1. The *United Nations Declaration on the Rights of Indigenous Peoples*: a human rights framework for intellectual property rights

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After more than 20 years of negotiations and confrontations in various United Nations (UN) human rights fora, in September 2007 the world's Indigenous peoples could celebrate the adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, a historic document which reflects the legal regime concerning Indigenous rights at the international level.¹

The question of culture enjoys a prominent position in the *United Nations Declaration on the Rights of Indigenous Peoples* 2007. Indeed it is precisely the cultural distinctiveness of Indigenous peoples – coupled with their willingness to preserve it – that makes them particularly different from other sub-State groups.² Emphasising the fact that Indigenous peoples' culture has both an encompassing and spiritual significance, the concept of 'cultural heritage' has often been used to refer to everything that belongs to the distinct identity of an Indigenous people.³ Cultural heritage is closely connected with the history, culture and identity of an Indigenous people and manifests itself in various domains, including traditional knowledge and practices, literary works, musical expressions, performances, rituals and social practices;⁴ it is transmitted from generation to generation, and is constantly recreated by Indigenous peoples in response to changes in their environment and their interaction with nature as well as their history.⁵

¹ *United Nations Declaration on the Rights of Indigenous Peoples* 2007 UN General Assembly Resolution 61/295 of 13 September 2007.

² For an analysis of the concept of 'Indigenous peoples' in international law, see Benedict Kingsbury, "Indigenous Peoples" in *International Law: A Constructivist Approach to the Asian Controversy* (1998) 92 *American Journal of International Law* 414–457.

³ See, in particular, the *Study on the Protection of the Cultural and Intellectual Property of Indigenous Peoples*, by Erica-Irene Daes, UN Doc. E/CN.4/Sub.2/1993/28 (28 July 1993). While other terms have been, and can be used, e.g. 'Indigenous culture', 'Indigenous traditional culture', or 'Indigenous cultural and intellectual property', there seems to be widespread agreement on the need to employ a holistic and comprehensive understanding and approach to the questions of culture and intellectual property in relation to Indigenous peoples. See, among others, Secretariat of the UN Permanent Forum on Indigenous Issues, *Background Note to the International Workshop on Traditional Knowledge*, Doc. PFII/2005/WS.TK, Panama City, 21–23 September 2005, para. 1.

⁴ Yozo Yokota and the Saami Council, *Review of the Draft Principles and Guidelines on the Heritage of Indigenous Peoples*, Working paper, UN Doc. E/CN.4/Sub.2/AC.4/2006/5 (16 June 2006), p. 6.

⁵ *Ibid.*

Because Indigenous peoples see culture as a heritage to be preserved and respected, most typically in a collective form, the existing regime of intellectual property rights appears ill suited to adequately protect the expressions and manifestations of Indigenous culture.⁶ Against this background, it is not surprising that the misappropriation of Indigenous cultural heritage has become a source of increasing concern at the international level.⁷

Taking note of all of these matters, the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 establishes, in Article 31, that Indigenous peoples ‘have the right to maintain, control, protect and develop their intellectual property over their cultural heritage, traditional knowledge, and traditional cultural expressions’. In light of the centrality of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 in the realm of Indigenous rights, Article 31 represents the reference point for any credible discussion of the interlink between the cultural and intellectual property rights of Indigenous peoples. This chapter seeks to contextualise this important provision within the normative framework of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007. The first part of the chapter will examine the legal and political significance of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, discussing the circumstances surrounding its drafting and adoption as well as its normative content. The second part of the chapter will focus on the key provisions of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 that are closely connected with Indigenous peoples’ intellectual property rights, including those on self-determination and land rights. Special attention will be paid to the content of Article 31 of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, highlighting the progressive character of this provision in relation to the intellectual property rights regime currently in force at the international level.

1. THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 2007

The adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 marked a crucial moment in the history of the relationship between Indigenous peoples and international law. While for centuries Indigenous peoples remained invisible to international law and institutions,⁸ with the adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 international law turned into an instrument of protection of Indigenous rights, seeking to guarantee the very ‘survival,

⁶ Referring to the ‘square peg in the round hole’ analogy, Batt has observed that one can hardly fit the square peg of Indigenous culture heritage into the round hole of the intellectual property rights regime. Fiona Batt, ‘Ancient Indigenous Deoxyribonucleic Acid (DNA) and Intellectual Property Rights’ (2012) 16 *The International Journal of Human Rights* 152–172, 153.

⁷ See, e.g., Graham Dutfield, ‘The Public and Private Domains: Intellectual Property Rights in Traditional Knowledge’ (2000) 21 *Science Communication* 274–295, 277–278.

⁸ Patrick Thornberry, *Indigenous Peoples and Human Rights*, Manchester: Manchester University Press, 2002, 83.

dignity and well-being' of these peoples.⁹ It is, therefore, not surprising that many welcomed the establishment of this important instrument as a triumph for justice.¹⁰

That said, the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 does not only carry historic and symbolic value but is of enormous practical significance for Indigenous peoples. It is the most comprehensive and progressive instrument concerning Indigenous rights in international law, as well as the only document of universal scope focusing on these rights.¹¹ The two International Labour Organization conventions protecting the rights of Indigenous peoples contain less ambitious provisions than those enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, and have been poorly ratified, leaving the majority of the world's Indigenous peoples without effective protection.¹² Similarly, the legal regimes developed by generic UN human rights bodies are inevitably limited by the fact that their respective instruments are not designed to address specifically the full range of claims advanced by Indigenous peoples.¹³

In light of such concerns, it is obvious that Indigenous peoples regard the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 as a fundamental legal tool for the protection of their rights internationally. Whether the *United Nations*

⁹ Article 43 of the *United Nations Declaration on the Rights of Indigenous Peoples* UN General Assembly Resolution 61/295 of 13 September 2007.

¹⁰ See, e.g., Office of the High Commissioner for Human Rights, 'High Commissioner for Human Rights Hails Adoption of Declaration on Indigenous Rights', Press Release, 13 September 2007, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=6097&LangID=E>

¹¹ For an overview of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, see Stefania Errico, 'The Draft UN Declaration on the Rights of Indigenous Peoples: An Overview' and 'The UN Declaration on the Rights of Indigenous Peoples is Adopted: An Overview' (2007) 7 *Human Rights Law Review* 741–759.

¹² *ILO Convention No 107 of 1957 Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries*, text and table of ratifications available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C107>; and *ILO Convention No 169 of 1989 Concerning Indigenous and Tribal Peoples in Independent Countries*, text and table of ratifications available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>. ILO Convention No 107 was declared closed for ratification after the establishment, in 1989, of ILO Convention No 169.

¹³ This is particularly true with regard to the jurisprudence developed by the Human Rights Committee (HRC) and Committee on the Elimination of Racial Discrimination (CERD) within the framework of, respectively, the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Convention on the Elimination of All Forms of Racial Discrimination*. The HRC did so by promoting a progressive interpretation of the right to culture included in Article 27 of the ICCPR. In particular, it recognised that 'culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples', *General Comment No. 23 (art. 27)*, UN Doc. CCPR/C/21/Rev.1/Add.5 (1994). CERD, instead, focused more prominently on the issue of land rights, regularly requesting that States Parties 'recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources', *General Recommendation XXIII on Indigenous Peoples*, UN Doc A/52/18 (1998). For an overview of the contribution of human rights instruments to the recognition and promotion of Indigenous rights in international law see Patrick Thornberry, *Indigenous Peoples and Human Rights*, Manchester: Manchester University Press, 2002.

Declaration on the Rights of Indigenous Peoples 2007 may also be seen as an authoritative and influential legal document depends, however, on a number of additional considerations. In particular, special attention needs to be paid to the legal status of the instrument, which, being adopted by means of a Generally Assembly resolution, does not *per se* produce legally binding obligations. Before tackling this crucial question, the next section will provide an overview of the history of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, as this has important implications for its overall political and legal force.

1.1 The History of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007

The history of the process leading to the adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 can be divided into three key stages: first, the opening up of the UN system to the claims of Indigenous peoples; secondly, the broad identification of the legal regime concerning Indigenous rights; and, thirdly, the actual adoption of the document and its affirmation on a global scale. The first significant event within the UN took place in the early 1970s, when the Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission) appointed Special Rapporteur José Martínez Cobo to undertake a comprehensive study on the situation of Indigenous peoples.¹⁴ With this initiative, and for the first time since its establishment, the UN resolved to address the ‘Indigenous question’, reversing a tradition of injustice and discrimination against Indigenous peoples. Following the completion of this important study, the Working Group on Indigenous Populations (WGIP) was created as a subsidiary body of the Sub-Commission with the task of reviewing normative developments pertaining to the human rights of Indigenous peoples.¹⁵

The completion of Cobo’s study and the creation of the WGIP indicate that by the mid-1980s the human rights claims of Indigenous peoples had received formal recognition within the UN structure. The next step consisted of designing a new legal regime which would concern specifically Indigenous rights. Although the WGIP had not been established with the task of producing a document on the rights of Indigenous peoples, its five independent members decided in 1985 that ‘the time had come to begin the preparation of a draft’.¹⁶ The first draft was completed in 1993 with the decisive contribution of Indigenous peoples’ representatives. A year later, the document

¹⁴ ‘Study of the Problem of Discrimination Against Indigenous Populations, Volume V Conclusions, Proposals and Recommendations’, by José R. Martínez Cobo, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, United Nations, UN Doc. E/CN.4/Sub.2/1986/7/Add.4.

¹⁵ Economic and Social Council Resolution 1982/34.

¹⁶ Report of the Fourth Session of the WGIP, UN Doc. E/CN.4/Sub.2/1985/22, para. 58.

was adopted by the Sub-Commission and sent to the Commission on Human Rights (Commission).¹⁷

When the draft reached the Commission several States expressed their concerns about its radical content. These objections led the Commission to set up a subsidiary organ, the Working Group on the Draft Declaration (WGDD), for the sole purpose of further elaborating the text of the draft.¹⁸ The establishment of the WGDD represents the beginning of the third, and crucial, stage in the history of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007. Two elements characterised the work of the WGDD. Firstly, the direct and influential participation of Indigenous representatives to the sessions of this body, a circumstance which will be further discussed below; and, secondly, the length of the relevant negotiations. Because of the controversies surrounding important provisions such as those on self-determination and land rights, the WGDD took more than ten years before agreeing on a final text of the draft and sending it to the newly created Human Rights Council (Council). After the adoption by the Council during its first session in June 2006,¹⁹ the text reached the General Assembly, where it was ultimately adopted in September 2007. In total, it took more than 20 years for the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 to be produced and adopted.

2. THE LEGAL VALUE OF THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 2007²⁰

The *United Nations Declaration on the Rights of Indigenous Peoples* 2007 belongs to what is normally referred to as soft law. Contrary to hard law instruments such as treaties, soft law instruments are not legally binding.²¹ In formalistic terms, this lack of legal force inevitably weakens the overall value of an international document. In this sense, the soft law nature of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 clashes with the positive narrative which portrays the instrument as the reference point for any credible discussion of Indigenous peoples' rights under international law. A more careful analysis of the features of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, however, suggests that this is not necessarily the case.

¹⁷ *Draft United Nations Declaration on the Rights of Indigenous Peoples*, adopted 26 Aug. 1994, Sub-Commission Res. 1994/45, UN Doc. E/CN.4/1995/2 (1994).

¹⁸ The working group was established in 1995 in accordance with Commission on Human Rights Resolution 1995/32 and Economic and Social Council Resolution 1995/32.

¹⁹ *Draft Declaration on the Rights of Indigenous Peoples*, adopted 29 June 2006, H.R.C. Res. 2006/2, UN Doc. A/HRC/1/2 (2006).

²⁰ For a more detailed discussion of the legal significance of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, see Mauro Barelli, 'The Role of Soft Law in the International Legal System: The Case of the United Nations Declaration on the Rights of Indigenous Peoples' (2009) 58 *International and Comparative Law Quarterly* 957–983

²¹ On soft law generally, see Christine Chinkin, 'The Challenge of Soft Law: Development and Change in International Law' (1989) 38 *International and Comparative Law Quarterly* 850–866.

Under the complexity and dynamism of contemporary international law-making, soft law cannot be simply dismissed as non-law. Instead, its value should be evaluated taking into account two fundamental elements. First, international standards may well emerge as a result of the interplay of different instruments, regardless of their nature.²² It follows that special attention should be paid to the relationship between soft law and existing hard law. Secondly, the category of soft law includes, among other instruments, inter-State conference declarations, UN General Assembly resolutions, codes of conduct, guidelines, and the recommendations of international organisations. It is, therefore, clear that various soft law instruments will have different legal significance, as well as different degrees of effectiveness. This assertion goes far beyond the limited formal aspect of the instrument concerned. More importantly, it refers to, *inter alia*, the different contexts within which an instrument is adopted, the circumstances which have led to its establishment, its very normative content and the institutional setting within which it exists. With this in mind, the following two sections will discuss two central features of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 which made an important contribution to enhancing its legal status and, consequently, its overall value.

2.1 The Legitimacy of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007

The first point to underline is that under UN practice a declaration is 'a formal and solemn instrument, suitable for rare occasions when principles of great and lasting importance are being enunciated'.²³ Thus, the principles underlying the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 are already vested with special value. That said, it is the combination of three additional elements that enhances significantly the legitimacy of the document.

Firstly, the drafting process of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 started in 1985 and reached a conclusion only after 22 years of fervent negotiations, deadlocks and compromises. As observed by the then Chairperson of the UN Permanent Forum on Indigenous Issues, Ms Victoria-Tauli Corpuz, this makes the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 one of the most extensively discussed and negotiated texts in the history of the UN.²⁴ Its

²² In this regard, it has been aptly observed that soft law and hard law are connected and intertwined to such an extent that sometimes it may be difficult to draw clear-cutting distinctions between the two. For example, soft-law instruments may have a specific normative content that is actually 'harder' than certain 'soft' obligations included in some treaties, and, equally importantly, that non-binding instruments may provide for supervisory mechanisms characteristic of hard law texts. See, Dinah Shelton, 'Law, Non-Law and the Problem of "Soft Law"' in Dinah Shelton (ed.), *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System*, Oxford: Oxford University Press, 2000, 10.

²³ Memorandum of the Office of Legal Affairs, UN Secretariat, 34 UN ESCOR, Supp. (No. 8), 15, UN Doc. E/CN.4/1/610 (1962).

²⁴ 'UN Forum Chairperson Decries Delay in Adopting Declaration on Indigenous Rights', United Nations News Centre, 12 December 2006, <http://www.un.org/apps/news/story.asp?NewsID=20959&Cr=indigenous>

gestation period certainly reflects the complexity of the issues at stake. However, it also indicates that significant efforts were made to produce a document capable of responding to the claims of Indigenous peoples while remaining acceptable to States and in accordance with international law. The result of such a collective effort certainly carries special value.

Secondly, the value of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 is further strengthened by the exceptional support it received within the United Nations system. Such a support did not come exclusively from those UN human rights bodies directly involved in the production of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007. The General Assembly, for one, constantly supported the project. After establishing, in 1993, the First Decade of the World's Indigenous People (1994–2004), it encouraged the Commission on Human Rights to consider the draft declaration produced by the Sub-Commission with a view to achieving its final adoption within the Decade.²⁵ However, once it was realised that this would not be possible, the General Assembly established the Second Decade of the World's Indigenous People (2005–2015) and urged 'all parties involved in the process of negotiation to do their utmost to ... present for adoption as soon as possible a final draft United Nations declaration on the rights of Indigenous peoples'.²⁶ Similarly, other UN bodies and specialised agencies repeatedly expressed their support for the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, contributing to keep the issue of Indigenous peoples at the forefront of the UN human rights agenda.²⁷ References to the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 can also be found in major documents recently adopted under the auspices of the United Nations.²⁸ States' support was equally remarkable. Firstly, the statements of various governmental representatives during the sessions of the WGDD pointed to the existence of a strong international convergence on the underlying principles of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007.²⁹ Secondly, and more importantly, 143 States voted in favour of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 at the General Assembly, while the only four countries that had voted against it, namely the US, Canada, Australia and New Zealand,

²⁵ UN General Assembly Resolution 49/214 of 23 December 1994.

²⁶ UN General Assembly Resolution 59/174 of 20 December 2004, para. 12.

²⁷ See the list of documents submitted by UN organisations at each session of the PFII on the website of the forum, at <http://www.un.org/esa/socdev/unpfii/index.html>

²⁸ *Vienna Declaration and Program of Action*, UN Doc. A/CONF.157/23 (12 July 1993) paras 28 and 29; *Durban Declaration and Programme of Action*, adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Durban, South Africa, from 31 August to 8 September 2001, para. 206; *2005 World Summit Outcome*, included in UN General Assembly Resolution 60/1 of 16 September 2005, para. 105.

²⁹ Crucially, this support has not waned following the adoption of the instrument. For example, at the Durban Review Conference in April 2009, 182 States adopted by consensus an outcome document which welcomed the adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 and highlighted the necessity to implement the rights of Indigenous peoples at the domestic level (UN Office of the High Commissioner for Human Rights, *Outcome Document of the Durban Review Conference*, 24 April 2009, para. 73).

have subsequently revisited their position.³⁰ It follows that today the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 enjoys virtually universal support among States.³¹ The third element that enhances the legitimacy of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 is the direct and significant participation of Indigenous peoples' representatives in the relevant drafting process. It was noted that Indigenous representatives participated in the sessions of both the WGIP and WGDD. At this point, it should be emphasised that Indigenous organisations were allowed to participate in these meetings regardless of their consultative status with the Economic and Social Council (ECOSOC), notably an uncommon circumstance by UN standards.³² This remarkable outcome is in line with modern calls to enhance 'popular participation' in law-making processes in order to promote the legitimacy and value of the provisions concerned.³³ It is also important to note that States themselves repeatedly acknowledged that Indigenous participation was not only vital but also necessary to the production of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007.³⁴

³⁰ The official endorsing statements can be found, respectively, at, Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Statement on the United Nations Declaration on the Rights of Indigenous Peoples', Parliament House, Canberra, 3 April 2009, http://www.un.org/esa/socdev/unpfii/documents/Australia_official_statement_endorsement_UNDRIP.pdf; United States Department of State, 'Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples', 11 January 2011, <http://www.state.gov/s/srgia/154553.htm>; Canada – Aboriginal Affairs and Northern Development Canada, 'Canada's Statement of Support on the United Nations Declaration on the Rights of Indigenous Peoples', 12 November 2010, <http://www.ainc-inac.gc.ca/ap/ia/dcl/stmt-eng.asp>; and Pita Sharples, Maori Affairs Minister, 'Supporting UN Declaration Restores NZ's Mana', New Zealand Government, 20 April 2010, <http://www.beehive.govt.nz/release/supporting-un-declaration-restores-nz039s-mana>

³¹ Among the 11 States that had abstained on the occasion of the vote on the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, the Russian Federation, Samoa, Ukraine) two, namely Colombia and Samoa, have subsequently endorsed the instrument. See United Nations News, 'Implementing Declaration on Indigenous Rights will bring "Historical Justice"', Develop Stronger, Democratic, Multicultural Societies, Third Committee Told', Sixty-Fourth General Assembly, 19 October 2009, <http://www.un.org/News/Press/docs/2009/gashc3954.doc.htm>

³² According to Article 71 of the United Nations Charter, 'the Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.' Updating the arrangements set out in resolution 1296 (XLIV) of 23 May 1968, ECOSOC Resolution 1996/31 of 25 July 1996 has outlined the eligibility requirements for consultative status as well as the rights and obligations of non-governmental organisations in consultative status with the United Nations.

³³ Richard Falk, *Human Rights Horizons: The Pursuit of Justice in a Globalizing World*, New York: Routledge, 2000, 62–63.

³⁴ See, e.g., the statements of the representatives of Denmark, Canada, Norway, Chile, Sweden, the USA, Colombia and the Russian Federation at the Second Session of the WGDD ('Report of the Working Group on the Draft Declaration on its Second Session' UN Doc. E/CN.4/ 1997/102 (10 December 1996) paras 23–34).

2.2 The Normative Content of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007

The discussion conducted in the previous section suggests that the inclusive nature of the drafting process of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, combined with the widespread support that it received internationally, had an important effect on the perceived legitimacy of the document. What remains to be established is whether the provisions of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 were laid on a solid legal background, that is to say, whether they are related to existing law or principles of international law, or reflect existing or emerging international law standards. This is an important question, for if the content of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 appeared disconnected from existing norms of, generally, international law, and, specifically, international human rights law, the legitimacy and authoritativeness of the text would be seriously undermined.

At the outset, it should be noted that the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 is the culmination of a long and complex political and normative process. Over this extended period, the drafters could take into account and merge together the diverse legal standards related to Indigenous peoples' rights which had been, and were being, elaborated by different international, regional and national bodies.³⁵ In a sense, therefore, the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 did not create a new legal framework, but simply further elaborated on and crystallised one. Looking more specifically at the content of the document, there is a strong connection between its provisions and existing law. For example, a number of rights enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 have already been accepted both under general international law, for example the right not to be subjected to any act of genocide (Article 7 of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007), and the minority rights regime, for example the right of a group to practise its own cultural traditions and customs (Article 11), and the right to public participation (Article 18).³⁶ It is true, however, that some provisions of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 have stretched existing legal standards, including, for example, those concerning self-determination, and, to a certain extent, land rights. Nevertheless, these developments have received widespread support from various judicial and quasi-judicial bodies of both international and regional character.³⁷ Equally importantly, they are in line with similar provisions found in other international

³⁵ Willem Van Genugten and Camilo Perez-Bustillo, 'The Emerging International Architecture of Indigenous Rights: The Interaction Between Global, Regional, and National Dimensions' (2004) 11 *International Journal on Minority and Group Rights* 379–409.

³⁶ See, e.g., Marc Weller (ed.), *Universal Minority Rights: A Commentary on the Jurisprudence of International Courts and Treaty Bodies*, Oxford: Oxford University Press, 2007.

³⁷ In particular, the UN Human Rights Committee, the UN Committee on the Elimination of All Forms of Racial Discrimination, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, and the African Commission on Human and Peoples' Rights. There is extensive coverage of these developments in the Indigenous rights literature. For a comprehensive discussion see Siegfried Wiessner, 'Re-Enchanting the World: Indigenous

documents dealing, either specifically or incidentally, with Indigenous peoples' rights.³⁸ Thus, there seems to exist a solid relationship between the normative content of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 and the norms, standards and principles related to Indigenous peoples that have recently emerged at the international level. Crucially, this strengthens the perception of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 as an authoritative and legitimate document,³⁹ with important implications for its overall legal significance.

3. INDIGENOUS PEOPLES' RIGHTS AND THE INTELLECTUAL PROPERTY REGIME

The first part of the chapter discussed the political and legal significance of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, suggesting that the soft law nature of the instrument does not diminish its legal validity and significance. Having clarified this important point, it is now possible to discuss the way in which the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 approaches the intellectual property rights of Indigenous peoples.

The traditional regime of intellectual property recognises the primary importance of the economic aspect of culture, and is premised on the concept of individual rights;⁴⁰ Indigenous peoples, by contrast, emphasise the collective character as well as spiritual connotations of their cultural manifestations.⁴¹ More generally, it can be said that Indigenous culture is 'a holistic concept based on common material and spiritual values',⁴² which includes manifestations in, among other areas, language, spirituality, arts, traditional knowledge, customs, rituals, ceremonies, methods of production, economic activities and cosmovisions.⁴³ The different approach to and understanding of culture create important tensions between Indigenous peoples' rights and the intellectual property regime. For example, Indigenous peoples claim that their traditional knowledge, which is part of their culture and identity, should be subject to their

Peoples' Rights as Essential Parts of a Holistic Human Rights Regime' (2010) 15 *UCLA Journal of International Law & Foreign Affairs* 239–288.

³⁸ In relation to land rights, see, among other measures, the 1992 *Convention on Biological Diversity*, Article 8(j), 31 ILM 818 (1992); the 1992 *Rio Declaration on Environment and Development*, 31 ILM 874 (1992); and *ILO Conventions No. 107 and No. 169*.

³⁹ S. James Anaya, *Indigenous Peoples in International Law*, Oxford: Oxford University Press, 1996, 53.

⁴⁰ For an overview, see Laurence Helfer and Graeme Austin, *Human Rights and Intellectual Property: Mapping the Global Interface*, Cambridge: Cambridge University Press, 2011.

⁴¹ As explained by Dodson, 'Western constructs of intellectual property focus on individual knowledge and creativity, rather than communal trans-generational knowledge', *Report of the Secretariat on Indigenous Traditional Knowledge*, prepared by Special Rapporteur M. Dodson, UN Doc. E/C.19/2007/10 (21 March 2007) para. 20.

⁴² Study on the role of languages and culture in the promotion and protection of the rights and identity of Indigenous peoples, prepared by the UN Expert Mechanism on the Rights of Indigenous Peoples, UN Doc. A/HRC/EMRIP/2012/3 (30 April 2012) para. 52.

⁴³ *Ibid.*

exclusive ownership and control, but this contrasts, to some extent, with the concept of 'public domain' recognised under intellectual property law. Complications of this kind have contributed to create an unsatisfactory situation which often permits the misappropriation of Indigenous culture and knowledge. The growing international concern surrounding the phenomenon of biopiracy offers a good example in this respect.⁴⁴

The severity of the problem of Indigenous IP infringement has led numerous international bodies to take action in an attempt to remedy the current situation. In the last decade, bodies such as the UN Educational, Scientific and Cultural Organization, the UN Conference on Trade and Development, the World Trade Organization TRIPS Council, and, in particular, the World Intellectual Property Organization, have all conducted work related to Indigenous peoples' cultural heritage.⁴⁵ Despite all these efforts, a viable legal solution to the problem of biopiracy has yet to be agreed on.⁴⁶ Against this background, the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 provides a human rights response to the question of Indigenous peoples' intellectual property.⁴⁷ This means that the intellectual property rights of Indigenous peoples are not regarded as a distinct issue but, rather, as part of the broader human rights framework enshrined in the *United Nations Declaration on the Rights of Indigenous Peoples* 2007. The resulting interaction has important implications for the way in which the intellectual property rights of Indigenous peoples are read and understood.

Two rights should be singled out by virtue of their centrality to the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 human rights framework, namely the right to self-determination and the right to own and control ancestral lands.⁴⁸ Self-determination is a far-reaching and controversial right which is normally

⁴⁴ Biopiracy has been described as the 'unauthorized extraction of traditional knowledge or biological resources and/or the patenting of "inventions" that derive from such knowledge or resources without any provision for sharing the benefits with the providers', Graham Dutfield, 'The Public and Private Domains: Intellectual Property Rights in Traditional Knowledge' (2000) 21 *Science Communication* 274–295 at 278.

⁴⁵ Yozo Yokota and the Saami Council, Guideline for the review of the draft principles and guidelines on the heritage of Indigenous peoples, Working paper, UN Doc. E/CN.4/Sub.2/AC.4/2004/5 (17 June 2004), para. 3. In particular, the World Intellectual Property Organization is currently working on new interpretations of the right to intellectual property so as to remedy the existing shortcomings of the system. In order to enhance the protection of traditional knowledge and traditional cultural expressions against misappropriation and misuse, the World Intellectual Property Organization set up an Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), which met for the first time in 2001 with the aim of producing a draft for the establishment of a new legal regime.

⁴⁶ For a discussion of some of the proposed solutions see Federico Lenzerini, 'Indigenous Peoples' Cultural Rights and the Controversy over Commercial Use of their Traditional Knowledge', in Francesco Francioni and Martin Scheinin (eds), *Cultural Human Rights*, Leiden: Martinus Nijhoff Publishers, 2008, 141–145.

⁴⁷ For a general discussion on the question of human rights and intellectual property, see Laurence Helfer and Graeme Austin, *Human Rights and Intellectual Property: Mapping the Global Interface*, Cambridge: Cambridge University Press, 2011.

⁴⁸ As stated by the UN Expert Mechanism on the Rights of Indigenous Peoples, 'indigenous peoples' cultures ... are an expression of their self-determination and of their spiritual and

recognised for all peoples under international law. In the context of this chapter, the enduring controversies related to the meaning and beneficiaries of this right need not be addressed.⁴⁹ What is relevant, instead, is the fact that self-determination is strictly connected with the cultural rights of Indigenous peoples because, by virtue of this right, Indigenous peoples ‘freely determine their political status and freely pursue their economic, social and *cultural* development’.⁵⁰ This means that the protection of their cultural heritage and identity is embedded in the self-determination discourse.⁵¹ Important consequences follow from this premise. For example, Indigenous peoples should have the right, in accordance with their right to self-determination, to allow or deny the use of their traditional knowledge, as this may affect the development of their culture and identity.

Land rights are also importantly associated with the question of intellectual property. Indigenous peoples have a distinctive and profound relationship with their lands.⁵² This special relationship is at the core of Indigenous societies,⁵³ and encompasses social, cultural, spiritual, economic and political dimensions.⁵⁴ The *United Nations Declaration on the Rights of Indigenous Peoples* 2007 aims at preserving this distinctive connection by recognising Indigenous peoples’ rights to own and control their ancestral

physical relationships with their lands, territories and resources’ (Study on the role of languages and culture in the promotion and protection of the rights and identity of Indigenous peoples, prepared by the UN Expert Mechanism on the Rights of Indigenous Peoples, UN Doc. A/HRC/EMRIP/2012/3 (30 April 2012), para. 52).

⁴⁹ For a discussion see Mauro Barelli, ‘Shaping Indigenous Self-Determination: Promising or Unsatisfactory Solutions?’ (2011) 4 *International Community Law Review* 413–436.

⁵⁰ Emphasis mine. Article 3 of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007.

⁵¹ For example, Indigenous peoples’ decision to allow or deny the use of their traditional knowledge may be seen as an expression of their right to self-determination, for this is related to their identity and culture. On the connection between cultural rights and self-determination see Report of the Seminar on the Draft Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples, by Mrs Erica-Irene Daes, UN Doc. E/CN.4/Sub.2/2000/26 (19 June 2000), Annex I, Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples, Principle 2), and Study on the role of languages and culture in the promotion and protection of the rights and identity of Indigenous peoples, prepared by the UN Expert Mechanism on the Rights of Indigenous Peoples, UN Doc. A/HRC/EMRIP/2012/3 (30 April 2012) para. 20.

⁵² For example, the Inter-American Court of Human Rights has noted that ‘the close ties of indigenous people with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity, and their economic survival. For indigenous communities, relations to the land are not merely a matter of possession and production but a material and spiritual element which they must fully enjoy, even to preserve their cultural legacy and transmit it to future generations’ (*Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, IACtHR (Ser. C) No. 79 (2001) para. 149).

⁵³ As one Indigenous representative put it: ‘the issue for indigenous peoples is the land; indigenous peoples are one with the land’ (statement by William Means, in Alexander Ewen (ed.), *Voices of Indigenous Peoples: Native People Address the United Nations*, Santa Fe, NM: Clear Light, 1994, 60).

⁵⁴ ‘Indigenous Peoples and their Relationship to Land’, final working paper, prepared by the special rapporteur, Mrs Erica-Irene A. Daes, UN Doc. E/CN.4/Sub.2/2001/21 (11 June 2001), para. 12.

lands, including the resources found thereon. Article 25, for example, recognises the right 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 and other resources and to uphold their responsibilities to future generations in this regard’. Following on from that, Article 26 establishes that ‘indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired’. Article 26 also enshrines the right of Indigenous peoples ‘to own, use, develop and control the lands, territories and resources that they possess’. These provisions are particularly relevant because some components of the Indigenous cultural heritage, for example traditional knowledge, are strictly related to Indigenous ancestral lands, and, more specifically, to the resources found thereon.⁵⁵ This means that protecting the traditional knowledge of Indigenous peoples, and, in turn, their cultural heritage, becomes part of the broader international commitment to protect the spiritual relationship that connects Indigenous peoples with their ancestral lands and resources, notably a principle which lies at the core of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007.

A final important point should be made in relation to the human rights framework of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007. Rights such as the right to self-determination and the right to own and control ancestral lands are enjoyed collectively by Indigenous peoples. This is particularly important considering that international human rights instruments have been traditionally reluctant to endorse collective rights for sub-State groups.⁵⁶ The *United Nations Declaration on the Rights of Indigenous Peoples* 2007, by contrast, seeks a fair balance between the collective and individual rights of Indigenous peoples, endorsing a conciliatory vision whereby each individual has individual rights and responsibilities within the context of collective rights.⁵⁷ This vision is somewhat close to the Indigenous belief according to which the very identity of Indigenous peoples ‘is shaped by the dynamic balance between and

⁵⁵ As noted by Federico Lenzerini, ‘plant genetic resources and the traditional knowledge related to them represent two inseparable elements of a unique social (and legal) concept that expresses the spiritual relationship of indigenous groups to their natural resources’ (Federico Lenzerini, ‘Indigenous Peoples’ Cultural Rights and the Controversy over Commercial Use of their Traditional Knowledge’, in Francesco Francioni and Martin Scheinin (eds), *Cultural Human Rights*, Leiden: Martinus Nijhoff Publishers, 2008, 140).

⁵⁶ For an overview of the individual-collective rights debate under international law, see Peter Jones, ‘Human Rights, Group Rights, and Peoples’ Rights’ (1999) 21 *Human Rights Quarterly* 80–107.

⁵⁷ Article 35, for example, affirms that ‘indigenous peoples have the right to determine the responsibilities of individuals to their communities’. At the same time, however, one crucial passage of the preamble importantly recognises ‘that indigenous individuals are entitled without discrimination to all human rights recognised in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as people’. Several provisions of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 strengthen the invoked coexistence between individual and collective rights, including Articles 1, 2, 6, 7, 8, 9, 14, 17, 24, 33, 35, 40 and 44.

linkage of [their] collective and individual rights'.⁵⁸ As will be further discussed in the next section, and in line with its progressive approach to collective rights generally, the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 fully endorses also the collective character of Indigenous peoples' intellectual property rights.

4. THE INTELLECTUAL PROPERTY RIGHTS OF INDIGENOUS PEOPLES IN THE *UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES* 2007

The previous section discussed the intellectual property rights of Indigenous peoples in the context of the human rights framework of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, highlighting that the protection of the cultural and intellectual property rights of Indigenous peoples is fundamentally connected with the effective enjoyment of their rights to self-determination and to own and control ancestral lands.⁵⁹ That said, the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 also contains a set of provisions that deal specifically with the issue of intellectual property. Article 11, for example, establishes that 'indigenous peoples have the right to practise and revitalize their cultural traditions and customs', and recognises their right 'to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature'. Article 12 focuses on the right 'to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies', including the right 'to the use and control of their ceremonial objects'. Article 13 further states that Indigenous peoples have the right 'to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons'. Finally, Article 24 protects the right of Indigenous peoples 'to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals.'

The most important provision with respect to intellectual property rights, however, is found in Article 31, which reads:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right

⁵⁸ Explanatory Note on the Collective Rights of Indigenous Peoples, Proposal by Indigenous Representatives, submitted during the Seventh Session of the WGDD, UN Doc. E/CN.4/2002/98, Annex II.

⁵⁹ Expert Mechanism on the Rights of Indigenous Peoples: Study on the Role of Languages and Culture in the Promotion and Protection of the Rights and Identity of Indigenous Peoples, UN Doc. A/HRC/EMRIP/2012/3, para 52.

to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

By connecting intellectual property with the concepts of cultural heritage, traditional knowledge and traditional cultural expressions, Article 31 links the question of intellectual property rights with that of cultural rights, promoting the inclusion of the former within the *United Nations Declaration on the Rights of Indigenous Peoples*' 2007 human rights framework.⁶⁰ Furthermore, this provision fully upholds the collective character of these rights, in accordance with the *United Nations Declaration on the Rights of Indigenous Peoples*' 2007 overall acceptance of collective rights that was discussed in the previous section. In light of such concerns, the protection of the intellectual property of Indigenous peoples becomes inseparable from the protection of their broadly defined cultural rights.⁶¹ Furthermore, in the *United Nations Declaration on the Rights of Indigenous Peoples*' 2007 architecture, the effective protection of Indigenous peoples' cultural and intellectual property becomes necessary to the realisation of their fundamental rights to self-determination and to own and control their ancestral lands.

By rejecting a purely economical understanding of culture and promoting a holistic approach to the protection of Indigenous cultural heritage, Article 31 sets a model for future developments in the area.⁶² In this respect, it is important to note that Article 31(2) of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 requires States to take effective measures to recognise and protect the rights affirmed in the first paragraph of the provision. In a similar vein, Article 42 of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 requires that United Nations bodies and specialised agencies promote respect for and full application of the

⁶⁰ The close relationship between human rights and cultural heritage has also been confirmed by a recent United Nations report prepared by the independent expert in the field of cultural rights, Farida Shaheed. The report noted, among other things, that 'the need to preserve/safeguard cultural heritage is a human rights issue. Cultural heritage is important not only in itself, but also in relation to its human dimension, in particular its significance for individuals and communities and their identity and development processes.' The report further observed that 'the misappropriation of cultural heritage would also impair the rights of communities to access and enjoy their own cultural heritage' (Farida Shaheed, *Report of the Independent Expert in the Field of Cultural Rights*, UN Doc.A/HRC/17/38 (21 March 2011), paras 77 and 12).

⁶¹ For a discussion of cultural rights in international law, see Elsa Stamatopoulou, *Cultural Rights in International Law*, Leiden: Martinus Nijhoff Publishers, 2007; and Francesco Francioni and Martin Scheinin (eds), *Cultural Human Rights*, Leiden: Martinus Nijhoff Publishers, 2008.

⁶² It should be noted, however, that some States expressed their concerns about the content of this provision during the negotiation stage. See, e.g., Report of the Second Session of the WGDD, E/CN.4/1997/102, para. 66, and Report of the Eight Session of the WGDD, UN Doc. E/CN.4/2003/92, paras 39 and 40. References to the question of intellectual property rights also featured in some governmental statements made on the occasion of the vote on the *United Nations Declaration on the Rights of Indigenous Peoples* at the General Assembly. Available at <http://www.un.org/News/Press/docs/2007/ga10612.doc.htm>

provisions of this instrument.⁶³ As discussed in the first part of this chapter, the provisions of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 do not produce legally binding obligations. That said, the considerations developed in Section 3 above suggested that the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 cannot be simply dismissed as non-binding law. By virtue of its drafting history, normative content and widespread international support, the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 represents a highly influential legal instrument which reflects the current Indigenous rights regime at the international level. For this reason, United Nations human rights treaty bodies have used it as a guide to interpret State parties' obligations under their respective instruments,⁶⁴ regional human rights courts and quasi-courts have endorsed it in their judgments,⁶⁵ and United Nations specialised agencies have made it the central instrument around which to develop their own initiatives in the field of Indigenous rights.⁶⁶ It follows that international bodies and States should pay considerable attention to the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 overall approach to the question of Indigenous culture heritage, and use Article 31 as a reference point for their work concerning the intellectual property rights of Indigenous peoples.

⁶³ Article 42 establishes that 'the United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialised agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration'.

⁶⁴ For example, in its Concluding Observations on the fourth, fifth and sixth periodic reports of the United States, the United Nations Committee on the Elimination of Racial Discrimination recommended that the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 'be used as a guide to interpret the State Party's obligations under the Convention relating to Indigenous Peoples' (UN Doc. CERD/C/USA/CO/6 (February 2008) para. 29. In a similar vein, in 2009, the United Nations Committee on the Rights of the Child published a general comment recommending States Parties to adopt a rights-based approach to Indigenous children based, among others, on the *United Nations Declaration on the Rights of Indigenous Peoples* 2007. *Indigenous Children and Their Rights under the Convention, General Comment No. 11*, UN Doc. CRC/C/GC/11 (12 February 2009) para. 82.

⁶⁵ *People v. Suriname*, Inter-American Court of Human Rights, Series C 172 (2007) para. 131; *Centre for Minority Rights Development (Kenya) v. Kenya*, African Commission on Human and Peoples' Rights, 276/2003 (4 February 2010) para. 204.

⁶⁶ Consider, e.g., the International Fund for Agricultural Development, Policy on Engagement with Indigenous Peoples, 2009, http://www.ifad.org/english/indigenous/documents/ip_policy_e.pdf, the Food and Agriculture Organization, *Policy on Indigenous and Tribal Peoples*, 2010, <http://www.fao.org/docrep/013/i1857e/i1857e00.pdf> and UN Development Group, the Guidelines on Indigenous Peoples' Issues, <http://www2.ohchr.org/english/issues/indigenous/docs/guidelines.pdf>. Although not a UN specialised agency, the latter is a UN global development network that collaborates with various UN specialised agencies dealing with, among other matters, Indigenous issues.

CONCLUSION

The question of Indigenous peoples' intellectual property rights is receiving increasing attention at the international level following widespread concerns about the lack of adequate protection offered by the relevant legal regime. The source of the problem lies in the different ways in which the western-constructed system of intellectual property law and Indigenous peoples approach and understand the concepts of cultural and intellectual property. Various international bodies dealing, either incidentally or specifically, with these issues have acknowledged the seriousness of the situation and worked towards the identification of viable legal solutions. The central instrument concerning the rights of Indigenous peoples at the international level, that is, the *United Nations Declaration on the Rights of Indigenous Peoples* 2007, provides a human rights answer to this problem. It incorporates intellectual property rights within the wider Indigenous human rights framework, linking those rights with, generally, cultural rights and, specifically, the rights to self-determination and to own and control ancestral lands. The *United Nations Declaration on the Rights of Indigenous Peoples*' 2007 holistic approach, well illustrated by Article 31, should guide States' and international bodies' attempts to protect the intellectual property rights of Indigenous peoples. This is particularly true in light of contemporary developments in the area of intellectual property directed towards the recognition of the important relationship between the latter and human rights. Crucially, the non-legally binding nature of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 does not undermine the instrument's overall value and legal significance. As discussed in this chapter, the drafting history, widespread international support and normative context of the *United Nations Declaration on the Rights of Indigenous Peoples* 2007 confer on the document the legitimacy and authoritativeness that are necessary for it to qualify as an influential legal instrument.