Sea Peoples & Marine Plastic Pollution in Southeast Asia:
An International Human Rights Approach in Support of Indigenous Rights to Environment

Jonathan Liljeblad

Abstract

The paper explores the potential for international human rights law to further articulation of indigenous rights to environment. The paper does so by using the case of sea peoples struggling against marine plastic pollution in Southeast Asia as an illustration clarifying how provisions in international human rights instruments can advance indigenous interests against environmental harms. The term "sea peoples" references the Bajau, Moken, and Orang Laut peoples, whose communities span multiple countries in the Association of Southeast Asian States (ASEAN) and whose cultures are tied closely to the marine environment. The paper applies international human rights instruments to identify legal rights covering substantive, procedural, and legal personality issues relevant to the concerns of sea peoples contending with marine plastic pollution. In doing so, the analysis demonstrates an international human rights law approach to the delineation of indigenous rights to environment.

Author Biography

Jonathan Liljeblad holds a PhD and JD, both from the University of Southern California. He is an Associate Professor at the Australian National University College of Law. His research focuses on the promotion of international rule-of-law norms in developing countries, with case studies addressing indigenous rights, human rights, and environmental issues. Much of his field work is in Southeast Asia, where he has

provided support to the efforts of international aid organizations such as Asia Development Bank (ADB), International Commission of Jurists (ICJ), Danish Institute of Human Rights (DIHR), and Konrad Adenauer Stiftung (KAS). He is a member of the Pa'Oh indigenous peoples of Shan State, Myanmar, and grew up in Sweden and the United States.

Table of Contents

I. Introduction

In a 2017 report to the Human Rights Council discussing the human rights obligations of states vis-à-vis the environment (2017 Report of the Special Rapporteur on Human Rights and Environment),[1] the United Nations Special Rapporteur on Human Rights and Environment John Knox dedicated attention to the need for elevated protections regarding vulnerable populations.[2] The notion of vulnerable populations in the report encompassed indigenous peoples[3], and so placed indigenous issues within international discourses connecting

1. U.N. GAOR, *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, & Sustainable Environment,* U.N. Doc. A/HRC/34/49 (2017) [hereinafter UNGA 2017].
2. *Id.* at 16–21.
3. *Id.*

human rights and environmental issues. The report, however, was a preliminary statement outlining the types of human rights related to the environment, and left a suite of recommendations for future implementation.[4] Among those recommendations was the call to respect the rights of indigenous peoples, pointing to the application of human rights in support of indigenous rights to environment.[5]

The present analysis contributes to the ongoing efforts to formulate human rights approaches supporting indigenous rights to the environment, using the situation of sea peoples and marine plastic pollution in Southeast Asia as a case illustrating the ways in which international human rights law can articulate indigenous rights against transboundary aquatic harms. In Southeast Asia, the terms "sea nomads," "sea gypsies," or "sea peoples" (hereinafter "sea peoples") reference indigenous populations with traditional cultures based on the seas.[6] The sea peoples consist of the Bajau, Moken, and Orang Laut peoples, each of whom claim spaces spanning the territories of multiple states within the Association of Southeast Asian Nations (ASEAN).[7] Due to their marginal status and relations with the sea[8], they suffer from elevated levels of vulnerability to harms impacting the shorelines and waterways of Southeast Asia. Among those harms is marine plastic, which is a growing issue for Southeast Asia in that the countries of ASEAN are both major producers of plastic waste and the most immediate victims of its passage through the region's waters.[9]

4. *Id.* at 21–22.

5. *Id.* at 22.

6. *See, e.g.*, Vilashini Somiah, *The Sea is Indigenous 'Land' Too*, 37 Sojourn: J. of Soc. Issues in Southeast Asia 85, 85–112 (2022) [hereinafter Somiah 2022]; Bérénice Bellina, Roger Blench, & Jean-Christopher Galipaud, *Sea Nomadism from the Past to the Present*, *in* Sea Nomads of Southeast Asia (Bérénice Bellina, Roger Blench, & Jean-Christopher Galipaid eds., 2021) [hereinafter Bellina et al. 2021]; Barbara Watson Andaya, *Recording the Past of "Peoples Without History": Southeast Asia's Sea Nomads*, 32 Asian Rev. 1, 5–33 (2019) [hereinafter Andaya 2019]; Sebastian Hope, Outcasts of the Islands: The Sea Gypsies of Southeast Asia (HarperCollins 2001) [hereinafter Hope 2001].

7. Bellina et al. 2021, *supra* note 6, at 12; Tom Gunnar Hoogervorst, *Ethnicity & Aquatic Lifestyles: Exploring Southeast Asia's Past & Present Seascapes*, 4 Water Hist. 245 (2012) [hereinafter Hoogervorst 2012]; Julian Clifton & Chris Majors, *Culture, Conservation, & Conflict: Perspectives on Marine Protection Among the Bajau of Southeast Asia*, 25 Soc'y & Nat. Resources 716, 717 (2011) [hereinafter Clifton & Majors 2011].

8. Somiah 2022, *supra* note 6, at 100.; Lowe 2003, *supra* note 17.

9. Lucy C.M. Omeyer et al., *Priorities to Inform Research on Marine Plastic Pollution in Southeast Asia*, 841 Sci. of the Total Env't (2022) [hereinafter Omeyer et al. 2022]; Youna Lyons, et al., A Review of Research on Marine Plastics in Southeast Asia: Who Does What? (Ctr. for Int'l Law, Nat'l Univ. of Sing. ed., 2019) [hereinafter Lyons et al. 2019]; Markus Lasut et al., *From Coral Triangle to Trash Triangle—How the Hot Spot of Global Marine Biodiversity Is Threatened by Plastic Waste*, *in* Proceedings of the International Conference on Microplastic Pollution in the Mediterranean Sea

The analysis works to demonstrate how international human rights law can enable legal actions by sea peoples against marine plastic pollution, illustrating the application of international human rights instruments to articulate legal rights supporting indigenous interests vis-à-vis the environment. The analysis begins with Section II, which provides background regarding the context of sea peoples and marine plastic pollution in Southeast Asia. The discussion continues with Section III, which summarizes international human rights law approaches relative to international environmental law approaches in conceptualizing indigenous rights to the environment. Section IV turns to the delineation of a framework using relevant international human rights instruments that maps substantive rights, procedural rights, and legal personality necessary for legal actions by sea peoples in regard to marine plastic pollution. Section V makes critical commentary on the issues tied with human rights approaches to indigenous environmental issues in Southeast Asia, and Section VI finishes with concluding thoughts and directions for future research.

II. Sea peoples and marine plastic pollution in Southeast Asia

The literature on indigenous peoples in Southeast Asia uses the appellations "sea peoples," "sea nomads," and "sea gypsies" in reference to communities whose cultures are connected to marine environments encompassing coastal and archipelagic waters, with historical continuity to ancestral migratory lifestyles crossing the modern political boundaries and territorial waters in the Southeast Asia region.[10] In contrast to more terrestrial notions of indigeneity, sea peoples hold to identities based on aquatic existence.[11] While their traditions can include defined land- and sea-scapes, their heritage is characterized by life as "boat-dwellers" or "floating villages," expertise in ship construction, skills in maritime navigation, and integration with marine environments.[12] In modern Southeast Asia, the concept of sea peoples

107–113 (2017) [hereinafter Lasut et al. 2017]; Peter Todd et al., *Impacts of Marine Life in Southeast Asia*, 19 Biodiversity & Conservation 1063 (2010) [hereinafter Todd et al. 2010].

10. *See, e.g.*, Somiah 2022, *supra* note 6; Bellina et al. 2021, *supra* note 6; Andaya 2019, *supra* note 6; Cynthia Chou, *The Water World of the Orang Suku Laut in Southeast Asia*, 4 TRaNS: Trans –Reg'l & –Nat'l Stud. of Se. Asia 265 (2016) [hereinafter Chou 2016]; Cynthia Chou, Indonesian Sea Nomads: Money, Magic & Fear of the Orang Suku Laut (Routledge ed., 2016) [hereinafter Chou 2016b]; Hoogervorst 2012, *supra* note 7; Clifton & Majors 2011, *supra* note 7; Hope 2001, *supra* note 6.

11. Somiah 2022, *supra* note 6, at 88; Chou 2016a, *supra* note 10; Chou 2016b, *supra* note 10.

12. Bellina et al. 2021, *supra* note 6; Chou 2016a, *supra* note 10, at 268; Hoogervorst 2012, *supra* note 7; Lisa Hiwasaki et al., *Local & Indigenous Knowledge on Climate-Related*

describes three broad groups: the Bajau (or Sama-Bajau), Moken (or Chao Lay), and Orang Laut (or Orang Suku Laut).[13] The Bajau lie within waters extending across areas of eastern Malaysia, southern Phillipines, and eastern Indonesia[14]; the Moken live along shorelines crossing Thailand, Myanmar, and Malaysia[15]; and the Orang Laut inhabit the coasts spanning Malaysia and Indonesia.[16]

The aforementioned sea peoples suffer from marginal socio-economic and political-legal status. With respect to socio-economic position, the Bajau, Moken, and Orang Laut live within the peripheries of the disparate countries of Southeast Asia, with poor levels of health care, weak education, low income, high unemployment, subsistence lifestyles, discrimination, and denigration as "primitive" or "backward" by mainstream societies.[17] Accompanying such issues are those of political subordination, with the various groupings of sea peoples encountering inequalities of power and privilege within multiple political systems in Southeast Asia that render them as subalterns to other interest groups.[18] Compounding their marginalization are widespread national policies of assimilation, which further conversion of traditional nomadic cultures to modern sedentary lifestyles while expanding state control over indigenous communities.[19] For example, Malaysia has imposed

Hazards of Coastal & Small Island Communities in Southeast Asia, 128 Climatic Change 35 (2015); Clifton & Majors 2011, *supra* note 7; Natasha Stacey et al., *Impacts of Marine Protected Areas on Livelihoods & Food Security of the Bajau as an Indigenous Migratory People in Maritime Southeast Asia, in* Marine Protected Areas: Interactions with Fishery Livelihoods and Food Security (Lena Westlund et al., eds., Food and Agric. Org. 2017) [hereinafter Stacey et al. 2017].

13. Bellina et al. 2021, *supra* note 6; Hoogervorst 2012, *supra* note 7; Clifton & Majors 2011, *supra* note 7.

14. Hoogervorst 2012, *supra* note 7; Stacey et al. 2017, *supra* note 12; Celia Lowe, *The Magic of Place; Sama at Sea & on Land in Sulawesi, Indonesia*, 159 Bijdragen tot de Taal-, Land- en Volkenkunde 109 (2003).

15. Olivier Ferrari, *Borders & Cultural Creativity: The Case of the Chao Lay, the Sea Gypsies of Southern Thailand, in* Reflections on Identity & the Social Construction Space in the Borderlands of Cambodia, Vietnam, Thailand, & Myanmar (Frederic Bourdier et al., eds., Amsterdam Univ. Press 2015) [hereinafter Ferrari 2015]; Clifton & Majors 2011, *supra* note 7.

16. Chou 2016a, *supra* note 10; Chou 2016b, *supra* note 10; Lioba Lenhart, *Orang Suku Laut Communities at Risk: Effects of Modernisation on the Resource Base, Livelihood, & Culture of the 'Sea Tribe People' of the Riau Islands (Indonesia)*, 5 Nomadic Peoples 67 (2001).

17. Chou 2016a, *supra* note 10; Hoogervorst 2012, *supra* note 7; Clifton & Majors 2011, *supra* note 7; Lowe 2003, *supra* note 17; Hope 2001, *supra* note 6.

18. Somiah 2022, *supra* note 6; Lowe 2003, *supra* note 17.

19. Chou 2016a, *supra* note 10, at 268; Chou 2016b, *supra* note 10; Ferrari 2015, *supra* note 15; Clifton & Majors 2011, *supra* note 7; Tonia Li, The Will to Improve: Governmentality, Development, & the Practice of Politics (Duke Univ. Press 2007); Hope 2001, *supra* note 6.

state-directed development plans emphasizing ecotourism for coastal communities, with the rationale that the such communities are "backward" due to their "dependency" on natural resources and require state intervention to bring them into national development goals, but in doing so denied Baja populations participation in state development decisions and ignored the sustainability of Baja subsistence-based lifestyles.[20] As an additional example, Indonesia has employed nation-building narratives of a common archipelagic aquatic culture, with an attendant reasoning that the nomadic nature of aquatic communities makes them amenable to state development policies involving the resettlement of coastal peoples. Such an approach, however, is reductionist in that it overlooks Bajau notions of place that connects maritime and terrestrial locations together, distorting Bajau culture by suppressing their associations with historical coastal territories and disconnecting them from traditions tied to those locations.[21]

Some states *accord* sea peoples with varying degrees of access to legal rights protecting indigenous cultures. The Philippines, for example, allow indigenous peoples such as the Bajau to pursue native title claims for ancestral domains.[22] Similarly, Malaysia provides legal protections for traditional knowledge and practices in indigenous territories.[23] The exercise of such rights, however, frequently place sea peoples in unequal contests with state, societal, and economic interests who enjoy relatively greater capacity to exercise legal strategies, with the examples of the Philippines and Malaysia in particular subjecting indigenous legal claims to state proscriptions serving social and economic policies.[24] A number of sea peoples struggle to gain access to the law at all, with situations such as the Moken and Bajau in Myanmar, Thailand, and Malaysia presenting contests over statelessness, with citizenship laws challenging the nature of sea peoples' legal personality

20. Greg Acciaioli, Helen Brunt, & Julian Clifton, *Foreigners Everywhere, Nationals Nowhere: Exclusion, Irregularity, & Invisibility of Stateless Bajau Laut in Eastern Sabah, Malaysia*, 15 J. of Immigrant & Refugee Stud. 232 (2017) [hereinafter Acciaioli et al 2017].

21. Greg Acciaioli, *"Archipelagic Culture" As an Exclusionary Government Discourse in Indonesia*, 2 Asia Pac. J. of Anthropology 1 (2001).

22. Amiel Valdez, *Balancing the Indigenous Peoples' Ancestral Sea Rights, and the State's Obligation to Protect and Preserve the Marine Environment*, 23 Asia-Pac. J. on Hum. Rts. & the L. 47 (2022) [hereinafter Valdez 2022].

23. *See* Azmi Sharom, *A Critical Study of the Laws Relating to the Indigenous Peoples of Malaysia in the Context of Article 8(j) of the Biodiversity Convention*, 13 Int'l J. on Minority & Grp. Rts. 53 (2006) [hereinafter Sharom 2006].

24. Valdez 2022, *supra* note 22; Somiah 2022, *supra* note 6, at 92; Sharom 2006, *supra* note 23; Hope 2001, *supra* note 6.

and their consequent claims to legal rights.[25] Both Myanmar and Thailand classify the Moken as a nomadic transboundary people and hence ineligible for citizenship in either country, leaving them bereft of rights to work, travel, and healthcare.[26] Similarly, Malaysia treats the Bajau as stateless, with the consequence that Bajau peoples are unable to access national healthcare and education.[27]

The position of sea peoples in Southeast Asia places them in a state of vulnerability. Their close relationships to the marine environment connect their cultural and physical survival to the sea. In terms of cultural survival, changes in aquatic conditions threaten their maritime cultural traditions and practices. In terms of physical survival, deterioration in marine ecosystems impairs their associated livelihoods and subsistence lifestyles. Their peripheral socio-economic status accords them weak capacity to respond to harms affecting the seas, and the marginal political-legal status provides them with limited means of using the instruments of Southeast Asian states to address their concerns. As a result, relative to other elements of societies in Southeast Asia, sea peoples are more susceptible to aquatic environmental problems such as marine plastic pollution.

The issue of marine plastic pollution is a growing problem for the world's oceans as a whole[28], but it has heightened significance for Asia in that the countries of the region are considered to be major producers of plastic debris in adjoining seas.[29] It is a particular issue for

25. Christoph Sperfeldt, *Legal Identity & Statelessness in Southeast Asia*, Asia Pac. Issues: No. 147 (2021); Acciaioli et al 2017; Catherine Allerton, *Contested Statelessness in Sabah, Malaysia: Irregularity & the Politics of Recognition*, 15 J. Immigrant & Refugee Stud. 250 (2017) [hereinafter Allerton 2017]; Julian Clifton, Greg Acciaioli, Helen Brunt, Wolfram Dressler & Michael Fabinyi, *Statelessness & Conservation*, 19 Tilburg L. R. 81 (2014) [hereinafter Clifton et al 2014].

26. Ferrari 2015, *supra* note 15; *Stateless at Sea: The Moken of Burma & Thailand*, Human Rights Watch (June 25, 2015), https://www.hrw.org/report/2015/06/25/stateless-sea/moken-burma-and-thailand [https://perma.cc/4XMQ-KT9Z].

27. Clifton et al. 2014, *supra* note 25.

28. *See, e.g.*, Sanae Chiba et al., *Footprint in the Abyss: 30 Year Records of Deep-Sea Plastic Debris*, 96 Marine Pol'y 204 (2018); H.S. Auta et al., *Distribution & Importance of Microplastics in the Marine Environment: A Review of the Sources, Fate, Effects, & Potential Solutions*, 102 Env't Int'l 165 (2017); Luis Gabriel Antao Barboza & Barbara Carolina Garcia Gimenez, *Microplastics in the Marine Environment: Current Trends and Future Perspectives*, 97 Marine Pollution Bull. 5 (2015); L.C.-M. Lebreton et al., *Numerical Modelling of Floating Debris in the World's Ocean*s, 64 Marine Pollution Bulletin 653 (2012) [hereinafter Lebreton et al. 2012).

29. *See, e.g.*, Beatriz Garcia et al., *Marine Plastic Pollution in Asia: All Hands on Deck!*, 3 Chinese J.Env't L. 11 (2019) [hereinafter Garcia et al. 2019];United Nations Economic and Social Council for Asia and the Pacific (UN ESCAP), Policy Brief: Managing Marine Plastic Debris in Asia and the Pacific (Jan. 31, 2022), https://www.unescap.org/sites/default/d8files/knowledge-products/Policy%20Brief_Plastic-English_final.pdf [https://

Southeast Asia, with ASEAN considered to be among the largest sources of marine plastic waste in the world.[30] Southeast Asia's issues with marine plastic, however, extend beyond production, in that the region also contends with high levels of exposure to marine plastic. Roughly 70 percent of the populations within ASEAN residing along coastal areas experience increasing urbanization, pollution, natural resource exploitation, and ship traffic.[31] Sea peoples lie within the margins of those populations, with their positions of vulnerability lying in a wider context of increasing marine plastic pollution and growing damage to aquatic environments. Hence, for sea peoples, marine plastic pollution poses relatively greater pressure upon the continued cultural and physical existence of their communities.

The hazards of marine plastic encompass a range of harms spanning aquatic ecosystems and human communities. To begin, marine plastic threatens ecosystems with toxic materials, either as a result of plastic debris breaking down while suspended in the seas or as a result of waste disposal via landfills or burning running into riverine and coastal waters.[32] The resulting chemical compounds can contaminate habitats or enter the food chain through ingestion, harming plant and animal life, thereby driving biodiversity loss.[33] For human communities, the consequences entail an impairment of ecosystem services derived from the seas, in that flora and fauna within oceanic and coastal environments render habitable spaces with resources for food, medicinal compounds for health, and materials and locations for housing.[34] It also threatens to weaken livelihoods that are dependent upon aquatic natural resources, including fishing, artisanal crafts, and aquatic

perma.cc/VP9Y-SLU5].

30. *ASEAN Framework of Action on Marine Debris*, Ass'n of Southeast Asian Nations (ASEAN) (2019), https://cil.nus.edu.sg/wp-content/uploads/2019/11/2019-ASEAN-Framework-Marine-Debris.pdf [https://perma.cc/2M6X-HT87] [hereinafter ASEAN 2019]; Lyons et al. 2019, *supra* note 9; Lasut et al. 2017, *supra* note 9; Lebreton et al. 2017, *supra* note 28; Jenna Jambeck et al., *Plastic Waste Inputs from Land Into the Ocean*, 347 Science 768 (2015) [hereinafter Jambeck et al. 2015].

31. Todd et al. 2010, *supra* note 9.

32. Omeyer et al. 2022, *supra* note 9; Todd et al. 2010, *supra* note 9; Murray Gregory, *Environmental Implications of Plastic Debris in Marine Settings—Entanglement, Ingestion, Smothering, Hangers-On, Hitch-Hiking, & Alien Invasions*, 364 Phil. Trans. R. Soc. B 2013 (2009).

33. *Id.*

34. Bellina et al. 2021, *supra* note 6; Anna Phelan et al., *Ocean Plastic Crisis—Mental Models of Plastic Pollution from Remote Indonesian Coastal Communities*, 15 PLOS One, 7 (2020); Jacob Wood et al., *Plastic Marine Waste & Its Potential for Indonesian Indigenous Communities*, 19 eTropic 168 (2020).

tourism.[35] Further, for cultures tied to the seas, it poses the potential interruption of practices and traditions endemic to their identities.[36] As an example illustrating the holistic scope of sea peoples' connections to the seas, Orang Laut culture associates traditional fishing with systems of knowledge regarding coastal and marine locations rich in edible life and resources for fire, clothing, and construction materials for boats and housing, which are concurrently interwoven with spiritual beliefs and rituals carrying Orang Laut approaches to rights, ownership, territory, and social relations.[37] As such, for the Orang Laut, disruptions in traditional fishing incur concurrent disruptions into subsistence, livelihoods, and culture.

The countries of Southeast Asia have struggled to implement management regimes to address the hazards of marine plastic.[38] Despite state efforts at global, regional, national, and sub-national levels, there has been little mitigation of plastic in Southeast Asia's seas.[39] Critics assert that the efforts are constrained by the prevalence of "top-down" approaches in the form of state-directed policies, which while necessary in promoting coordinated approaches covering global, regional, and national levels that match the transnational reach of marine plastic pollution, are insufficient in that they overlook the complexities of issues at the sub-national levels of local communities which drive the generation and propagation of marine plastic pollution.[40] They argue instead that more effective solutions require holistic approaches coordinating multiple-levels of action, and so call for the integration of "top-down" state-centric policies with "bottom-up" strategies encompassing contributions of non-state stakeholders from local communities.[41] The rationale behind community-oriented "bottom-up" approaches is that

35. *Id.*

36. *Id.*

37. Chou 2016a, *supra* note 10; Chou 2016b, *supra* note 10.

38. Omeyer et al 2022, *supra* note 9; Lyons et al. 2019, *supra* note 9; Jambeck et al. 2015, *supra* note 30.

39. Lyons et al. 2019, *supra* note 9; Gregoria Joanne Tiquio, et al., *Management Frameworks for Coastal & Marine Pollution in the European & South East Asian Regions*, 135 Ocean & Coastal Mgmt 65 (2017).

40. Omeyer et al. 2022, *supra* note 9; Garcia et al. 2019, *supra* note 29; Peter Dauvergne, *Why Is the Global Governance of Plastic Failing the Oceans?*, 51 Glob. Env't Change 22 (2018); Joanna Vince & Britta Hardesty, *Plastic Pollution Challenges in Marine & Coastal Environments: From Local to Global Governance*, 25 Restoration Ecology 123 (2017) [hereinafter Vince & Hardesty 2017]; Lauren Butterly & Erika Techera, *Critical Linkages: Trans-Jurisdictional Approaches to Advancing Indigenous Marine Governance*, *in* Trans-Jurisdictional Water L. & Governance (J Gray et al. eds., 2016) [hereinafter Butterly & Techera 2016]; Todd et al. 2010, *supra* note 9.

41. *Supra* note 40.

they help to direct attention to the sources of marine plastic pollution at sub-national levels involving community civil society organizations, local governments, and private sector actors which often avoid state-driven measures.[42]

The present analysis follows the call for bottom-up strategies vis-à-vis the challenges of marine plastic pollution affecting the sea peoples of Southeast Asia. However, as much as the harms inflicted by marine plastic upon indigenous communities may be considered as local phenomena, the nature of sea-borne plastic debris is not. Specifically, it is not readily feasible to identify point source origins of individual plastic materials carried into the aquatic spaces of sea people communities, as the plastic is carried by currents through the waters of Southeast Asia. As a result, to the extent that marine plastic debris is carried by the seas across territorial boundaries of states, it constitutes a transboundary environmental problem. Such a transboundary aspects place marine plastic pollution within the space of international law.

The analysis keeps to the orientation of "bottom-up" approaches vis-à-vis transboundary environmental harms, with the deliberations in following sections intended to clarify potential legal strategies under international human rights law available to indigenous communities struggling with plastic debris in their aquatic environments. The next section begins with commentary about the value of international human rights law as a complement to international environmental law in assisting the interests of coastal and oceanic indigenous communities. It then turns to identifying principles of international human rights law relevant to the situation of sea peoples and marine plastic pollution in Southeast Asia.

III. International human rights approaches as complementary to international environmental law

The case of sea peoples and marine plastic pollution conforms to efforts to formulate indigenous rights to the environment. A substantial portion of such efforts associate indigenous rights to environment with environmental law discourses, with transboundary scenarios drawing contributions from literature in international law.[43] An alternative

42. Garcia et al. 2019, *supra* note 29; Vince & Hardesty 2017, *supra* note 40.

43. *See generally*, Shawkat Alam, *The Collective Rights of Indigenous PeoplesEnvironmental Destruction, & Climate Change*, *in* Routledge Handbook of Int'l Env't Law (Erika Techera et al. eds., 2nd ed., 2021); Laura Westra, Environmental Justice & The Rights of Indigenous Peoples (1st ed., 2013) [hereinafter Westra 2013]; Rebecca Tsosie, Indigenous People & Environmental Justice: The Impact of Climate Change, 78 *U. Colorado L. Rev.* 1625 (2007); Peter Manus, Indigenous Peoples' Environmental Rights:

component, however, looks to approaches based in human rights, using human rights to connect indigenous interests to environmental issues.[44] Of particular relevance for transboundary cases is the work of the office of the UN Special Rapporteur, whose mandate focuses specifically on delineating the connections between human rights and environment in international law.[45] The office of the Special Rapporteur has included indigenous issues within its publications, with notable guidance appearing in the 2017 Report of the Special Rapporteur on Human Rights and Environment, which highlighted the status of indigenous peoples as vulnerable populations requiring elevated protection from the diverse legal systems of the world.[46]

The present analysis follows the discourse on human rights and environment, using the case of sea peoples and marine plastic pollution to explore a human rights approach in articulating indigenous rights to environment. The following subsections discuss the complications of international environmental law in addressing the case of sea peoples and marine plastic pollution, and ways in which international human rights law can provide them alternative means of recourse. Together, the subsections below work to demonstrate how international human rights law can complement international environmental law to aid indigenous peoples impacted by sea-borne plastic debris.

A. International environmental law

The interests of indigenous peoples are present within spaces of international environmental law, with examples of engagement with indigenous voices in instruments such as the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity (CBD), and its accompanying Nagoya Protocol.[47] Such efforts, however, are recent trends in the longer history of international environmental law, which extends to the early 20th century[48],

Evolving Common Law Perspectives in Canada, Australia, & the United States, 33 *B.C. Envtl Aff. L. Rev.* 1 (2006).

44. *See, e.g.*, Westra 2013, *supra* note 43; Bridget Lewis, *Indigenous Human Rights and Climate Change*, 7 Indigenous L. Bull. 8, 11–16 (2008).

45. United Nations Special Rapporteur on Human Rights & Environment (2022), https://www.ohchr.org/en/special-procedures/sr-environment [https://perma.cc/SY8U-BJCH].

46. UNGA 2017, *supra* note 1, at 22.

47. Alan Boyle, *Climate Change, the Paris Agreement and Human Rights*, 67 *I.C.L.Q.* 759 (2018) [hereinafter Boyle 2018]; UNGA 2017, *supra* note 1; Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16–1104 [hereinafter UN 2015]; Convention on Biological Diversity, https://www.cbd.int (last visited Sept. 20, 2020) [https://perma.cc/TZ72–47J3] [hereinafter CBD 1992].

48. Edith Brown Weiss, *The Evolution of International Environmental Law*, 54

and they do not directly address indigenous rights in relation to the topic of marine plastic. The concerns of aquatic indigenous peoples are encompassed by the World Indigenous Network of Land and Sea Managers, which is a product of the United Nations Conference on Sustainable Development[49], but the network is a non-legal venue and so offers little as a legal mechanism. There is international law that relates to marine plastic debris, in that it conceivably falls within the purview of instruments such as the Convention on the Control of Transboundary Movements of Hazardous Wastes & Their Disposal (Basel Convention), United Nations Convention on the Law of the Sea (UNCLOS), International Convention for the Prevention of Pollution from Ships (MARPOL), and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London Convention).[50] But none of these directly address the issues of indigenous peoples in relation to harms resulting from marine plastic.

To some degree, it is possible to extend international environmental law to encompass indigenous communities, in that international environmental law does allow for action by state and non-state actors and indigenous communities can function as non-state actors. Such considerations can apply to the phenomenon of marine plastic pollution, with public and private international environmental law providing avenues addressing state and non-state sources of aquatic plastic debris. Public international environmental law imposes liability upon a state for its conduct within its territory that harms the environment of other states. Such liability draws from the proceedings of the *Trail Smelter* arbitrations between Canada and the United States as well as from principles contained in the United Nations Conference on the Human Environment (Stockholm Declaration) and the United Nations Conference on Environment and Development (Rio Declaration).[51] Private

Japanese Y.B. Int'l L. 1, 2 (2011) [summarizing the timeline of international environmental law as the commencement of international instruments dealing with the environment].

49. Butterly & Techera 2016, *supra* note 40.

50. *See* Ina Tessnow-von Wysocki & Philippe Le Billon, *Plastics at Sea: Treaty Design for a Global Solution to Marine Plastic Pollution*, 100 Env't Sci. & Pol'y 94, 98 (2019); *see also* Micah Landon-Lane, *Corporate Social Responsibility in Marine Plastic Debris Governance*, 127 Marine Pollution Bull. 310 (2018); Karen Raubenheimer & Alistair McIlgorm, *Can the Basel and Stockholm Conventions Provide a Global Framework to Reduce the Impact of Marine Plastic Litter?*, 96 Marine Pol'y 285 (2018); Patricia Villarrubia-Gomez et al., *Marine Plastic Pollution as a Planetary Boundary Threat: The Drifting Piece in the Sustainability Puzzle*, Marine Pol'y 213 (2018) [hereinafter Villarrubia-Gomez et al. 2018]; Christopher Mooradian, *Protecting Sovereign Rights: The Case for Increased Coastal State Jurisdiction Over Vessel-Source Pollution in the Exclusive Economic Zone*, 82 B.U. L. Rev. 767 (2002).

51. Maria Banda, *Regime Congruence: Rethinking the Scope of State Responsibility*

international environmental law allows legal action between non-state actors located in different states, with civil law options such as torts offering potential remedies for plaintiffs against transboundary harms by polluters in other jurisdictions.[52]

Both of the above public and private approaches, however, operate to place indigenous concerns under the discretion of states. In framing liability in terms of state-to-state transboundary harms, public international environmental law makes non-state actors dependent upon the will of their home state to advocate on their behalf.[53] In looking to liability between non-state actors, private international environmental law is limited to remedies offered by the laws of states hosting plaintiff and defendant parties.[54] Either way, international environmental law exhibit a state-centric disposition in which states control the avenues available to indigenous peoples in addressing transboundary environmental issues.[55] Even when such avenues are available, such as in the indigenous fora allocated to indigenous peoples in the UNFCCC and CBD, they often require knowledge, skills, technology, and financial resources that challenge indigenous peoples who frequently have little familiarity with international environmental law, possess weak education, hold limited technology, and come from locales with low income.[56]

---

for Transboundary Environmental Harm, 103 Minn. L. Rev. 1879 (2019); Boyle (2018), *supra* note 47; Alan Boyle, *Globalising Environmental Liability: The Interplay of National & International Law*, 17 J. Env't L. 3, at 4 (2005) [hereinafter Boyle 2005].

52. *See* Hans van Loon, *Principles and Building Blocks for a Global Legal Framework for Transnational Civil Litigation in Environmental Matters*, 23 Uniform L. Rev. 298, 305–306 (2018); Robert Percival, *Liability for Environmental Harm and Emerging Global Environmental Law*, 25 Md. J. Int'l L. 37, 42, 49 (2010) [hereinafter Percival 2010]; Boyle (2005), *supra* note 51 at 9.

53. Banda, *supra* note 51, at 1951; Boyle (2005), *supra* note 51; *see generally* Jaye Ellis, *Extraterritorial Exercise of Jurisdiction for Environmental Protection: Addressing Fairness Concerns*, 25 Leiden J. Int'l L. 397, 399 (2012) [hereinafter Ellis 2012]; Peter Lepsch, *Ecological Effects Know No Boundaries: Little Remedy for Native American Tribes Pursuing Transboundary Pollution Under International Law*, 11 Buff. Env't L.J. 61, at 67–69 (2003) [hereinafter Lepsch 2003].

54. Percival (2010), *supra* note 52, at 63; Boyle (2005), *supra* note 51, at 10–11; Lepsch (2003), *supra* note 53.

55. *See, e.g.*, David Wilson, *European Colonisation, Law, and Indigenous Marine Dispossession: Historical Perspectives on the Construction and Entrenchment of Unequal Marine Governance*, 20 Maritime Studies 387, 398–402 (2021); The Rights of Indigenous Peoples in Marine Areas 39–42, 126–132 (Stephen Allen et al. eds., Hart Publishing 2019); Lepsch (2003), *supra* note 53, at 67–69; Stuart Kaye, *Jurisdictional Patchwork: Law of the Sea & Native Title Issues in the Torres Strait*, 2 Melbourne J. Int'l L. 381, 402–403, 409–410 (2001).

56. Jonathan Liljeblad, Indigenous Identity, Human Rights, & the Environment in Myanmar, 10–11, 61–62, 82–85 (Routledge 2022) [hereinafter Liljeblad 2022].

In addition, the reserve of state discretion raises an antecedent issue regarding legal claims by indigenous communities in terms of the determination of indigenous status itself. As much as international environmental law may work to accommodate indigenous peoples, it does little to address identification by legal systems of groups as being indigenous[57], leaving the recognition of indigenous status to reference other sources of law. In the absence of alternative sources, the state-driven structure of international environmental law points to the prominence of the state vis-à-vis legal systems and their implementation of legal rights. Hence, the ability of groups to claim indigenous status is rendered uncertain by the discretionary powers of states in international environmental law.

B. International human rights law

International human rights law provides an alternative approach to formulating indigenous rights to environment. International human rights discourses encompass issues of indigenous rights, both directly as rights specific to indigenous peoples, as exemplified by dedicated instruments such as the United Nations Declaration on Rights of Indigenous Peoples (DRIP), and indirectly as rights held by populations that encompass indigenous communities, in the sense that group rights available in instruments such as the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social, and Cultural Rights (ICESCR) are accessible to an indigenous population comprising a coherent group.[58] For its part, of the office of the UN Special Rapporteur on Human Rights and Environment specifically integrates indigenous peoples within deliberations over connections between human rights and environment.[59] In addition, human rights discourses espouse the universal promotion of concepts like human dignity[60], agency and autonomy[61], human capabilities[62], moral worth[63], collective human endeavors[64], and respect for cultural

57. Maria Victoria Cabrera Ormaza, *Re-thinking the Role of Indigenous Peoples in International Law: New Developments in International Environmental Law & Development Cooperation*, 4 Goettingen J. Int'l L. 243, 261–262, 269–270 (2012).

58. UNGA 2017, *supra* note 1; OHCHR, *Indigenous Peoples and the United Nations Human Rights System, Fact Sheet No. 9/Rev.2* (2013), at 4–9, 19–22.

59. UNGA 2017, *supra* note 1.

60. Michael Goodhart, Human Rights: Politics & Practice 18–19 (Oxford Univ. Press 2009) [hereinafter cited as Goodhart 2009].

61. *Id.*

62. *Id.*; Amartya Sen, Development as Freedom (Anchor Books 2000).

63. *Id.*

64. *Id.* John Rawls, The Law of Peoples (Harvard Univ. Press 1999).

context,[65] with such universality implying the inclusion of indigenous peoples as human beings. Further, international human rights instruments assert the rights of self-determination for peoples[66], enabling the ability of indigenous individuals and groups to identify the meaning of their status as peoples.

Collectively, the preceding ensemble of rights indicates an orientation towards the concerns of individuals and groups, placing international human rights law in contrast with the more state-centric disposition of international environmental law. In particular, while international environmental law affords any given state a measure of discretion vis-à-vis the provision of legal options for non-state actors, international human rights law calls for each state to hold responsibility for the promotion of human rights protecting individuals and groups within its jurisdiction.[67] Such a circumscription of state authority extends to the recognition of legal personality, in that as much as international environmental law maintains state discretion in recognizing the existence of groups claiming to be indigenous, the right of self-determination in international human rights law calls upon states to *accord* such groups the power to decide their own status.[68] Hence, for any given indigenous population, the scope of rights under international human rights law offers the potential for more legal avenues in terms of both exercising rights as a group and as an indigenous people.

The differences between international environmental law and international human rights law also extend to the treatment of liabilities. Under international environmental law, state and non-state liabilities are prescribed by states, leaving indigenous peoples at the mercy of states to provide means of remedy. In contrast, international human rights law asserts universal rights, incurring international liabilities which enable indigenous peoples to advance transboundary claims. Specifically,

65. Kyle Whyte, *The Recognition Dimensions of Environmental Justice in Indian Country*, 4 Env't Just. 199, 204 (2011); U.N. GAOR, *Report of the Independent Expert in the Field of Cultural Rights, Ms. Farida Shaheed, Submitted Pursuant to Resolution 10/23 of the Human Rights Council*, A/HRC/14/36 (2010).

66. *See, e.g.*, International Covenant on Civil & Political Rights, art. 1, Dec. 16, 1966, 999 U.N.T.S. 171, https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx [https://perma.cc/76YG-S5R7] [hereinafter ICCPR 1966]; International Covenant on Economic, Social & Cultural Rights, art. 1, Dec. 16, 1966, 999 U.N.T.S. 3, https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx [https://perma.cc/MA8E-79H8] [hereinafter ICESCR].

67. Lottie Lane, *The Horizontal Effect of International Human Rights Law in Practice*, 5 Eur. J. Compar. L. & Governance 5, at 26, 29–30 (2018); Jennifer Corrin, *From Horizontal & Vertical to Lateral: Extending the Effect of Human Rights in Post Colonial Legal Systems of the South Pacific*, 58 Int'l & Compar. L. Q. 31, at 31, 33–35 (2009).

68. ICCPR 1966, art. 1; ICESCR 1966, art. 1.

international human rights law identifies obligations of a state to protect the rights of human beings within its jurisdiction, which on a global scale forms an international system of unilateral state duties to anyone crossing diverse state jurisdictions.[69] Because such obligations extend to all human beings, international human rights law offers protection for indigenous peoples regardless of a state's recognition of indigenous status. The notion of jurisdiction can be extra-territorial, and so may extend a state's obligations to cover the human rights of populations outside its political boundaries.[70]

Human rights law looks to state duties not just with respect to a state's own actions, but also to state duties in promoting the observance of human rights by its own population.[71] As a result, for the issue of transboundary environmental problems like marine plastic pollution, international human rights law expects a state to provide redress for cases where 1) the state is responsible for a transboundary environmental harm affecting the human rights of a particular individual or group located in the territory of another state; and 2) the state hosts a non-state actor which is responsible for a transboundary environmental harm infringing upon the human rights of an individual or group in another state.[72] For indigenous peoples, such options means that they can turn to international human rights law to address transboundary environmental harms such as marine plastic and thereby bypass state-delimited strategies offered by international environmental law.

69. Banda, *supra* note 51, at 1900; Ibrahim Kanalan, *Extraterritorial State Obligations Beyond the Concept of Jurisdiction*, 19 German L.J. 43, 57–59 (2018).

70. Banda, *supra* note 51, at 1915; Kanalan, *supra* note 69; Natalie Dobson & Cedric Ryngaert, *Provocative Climate Protection: EU Extraterritorial Regulation of Maritime Emissions*, 66 Int'l & Compar. L. Q. 295 (2017); Peter Szigeti, *The Illusion of Territorial Jurisdiction*, 52 Tex. Int'l L.J. 369(2017); Jorge Vinuales, *A Human Rights Approach to Extraterritorial Environmental Protection?*, *in* THE FRONTIERS OF HUMAN RIGHTS 177 (Nehal Bhuta ed., 2016) [hereinafter Vinuales 2016]; Alan Boyle, *Human Rights &the Environment: Where Next?*, 23 EUR. J. OF INT'L L. 613, at 635–637 (2012); Olivia De Schutter et al., *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social, & Cultural Rights*, 34 HUM. RTS. Q. 1084, at 1090, 1096, 1099, 1101–1109 (2012); Hugh King, *Extraterritorial Human Rights Obligations of States*,9 HUM. RTS. L. R. 521, at 523, 542–555 (2009); Bankovic v. Belg., App. No. 52207/99, 2001-XII Eur. Ct. H.R. 333; Burgos v. Uru., Commc'n No. 52/1979, U.N. Doc. CCPR/C/13/D/52/1979; Meneses v. Ecuador, Petition 189–03, Inter-Am. Comm'n H.R., Report No. 153/11 (2011); Andreou v. Turk., App. No. 45653/99, Eur. Ct. H.R. (admissibility 3 June 2008); Pad v. Turk., App. No. 60167/00, Eur. Ct. H.R. (admissibility 28 June 2007); Kovacic v. Slovn., App. Nos. 44575/98, 45133/98, 48316/99, Eur. Ct. H.R. (admissibility 1 April 2004); Gueye v. Grance, Commc'n No. 196/1985, U.N. Human Rights Comm., U.N. Doc. CCPR/C/35/D/196/1985 (1989); Stephens v. Malta, App. No. 11956/07, Eur. Ct. H.R. (admissibility 21 April 2009).

71. Banda, *supra* note 51.

72. *Id.*

Further, while the nomenclature of "human rights" and "environmental law" indicate two distinct disciplines, there are increasing linkages between the two in academic and policy discourses acknowledging the prevalence of human-environment inter-relationships and the subsequent connections of rights regarding humanity and the environment.[73] The perspective inherent to such discourses is that the two disciplines can conjoin with each other, with complementary approaches for single cases hosting both human rights and environmental issues. The deliberations over legal associations between human rights and environment encompass ideas of a human right to a healthy environment.[74] Such linkages of human rights and environment means that the slate of human rights in international human rights law adds to the slate of legal claims available to individuals and groups suffering from environmental harms.[75] Such an expansion enables a more holistic scope covering the concerns of indigenous peoples.[76] In particular, it allows indigenous peoples to exercise rights associated with such concerns as cultural integrity, self-determination, and traditional environmental resources.[77] All the aforementioned areas of rights connect to each other,

73. *See, e.g.*, U. N. Special Rapporteur, Special Rapporteur on Human Rights and the Environment (2020), available at: https://www.ohchr.org/en/Issues/environment/SRenvironment/Pages/SRenvironmentIndex.aspx [https://perma.cc/TUB2-C55E] [hereinafter cited as U.N.G.A. 2020]; Jenny Springer, *IUCN's Rights-Based Approach: A Systemization of the Union's Policy Instruments, Standards, and Guidelines* (International Union for the Conservation of Nature IUCN 2016) [hereinafter Springer 2016]; Puneet Pathak, *Human Rights Approach to Environmental Protection*, 7 OIDA Int'l J. of Sustainable Dev. 17 (2014); U.N. General Assembly, Human Rights & the Environment, A/HRC/RES/19/10 (United Nations General Assembly 2014) [hereinafter UNGA 2012].

74. *See, e.g.*, John Knox, *Constructing the Human Right to a Healthy Environment*, 16 Ann. Rev. of L. & Soc. Sci. 4 (2020); The Human Right to a Healthy Environment (John Knox & Ramin Pejan eds., Cambridge Univ. Press 2018); Human Rights Council, Rep. of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, & Sustainable Environment, U.N. Doc. A/HRC/37/59 (Jan. 24 2018).[hereinafter cited as U.N.G.A. 2018a]; U.N. General Assembly, Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, & Sustainable Environment, U.N. Doc. A/73/188, https://undocs.org/A/73/188 (July 19, 2018) [hereinafter U.N.G.A. 2018b]; Springer 2016, *supra* note 73; Boyle, *supra* note 70, at 615, 617.

75. U.N.G.A. 2017, *supra* note 1; Human Rights Council, Rep. of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, & Sustainable Environment, U.N. Doc. A/HRC/34/49 (Jan. 19, 2017); Peter Zwiebach, *Whose Right Is It Anyway? Rethinking a Group Rights Approach to International Human Rights*, 4 Hum. Rts. & Hum. Welfare 79 (2004); Peter Jones, *Human Rights, Group Rights, & Peoples' Rights*, 21 Hum. Rts. Q. 80 (1999).

76. U.N.G.A. 2017, *supra* note 1; Susana Borras, *New Transitions from Human Rights to the Environment to the Rights of Nature*, 5 Transnat'l Env't L. 113–143 (2016) [hereinafter cited as Borras 2016].

77. U.N.G.A. 2017, *supra* note 1; G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007)[hereinafter cited as DRIP 2007]; Cherie Metcalfe,

in that a given indigenous culture is inter-related with its environmental context, and self-determination involves control over environmental resources and the cultural practices tied to those resources.[78]

In summary, international human rights law offers options beyond those available in international environmental law, and so provides potential to expand the slate of legal strategies available for indigenous peoples struggling against transboundary environmental problems. For the sea peoples of Southeast Asia, international human rights law presents possible ways of working from positions of marginality to counter the impacts of plastic in their marine environments. The next section follows the above discussion with delineation of how international human rights law opens legal avenues for sea peoples, with the analysis ascertaining principles in international human rights law addressing issues of substantive rights, procedural rights, and legal personality supporting legal action by sea peoples struggling against marine plastic pollution.

IV. Relevant principles of international human rights law for indigenous sea peoples

In looking to international human rights law in the case of sea peoples in Southeast Asia, the analysis applies a human rights approach to construct indigenous rights to the environment. To do so, the analysis heeds the progress of policy and scholarly discourses connecting human rights and environment as discussed previously, with guidance borrowed from elements of the discussion on indigenous rights in the 2017 Report of the Special Rapporteur on Human Rights and Environment. In keeping with the preceding section, the analysis addresses the topic of sea peoples and marine plastic pollution by interpreting their relations to water as involving human rights contained in international human rights instruments.

Implementation in law of a human right to environment incurs a need to delineate substantive and procedural components.[79] Substantive aspects of law relate to concepts and rules guiding the decisions of

Indigenous Rights & the Environment: Evolving International Law, 35 Ottawa L. Rev. 101 (2003) [hereinafter cited as Metcalfe 2003].

78. A.W. Harris, *Making the Case for Collective Rights: Indigenous Claims to Stocks of Marine Living Resources*, 15 Geo. Int'l Env't L. Rev. 379 (2003), https://indexarticles.com/reference/georgetown-international-environmental-law-review/indigenous-claims-to-stocks-of-marine-living-resources [https://perma.cc/E2UH-XPEF]; Metcalfe 2003, *supra* note 77; Lawrence Watters, *Indigenous Peoples & the Environment: Convergence from a Nordic Perspective*, 20 UCLA J. Env't L. & Pol'y 237, 304 (2001).

79. *Id.*

legal actors[80], with an example being statutory provisions identifying state duties in addressing environmental problems as a way of ensuring the enjoyment of human rights held by individuals and groups.[81] Procedural aspects relate to the processes that legal actors must follow in the exercise of legal mechanisms, with examples including state duties to provide transparency of information, enable public participation in policy decisions, and allow access to non-state actors for remedies against environmental harm.[82] However, the legal exercise of both substantive and procedural rights entails an attendant recognition of legal personality, in that an actor must have status allowing legal claims to the aforementioned rights. Pursuant to such considerations, the discussion below identifies the elements of sea peoples' connections with the marine environment that reflect substantive rights contained in international human rights law. The discussion also asserts that the exercise of those rights in legal actions by sea peoples requires attendant procedural rights, and proceeds to identify the procedural rights available in international human rights law. The discussion then associates the antecedent identification of indigenous legal personality with provisions of international human rights law.

It should be noted that indigenous rights are explicitly raised by dedicated international law instruments in the form of International Labor Organization Convention Number 169 (ILO 169) and DRIP. However, both suffer in terms of their binding capacities in Southeast Asia. As a treaty, ILO 169 is binding upon state parties, but none of the states in ASEAN are parties to the convention.[83] As a declaration, DRIP has no binding authority upon states.[84] Both instruments function as statements of norms and thereby aspirations guiding conduct, but the observance of those norms are problematic in Southeast Asia, as states

80. Sidney Dekker & Hugh Breakey, *"Just Culture": Improving Safety by Achieving Substantive, Procedural, & Restorative Justice*, 85 Safety Sci. 187 (2016) [hereinafter cited as Dekker & Beakey 2016]; Tyrone Kirchengast, *Beyond Normative Constraints: Declining Institutionalism and the Emergence of Substantive and Procedural Justice*, 41 Int'l J. of L., Crime, & Just. 292 (2013); Paul Stancil, *Substantive Equality and Procedural Justice*, 102 Iowa L. Rev. 1633 (2017).

81. U.N.G.A. 2017, *supra* note 1.

82. *Id.*; Dekker & Breakey 2016, *supra* note 80; Boyle 2012; Kyle Whyte, *The Recognition Dimensions of Environmental Justice in Indian Country*, 4 Env't Just. 199 (2011).

83. General Conference of the International Labour Organisation, *Indigenous & Tribal Peoples Convention, No. 169* (1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 [https://perma.cc/22NY-7JWZ] [hereinafter I.L.O. 169 1989].

84. Megan Davis, *The United Nations Declaration on the Rights of Indigenous Peoples*, 11 Aust'l Indigenous L. Rev., no. 3, 2007, at 55.

and societies across the region continue to contest notions of indigenous identity and the recognition of indigenous rights.[85] Such complications can be ameliorated through reference to international human rights law to the extent that provisions in ILO 169 and DRIP parallel analog provisions in human rights treaties and a proportion of states in Southeast Asia submit themselves to the legal duties in those treaties. In effect, human rights treaties can provide obligations on states for norms shared with the content of ILO 169 and DRIP. The discussion in the subsections below illustrate the mapping of human rights to indigenous rights to the environment, with the delineation of substantive rights, procedural rights, and legal personality using elements of ILO 169 and DRIP in relation to human rights treaties.

In using the case of sea peoples and marine plastic pollution, the analysis seeks to demonstrate the application of international human rights law using a sample of relevant international human rights instruments. Such an application is a practice in international law, in that the United Nations system has worked to articulate indigenous rights through existing international human rights instruments and within human rights-based approaches of United Nations programming principles.[86] In addition, both ILO 169 and DRIP tie themselves to human rights, with Article 3 of ILO 169 stating that "indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination"[87] and Article 1 of DRIP similarly stating that "indigenous peoples have the right to full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations,

85. *See e.g.*, Liljeblad (2022), *supra* note 56.; Micah Morton & Ian Baird, *From Hill Tribes to Indigenous Peoples: The Localisation of a Global Movement in Thailand*, 50 J. of Se. Asian Stud. 7 (2019); Ian Baird, *Introduction: Indigeneity in 'Southeast' Asia: Challenging Identities & Geographies*, 50 J. of Se. Asian Stud. 2 (2019) [hereinafter cited as Baird 2019]; Ian Baird, *Indigeneity in Asia: An Emerging but Contested Concept*, 17 Asian Ethnicity 501 (2016); Neal Keating, *Kites in the Highlands: Articulating Bunong Indigeneity in Cambodia, Vietnam, and Abroad*, 17 Asian Ethnicity 566 (2016); Alice Nah, *Negotiating Indigenous Identity in Postcolonial Malaysia: Beyond Being"Not Quite/Not Malay,"* 9 Soc. Identities 511 (2003).

86. Off. of the High Comm'r for Hum. Rts., *Indigenous Peoples & the U.N. Human Rights System*, Fact Sheet No. 9/Rev.2 (2013), https://www.ohchr.org/sites/default/files/Documents/Publications/fs9Rev.2.pdf ; U.N. Dep't of Pub. Info., *System-Wide Action Plan on the Rights of Indigenous Peoples*, at 13 (2016), https://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/SWAP_Indigenous_Peoples_WEB.pdf; John H. Nox (Independent Expert on the Issue of Human Rights Obligations), *Rep. of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, & Sustainable Environment*, U.N. Doc. A/HRC/25/53, at 20–21 (Dec. 30, 2013).

87. ILO 169 1989, *supra* note 83, at art. 3.

the Universal Declaration of Human Rights, and international human rights law."[88] For purposes of illustrating the relevance of international human rights law for sea peoples, the present analysis focuses on the components of the International Bill of Human Rights, since they constitute foundational instruments in the modern international human rights system[89], enjoy a higher number of state parties relative to other human rights treaties[90], and encompass a broad range of rights offering a greater potential for overlap with the indigenous rights identified in ILO 169 and DRIP for the case of sea peoples and marine plastic pollution. The International Bill of Human Rights consists of the Universal Declaration of Human Rights (UDHR), the ICCPR, and the ICESCR.[91] Comparison of the ICCPR and ICESCR with ILO 169 and DRIP serves to clarify the correlation of rights contained within them, thereby demarcating how international human rights law can bolster efforts to construct indigenous rights to the environment. Extending the comparison to include the UDHR further helps to highlight the normative alignment of international human rights system with efforts to promote indigenous rights to the environment.

In addressing the case of sea peoples, some note should be made regarding the nature of indigenous rights to water, particularly in terms of the applicability of the aforementioned instruments to indigenous rights to aquatic environments. To begin, the texts of ILO 169 and DRIP are not explicit in expanding their respective scopes to include indigenous claims to seas. The language of ILO 169 favors the terms "lands" and "territories"[92], going so far as to organize an entire Part II under a heading of "land."[93] Similarly, DRIP uses the words "lands" and "territories"[94], and only mentions water in Article 25's statement of rights of indigenous peoples "to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters, and coastal seas."[95] However, ILO 169 Article 13 clarifies that, at least with respect to the rights

88. DRIP 2007, *supra* note 77, at art. 1.

89. Off. of the High Comm'r for Hum. Rts., *Int'l Bill of Human Rights* (2022) [https://perma.cc/8KUP-KHEC] [hereinafter cited as OHCHR 2022].

90. Off. of the High Comm'r for Hum. Rts., *Indicators—Ratification of 18 International Human Rights Treaties* (2021).

91. OHCHR 2022.

92. David Getches, *Indigenous Peoples' Rights to Water Under International Norms*, 16Colo. J. of Int'l. L. & Pol'y. 259 (2005) [hereinafter Getches 2005]; *see, e.g.,* ILO 169 1989, *supra* note 83, at arts. 7. 13, 15, & 16.

93. ILO 169 1989, *supra* note 83, at arts. 13–19.

94. *See, e.g.*, DRIP 2007, *supra* note 77, at arts. 8, 25–30, 32.

95. DRIP 2007, *supra* note 77, at art. 25.

to natural resources and rights against relocation[96], the term "lands" includes "the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use."[97] Such language allows for aquatic areas that are occupied or used by indigenous peoples. Further, the separation of the term "lands" as distinct from "territories" in both ILO 169 and DRIP allows for an additional interpretation of "territories" as referring to physical spaces beyond "land," which would then enable a conception of "territories" as encompassing areas of water.

For their parts, the ICCPR, ICESCR, and UDHR exhibit similar obscurity regarding seas, with comparable absence of specific language that accords rights as holding equal considerations of both land and water. It is, however, possible to infer the inclusion of water to the extent that it is involved in the exercise of other rights in the aforementioned instruments, such as rights regarding cultural practice, subsistence, and economic activities.[98] Such a method of inference is employed in the Committee on Economic, Social, and Cultural Rights (CESCR) General Comment 15, which states that water "is a prerequisite for the realization of other human rights"[99], including the rights to adequate standard of living, highest attainable standard of health, adequate food and housing, life, and dignity.[100] The significance of water is such that the CESCR issues a reminder that it "has previously recognized that water is a human right."[101] Moreover, the ICCPR and the ICESCR describe the right to self-determination of peoples as including the ability to "freely dispose of their natural wealth and resources,"[102] presenting a general scope open to potential interpretation as encompassing natural resources associated with water.[103] State parties to the ICCPR and ICESCR are required to "promote the realization of the

96. ILO 169 1989, *supra* note 83, at arts. 15 & 16.

97. *Id.* at art. 13.

98. Joyeeta Gupta et al., *Indigenous Peoples' Right to Water Under International Law: A Legal Pluralism Perspective*, 11 Current Op. in Env't Sustainability 26 (2014) [hereinafter cited as Gupta et al 2014]; Daphina Misiedjan & Joyeeta Gupta, *Indigenous Communities: Analyzing Their Right to Water Under Different International Regimes*, 10 Utrecht L. Rev 2: 77–10 (2014) [hereinafter cited as Misiedjan & Gupta 2014]; Neva Collings, *The Rights of Indigenous Peoples to Water: International Environment and Human Rights Standards*, 6 J. of Indigenous Pol'y 60–77 (2006); Getches 2005.

99. Committee on Economic, Social, and Cultural Rights (CESCR), *General Comment No. 15: The Right to Water (arts. 11 and 12 of the Covenant), E/C.12/2002/11*, ¶ 1, Off. of the High Comm'r for Hum. Rts. (2003).

100. *Id.* ¶ 3.

101. *Id.*

102. ICCPR 1966, art. 1; ICESCR 1966, art. 1.

103. Valdez 2022, *supra* note 22; Gupta et al 2014; Misiedjan & Gupta 2014.

right of self-determination"[104], and so under such an approach would be obligated to support the claims of peoples to resources situated in aquatic environments.

A. Substantive rights

In his 2017 Report of the Special Rapporteur on Human Rights and Environment, John Knox sees substantive rights issues as context-sensitive in that the human rights issues requiring consideration depend on the particular details of each individual case.[105] Hence, for the case of sea peoples and marine plastic pollution, the substantive rights considerations should center around the ramifications of marine plastic debris for the relationship of sea peoples to their surrounding aquatic environments.

1. ILO 169 and DRIP

Provisions within ILO 169 and DRIP help to articulate the indigenous rights in such a relationship. To begin, to the extent that plastic threatens marine ecosystems, it impacts their provision of resources for physical welfare, posing questions over impacts on the right to resources articulated in ILO 169 Article 15[106] and DRIP Article 26.[107] The impairment of resources for basic needs, such as food, traditional medicines, and housing, direct attention to the right to subsistence, which is covered by ILO 169 Article 14's language on ownership, possession and use of traditional lands.[108] Article 14's use of the term "lands" indicates a terrestrial rather than aquatic application, but DRIP Article 20 offers a broader scope encompassing both land and water in its assertion of a right of indigenous peoples generally "to be secure in the enjoyment of their own means of subsistence and development.".[109] Basic needs, however, also contribute to supporting life and health, and so the issue of basic needs further connects to the right to life found in DRIP

104. ICCPR 1966, art. 1; ICESCR 1966, art. 1.

105. UNGA 2017, *supra* note 1, at 12.

106. ILO 169 1989, *supra* note 83, at Art. 15 reads " . . . the right of these peoples to participate in the use, management, and conservation of these resources . . . "

107. DRIP 2007, *supra* note 77, at Art. 26 reads " . . . the right to own, use, develop, and control the . . . resources they possess."

108. ILO 169 1989, *supra* note 83, at Art. 14 calls for recognition of rights regarding ownership and possession of traditionally occupied lands, but also expects "measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities."

109. DRIP 2007, *Supra* note 77, at Art. 20.

Article 7[110] and the right to health contained ILO 169 Article 25[111] and DRIP Article 24.[112]

In addition, to the extent that resources are used for economic livelihoods assisting development, particularly those related to subsistence and cultural traditions, damage to resources poses potential issues for multiple provisions in the ILO 169 and DRIP. For example, within ILO 169 it raises concerns regarding Article 7, which accords to peoples the right "to exercise control . . . over their own economic, social, and cultural development"[113], and Article 23, which includes "[h]andicrafts, rural and community-based industries, and subsistence economy and traditional activities" in the "economic self-reliance and development" of peoples.[114] It also directs attention to DRIP Articles 20 and 23, which provide Indigenous peoples the right to maintain and develop their political, economic, and social systems[115] and the right to determine and develop priorities and strategies for exercising their right to development,[116] respectively.

Further, beyond physical ecosystem services, the hazards of plastic in altering the marine environment raises the potential of eliminating elements in the environment integral to group worldviews, beliefs, and practices. To the extent that those worldviews, beliefs, and practices comprise cultural and spiritual components of group identity, they incur considerations of indigenous rights regarding culture and spirituality contained in ILO 169 Articles 5 and 8.[117] Similarly, they call for scrutiny with respect to comparable provisions in DRIP, which addresses culture in Article 11[118] and spirituality in Article 12.[119] Further, to the

110. *Id*d., At Art. 7 explicitly states "Indigenous peoples have the rights to life, physical and mental integrity, liberty, and security of person."

111. ILO 169 1989, *supra* note 83, at Art. 25 calls on governments to provide peoples with health services to "enjoy the highest attainable standard of physical and mental health."

112. DRIP 2007, *supra* note 77, at Art. 24 states "Indigenous peoples have the right to their traditional medicines and to maintain their health practices" along with "an equal right to the enjoyment of the highest attainable standard of physical and mental health."

113. ILO 169 1989, *supra* note 83, at Art. 7.

114. *Id.*, at Art. 23.

115. DRIP 2007, *supra* note 77, at Art. 20 reads "Indigenous peoples have the right to maintain and develop their political, economic, and social systems."

116. *Id.*, at Art. 23 reads "Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development."

117. ILO 169 1989, *supra* note 83, at Art. 5 states " . . . the social, cultural, religious, and spiritual values and practices of these peoples shall be recognised and protected" and Art. 8 recognizes that peoples "shall have the right to retain their own customs and institutions."

118. DRIP 2007, *supra* note 77, at Art. 11 states "Indigenous peoples have the right to practise and revitalize their cultural traditions and customs."

119. *Id.* at art. 12 asserts that indigenous peoples have rights to "manifest, practise,

degree that they are nurtured and conveyed across multiple generations, they entail indigenous rights for the development and transmission via histories, languages, and writing in DRIP Article 13. [120]

2. ICCPR, ICESCR, and UDHR

Comparing the above provisions to the ICCPR, ICESCR, and UDHR yields analogs, with correlating elements in the diverse articles of each instrument. To begin, both the ICESCR and ICCPR contain an identical Article 1 with language stating that "[a]ll peoples may . . . freely dispose of their natural wealth and resources."[121] The ICESCR goes further to state in its Article 25 that "[n]othing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources."[122] Such language accords indigenous populations with a right to resources in terms of having group freedom to use materials from nature. Both the ICESCR and ICCPR continue with a comparable Article 1 adding, "In no case may a people be deprived of its own means of subsistence"[123], effectively setting a lower limit that ensures any consumption of natural resources does not deny indigenous communities their subsistence from the environment. Similarly, to the extent that subsistence depends upon food, traditional medicines, and housing, it can also be construed as related to standard of living, which is included as a right in ICESCR Article 11[124] and UDHR Article 25.[125]

In addition, to the degree that subsistence sustains life, it may also be argued as encompassed by the right to life articulated by Article 6 of the ICCPR and Article 3 of the UDHR. ICCPR Article 6 provides, "Every human being has a right to life. This right shall be protected by law."[126] This suggests that the law must address harms to nature which

develop, and teach their spiritual and religious traditions, customs, and ceremonies" and "maintain, protect, and have access in privacy to their religious and cultural sites."

120. *Id.*, Art. 13 reads "Indigenous peoples have the right to revitalize, use, develop, and transmit . . . histories, languages, oral traditions, philosophies, writing systems and literature, and to designate and retain their own names."

121. ICCPR 1966, art. 1; ICESCR 1966, art. 1.

122. ICESCR 1966, art. 25.

123. *Id.*

124. ICESCR 1966, art. 11 reads, "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living . . . including adequate food, clothing, and housing."

125. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948), Art. 25 [hereinafter UDHR 1948] provides "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services."

126. ICCPR 1966, art. 6.

threaten the life of indigenous populations. Such interpretations of the ICCPR are encompassed by the UDHR, in that its Article 3 applies the same terminology via its succinct statement that "Everyone has the right to life, liberty, and security of person."[127] The right to life in the ICCPR and UDHR has direct correlation with the right to life contained in Article 7 of DRIP. With respect to the ICCPR, the scope of the right to life encompasses environmental welfare, with the Human Rights Committee (HRC) reasoning in its General Comment 36 on the ICCPR that "[i]mplementation of the obligation to respect and ensure the right to life . . . depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm" such as pollution "caused by public and private actors."[128] General Comment 36 goes further to declare extra-territorial expectations, specifying that state obligations regarding the right to life extend to "persons located outside any territory effectively controlled by the state, whose right to life is nonetheless impacted by its military or other activities."[129] As a consequence, to the degree that their lives depend upon the marine environment, sea peoples can assert that their right to life is impaired by plastic pollution that harms the marine environment. Further, in seeking relief for impairment of their right to life, they can pursue domestic and transboundary claims against state activities vis-à-vis marine plastic.

The right to health in ILO 169 and DRIP has a direct correlation in ICESCR Article 12, which provides that "[t]he States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[130] The nature of the right to health in the ICESCR has a broad scope in association with indigenous peoples. Specifically, the Committee on Economic, Social, and Cultural Rights (CESCR) noted in General Comment 14 that "in indigenous communities, the health of the individual is often linked to the health of the society as a whole" and hence "development-related activities that lead to the displacement of indigenous peoples against their will from their traditional territories and environment, denying them their sources of nutrition and breaking their symbiotic relationship with their lands, has a deleterious effect on their health."[131] In addition, a view of health as tied to needs involving food,

127. UDHR 1948, art. 3.

128. Hum. Rts. Comm., General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil & Political Rights, On the Right to Life, U.N. Doc. CCPR/C/GC/36, ¶ 62, Off. of the High Comm'r for Hum. Rts. (2018).

129. *Id.* ¶ 63.

130. ICESCR 1966, art. 12.

131. Committee on Economic, Social, & Cultural Rights (CESCR), General

clothing, or housing also brings it into discussions of the right to adequate standard of living given in Article 11 of the ICESCR and Article 25 of the UDHR. Further, an interpretation of health as requiring support for life ties it to considerations of the right to life articulated in Article 6 of the ICCPR and Article 3 of the UDHR.

For the group of economic rights covering the right to improvement of economic and social conditions in Article 21 of DRIP, the right to economic and social systems in Article 20 of DRIP, the right to economic self-reliance in Article 23 of ILO 169, and the right to development in Articles 20 and 23 of DRIP and Article 7 of ILO 169, there is an analog in the sense of economic and social development being included in the right to work contained in Article 6 of the ICESCR. It states that the full realization of the right to work "shall include technical and vocational guidance and training programmes, policies, and techniques to achieve steady economic, social, and cultural development."[132] ICESCR Article 6 frames the right to work as "the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts," indicating an individual orientation, but the reference to "programmes, policies, and techniques" suggests a broader scope that would extend to all members of an indigenous community.[133] To the extent that such development activities impact living conditions, the aforementioned economic rights can also be considered as connecting to the right to adequate standard of living in Article 11 of the ICESCR and Article 3 of the UDHR.

Comparable correlations also apply to socio-cultural components. Specifically, the right to religion and spirituality is directly addressed in the provisions on the right to religion in Article 18 of the ICCPR[134] and Article 18 of the UDHR.[135] In addition, to the extent that indigenous peoples may exist as minorities, they may also claim the rights of minorities to their individual religions, which is contained in ICCPR Article 27.[136] Similarly, the right to culture aligns with ICESCR Article

Comment No. 14: The Right to Highest Attainable Standard of Health (Art. 12), U.N. Doc. E/C.12/2000/4, ¶ . 27, Office of the High Comm'r for Hum. Rts. (2000).

132. ICESCR 1966, art. 6.

133. *Id.*

134. ICCPR 1966, art. 18 recognizes the "freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, the manifest is his religion or belief . . . "

135. UDHR 1948, Art. 18 states "Everyone has the right to freedom of thought, conscience, and religion."

136. ICCPR 1966, art. 27 reads " . . . minorities shall not be denied the right . . . to profess or practise their own religion . . . "

15[137], ICCPR Article 27[138], and UDHR Article 27.[139] For its part, the notion of culture in the ICESCR has a broad application to indigenous peoples. CESCR General Comment 21 observes that "[t]he strong communal dimension of indigenous peoples' cultural life is indispensable to their existence . . . and includes the right to their lands, territories, and resources which they have traditionally owned, occupied, or otherwise used or acquired."[140] In General Comment 21, the CESCR goes further to interpret the ICESCR's right to culture as requiring states to "take measures to recognize and protect the rights of indigenous peoples to own, develop, control, and use their communal lands, territories, and resources."[141] To the extent that the cultures of sea peoples connect to traditional coastal and maritime areas, they can be viewed as constituting communal lands and territories with attendant resources which conform to the conceptions of the right to culture articulated by General Comment 21 regarding ICESCR Article 15.

The above mapping is summarized in Table 1 below, showing the correlation between the indigenous rights in ILO 169 and DRIP raised by the case of sea peoples and marine plastic pollution with the human rights provisions contained in the ICCPR, the ICESCR, and the UDHR:

Table 1: Analogs to substantive indigenous rights in international human rights[142]

International indigenous rights instruments	*International human rights instruments*
Right to resources (ILO 169 Art. 15; DRIP Art. 26)	*Right to dispose of resources (ICESCR Art. 1; ICCPR Art. 1)*
Right to subsistence (ILO 169 Art. 14; DRIP 2007 Art. 20)	*Right to subsistence (ICCPR Art. 1; ICESCR Art. 1); Right to adequate standard of living (ICESCR Art. 11; UDHR Art. 25); Right to life (ICCPR Arts. 6 & 9; UDHR Art. 3)*
Right to health (ILO 169 Art. 25; DRIP 2007 Arts. 20–24)	*Right to health (ICESCR Art. 12); Right to adequate standard of living (ICESCR Art. 11; UDHR Art. 25); Right to life (ICCPR Art. 6; UDHR Art. 3)*
Right to life (DRIP Art. 7)	*Right to life (ICCPR Arts. 6; UDHR Art. 3)*

137. ICESCR 1966, art. 15 recognizes the right of everyone " . . . to take part in cultural life."

138. ICCPR 1966, art. 27, in addition to religion, also accords minorities the right "to enjoy their own culture."

139. UDHR 1948, art. 27 offers "Everyone has the right freely to participate in the cultural life of the community."

140. Committee on Economic, Social, & Cultural Rights. (CESCR), General Comment No. 21: Right of Everyone to Take Part in Cultural Life(art. 15, ¶ 1(a), of the International Covenant on Economic, Social, & Cultural Rights), U.N. Doc. E/C.12/GC/21, ¶ 36, Office of the High Comm'r for Human Rts. (2009).

141. *Id.* ¶ 36.

142. Compiled by author from 1; ICESCR 1966]; International Covenant on Economic, Social, & Cultural Rights (1966) [hereinafter ICESCR 1966]; UDHR 1948.

International indigenous rights instruments	***International human rights instruments***
Right to improvement of economic & social conditions (DRIP Art. 21); Right to economic & social systems (DRIP Art. 20); Right to economic self-reliance (ILO 169 Art. 23); Right to development (ILO 169 Art. 7; DRIP Arts. 20 & 23)	*Right to adequate standard of living (ICESCR Art. 11; UDHR Art. 25); Right to work (including economic, social, & cultural development) (ICESCR Art. 6; UDHR Art. 23)*
Right to religion and spirituality (ILO 169 Art. 5; DRIP Art. 12)	*Right to religion (ICCPR Art. 18; UDHR Art. 18); Minority right to religion (ICCPR Art. 27)*
Right to culture (ILO 169 Arts. 5 & 8; DRIP Arts. 11–13)	*Right to culture (ICESCR Art. 15; UDHR Art. 27); Minority right to culture (ICESCR Art. 27)*

B. Procedural rights

The exercise of substantive rights requires attendant procedural rights which enable access to legal remedies.[143] In his 2017 Report of the Special Rapporteur on Human Rights and Environment, John Knox set forth a base of procedural rights for vulnerable populations such as indigenous peoples, asserting that abilities to exercise legal strategies to redress environmental harms require antecedent rights to participation in governance decisions impacting indigenous communities, equality and non-discrimination, free expression, free association, and information, which collectively enable exercise of legal mechanisms on behalf of the substantive rights raised in the previous section.[144] Following the analytical framework set forth in the present analysis, it is possible to articulate the aforementioned rights in relation to existing international indigenous and human rights instruments. Keeping with the approach applied in the preceding section, correlation of provisions in ILO 169 and DRIP with provisions in the ICCPR, the ICESCR, and the UDHR helps to clarify elements of international human rights law which support procedural rights relevant for indigenous communities such as the sea peoples of Southeast Asia.

1. ILO 169 and DRIP

To begin, the right to participate in governance decisions correlates to the rights regarding participation articulated by ILO 169 and DRIP. In regards to ILO 169, multiple provisions reference the inclusion of indigenous peoples in decision-making. Specifically, Article 5 calls for application of the convention via "policies aimed at mitigating the difficulties experienced by these peoples . . . with the participation and co-operation of the peoples affected"[145] and Article 6 requires governments to "establish means by which these peoples can freely

143. UNGA 2017, *supra* note 1, at 10, 16–17.
144. *Id.*
145. ILO 169 1989, *supra* note 83, at Art. 5.

participate . . . at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes that concern them."[146] In addition, ILO 169 Article 15 clarifies rights to natural resources with the condition that "[t]hese rights include the rights of these peoples to participate in the use, management, and conservation of these resources"[147] and Article 33 specifies that in relation to both "the planning, co-ordination, execution, and evaluation" of programmes over indigenous peoples and "the proposing of legislation and other measures" regarding indigenous peoples, a government shall act "in co-operation with the peoples concerned."[148] With respect to DRIP, Article 5 asserts that indigenous peoples retain "the right to participate fully . . . in the political, economic, social, and cultural life of the State"[149] and Article 18 adds that "[i]ndigenous peoples have the right to participate in decision-making in matters which affect their rights."[150]

Rights regarding participation can also be inferred from rights requiring consent in ILO 169 and DRIP. In particular, ILO 169 Article 16 states that relocation of indigenous peoples "shall take place only with their free and informed consent."[151] DRIP offers multiple provisions involving consent. In particular, Article 10 requires that "[n]o relocation shall take place without the free, prior, and informed consent of the indigenous peoples concerned."[152] Article 16 looks to culture with the condition that "cultural, intellectual, religious, and spiritual property" taken without "free, prior, and informed consent" must receive redress.[153] In addition, Article 28 similarly expects redress to indigenous peoples for "lands, territories, and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, or damaged without their free, prior, and informed consent."[154] Article 29 goes further to prohibit "storage or disposal of hazardous materials . . . in the lands or territories of indigenous peoples without their free, prior, and informed consent."[155] The expectations for consent undertaken with information prior to actions

146. *Id.*, at Art. 6.
147. *Id.*, at Art. 15.
148. *Id.*, at Art. 33.
149. DRIP 2007, *supra* note 77, at Art. 5.
150. *Id.*, at Art. 18.
151. ILO 169 1989, *supra* note 83, at Art. 16.
152. DRIP 2007, *supra* note 77, at Art. 10;
153. *Id.*, Art. 11.
154. *Id.*, Art. 28.
155. *Id.*, Art. 29.

affecting indigenous communities point to a measure of engagement with indigenous peoples as part of decision-making processes over those actions. As a result, they represent a minimum requirement for indigenous participation.

With respect to equality and non-discrimination, rights regarding both appear in ILO 169 Article 3[156] and DRIP Article 2.[157] In contrast, the rights of free expression, free association, and information are not explicit in either ILO 169 or DRIP, but both instruments provide a means of covering such rights by language that maintains access by indigenous peoples to the full sweep of available human rights. In particular, Article 3 of ILO 169 and Article 1 of DRIP *accord* indigenous peoples with full enjoyment of human rights and fundamental freedoms.[158] The implication of such provisions is that indigenous peoples can claim human rights not apparent in the contents of either instrument, including rights of free expression, free association, and information addressed by international human rights law.

2. ICCPR, ICESCR, and UDHR

Looking to the ICCPR, ICESCR, and UDHR, there are analogs in each instrument that align with the procedural rights raised in ILO 169 and DRIP above. With respect to participation in governance decisions, relevant rights appear in both the ICCPR and UDHR. Article 25 of the ICCPR offers that "[e]very citizen shall have the right and the opportunity . . . to take part in the conduct of public affairs" as well as to vote, be elected, and have access to public service.[159] The article's language effectively requires indigenous peoples to gain citizenship in order to enjoy such rights of participation, placing a qualifier that makes the ICCPR narrower than the UDHR, whose Article 21 states more broadly that "[e]veryone has the right to take part in the government . . .

156. ILO 169 1989, *supra* note 83, at Art. 3 ensures that indigenous peoples "shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination" and further adds that "[t]he provisions of the Convention shall be applied without discrimination to male and female members of these peoples."

157. DRIP 2007, *supra* note 77, at Art. 2 declares "Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights . . . "

158. ILO 169 1989, *supra* note 83, at Art. 3 reads "indigenous and tribal peoples shall enjoy the full measure of human rights and fundamental freedoms without hindrance or discrimination"; DRIP 2007, Art. 1 reads "indigenous peoples have the right to full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms."

159. ICCPR 1966, art. 25.

Everyone has the right of equal access to public service" along with "periodic and genuine elections."[160]

The rights to equality and non-discrimination arise in multiple provisions of the ICCPR, ICESCR, and UDHR. In the ICCPR, references to equality and non-discrimination appear in Articles 2, 3, and 14.[161] Further, ICCPR Article 27 explicitly states that

> All persons are equal before the law and are entitled without any discrimination to the equal protection of the law . . . the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.[162]

The ICESCR provides comparable provisions, with Articles 2, 3, and 13 addressing equality and non-discrimination.[163] For its part, the UDHR addresses equality and non-discrimination in Articles 2 and 7.[164] The range of provisions across the ICCPR, ICESCR, and UDHR indicate the significance of equality and non-discrimination as issues for attention. Collectively, they represent multiple avenues offering indigenous peoples protection against discrimination in the pursuit of their potential human rights claims.

---

160. UDHR 1948, art. 21.

161. ICCPR 1966, art. 2 reads "Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind"; art. 3 calls for state parties to "ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant"; art. 14 asserts that "All persons shall be equal before the courts and tribunals" with guarantees "in full equality" of counsel, timely trial, defense, examination of witnesses, interpretation, and protection against self-incrimination."

162. *Id.*, Art. 26.

163. ICESCR 1966, art. 2 reads "The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind"; art. 3 states "The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social, and cultural rights set forth in the present Covenant"; art. 13 requires education education which "shall enable all persons to participate effectively in a free society, promote understanding, tolerance, and friendship among all nations and all racial, ethnic, or religious groups."

164. UDHR 1948, Art. 2 entitles everyone to rights in the UDHR "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status" and continues to state "no distinction shall be made on the basis of the political, jurisdictional, or international status of the country or territory to which a person belongs"; Art. 7 states "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

With respect to the right to free expression, it may be treated as a substantive right in terms of constituting a basic component of liberty, but it may also be viewed as a procedural right in the sense that it is necessary to exercise mechanisms involved in the promotion of human rights and to enable the enjoyment of other human rights.[165] The right to free expression is contained in both the ICCPR and UDHR. ICCPR Article 19 specifically states that "[e]veryone shall have the right to freedom of expression" as well as "the right to hold opinions without interference."[166] UDHR Article 19 holds nearly identical language, with the wording "[e]veryone as the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference."[167] The use of the word "everyone" in the preceding provisions indicates a universal scope covering all human beings, and so encompasses indigenous peoples as part of a larger global human population.

The right to information is within the right to free expression, with provisions on free expression in both the ICCPR and UDHR including text regarding the flow of information. Specifically, ICCPR Article 19 notes that the right to free expression "shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers."[168] UDHR Article 19 similarly indicates that the right to free expression not only includes the freedom to hold opinions but also the freedom "to seek, receive, and impart information and ideas through any media and regardless of frontiers."[169] The expansive scope extends to the functions of the state. The HRC observed in General Comment 34 that Article 19 of the ICCPR "embraces a right of access to information held by public bodies" encompassing the all branches of governmental authority.[170] Such access is heightened in cases involving minorities, with the HRC continuing to observe that "a State party's decision-making that may substantively compromise the way of life and culture of a minority group should be undertaken in a process of information-sharing and consultation with affected communities."[171] Hence, as much as the universal scope of the right to free expression extends

165. Hum. Rts. Comm., General Comment No. 34: Article 19: Freedoms of Opinion and Expression, U.N. Doc. CCPR/C/GC/34, ¶¶ 3, 4, Off. of the High Comm'r for Hum. Rts. (2011), https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf (last visited Oct. 3, 2022) [hereinafter HRC General Comment 34].

166. ICCPR 1966, art. 19.

167. UDHR 1948, art. 19.

168. ICCPR 1966, art. 19.

169. UDHR 1948, art. 19.

170. HRC General Comment 34, ¶¶ 7, 18.

171. *Id.* ¶ 18.

the right to information to all human beings, indigenous communities that constitute minorities hold an added right to information and consultation for any state actions affecting their cultures.

The rights to free assembly and association appear in the ICCPR and UDHR. Specifically, in the ICCPR, Article 21 declares that "[t]he right of peaceful assembly shall be recognized"[172] and Article 22 asserts that "[e]veryone shall have the right to freedom of association with others."[173] UDHR Article 20 brings them together, simply stating that "[e]veryone has the right to freedom of peaceful assembly and association."[174] In connecting both rights together, General Comment 37 of the HRC observes assembly relates to "non-violent gathering by persons for specific purposes" but that "[i]nherent to the right is thus an associative element"[175], suggesting that free association is necessary to enable free assembly. Similar to the right to free expression, the rights to free assembly and association may be seen as entailing substantive and procedural aspects. Substantively, General Comment 37 of the HRC observes that they represent fundamental rights in the sense that they both deal with collective action and so connect to a substantive human exercise of solidarity.[176] Procedurally, however, they enable "a system of participatory governance" by "allowing participants to advance ideas and aspirational goals in the public domain" and creating "opportunities for the inclusive, participatory, and peaceful resolution of differences."[177] General Comment 37 notes that the right to peaceful assembly, in particular, is valuable in the exercise of other rights and "[i]t is of particular importance to marginalized individuals and groups."[178] Such observations apply to indigenous peoples, who often exist as marginalized groups, in that the rights to free assembly and free association are important in allowing the mobilization of collective action to advance other rights protecting group interests.

The above discussion of the ICCPR, ICESCR, and UDHR addressed provisions correlating to elements in ILO 169 and DRIP related to procedural rights. However, they also proffer an additional procedural right in the form of an effective remedy, with the right to effective remedy

172. ICCPR 1966, art. 21.

173. *Id.* at art. 22.

174. UDHR 1948, at art. 20.

175. Hum. Rts. Comm., General Comment No. 37 on the Right of Peaceful Assembly, CCPR/C/GC/37, ¶ 4, Off. of the High Comm'r for Hum. Rts. (2020), https://digitallibrary.un.org/record/3884725?ln=en (last visited Oct. 3, 2022) [hereinafter HRC General Comment 37].

176. *Id.* ¶¶ 1,100.

177. *Id.*, ¶ 1.

178. *Id.* ¶ 2.

referenced in ICCPR Article 2 and UDHR Article 8.[179] The definition of an effective remedy differs between the two instruments. ICCPR Article 2 requires that a determination of rights is made by "competent judicial, administrative, or legislative authorities, or by any other competent authority provided for by the legal system of the State"[180] while UDHR Article 10 goes further to specify that a determination of rights is performed by "fair and public hearing by an independent and impartial tribunal."[181] Either conception, however, is relevant for indigenous legal actions, in that they empower indigenous peoples to use legal strategies to secure relief for violations of their rights.

Summarizing the above mapping of rights, international human rights law provides a framework to enable procedural rights relevant for indigenous peoples. Hence, as indigenous peoples, the sea peoples of Southeast Asia can draw upon international human rights law to support the procedural rights necessary for legal action. Table 2 below provides a summary of the rights identified in the preceding paragraphs:

Table 2: Analogs to procedural indigenous rights in international human rights[182]

International indigenous rights instruments	***International human rights instruments***
Rights to participation & consultation (ILO 169 rts. 5, 6, 15, 18, & 33; DRIP Arts. 5 & 18) Rights regarding consent (ILO 169 Art. 16; DRIP Arts. 10, 11, & 28–29)	*Rights to participate (ICCPR Art. 25; UDHR Art. 21)*
*Rights equality & non-discrimination (*ILO 169 Art. 3 & DRIP Art. 2)	*Rights to equality & non-discrimination (ICCPR Arts. 2, 3, 14, & 27; ICESCR Arts. 2, 3, & 13; UDHR Arts. 2 & 7)*
Right to free expression (construed by extension to human rights instruments through ILO 169 Art. 3 & DRIP Art. 1)	*Right to free expression (ICCPR Art. 19; UDHR Art. 19)*
Right to free association (construed by extension to human rights instruments through ILO 169 Art. 3 & DRIP Art. 1)	*Right to free association (ICCPR Arts. 21 & 22; UDHR Art. 20))*
Right to information (construed by extension to human rights instruments through ILO 169 Art. 3 & DRIP Art. 1)	*Right to information (ICCPR Art. 19; UDHR Art. 19)*
Right to remedies by competent authorities (construed by extension to human rights instruments through ILO 169Art. 3 & DRIP Art. 1)	*Right to remedies by competent authorities (ICCPR Art. 2; UDHR Arts. 8 & 10)*

179. ICCPR 1966, art. 2 reads " . . . any person whose rights or freedoms as herein recognized as violated shall have an effective remedy"; UDHR art. 8 states "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or law."

180. ICCPR 1966, art. 2.

181. UDHR 1948, at art. 10.

182. Compiled by author from DRIP 2007, *supra* note 77; ICCPR 1966; ICESCR 1966; UDHR 1948.

C. Legal personality

Aspirations to exercise substantive or procedural rights must address an antecedent issue of legal personality, in that legal actions require recognition of actors holding rights recognized by the legal systems of a state.[183] An entity lacking status as a legal person is not allowed to hold legal rights nor to access process of law.[184] The question of legal personality connects to international law discourses over the relative positions of indigenous peoples as marginalized groups vis-à-vis states wielding sovereignty.[185] Traditionally, international law viewed states as the primary holders of legal personality, with each state largely enjoying sovereignty in terms of exclusive jurisdiction to prescribe laws over peoples and properties within the state's territories.[186] However, international human rights law has accorded a measure of legal personality to the notion of peoples, with the human right to self-determination empowering each group of people to decide its own status vis-à-vis the state.[187] Similarly, indigenous rights movements engaged with international institutions such as the United Nations have spurred an increasing recognition in international law mechanisms of varying degrees of personality and self-determination as held by indigenous peoples.[188]

183. Alan Boyle, *Climate Change, the Paris Agreement, & Human Rights*, 67 Int'l & Compar. L. Q. 759 (2018).

184. *Id.*

185. *See, e.g.*, Vinuales, *supra* note 70; Andrew Erueti, *Maori Rights to Freshwater: The Three Conceptual Models of Indigenous Rights*, 24 Waikato L. Rev. 58, 60–64 (2016); Robert Snyder, International Legal Regimes to Manage Indigenous Rights & Arctic Disputes from Climate Change, 22 Colo. J. of Int'l. L. & Pol'y. 1, 13–18 (2011) citation added; Jay Williams, *The Impact of Climate Change on Indigenous People – The Implications for the Cultural, Spiritual, Economic, & Legal Rights of Indigenous People*, 16, 672–673 The Int'l J. of Hum. Rts. 648 (2012); Patrick Macklem, *Indigenous Recognition in International Law: Theoretical Observations*, 30 Mich. J. of Int'l L. 177, 186–187, 210 (2008) [hereinafter Macklem 2008]; Federico Lenzerini, *Sovereignty Revisited: International Law & Parallel Sovereignty of Indigenous Peoples*, 42 Tex. Int'l L.J. 155, 166–167 (2006) [hereinafter Lenzerini 2006].

186. *See generally* Sovereignty: A Contribution to the Theory of Public & International Law (Herman Heller & David Dyzenhaus eds., 2019); Roland Portmann, Legal Personality in International Law (2010); Lenzerini 2006, *supra* note 185, at 166–167.

187. William Thomas Worster, *Relative International Legal Personality of Non-State Actors*, 42 Brooklyn J. of Int'l L. 1: 207, 221–222 (2016); James Summers, Peoples & International Law at 175–191 (2007).

188. U. N. Dep't of Econ. & Soc. Aff., System-Wide Action Plan (2022); Jonathan Liljeblad, Indigenous Identity, Human Rights, & the Environment: Local Engagement with Global Rights Discourses (2022) [hereinafter Liljeblad 2022]; Macklem 2008. Jeff Corntassel, Partnership in Action? Indigenous Political Mobilization and Co-Optation During the First UN Indigenous Decade (1995–2004), 29 HUMAN RIGHTS QUARTERLY 137, 149–152 (2007).

In considering the status of indigenous peoples with states, in his 2017 report, Special Rapporteur on Human Rights and Environment John Knox commented that the vulnerability of indigenous communities to environmental harms places heightened duties upon states to recognize the rights of indigenous peoples.[189] For a group seeking legal actions for indigenous rights, legal status as an indigenous people involves an exercise of rights to identity alongside the right to self-determination.[190] The topic of identity is referenced in the Preamble and Article 2 of ILO 169[191] as well as in Article 2 of DRIP. and Article 2 of DRIP.[192] Both ILO 169 and DRIP go so far as to identify a right to self-identification. Specifically, ILO 169 Article 1 states that "[s]elf-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply."[193] DRIP does not treat self-identification as fundamental, but Article 33 asserts it as a right, reading "[i]ndigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions."[194] The right to self-determination is not used as a specific term in the text of ILO 169, but it is contained within DRIP. Specifically, DRIP Article 3 directly provides self-determination for political status and economic, social, and cultural development[195], and Article 4 adds self-determination with respect to autonomy and self-government regarding internal and local matters.[196]

In contrast to ILO 169 and DRIP, the contents of the ICCPR, ICESCR, and UDHR do not provide explicit references to identity. There is, however, a means to infer a measure of rights regarding identity through the right to self-determination in the ICCPR and the ICESCR.

189. UNGA 2017, *supra* note 1, at 16–17.

190. *See, e.g.*, *id.*; Macklem 2008; UNDRIP 2007.

191. ILO 169 1989, *supra* note 83, Preamble describes indigenous peoples as holding aspirations "to maintain and develop their identities, languages, and religion, within the framework of the States in which they live" and Art. 2 calls on governments to promote "the full realisation of the social, economic, and cultural rights of these peoples with respect for their social and cultural identity."

192. DRIP 2007, *supra* note 77, at Art. 2 comments that indigenous peoples hold the right to be free from any kind of discrimination "based on their indigenous origin or identity."

193. ILO 169 1989, *supra* note 83, at Art. 1.

194. DRIP 2007, *supra* note 77, at Art. 33.

195. *Id.*, at Art. 3 reads "[i]ndigenous peoples have the right to self-determination . . . they freely determine their political status and freely pursue their economic, social, and cultural development."

196. *Id.*, at Art. 4 reads "[i]ndigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs."

Article 1 of both the ICCPR and ICESCR provide identical language in stating "All peoples have the right of self-determination."[197] Within the article, the language includes a qualifier to "freely determine their political status,"[198] presenting an omission of legal status that suggests its exclusion from the scope of self-determination. Such a reading, however, is mitigated by the body of rights within the provisions of the ICCPR and ICESCR, which their respective state parties are legally obligated to observe. Hence, to the degree that indigenous peoples fall within the conception of "peoples" in ICCPR and ICESCR Article 1, they can exercise a right to self-determination regarding legal status related to the various rights listed in each covenant. Application of a right to self-determination can encompass aspects of identity, in that Article 1 of both the ICCPR and ICESCR references self-determination as entailing "economic, social, and cultural development."[199] Such language overlaps with the contents of ILO 169 in terms of its notes on cultural components of indigenous identity. It also overlaps with DRIP in the sense that culture encompasses customs and traditions denoting indigenous identity. As a result, to the extent that self-determination applies to the rights listed in the ICCPR and ICESCR, it is possible to see it as extending to a portion of elements related to identity.

Such a limited scope towards identity leaves it short of the right to self-identification given in ILO Article 1 and DRIP Article 33. In effect, it does not address issues of indigeneity with respect to the aspirations of a particular group seeking to decide its own status as *being* an indigenous people.[200] The ICCPR, ICESCR, and UDHR contain no language correlating directly to the right of self-identification, and so provide no statement regarding the ability of populations to assert themselves as constituting "peoples." The absence of text opens interpretation to perspectives that see states as retaining the power to decide which populations are "peoples" and further which populations are indigenous peoples. The provisions on self-determination, however, present a potential limit to state power, with guidance coming from General Comment 12 of the HRC regarding the right to self-determination in its observation that "States parties should describe the constitutional and

197. ICCPR 1966, art. 1; ICESCR 1966, art. 1.

198. *Id.*

199. *Id.*

200. *See, e,g.*, Macklem 2008; Jeff Corntassel and Tomas Hopkins Primeau, Indigenous "Sovereigty" and International Law: Revised Strategies for Pursuing "Self-Determination", 2 HAW. J.L. & POL. 52, 58–60 (2006); Jeff Corntassel, *Who is Indigenous? 'Peoplehood' & Ethnonationalist Approaches to Rearticulating Indigenous Identity*, 9 Ethnonationalism & Ethnic Pol. 1, 75–77 (2003).

political processes which in practice allow the exercise of this right."[201] This suggests that at minimum states should provide constitutional and political processes to populations to decide if they are "peoples" with self-determination—including self-determination related to the exercise of rights in the ICCPR and ICESCR connected to aspects of indigenous identity. In essence, General Comment 12 can be viewed as enabling a turn from state power over determination of identity towards a state obligation to furnish mechanisms regarding self-determination of elements related to identity. General Comment 12 applies only to ICCPR Article 1, and there is no comparable general comment for ICESCR Article 1, but the matching language of both allows the insights of General Comment 12 to inform reflections on self-determination in both instruments.

Table 3 below presents the above correlation of rights in ILO 169 and DRIP relevant for sea peoples claiming status as indigenous with matching provisions in the ICCPR, ICESCR, and UDHR:

Table 3: Analogs regarding indigenous legal personality in international human rights[202]

International indigenous rights instruments	*International human rights instruments*
Right to self-determination (DRIP Arts. 3 & 4)	*Right to self-determination (ICCPR Art. 1; ICESCR Art. 1)*
Rights to identity (ILO 169 Preamble & Arts. 1 & 2; DRIP Arts. 2 & 33)	*Partial rights to identity under right to self-determination (ICCPR Art. 1; ICESCR Art. 1)*

V. Limitations of an international human rights approach for indigenous sea peoples in Southeast Asia

The analysis has sought to demonstrate how international human rights law can support the construction of indigenous rights to environment, with previous sections delineating the ways in which indigenous concerns over environmental issues can be articulated through provisions in international human rights instruments. In doing so, the analysis supported a rationale that international human rights law complements international environmental law with respect to indigenous peoples by offering an alternative slate of legal rights more directly related to indigenous interests in the environment. In essence, relative to international environmental law, international human rights law

201. Hum. Rts. Comm., General Comment No. 12: Article 1 (Right to Self-Determination), The Right to Self-Determination of Peoples, ¶ . 4, Off. of the High Comm'r for Hum. Rts. (1984).

202. Compiled by author from DRIP 2007 *supra* note 77; ICCPR 1966; ICESCR 1966; UDHR 1948.

accords more space to engage indigenous rights as legal rights, providing legal strategies for indigenous communities to address issues such as environmental harms. To help clarify the association of indigenous peoples, environment, and human rights, the discussion in preceding sections centered on the case of sea peoples and marine plastic pollution in Southeast Asia.

Critical reflection, however, is necessary in considering application of an international human rights approach for sea peoples. As much as international human rights law offers indigenous communities the potential for legal strategies beyond those in international environmental law, it is not without its own limitations. In particular, there are several cautionary observations arising from the situation of sea peoples in Southeast Asia with implications for broader application to indigenous peoples elsewhere. First, there are complications arising from the multi-jurisdictional status of sea peoples. All three of the populations described as sea peoples at the start of the present analysis—the Bajau, Moken, and Orang Laut—are transboundary, with communities residing in the territories of more than one state. As a result, their struggles with aquatic plastic is not about isolated cases featuring a transboundary environmental harm impacting an individual community within a single state, but is instead about a transboundary environmental harm impacting a transboundary people with multiple communities across several states. Existence as transboundary peoples exposes them to the problem of different legal systems with consequent differences in legal status and legal outcomes. Such differences introduce a disruption into the cohesion of each people as a group, in that it divides their collective population into sub-groups facing diverse legal treatment.

While the legal divisions may be driven by the jurisdictional boundaries of states, they often follow the political boundaries between states, reflecting borders of a modern post-colonial international system that was imposed upon the historical geography of a pre-colonial indigenous world.[203] For indigenous cultures spanning more than one state, the consequences of borders may be significant. For example, indigenous rights organizations on the United States-Mexico border find that transboundary peoples such as the Yaqui, O'odham, Cocopah, Kumeyaay, Pai, Apache, and Kickapoo face threats to cultural survival via the denial of cross-border access to traditional territories, prevention

203. *See generally* Liljeblad 2022; Hiroshi Fukurai And Richard Krooth, Original Nation Approaches To Inter-National Law (2021); Audra Simpson, Mohawk Interruptus: Political Life Across the Borders of Settler States (2014); Antonio Anghie, Imperialism, Sovereignty, and the Making of International Law (2005).

of cross-border travel to conduct spiritual and cultural practices associated with those territories, and interference with cross-border social and cultural relationships between community members.[204] In some cases, the contrasting legal rights among an indigenous group situated on either side of a border becomes a driver of internecine tensions, eroding the prospects for solidarity in the pursuit of group claims.[205] For other indigenous peoples, borders go further to constitute a threat to subsistence and livelihood, as in the case of the Sámi, whose culture follows the migratory patterns of reindeer, such that their conception of territory is based not on fixed boundaries of land but instead on spaces of reindeer movement. The reindeer, however, migrate across the borders of Finland, Sweden, and Norway, each of which hosts different governance systems that can restrict Sámi access to reindeer and subsequently interrupt the Sámi way of life.[206] For sea peoples, the potential issues of multiple jurisdictions are apparent in a review of the state parties among ASEAN countries to the international instruments used in the present analysis. Table 4 below identifies the status of ASEAN states relative to ILO 169, DRIP, ICCPR, ICESCR, and UDHR. None of the ASEAN states are parties to ILO 169.[207] All of them voted in favor of DRIP,[208] but as a declaration its provisions are not legal duties binding upon states. As of 2022, only six ASEAN states have ratified the ICCPR, making the treaty binding only upon Indonesia,

204. Indigenous Alliance Without Borders, *Handbook on Indigenous Peoples' Border Crossing Rights between the United States & Mexico*, Off. of the High Comm'r for Hum. Rts. 2–3 (2019), https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/Call/IndigenousAllianceWithoutBorders.pdf [https://perma.cc/S58A-TE6Q]; *see also* David Stirrup & Jan Clarke, *Straddling Boundaries: Culture & the Canada-US Border*, 13 Compar. Am. Stud. Nos. 1–2, 1–15 (June 2015); Rachel Rose Starks et al., Native Nations & U.S. Borders: Challenges to Indigenous Culture, Citizenship, and Security (Robert Merideth ed., 2011).

205. *See* Geraldo Cavada, *Borderlands of Modernity & Abandonment: The Lines within Ambos Nogales & the Tohono O'odham Nation*, 98(2) J. of American History 362, 368–83 (2011).

206. *See* Marine Krauzman, *International Borders: Dividing Lines for Indigenous Peoples' Rights*, Universal Rights Group: Blog (May 2, 2022), https://www.universal-rights.org/blog/international-borders-dividing-lines-for-indigenous-peoples-rights/ [https://perma.cc/J9QW-98XJ]; *see also* Agnieszka Szpak & Maria Ochwat, *The Saami & the Karen—Common Experience & Differences: A Comparative Perspective*, 19 Asia Europe J. 445, 451–455 (2021).

207. Int'l Labour Org. [ILO], *Ratifications of C169-Indigenous & Tribal Peoples Convention, 1989 (No. 169)*, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314:NO (last visited Dec. 12, 2021) [https://perma.cc/3TGK-LVXR].

208. G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

Timor-Leste, Thailand, Cambodia, Philippines, and Vietnam.[209] Similarly, the ICESCR is binding upon only seven ASEAN state parties: Indonesia, Timor-Leste, Thailand, Cambodia, Philippines, Vietnam, and Myanmar.[210] The UDHR preceded the formation of the majority of ASEAN states, and so only enjoys the supporting votes of those that were in existence at the time of passage in the UN General Assembly.[211] Similar to DRIP, however, the UDHR is non-binding upon states.

Table 4: Status of ASEAN states vis-à-vis international human rights instruments[212]

Country	*ILO No. 169*	*DRIP*	*ICCPR*	*ICESCR*	*UDHR*
Indonesia	*Did not vote in favor*	*Voted in favor*	*Ratified (2006)*	*Ratified (2006)*	*Not in existence at time of vote*
Timor-Leste	*Did not vote in favor*	*Voted in favor*	*Ratified (2003)*	*Ratified (2003)*	*Not in existence at time of vote*
Thailand	*- Did not vote in favor*	*Voted in favor*	*Ratified (1996)*	*Ratified (1999)*	*Voted in favor (as Siam)*
Cambodia	*Did not vote in favor*	*Voted in favor*	*Ratified (1992)*	*Ratified (1992)*	*Not in existence at time of vote*
Philippines	*Did not vote in favor*	*Voted in favor*	*Ratified (1986)*	*Ratified (1974)*	*Voted in favor*
Vietnam	*Did not vote in favor*	*Voted in favor*	*Ratified (1982)*	*Ratified (1982)*	*Not in existence at time of vote*
Myanmar	*Did not vote in favor*	*Voted in favor*	*-*	*Ratified (2017)*	*Voted in favor (as Burma)*
Malaysia	*Did not vote in favor*	*Voted in favor*	*-*	*-*	*- Not in existence at time of vote*
Brunei	*Did not vote in favor*	*Voted in favor*	*-*	*-*	*Not in existence at time of vote*
Singapore	*Did not vote in favor*	*Voted in favor*	*-*	*-*	*Not in existence at time of vote*

The status of state parties in Table 4 above highlights the transboundary disjunctures for sea peoples in Southeast Asia. For the Bajau, who extend across the waters of Indonesia, Philippines, and Malaysia, the international human rights framework outlined in previous sections would be available for communities in Indonesia and Philippines but not for those in Malaysia. The Moken lie in the shorelines of Thailand, Myanmar, and Malaysia, resulting in a jurisdictional progression wherein Moken populations in Thailand have legal rights under both

209. Office of the U.N. High Comm'r for Hum. Rts., *U.N. Treaty Body Database: Ratification Status for CCPR-International Covenant for Civil & Political Rights*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx (last visited Oct. 3, 2022).

210. Office of the U.N. High Comm'r for Hum. Rts., *U.N. Treaty Body Database: Ratification Status for CESCR-International Covenant on Economic, Social, & Cultural Rights*, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx (last visited Oct. 3, 2022).

211. G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

212. Compiled by author from UN Digital Library 2022; DRIP 2007, *supra* note 77; ILO No. 169 1989 *supra* note 83; ICCPR 1966; ICESCR 1966; UDHR 1948.

the ICCPR and ICESCR, Moken communities in Myanmar have legal rights only under the ICESCR, and Moken people in Malaysia have neither. The Orang Laut cross the territorial boundaries of Malaysia and Indonesia, leaving the members of their communities located in Indonesia with greater legal rights under the ICCPR and ICESCR compared to the portions of their populations residing in Malaysia.

Second, beyond the jurisdictional inconsistencies that would threaten the coherence of sea peoples, there are attendant complexities with respect to the political context of indigenous rights movements across the countries of Southeast Asia. For the countries hosting the Bajau, Moken, and Orang Laut sea peoples in the present analysis—Indonesia, Malaysia, Philippines, Thailand, and Myanmar—the idea of indigenous rights is contested in terms of both concept and treatment. Conceptually, all five countries voted in favor of the UN General Assembly resolution adopting DRIP[213], signalling an acceptance of indigenous rights in the abstract. Abstract recognition, however, contends with an ongoing reluctance against legal recognition of indigenous peoples, with countries such as Indonesia, Malaysia, Myanmar, and Thailand holding to various historical legacies of nation-building wherein states placed primacy on unification into a single national identity.[214] The result has been a predilection to view indigenous claims for group rights like self-determination as separatist movements.[215] The consequences appear in the treatment of indigenous claims, with the aforementioned states exercising policies that encompass denial of the existence of indigenous peoples within state territories, pacification of indigenous rights movements as challenges to state authority, or

213. DRIP 2007, *supra* note 77.

214. *See* Liljeblad 2022, at 41; Sukri Tamma & Timo Duile, *Indigeneity & the State in Indonesia: The Local Turn in the Dialectic Recognition*, 39(2) J. of Current Se. Asian Affs. 270, at 273–276 (2020) [hereinafter Tamma & Duile 2020]; Rhe-Anne Tan, *"We Are Not Red and White, We Are Morning Star!" Internal Colonization, Indigenous Identity, and the Idea of Indonesia*, 73(2) J. of Int'l Affs. 271, at 275–279 (2020) [hereinafter Tan 2020]; Baird 2019, *supra* note 85, at 3–4; Baird 2016, *supra* note 85, at 501–504; Michael Dunford, *Indigeneity, Ethnopolitics, & Taingyinthar: Myanmar & the Global Indigenous Peoples' Movement*, 50(1) J. of Se. Asian Stud. 51, at 58–60 (2019); Prasit Leepracha, *Becoming Indigenous Peoples in Thailand*, 50(1) J. of Se. Asian Stud. 32, at 39–40 (2019) [hereinafter Leepracha 2019]; Robert Taylor, *Refighting Old Battles, Compounding Misconceptions: The Politics of Ethnicity in Myanmar Today*, IseasPerspective, Mar. 2. 2015, at 4–7, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs21/Taylor-2015-iseas_perspective-red.pdf [hereinafter Taylor 2015]; Int'l Work Grp. for Indigenous Affs., The Concept of Indigenous Peoples in Asia 209–210, 263–267 (Ian Erni ed., 2008) [hereinafter Erni 2008].

215. *See* Tan 2020, *supra* note 214; Morton & Baird 2019, *supra* note 85; Baird 2016, *supra* note 85; Erni 2008, *supra* note 214.

assimilation into a more homogenous mainstream society.[216] Even in situations like Indonesia, Malaysia, and Philippines where indigenous rights are demarcated within legal systems, the position of indigenous peoples within endemic identity politics creates a hierarchy over status and accompanying tensions regarding the proportional allocation of rights.[217] The differentiation into hierarchy entails marginalization, with indigenous peoples contending with "othering" discourses that stigmatize them as being "primitive" or "backwards."[218] In addition, however, it also incurs exploitation, with political and economic elites justifying development projects in remote areas as beneficial to the rights of underdeveloped indigenous communities, creating ironic situations of indigenous rights becoming instruments of agendas driving disruption of indigenous cultures.[219]

The above contextual issues mean that efforts by sea peoples to exercise legal rights, whether drawn from human rights or otherwise, are likely to incite existing political controversies. In particular, perceptions of indigenous claims as challenging the status quo risk antagonizing dominant elements of state and society, escalating resistance to indigenous concerns. Hence, deliberations over legal actions

216. *See, e.g.*, Liljeblad 2022; Somiah 2022, *supra* note 6, at 102; Tamma & Duile 2020, *supra* note 214, at 273–276; Tan 2020, *supra* note 214, at 275–276; Leepracha 2019, *supra* note 214, at 39–40, 48; Morton & Baird 2019, *supra* note 85, at 11–16; Acciaioli et al 2017, *supra* note 20, at 2–6 and 8–11; Allerton 2017, *supra* note 25, at 13–15; Micah Morton, *Reframing the Boundaries of Indigeneity: State-Based Ontologies and Assertions of Distinction and Compatibility in Thailand*, 119 AMERICAN ANTHROPOLOGIST 684, at 686 and 688 (2016) [hereinafter cited as Morton 2016]; Ferrari 2015, *supra* note 15, at 122–123 and 136–137; Taylor 2015, *supra* note 214, at 4–7; Clifton & Majors 2011, *supra* note 7, at 85–88; Nathan Porath, *'They Have Not Progressed Enough': Development's Negated Identities Among Two Indigenous Peoples (Orang Asli) in Indonesia & Thailand*, 41(1) J. of Se. Asian Stud. 267, at 273–276 (2010) [hereinafter Porath 2010].

217. *See* Rusaslina Idrus, *Competing for the 'Indigenous' Slot: Layered Histories & Positionings in Peninsular Malaysia*, 37(1) Sojourn: J. of Soc. Issues in Se. Asia 58, 66–67, 70–71 (2022) [hereinafter Idrus 2022]; Somiah 2022, *supra* note 6, at 90–92; Tamma & Duile 2020, *supra* note 214, at 273–76; Tan 2020, *supra* note 214, at 275–276; Oona Paredes, *Preserving 'Tradition': The Business of Indigeneity in the Modern Philippine Context*, 50(1) J. of Se. Asian Stud. 86, 94–95, 102–104 (2019) [hereinafter Paredes 2019]; Allerton 2017, *supra* note 25, at 261; Morton 2016, *supra* note 216, at 688; Sharom 2006, *supra* note 23, at 55, 62.

218. *See* Somiah 2022, *supra* note 6, at 102–04; Will Smith & Wolfram Dressler, *Forged in Flames: Indigeneity, Forest Fire, & Geographies of Blame in the Philippines*, 23(4) Postcolonial Stud. 527, 537–40 (2020); Tamma & Duile 2020, *supra* note 214, at 273–276; Tan 2020, *supra* note 214, at 275–76; Leepracha 2019, *supra* note 214, at 45–46; Morton & Baird 2019, *supra* note 85, at 11–16; Acciaioli et al. 2017, *supra* note 20, at 13–15; Morton 2016, *supra* note 216, at 688; Porath 2010, at 271–72, 276, 280.

219. Willem van der Muur, Jacqueline Vel, Micah Fisher, & Kathryn Robinson, *Changing Indigeneity Politics in Indonesia: From Revival to Projects*, 20(5) Asia Pac. J. of Anthropology 379, at 385–88 (2019); Porath 2010, *supra* note 218, at 276, 286–87.

by sea peoples to address marine plastic pollution require a broader consideration of the political ramifications of those actions for their status. The nuances of internal politics are specific to individual states, but the differences point all the more to a need for Bajau, Moken, and Orang Laut communities to calibrate potential legal strategies to the endemic circumstances in their respective countries.

VI. Conclusion

The work of preceding sections leaves several directions for future research. To begin, the orientation of the analysis was largely theoretical, with discussion directed to exploring what an international human rights law approach regarding indigenous rights to the environment would look like. The analysis centered around the situation of sea peoples in ASEAN states, but the purpose was to enable demonstration of how international human rights law addresses different components necessary for indigenous legal actions to address environmental problems. As such, the analysis served more as an introduction guiding reflection and less as a comprehensive technical statement on the conduct of litigation. Hence, the analysis would benefit from additional studies addressing the technical elements of legal action. In particular, future work should clarify the relevant legal sources and procedural actions associated with individual legal venues, with appropriate study involving specific cases tracing the details of litigation undertaken in each one. Such research would extend understanding how the theoretical observations in the present analysis could be implemented into legal practice by indigenous interests.

In addition, the exploration of theory would benefit from additional empirical grounding, in the sense that empirical studies would inform the refinement of theory to better reflect the complexities facing indigenous peoples struggling with environmental issues. With respect to the present analysis, useful empirical study would involve other cases of indigenous groups pursuing legal actions to address marine plastic pollution, both within ASEAN and elsewhere. A broader range of case studies would generate more information regarding the legal strategies preferred by indigenous communities with respect to the marine environment, with comparison between cases enabling the identification of nuances to requiring revisions in theory.

In conclusion, the analysis sought to demonstrate how international human rights law framework can articulate indigenous rights to the environment, using the case of sea peoples and marine plastic pollution

in Southeast Asia to illustrate the application of provisions in international human rights instruments in advancing indigenous concerns over environmental harms. Specifically, drawing upon the ICCPR, ICESCR, and UDHR as representative examples of international human rights law, the work of preceding sections identified legal rights addressing substantive, procedural, and legal personality issues associated with potential legal actions by sea peoples vis-à-vis plastic in their marine environments. In doing so, the analysis contributed to larger efforts to construct indigenous rights to the environment, with the deliberations in the analysis helping to locate indigenous legal concerns within broader discourses bridging human rights and environment.

References

Acciaioli, Greg, Helen Brunt, & Julian Clifton. (2017) Foreigners Everywhere, Nationals Nowhere: Exclusion, Irregularity, & Invisibility of Stateless Bajau Laut in Eastern Sabah, Malaysia. *Journal of Immigrant & Refugee Studies* 15(3): 232–249.

Acciaioli, Greg. (2001) "Archipelagic Culture" As an Exclusionary Government Discourse in Indonesia. *Asia Pacific Journal of Anthropology* 2(1): 1–23.

Alam, Shawkat. (2013) The Collective Rights of Indigenous Peoples, Environmental Destruction, & Climate Change, in Erika Techra, et al., *Routledge Handbook of International Environmental Law*. Routledge. Available at: https://researchers.mq.edu.au/en/publications/the-collective-rights-of-indigenous-peoples-environmental-destruc

Allen, Stephen, Nigel Bankes, & Oyvind Ravna. (2019) *The Rights of Indigenous Peoples in Marine Areas*. Hart Publishing.

Andaya, Barbara. (2019) Recording the Past of "Peoples without History": Southeast Asia's Sea Nomads. *Asian Review* 32(1): 5–33.

Anghie, Antonio. (2005) *Imperialism, Sovereignty, and the Making of International Law*. Cambridge University Press.

Association of Southeast Asian Nations (ASEAN). (2019) *ASEAN Framework of Action on Marine Debris*. Available at: https://cil.nus.edu.sg/wp-content/uploads/2019/11/2019-ASEAN-Framework-Marine-Debris.pdf

Auta, H.S., et al. (2017) Distribution & Importance of Microplastics in the Marine Environment: A Review of the Sources, Fate, Effects, & Potential Solutions. *Environment International* 102(2017): 165–176.

Baird, Ian. (2019) Introduction: Indigeneity in 'Southeast' Asia: Challenging Identities & Geographies. *Journal of Southeast Asian Studies* 50(1): 2–6.

Baird, Ian. (2016) Indigeneity in Asia: An Emerging but Contested Concept. *Asian Ethnicity* 17(4): 501–505.

Banda, Maria. (2019) Regime Congruence: Rethinking the Scope of State Responsibility for Transboundary Environmental Harm. *Minnesota Law Review* 103: 1879–1959.

Barboza, Luis Gabriel Antao, et al. (2015) Microplastics in the Marine Environment: Current Trends and Future Perspectives. *Marine Pollution Bulletin* 97 (2015): 5–12.

Barnard, Timothy. (2014) An Inroduction, in Timothy Barnard (ed.), *Nature Contained: Environmental Histories of Singapore*. NUS Press.

Basel Convention. (1989) Available at: http://www.basel.int/Home/tabid/2202/Default.aspx

Boomgard, Peter. (2007) In a State of Flux: Water as a Deadly & Life-Giving Forces in Southeast Asia, in Peter Boomgaard (ed.), *A World of Water: Rain, Rivers, & Seas in Southeast Asian Histories*. Koninklijk Instituut voor Taal-, Land- en Volkenkunde Press.

Borras, Susana. (2016) New Transitions from Human Rights to the Environment to the Rights of Nature. *Transnational Environmental Law* 5(1): 113–143.

Boyle, Alan. (2018) Climate Change, the Paris Agreement, & Human Rights. *International & Comparative Law Quarterly* 67: 759–777.

Boyle, Alan. (2012) Human Rights & the Environment: Where Next? *European Journal of International Law* 23(3): 613–642.

Boyle, Alan. (2005) Globalising Environmental Liability: The Interplay of National & International Law. *Journal of Environmental Law* 17(1): 3–26.

Butler, Israel de Jesus. (2004) Comparative Analysis of Individual Petition in Regional & Global Human Rights Protection Mechanisms. *University of Queensland Law Journal* 23(2004: 22–53.

Butterly, Lauren & Erika Techera. (2016) Critical Linkages: Trans-Jurisdictional Approaches to Advancing Indigenous Marine Governance, in J Gray, et al (eds.), *Trans-Jurisdictional Water Law & Governance*. Routledge.

Cadava, Geraldo. (2011) Borderlands of Modernity & Abandonment: The Lines within Ambos Nogales & the Tohono O'odham Nation. *Journal of American History* 98(2): 368–383.

Casals, Torbisco. (2006) *Group Rights as Human Rights*. Springer.

Chiba, Sanae, et al. (2018) Footprint in the Abyss: 30 Year Records of Deep-Sea Plastic Debris. *Marine Policy* 96(2018): 204–212.

Chou, Cynthia. (2016a) The Water World of the Orang Suku Laut in Southeast Asia. *TRaNS: Trans-Regional & -National Studies of Southeast Asia* 4(2): 265–282.

Chou, Cynthia. (2016b) *Indonesian Sea Nomads: Money, Magic, & Fear of the Orang Suku Laut*. Routledge.

Clifton, Julian, Greg Acciaioli, Helen Brunt, Wolfram Dressler, & Michael Fabinyi. (2014) Statelessness & Conservation. *Tilburg Law Review* 19(2014): 81–89.

Clifton, Julian & Chris Majors. (2011) Culture, Conservation, & Conflict: Perspectives on Marine Protection Among the Bajau of Southeast Asia. *Society & Natural Resources* 25(7): 716–725.

Collings, Neva. (2006) The Rights of Indigenous Peoples to Water: International Environment and Human Rights Standards. *Journal of Indigenous Policy* 6(2006): 60–77.

Committee on Economic, Social, & Cultural Rights (CESCR). (2009) *General Comment No. 21: Right of Everyone to Take Part in Cultural Life (Art. 15, Para. 1(a), of the International Covenant on Economic, Social, & Cultural Rights), E/C.12/GC/21*. Office of the High Commissioner for Human Rights. Available at: https://www.refworld.org/docid/4ed35bae2.html

Committee on Economic, Social, and Cultural Rights (CESCR). (2003) *General Comment No. 15: The Right to Water (Arts. 11 and 12 of the Covenant), E/C.12/2002/11*. Office of the High Commissioner for Human Rights. Available at: https://www.refworld.org/docid/4538838d11.html

Committee on Economic, Social, & Cultural Rights (CESCR). (2000) *General Comment No. 14: The Right to Highest Attainable Standard of Health (Art. 12), E/C/12/2000/4*. Office of the High Commissioner for Human Rights. Available at: https://www.refworld.org/pdfid/4538838d0.pdf

Convention on Biological Diversity (CBD). (1992) Available at: https://www.cbd.int/

Corntassel, Jeff. (2003) Who is Indigenous? 'Peoplehood' & Ethnonationalist Approaches to Rearticulating Indigenous Identity. *Ethnonationalism & Ethnic Politics* 9(1): 75–100

Corrin, Jennifer. (2009) From Horizontal & Vertical to Lateral: Extending the Effect of Human Rights in Post Colonial Legal Systems of the South Pacific. *International & Comparative Law Quarterly* 58(1): 31–71.

Dantas, Carla. (2012) Right of Petition by Individuals Within the Global Human Rights Protection System. *SUR International Journal on Human Rights* 17(2012): 187–208.

Dauvergne, Peter. (2018) Why Is the Global Governance of Plastic Failing the Oceans? *Global Environmental Change* 51(2018): 22–31.

Davis, Megan. (2007) The United Nations Declaration on the Rights of Indigenous Peoples. *Australian Indigenous Law Review* 11(3): 55–64.

Dekker, Sidney & Hugh Breakey. (2016) "Just Culture": Improving Safety by Achieving Substantive, Procedural, & Restorative Justice. *Safety Science* 85(2016): 187–193.

De Schutter, Olivia, et al. (2012) Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social, & Cultural Rights. *Human Rights Quarterly* 34(2012): 1084–1169.

Dobson, Natalie & Cedric Ryngaert. (2017) Provocative Climate Protection: EU Extraterritorial Regulation of Maritime Emissions. *International & Comparatively Law Quarterly* 66(2): 295–334.

Dunford, Michael. (2019) Indigeneity, Ethnopolitics, & Taingyinthar: Myanmar & the Global Indigenous Peoples' Movement. *Journal of Southeast Asian Studies* 50(1): 51–67.

Dworkin, Ronald. (1977) *Taking Rights Seriously*. Harvard University Press.

Ellis, Jaye. (2012) Extraterritorial Exercise of Jurisdiction for Environmental Protection: Addressing Fairness Concerns. *Leiden Journal of International Law* 25(2): 397–414.

Engel, David. (2012) Vertical & Horizontal Perspectives on Rights Consciousness. *Indiana Journal of Global Legal Studies* 19(2): 423–455.

Ian Erni (ed.). (2008) *The Concept of Indigenous Peoples in Asia*. International Work Group for Indigenous Affairs.

Erueti, Andrew. (2016) Maori Rights to Freshwater: The Three Conceptual Models of Indigenous Rights. *Waikato Law Review* 24(2016): 58–80.

Ferrari, Olivier. (2015) Borders & Cultural Creativity: The Case of the Chao Lay, the Sea Gypsies of Southern Thailand, in Frederic Bourdier, Maxime Boutry, Jacque Ivanoff, & Olivier Ferrari (eds.), *Reflections on Identity & the Social Construction Space in the Borderlands of Cambodia, Vietnam, Thailand, & Myanmar*. Amsterdam University Press.

Fukurai, Hiroshi and Richard Krooth. (2021) *Original Nation Approaches to Inter-National Law*. Palgrave MacMillan.

Garcia, Beatriz, et al. (2019) Marine Plastic Pollution in Asia: All Hands on Deck! *Chinese Journal of Environmental Law* 3(2019): 11–46.

Gewirth, A. (1996) *The Community of Rights*. University of Chicago Press.

Goodhart, Michael. (2009) *Human Rights: Politics & Practice*. Oxford University Press.

Greenwald, Peter. (1979) Pollution Control at the Maritime Frontier: The Limits of State Extraterritorial Power. *Santa Clara Law Review* 19(3): 747–776.

Gregory, Murray. (2009) Environmental Implications of Plastic Debris in Marine Settings—Entanglement, Ingestion, Smothering, Hangers-on, Hitch-hiking, & Alien Invasions. *Philosophical Transactions of the Royal Society B* 364(1526): 2013–2025.

Gupta, Joyeeta, Antoinette Hildering, & Daphina Misiedjan. (2014) Indigenous Peoples' Right to Water Under International Law: A Legal Pluralism Perspective. *Current Opinion in Environmental Sustainability* 11(2014): 26–33.

Harris, A.W. (2003) Making the Case for Collective Rights: Indigenous Claims to Stocks of Marine Living Resources. *Georgetown International Environmental Law Review* 15(3): 379–428.

Heller, Herman & David Dyzenhaus (eds.). (2019) *Sovereignty: A Contribution to the Theory of Public & International Law*. Oxford University Press.

Hiwasaki, Lisa, Emmanuel Luna, Syamsidik, Jose Adriano Marcal. (2015) Local & Indigenous Knowledge on Climate-Related Hazards of Coastal & Small Island Communities in Southeast Asia. *Climatic Change* 128(2015): 35–56.

Hoogevorst, Tom. (2012) Ethnicity & Aquatic Lifestyles: Exploring Southeast Asia's Past & Present Seascapes. *Water History* 4(2012): 245–265.

Human Rights Committee. (2020) *General Comment No. 37 (2020) on the Right of Peaceful Assembly, CCPR/C/GC/37*. Office of the High Commissioner for Human Rights. Available at: https://digitallibrary.un.org/record/3884725?ln=en

Human Rights Committee. (2018) *General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil & Political Rights, On the Right to Life, CCPR/C/GC/36*. Office of the High Commissioner for Human Rights. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f36&Lang=en18

Human Rights Committee. (2011) *General Comment No. 34: Article 19: Freedoms of Opinion and Expression, CCPR/C/GC/34*. Office of the High Commissioner for Human Rights. Available at: https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf

Human Rights Committee. (1984) *General Comment No. 12: Article 1 (Right to Self-Determination), The Right to Self-Determination of Peoples*. Office of the High Commissioner for Human Rights. Available at: https://www.refworld.org/docid/453883f822.html

Human Rights Watch. (2015) *Stateless at Sea: The Moken of Burma & Thailand, June 25, 2015*. Available at: https://www.hrw.org/report/2015/06/25/stateless-sea/moken-burma-and-thailand

Idrus, Rusaslina. (2022) Competing for the 'Indigenous' Slot: Layered Histories & Positionings in Peninsular Malaysia. *Sojourn* 37(1): 58–85.

Indigenous Alliance Without Borders. (2019) *Handbook on Indigenous Peoples' Border Crossing Rights between the United States & Mexico*. Office of the High Commissioner for Human Rights (2019). Available at: https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/Call/IndigenousAllianceWithoutBorders.pdf

International Convention for the Prevention of Pollution from Ships (MARPOL). (1973) Available at: http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Prevention-of-Pollution-from-Ships-(MARPOL).aspx

International Covenant on Civil & Political Rights (ICCPR). (1966) Available at: https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx

International Covenant on Civil & Political Rights First Optional Protocol (ICCPR First Optional Protocol). (1966) Available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx

International Covenant on Economic, Social, & Cultural Rights (ICESCR). (1966) Available at: https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx

International Covenant on Economic, Social, & Cultural Rights Optional Protocol (ICESCR Optional Protocol). (1966) Available at: https://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx

International Labor Organization. (2021) *Ratifications of C169-Indigenous & Tribal Peoples Convention, 1989 (No. 169)*. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314:NO .

International Labor Organization Convention on Indigenous & Tribal Peoples No. 169 (ILO No. 169). (1989) Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169

Jambeck, Jenna, et al. (2015) Plastic Waste Inputs from Land Into the Ocean. *Science* 347(6223): 768–771.

Jones, Peter. (1999) Human Rights, Group Rights, & Peoples' Rights. *Human Rights Quarterly* 21(1): 80–107.

Kanalan, Ibrahim. (2018) Extraterritorial State Obligations Beyond the Concept of Jurisdiction. *German Law Journal* 19(1): 43–64.

Kannan, Radhika. (2020) The Effectiveness of Environmental Law in Preventing Transboundary Pollution from Oil Drilling in the Arctic. *Columbia Journal of Environmental* 45(1): 241–284.

Keating, Neal. (2019) Kites in the Highlands: Articulating Bunong Indigeneity in Cambodia, Vietnam, and Abroad. *Asian Ethnicity* 17(4): 566–579.

Kaye, Stuart. (2001) Jurisdictional Patchwork: Law of the Sea & Native Title Issues in the Torres Strait. *Melbourne Journal of International Law* 2(2): 381–413.

King, Hugh. (2009) Extraterritorial Human Rights Obligations of States. *Human Rights Law Review* 9(4): 521–556.

Kirchengast, Tyrone. (2013) Beyond Normative Constraints: Declining Institutionalism and the Emergence of Substantive and Procedural Justice. *International Journal of Law, Crime, & Justice* 41(2013): 292–302.

Knox, John. (2020) Constructing the Human Right to a Healthy Environment. *Annual Review of Law & Social Science* 16(1): 4–17.

Knox, John & Ramin Pejan (eds.). (2018) *The Human Right to a Healthy Environment*. Cambridge University Press.

Krauzman, Marine. (2022) *International Borders: Dividing Lines for Indigenous Peoples' Rights, May 2, 2022*. Universal Rights Group. Available at: https://www.universal-rights.org/blog/international-borders-dividing-lines-for-indigenous-peoples-rights/ (visited October 3, 2022).

Landon-Lane, Micah. (2018) Corporate Social Responsibility in Marine Plastic Debris Governance. *Marine Pollution Bulletin* 127(2018): 310–319.

Lane, Lottie. (2018) The Horizontal Effect of International Human Rights Law in Practice. *European Journal of Comparative Law & Governance* 5(1): 5–88.

Lasut, Markus, et al. (2017) From Coral Triangle to Trash Triangle—How the Hot Spot of Global Marine Biodiversity Is Threatened by Plastic Waste. *Proceedings of*

the International Conference on Microplastic Pollution in the Mediterranean Sea 2017:107–113.

Lebreton, L.C.-M., et al. (2012) Numerical Modelling of Floating Debris in the World's Oceans. *Marine Pollution Bulletin* 64(2012): 653–661.

Leepracha, Prasit Leepracha. (2019) Becoming Indigenous Peoples in Thailand. *Journal of Southeast Asian Studies* 50(1): 32–50.

Lenhart, Lioba. (2001) Orang Suku Laut Communities at Risk: Effects of Modernisation on the Resource Base, Livelihood, & Culture of the 'Sea Tribe People' of the Riau Islands (Indonesia), *Nomadic Peoples* 5(2): 67–88.

Lenzerini, Federico. (2006) Sovereignty Revisited: International Law & Parallel Sovereignty of Indigenous Peoples. *Texas International Law Journal* 42(1): 155–190.

Lepsch, Peter. (2003) Ecological Effects Know No Boundaries: Little Remedy for Native American Tribes Pursuing Transboundary Pollution Under International Law. *Buffalo Environmental Law Journal* 11(1): 61–88.

Lewis, Bridget. (2008) Indigenous Human Rights & Climate Change. *Indigenous Law Bulletin* 7(8): 11–36.

Liljeblad, Jonathan. (2022) *Indigenous Identity, Human Rights, & the Environment in Myanmar: Local Engagement with Global Rights Discourses*. Routledge.

London Convention. (1972) Available at: http://www.imo.org/en/OurWork/Environment/LCLP/Pages/default.aspx

Lowe, Celia. (2003) The Magic of Place; Sama at Sea & on Land in Sulawesi, Indonesia. Bijdragen tot de Taal-, Land- en Volkenkunde 159(1): 109–133.

Lyons, Youna, et al. (2019) *A Review of Research on Marine Plastics in Southeast Asia: Who Does What?* Centre for International Law, National University of Singapore. Available at: https://cil.nus.edu.sg/wp-content/uploads/2019/07/A-review-of-research-on-marine-plastics-in-Southeast-Asia_Final28June2019Rev4July2019.pdf

Macklem, Patrick. (2008) Indigenous Recognition in International Law: Theoretical Observations. *Michigan Journal of International Law* 30(1): 177–210.

Manus, Peter Manus. (2006) Indigenous Peoples' Environmental Rights: Evolving Common Law Perspectives in Canada, Australia, & the United States. *British Columbia Environmental Affairs Law Review* 33(1): 1–86.

Metcalfe, Cherie. (2003) Indigenous Rights & the Environment: Evolving International Law. *Ottawa Law Review* 35(1): 101–140.

Misiedjan, Daphina & Joyeeta Gupta. (2014) Indigenous Communities: Analyzing Their Right to Water Under Different International Regimes. *Utrecht Law Review* 10(2): 77–10.

Mooradian. Christopher. (2002) Protecting Sovereign rights: The Case for Increased Coastal State Jurisdiction Over Vessel-Source Pollution in the Exclusive Economic Zone. *Boston University Law Review* 82(3): 767–816.

Morton, Micah Morton & Ian Baird. (2019) From Hill Tribes to Indigenous Peoples: The Localisation of a Global Movement in Thailand. *Journal of Southeast Asian Studies* 50(1): 7–31.

Nah, Alice. (2003) Negotiating Indigenous Identity in Postcolonial Malaysia: Beyond Being "Not Quite/Not Malay." *Social Identities* 9(4): 511–534.

Ocean Conservancy & McKinsey & Company. (2015) *Stemming the Tide: Land-Based Strategies for a Plastic-Free Ocean*. McKinsey & Co. Available at: https://www.mckinsey.com/business-functions/sustainability/our-insights/stemming-the-tide-land-based-strategies-for-a-plastic-free-ocean#

Office of the High Commissioner for Human Rights. (2022) *International Bill of Human Rights*. Available at: https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights#:~:text=The%20International%20Bill%20of%20Human%20Rights%20is%20a%20powerful%20statement,agree%20to%20abide%20by%20them

Office of the High Commissioner for Human Rights (OHCHR). (2021) *Indicators—Ratification of 18 International Human Rights Treaties*. Available at: https://indicators.ohchr.org/

Office of the High Commissioner for Human Rights (OHCHR). (2020) *Human Rights Bodies – Complaints Procedures*. Available at: https://www.ohchr.org/en/hrbodies/tbpetitions/pages/hrtbpetitions.aspx

Office of the High Commissioner for Human Rights (OHCHR). (2013), *Indigenous Peoples & the United Nations Human Rights System, Fact Sheet No. 9/Rev.2*. Office of the High Commissioner for Human Rights. Available at: https://www.ohchr.org/sites/default/files/Documents/Publications/fs9Rev.2.pdf

Office of the High Commissioner for Human Rights (OHCHR). (2013) *Individual Complaint Procedures Under the United Nations Human Rights Treaties.* United Nations. Available at: https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf

Omeyer, Lucy, et al. (2022) Priorities to Inform Research on Marine Plastic Pollution in Southeast Asia. *Science of the Total Environment* 841(2022), available at: https://www.sciencedirect.com/science/article/pii/S0048969722038013

Ormaza, Maria Victoria Cabrera. (2012) Re-thinking the Role of Indigenous Peoples in International Law: New Developments in International Environmental Law & Development Cooperation. *Goettingen Journal of International Law* 4(1): 243–270.

Paredes, Oona Paredes. (2019) Preserving 'Tradition': The Business of Indigeneity in the Modern Philippine Context. *Journal of Southeast Asian Studies* 50(1): 86–106.

Pathak, Puneet. (2014) Human Rights Approach to Environmental Protection. *OIDA International Journal of Sustainable Development* 7(1): 17–24.

Pearl, M. Alexander. (2018) Human Rights, Indigenous Peoples, & the Global Climate Change Crisis. *Wake Forest Law Review* 53(4): 713–738.

Percival, Robert. (2010) Liability for Environmental Harm and Emerging Global Environmental Law. *Maryland Journal of International Law* 25(1): 37–63.

Phelan, Anna, et al. (2020) Ocean Plastic Crisis—Mental Models of Plastic Pollution from Remote Indonesian Coastal Communities. *PLoS One* 15(7). Available at: https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0236149

Porath, Nathan. (2010) 'They Have Not Progressed Enough': Development's Negated Identities Among Two Indigenous Peoples (Orang Asli) in Indonesia & Thailand. *Journal of Southeast Asia Studies* 41(1): 267–289.

Portmann, Roland. (2010) *Legal Personality in International Law*. Cambridge University Press.

Raubenheimer, Karen & Alistair McIlgorm. (2018) Can the Basel and Stockholm Conventions Provide a Global Framework to Reduce the Impact of Marine Plastic Litter? *Marine Policy* 96(2018): 285–290.

Rawls, John. (1999) *The Laws of Peoples with "The Idea of Public Reason Revisited."* Harvard University Press.

Raz, Joseph. (1986) *The Morality of Freedom*. Oxford University Press.

Sen, Amartya. (2000) *Development as Freedom*. Anchor Books.
Sharom, Azmi. (2006) A Critical Study of the Laws Relating to the Indigenous Peoples of Malaysia in the Context of Article 8(j) of the Biodiversity Convention. *International Journal on Minority & Group Rights* 13(1): 53–68.
Smith, Will & Wolfram Dressler. (2020) Forged in Flames: Indigeneity, Forest Fire, & Geographies of Blame in the Philippines. *Postcolonial Studies* 23(4): 527–545.
Snyder, Robert. (2011) International Legal Regimes to Manage Indigenous Rights & Arctic Disputes from Climate Change. *Colorado Journal of International Environmental Law & Policy* 22(1): 1–40.
Somiah, Vilashini. (2022) The Sea is Indigenous 'Land' Too. *Journal of Social Issues in Southeast Asia* 37(1): 85–112.
Sperfeldt, Christoph. (2021) Legal Identity & Statelessness in Southeast Asia. *Asia Pacific Issues 147*. Available at: https://www.eastwestcenter.org/publications/legal-identity-and-statelessness-in-southeast-asia
Springer, Jenny. (2016) *IUCN's Rights-Based Approach: A Systemization of the Union's Policy Instruments, Standards, and Guidelines*. International Union for the Conservation of Nature (IUCN). Available at: https://www.iucn.org/sites/dev/files/content/documents/iucn_rba_systematization_compiled.pdf
Stancil, Paul. (2017) Substantive Equality and Procedural Justice. *Iowa Law Review* 102(1): 1633–1690.
Starks, Rachel Rose, Stephen Cornell, & Jen McCormack. (2011) *Native Nations & U.S. Borders: Challenges to Indigenous Culture, Citizenship, & Security*. University of Arizona Native Nations Institute.
Stirrup, David & Jan Clarke. (2015) Straddling Boundaires: Culture & the Canada-US Border. *Comparative American Studies* 13(1—2): 1–15.
Summers, James Summers (2007). *Peoples & International Law*. Brill.
Szigeti, Peter. (2017) The Illusion of Territorial Jurisdiction. *Texas International Law Journal* 52(3): 369–399.
Szpak, Agnieszka & Maria Ochwat. (2021) The Saami & the Karen—Common Experience & Differences: A Comparative Perspective. *Asia Europe Journal* 19(2021): 445–465.
Tamma, Sukri & Timo Duile. (2020) Indigeneity & the State in Indonesia: The Local Turn in the Dialectic Recognition. *Journal of Current Southeast Asian Affairs* 39(2): 270–289.
Tan, Rhe-Anne Tan. (2020) "We Are Not Red and White, We Are Morning Star!" Internal Colonization, Indigenous Identity, & the Idea of Indonesia. *Journal of International Affairs* 73(2): 271–284.
Taylor, Robert Taylor. (2015) Refighting Old Battles, Compounding Misconceptions: The Politics of Ethnicity in Myanmar Today. *ISEAS Perspective* 2015(12). Available at: https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs21/Taylor-2015-iseas_perspective-red.pdf
Tessnow-von Wysocki, Ina & Philippe Le Billon. (2019) Plastics at Sea: Treaty Design for a Global Solution to Marine Plastic Pollution. *Environmental Science & Policy* 100(2019): 94–104.
Todd, Peter, et al . (2010) Impacts of Marine Life in Southeast Asia. *Biodiversity & Conservation* 19(4): 1063–1082.
Trail Smelter Arbitrations Between Canada and the United States (*Trail Smelter*). (1941) *Reports of International Arbitral Awards, Trail Smelter Case (United States, Canada)*. Available at: https://legal.un.org/riaa/cases/vol_III/1905–1982.pdf

Tsosie, Rebecca. (2007) Indigenous People & Environmental Justice: The Impact of Climate Change. *University of Colorado Law Review* 78(4): 1625–1678.

United Nations (UN). (2020) *Special Rapporteur on Human Rights and the Environment*. Available at: https://www.ohchr.org/en/Issues/environment/SRenvironment/Pages/SRenvironmentIndex.aspx

United Nations (UN). (2016) *System-Wide Action Plan on the Rights of Indigenous Peoples*. United Nations. Available at: https://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/SWAP_Indigenous_Peoples_WEB.pdf

United Nations. (2015) *Paris Agreement*. United Nations. Available at: https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf

United Nations Convention on the Law of the Sea (UNCLOS). (1982) Available at: https://www.un.org/Depts/los/convention_agreements/texts/unclos/UNCLOS-TOC.htm

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). (2007) Available at: https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html

United Nations Department of Economic & Social Affairs. (2022) *System-Wide Action Plan*. Available at: https://www.un.org/development/desa/indigenouspeoples/about-us/system-wide-action-plan.html

United Nations Digital Library. (2022) Available at: https://digitallibrary.un.org/

United Nations Digital Library. (2007) *United Nations Declaration on the Rights of Indigenous Peoples: Resolution/adopted by the General Assembly (2007), A/RES/61/295*. Available at: https://digitallibrary.un.org/record/609197?ln=en

United Nations Digital Library. (1948) *International Bill of Human Rights: Universal Declaration of Human Rights: Resolution/adoption by the General Assembly, A/RES/217(III)[A]*. Available at: https://digitallibrary.un.org/record/670964?ln=en

United Nations Framework Convention on Climate Change (UNFCCC). (1992) Available at: https://unfccc.int/

United Nations General Assembly (UNGA). (2018a) Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, & Sustainable Environment, A/HRC/37/59. Available at: https://undocs.org/A/HRC/37/59

United Nations General Assembly (UNGA). (2018b) Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, & Sustainable Environment, A/73/188. Available at: https://undocs.org/A/73/188

United Nations General Assembly (UNGA). (2017) *Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, & Sustainable Environment, A/HRC/34/49*. Available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/009/97/PDF/G1700997.pdf?OpenElement

United Nations General Assembly (UNGA). (2013) *Report of the Independent Expert on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy, & Sustainable Environment, John H. Knox, A/HRC/25/53*. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/25/53

United Nations General Assembly (UNGA). (2012) Human Rights & the Environment, A/HRC/RES/19/10. Available at: https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/G12/131/59/PDF/G1213159.pdf?OpenElement

Universal Declaration of Human Rights (UDHR). (1948) Available at: https://www.un.org/en/universal-declaration-human-rights/

United Nations Special Rapporteur on Human Rights & Environment. (2022) Available at: https://www.ohchr.org/en/special-procedures/sr-environment

United Nations Treaty Body Database. (2022a) *Ratification Status for CCPR-International Covenant for Civil & Political Rights*. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx

United Nations Treaty Body Database. (2022b) *Ratification Status for CESCR-International Covenant on Economic, Social, & Cultural Rights*. Available at: https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx

Valdez, Amiel. (2022) Balancing the Indigenous Peoples' Ancestral Sea Rights, & the State's Obligation to Protect & Preserve the Marine Environment. *Asia-Pacific Journal on Human Rights & the Law* 23: 47–79.

van der Muur, Willem, Jacqueline Vel, Micah Fisher, & Kathryn Robinson. (2019) Changing Indigeneity Politics in Indonesia: From Revival to Projects. *Asia Pacific Journal of Anthropology* 20(5): 379–396.

Villarrubia-Gomez, Patricia, et al. (2018) Marine Plastic Pollution as a Planetary Boundary Threat: The Drifting Piece in the Sustainability Puzzle. *Marine Policy* 96(2018): 213–220.

Vince, Joanna, & Britta Hardesty. (2017) Plastic Pollution Challenges in Marine & Coastal Environments: From Local to Global Governance. *Restoration Ecology* 25(1): 123–128.

Vinuales, Jorge. (2016) A Human Rights Approach to Extraterritorial Environmental Protection? In Nehal Bhuta (ed.) *The Frontiers of Human Rights*. Oxford University Press.

Watters, Lawrence. (2001) Indigenous Peoples & the Environment: Convergence from a Nordic Perspective. *UCLA Journal of Environmental Law & Policy* 20(2): 237–304.

Weiss, Edith Brown. (2011) The Evolution of International Environmental Law. *Japanese Yearbook of International Law* 54: 1–27.

Westra, Laura. (2013) *Environmental Justice & the Rights of Indigenous Peoples*. Routledge.

Whyte, Kyle. (2011) The Recognition Dimensions of Environmental Justice in Indian Country. *Environmental Justice* 4(4): 199–205.

Williams, Jay. (2012) The Impact of Climate Change on Indigenous People – The Implications for the Cultural, Spiritual, Economic, & Legal Rights of Indigenous People. *The International Journal of Human Rights* 16(4): 648–688.

Wood, Jacob, et al. (2020) Plastic Marine Waste & Its Potential for Indonesian Indigenous Communities. *eTropic* 19(1): 167–184. Available at: https://journals.jcu.edu.au/etropic/article/view/3697

Worster, William Thomas. (2016) Relative International Legal Personality of Non-State Actors. *Brooklyn Journal of International Law* 42(1): 207–273.

Zwiebach, Peter. (2004) Whose Right Is It Anyway? Rethinking a Group Rights Approach to International Human Rights. *Human Rights & Human Welfare* 4:79–89.