

Self-Determination as Foundation to Indigenous Peoples' Rights

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Abstract

Developed in the 15th Century through a series of pontifical writings, the "The doctrine of discovery" helped western countries to put in place a domination system depriving indigenous peoples' rights, most especially the rights to a land and access to their resources.

That article tries to show that, it is through the self determination that indigenous people can do away with a segregationist system that has kept them into a state of alienation, defend their rights and fight against all sorts of discrimination due to the fact that they belong to a group different from the majority.

However, The declaration of the United Nations on the Rights of indigenous people, it acknowledges the right to self-determination enable the indigenous people to get organized to improve their situation on political, economic, social and cultural plans and end all kinds of discrimination and oppressions wherever it is operates.

The self-determination can the make it possible to obstruct the forced assimilation policy and makes cultural diversity possible as values of human dignity.

The rationale behind this study was to demonstrate that it is only through auto determination that indigenous people can do away with a segregationist system that keep them in an alienation state. It enables them defend their rights and fight against all kinds of discrimination caused by their belonging to a group different from the majority.

In the academia, this study helps to understand the principle of auto determination based on the distinction made between "External auto determinations" for claims over independences and "internal auto determination" laying foundations to the claims of indigenous people of recognitions of their cultural, social, economic and political identity in the realm of internal autonomy.

This study exposes the relevance of auto determination concept in the overall promotion and protection of right of indigenous people and in its contributions to legal framework related to the matter.

Our methodology was mainly of a qualitative kind of research where the primal goal was to offer a comprehensive understanding of the phenomenon of discrimination of indigenous people, tracing its historical and theoretical background to arrive to the formulation of possible way out towards to do away with discrimination. It was therefore a blend of descriptive and normative form methods that led us to come to make a use of a dialectic form of analysis (thesis, antithesis and synthesis) to arrive to the proposed solutions.

Keywords: Indigenous people; Self-determination; Diversity; Doctrine of discovery; Discrimination

Introduction

The Convention on the protection and promotion of the diversity of cultural expressions was adopted on 20 October 2005 at the 33rd session of the General Conference. This text takes the form of an instrument international legal binding and reinforces the idea that already appeared in the Universal Declaration of UNESCO on the cultural diversity of 2 November 2002 [1] namely that cultural diversity must be seen as a "common heritage of humanity" and its 'defense as an imperative, inseparable from respect for the dignity of the human person [2].

It is clear from the instruments of UNESCO to do understand the principle of the equality of all human beings; we must promote an understanding of the diversity of human communities. Too often, this diversity appeared over the centuries as evidence of the unequal distribution of human dignity among the different communities. In other words, members of some communities seemed closer to the model of the 'perfect human' than the members of other communities. History offers many examples of this way of thinking which often resulted in the facts by the acts of violence, wars and genocides.

For example, after the discovery of America, the European settlers

have qualified Aboriginal people of 'savages', because they had immoral behavior in the eyes of the Puritan societies of the West. They were legitimate to exterminate the indigenous people and seize their land as terra nullius, because the political systems of Aboriginal people did not correspond to the European model centered on the State. They relied on the conviction to act on behalf of God since the Pope Alexandre VI had published from May 4, 1493 the Inter cetera bubble in which he expressed the desire that the barbarian nations (...) were enslaved and converted to Christianity [3].

We should therefore ask ourselves if the claims of the right of self-determination, relying on the praise to the cultural diversity, open space

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to strengthen the framework for the protection of the particularities of indigenous peoples.

Thus we will scrutinize if these claims really lead to the recognition of the right to self-determination (§2) in favor of indigenous peoples which, following the denial of cultural diversity, have suffered many injustices. In this regard, we will particularly examine the perversities of the “discovery doctrine”.

Discrimination through the “Discovery Doctrine” and the Perversities of Forced Assimilation

Here, it comes to present the meaning and origins of the doctrine of discovery and demonstrate how it allowed States to claim the lands, territories and resources of indigenous and grabbing massively. We can easily deduce that the doctrine of the discovery and the pattern of domination are responsible for plunder, of misery and trouble without number that Aborigines must (...) still face every day around the world as Tonya has stated in his numerous researches on indigenous [4].

Origins and consecration of the doctrine of discovery

The international law of today had formerly right of people. At the end of the 19th century, the jurist Thomas Erskine Holland defined the law of Nations as ‘the right of Christendom’, also little applicable to the infidels, he said, than the common law of the Greek city-States was barbaric companies. In 1835, John Catron (1786-1865), then judge of the supreme Court of Tennessee, made official a ‘principle’ of the right of Christendom, that discovery gave a title of sovereignty and allowed to govern (non-Christian) unconverted peoples of Africa, Asia, North America and South. He said that this principle was considered as part of the law of Nations “since nearly four centuries” and that it was recognized as such by every Christian power, its administration and its judiciary. Four centuries referred to by judge Catron return in the middle of the 15th century, time of publication of many Pontifical, starting with bubbles Dum diverse texts (1452) and Romanus Pontifex (1455), who are part of a story of rival monarchies and claims of the Christian States of Europe involved in the huge undertaking of invasions, conquests and subjugation of non-Christian peoples of their lands, territories and resources that characterized the age of discoveries Tonya [4].

Without going back to the teachings of St. Augustine on the ‘just war’ imposing Catholic Church to interfere in International Affairs; This discovery (doctrine) principle established by Pope Nicholas V, in these bubbles mentioned previously, to give legitimacy to the colonization of the rest of the world by Europe and the slave trade, will be consolidated by Pope Alexander VI in three bubbles with the most famous *Inter cetera* with specific references to the conquest of America [5].

All these bubbles, a presumption will be deducted and will remain the basis of international Eurocentric law: the loss by the indigenous peoples of all rights to ancestral lands.

A few centuries later, the young country that was then the United States needed to make a Native American political identity and a concept of Aboriginal land title to pave the way for its colonial expansion to the West. The principle invented for the purposes of the case by the Court in Johnson was that, by virtue of its discovery, the title was vested in the Government whose subjects had made the discovery or under the authority of which the discovery was made, and this, to other Governments, this title can be made perfect by possession. Under the principle of “discovery”, the Supreme Court forged an Indian

title of “simple occupation”. On this basis, Tonya [4] argued that the occupation title was only temporary, incidental and subordinate in last instance to the exclusive right of Christian powers of Europe, and later actors such as the United States.

In that case, Justice Marshall reminds that (the) mission conferred by King Henri VII to Jean Cabot and his sons responds directly to the series of Papal bubbles above. The British Crown intends to mean in this case that the Pontifical permissions granted previously to Portugal and Spain cannot legitimately forbid it to explore and occupy the lands of the ‘pagans and infidels’ previously ‘unknown to all Christian Nations. Marshall added that the patent letters given to Jean Cabot demonstrate “full recognition” of the principle or doctrine of discovery [4].

American jurisprudence was born with what is called “the Marshall trilogy” namely three judgments handed down by the Supreme Court under the presidency of Judge John Marshall Johnson’s *Lessee v. McIntosh*, 8 Wheat.543; *Cherokee Nation c. Georgia* 30 U.S. 1; and *Worcester v. Georgia* 31 U.S. 515.

American jurisprudence which has inspired other countries in the world appears to us as the very illustration of the doctrine of discovery and the pattern of domination. According to Lindsay [6] the Johnson versus McIntosh decision has had a global reach. Non-Aboriginal lawyers and actors have nested this doctrine in international law and domestic legislation. The outcome of the case: *City of Sherrill versus Oneida Indian Nation of New York* was judged in March 2005 (...) shows that the doctrine of discovery remains a legal principle still in use at the Supreme Court of the United States in the 21st century. It is revealed in footnote 1 of the majority opinion written by Justice Ruth Bader Ginsberg, that “under the doctrine of discovery, the full ownership of the land occupied by the Indians at the time of the arrival of the colonists was conferred on the ruler-first the European discoverer nation, then the first States and finally, the United States.”

Thus, Aboriginal people still suffer the consequences of the doctrine of discovery and the pattern of domination in the regions where they live according to the above study.

Dispossession of ancestral lands and discrimination, consequences of the doctrine of discovery

The “domination scheme” is the fact that States can claim a title and power over Aboriginal people, their land, their territories and their resources. This usage has resulted in an attempt of dehumanization of Aboriginal people. We’re at the heart of the question of the human rights of indigenous peoples today.

The Romanus Pontifex of 1455 bubble provides the first elements of explanation of the doctrine of discovery and specifically expeditions organized by the kingdoms and Christian States of Europe from the 15th century to conquer and submit non-Christian indigenous peoples in order to seize their lands and territories and exploit them. It was basically to accumulate wealth by plundering resources, including mining, of the ancestral territories of the indigenous peoples and nations without restraint. Romanus Pontifex offers an illustration of the doctrine or law of the discovery, whose application, on a background of domination scheme, has produced centuries of destruction and ethnocide against indigenous peoples and their lands, territories and resources Tonya [4] The Pope praises the conquests that ‘submit’ non-Christians to temporal power of the Catholic princes and Kings, “sparing no effort and expense. Thus, the Holy See established by Decree the right to submit non-Christian peoples by violence, to become their master and take possession of their lands, territories and

resources [4]. The use of violence and forced conversions to 'submit' non-Christians was the basis of the domination and the enslavement of the indigenous peoples. Judge Joseph Story will say in 1833 in its Commentaries on the Constitution of the United States '[...]'. The Indians were a wild breed immersed in ignorance and idolatry, and if one had no right to exterminate them for their lack of religion and real morals, one could try to get them out of their mistakes. These peoples were forced to submit to the superior genius of Europe, and by changing their wild and degrading habits to embrace civilization and Christianity, considered that they had obtained more than the equivalent of their sacrifices and their suffering" [4].

That is how aboriginal peoples have been acts of forced conversion by denying them freedom. Story summed up the arguments contesting the original freedom of indigenous peoples in these terms: "as infidels, Pagans and savages, the natives could not exercise the prerogatives of fully sovereign independent nations." This easily explains why, once institutionalized in the law and policies of the United States, the concepts of 'discovery' and 'ultimate ownership' (already present in papal bubbles as Romanus Pontifex led to the imposition of the pattern of domination of nations and indigenous peoples. The U.S. Government was able to seize the lands, territories, and Aboriginal resources and dispose of them at will with impunity and in violation of fundamental rights, individual and collective of Aboriginal people [4].

Based on American jurisprudence, in Canada, the aborigines are granted the right to occupation of the ground without the right to property, this belongs exclusively to the Crown as [5] points out: "Sovereignty is presumed to reside in the Crown, and the Crown has the right to thus own Native land. Native peoples are regarded as having an Aboriginal claim on land, but this claim is not equivalent to ownership. Aboriginal title relates to rights of occupation and use, not underlying title. Thus, all Aboriginal land rights are limited in Canada. Any land right can be contravened if the government deems such a move necessary for economic or other reasons. Regardless of the negotiation and payment of compensation that are now by convention considered to be necessary components of the process of extinguishing Aboriginal rights, the fact that extinguishment is possible, and that limits on alienability continues to be imposed on Native peoples, underscore the Crown's preemptive rights "that are founded in the Doctrine of Discovery." Chantal [7] remarked that this view is also shared by the signatories of the Treaty of Utrecht, concluded in 1713 between Spain, France and Great Britain, in the form of the criteria of "effective control" regarded since as the determining criteria of the sovereignty of the State. The prevailing idea is that "Aboriginal collective rights are imperfect since they are inalienable, meaning that the "Indian" title cannot be transferred to non-Aboriginal people except by decision of the Crown.

In summary, "throughout the history of humanity, whenever the dominant neighboring peoples extended their territory or settlers from remote areas have acquired new lands by force, the cultures and livelihoods-or even the existence-of indigenous peoples were endangered." United Nation's High Commissioner for Human Rights [8] saying that non-Aboriginal dominate indigenous peoples and settlers have acquired Aboriginal lands by force, is to point a finger to what has endangered the crops and livelihoods, or even the existence, of indigenous peoples. Tonya [6] studied that ethnocide and the linguicide are two elements of the endangerment of the existence of indigenous peoples by the kingdoms and States who seek to establish an 'effective control' over their lands and territories, in violation of their individual and collective rights.

Even at the current time, the challenge remains as says this formula of Jennifer Reid: (...) "Indigenous peoples have been forced to deal with judicial systems that are wedded to year archaic and racist principle of papal law" [5].

In context, more or less different in Africa, people always suffer from consequences of domination because they find themselves in a situation of "non-dominant" people and therefore discriminated against in many areas [4].

In his final report on the study of discrimination against indigenous peoples, the Special Rapporteur of the Commission on Human Rights, José Martínez Cobo, reviewed the key concepts that characterize and translate the domination imposed on indigenous peoples: "By indigenous communities, peoples and nations, we mean those who, bound by historical continuity with the pre-invasion societies and with the pre-colonial societies that have developed on their territories, consider themselves distinct from the other segments of which now dominate their territories or parts of those territories." They are now non-dominant segments of society and are determined to preserve, develop and transmit to future generations their ancestral territories and their ethnic identity, which form the basis of the continuity of their existence as peoples, in accordance with their own cultural models, their social institutions and legal systems. "Indigenous people" are non-dominant, confirming that the invaders impose their domination in violation of the individual and collective rights of indigenous peoples.

Rouland et al. [9] noted in many newly independent States-the democratic virtues are rather discrete the watchwords are national unity and economic development, which give rise to policies of which Aboriginal people were often victims.

As an example, the problems faced by the Pygmy communities are especially the denial of their rights to land and ethnic discrimination. Racism is the daily lot of the Pygmies who suffer from discrimination in public services such as hospitals, justice or education. Even if the Pygmies, because of their nomadic lifestyle, were not directly victims of the colonial regime, they suffered from disturbances of the village economy. The need for Pygmy manpower on annuities plantations gave birth to an authoritarian social system neighboring serfdom which continues even today [10].

Similarly, in this study, Amani [11] saw that there is so much difficulty related to access to justice as they have difficult to recognize their rights. For example, in Burundi, currently, the Batwa live mostly in rural areas, on communal land without written titles. Some Batwa who received land on the part of the administrative authorities hold administrative documents attesting ownership or the granting of collective lands. However, as the Batwa are poor and the Batwa principle of collective ownership concept is not taken into account, the rural Batwa lands are not registered with property titles.

The access to justice for Batwa is problematic, due to various constraints that do not let Batwa who have been wronged to resort to justice in time. As the property is collective, the Batwa designate one of them-a leader or a representative-to defend their land rights. When they manage to make a complaint, the Batwa, often living in extreme poverty, are usually unable to pay judicial fees [11].

These same Batwa, with little overall, cannot even avail themselves of the provisions of Decree-Law No. 1/19 of June 30, 1977. With regards to the abolition of the institution of the ubugererwa [12], in his research work, found that: "A traditional institution deeply rooted in the mentality of Burundians was the conclusion of a contract between

two individuals the shebujja, the owner of a land, who undertook to let the mugererwa use it, which was then obliged to pay royalties in kind and to carry out various works on behalf of the shebujja. The contract, for an indefinite period, was revocable at the request of one of the parties. However, although it grants both parties the freedom to terminate the contract, this clause places the shebujja in a position of strength, and the latter probably used its power of revocation more often than its client.”

In short, taking into account current realities, the material, environmental and spiritual situation of indigenous peoples, their world view and their intimate relationship with the territories and natural resources are particularly vulnerable to the effects of globalization. The resulting instability, aggravated by the dispossession of their lands and their natural resources, has interrupted the transmission of their cultural heritage from one generation to the next. However, indigenous peoples remain deeply committed to the protection and transmission of their cultures, and it is vital that the international community, as part of its efforts to promote cultural diversity and sustainable development, offers them its full support [13].

Then, we can say with good reason, that indigenous peoples can freely exercise the right of ownership to their lands and other collective rights if their right to self-determination is recognized.

The Right of Self-Determination of Indigenous Peoples: An Affirmation of the Right to be Different

The Declaration of the United Nations on the rights of indigenous peoples on September 13, 2007 contains many provisions to protect indigenous peoples from any discriminatory or prejudicial treatment based on cultural reasons and expects positive measures of support to the cultures of these peoples. This includes the right not to be subjected to forced assimilation or the destruction of their culture [13]. This is true insofar as indigenous peoples have the right to self-determination. Under this right, they freely determine their political status and freely seek their economic, social and cultural values [14,15].

The right of peoples to self-determination is a principle enshrined in many instruments of international law and may be subject to varied interpretations. Therefore in principle that indigenous peoples can assert different, to consider themselves different and to be respected as such [14,15].

Foundations and Interpretations of the Right to Self-Determination of Indigenous Peoples

The right to self-determination or right of peoples to self-determination (...) is according to the eminent jurist, Grigory Tunkin, “the largest generally accepted principle of contemporary international law. This principle is based on articles 2, paragraph 2, and 55 of the Charter of San Francisco, June 26, 1945, creating the United Nations, which made it one of its major objectives to be achieved” [16].

Nguyen also cemented this notion refereeing to the Universal Declaration of 1948 and the Covenant of the civil and political rights of 1966 that dedicates and affirms the principle of non-discrimination [17].

The principle of self-determination is enshrined in an article that is common to the two Covenants of 1966-the international Covenant on civil and political rights and the international Covenant on economic, social and cultural-rights in these terms: “all peoples have the right of self-determination; by virtue of that right, they freely determine their

political status and freely pursue their economic, social and cultural development.”

The right of peoples to self-determination is a principle of variable content. Nguyen [17] continues the discourse that, for peoples that are State incorporated or integrated into a democratic State that recognizes their existence and allows them to fully participate in the expression of the political will and in the Government, it means the right to “internal self-determination”, i.e. a “right to democracy” that is still badly assured and in the multinational States, where coexist several peoples, by the recognition that asserts itself, of the rights of minorities, including indigenous peoples but in the principle there is no right of “external self-determination”, when it leads to a secession, which is incompatible with another fundamental principle of contemporary international law, the right of States to their territorial integrity.

The formula of the Supreme Court of Canada shows that the people have the right to external self-determination because they are being denied the ability to exercise their right to self-determination internally [17]. This is consistent with the recognition of the right to decolonization. A comprehensive list of these texts would be tedious, as there are so many since 1945 [18].

But, in the context of United Nations Declaration on the rights of indigenous peoples (UNDRIP) it is dedicated to indigenous peoples a right to self-determination while stating that “indigenous peoples are equal to all peoples” [16].

This statement adds that “indigenous peoples have the right collectively or individually”, to enjoy all of the human rights and fundamental freedoms recognized by the United Nations Charter, the universal human rights Declaration and the international law of human rights [14,15].

The same sources indicate that these rights include the right to self-determination. Under the terms of article 3 of the Declaration: “indigenous peoples have the right to self-determination”. Under this right, they freely determine their political status and freely seek their economic, social and cultural development.

In the view of a number of Jurists, Ahmed [16] thinks that we can infer that the substantive right to self-determination of indigenous peoples can only be synonymous with autonomy.

And not support for eventual future decolonization. This assertion is shared with Mubiala [19] when he says that “the practice of African States and the work of the African Commission on human and peoples’ rights in the United Nations testify to the taking into account of the “infra stata” dimension of the rights of peoples, with inherent limits to the constitutional order of these States and to certain fundamental principles governing African international relations”.

In short, this self-determination must be exercised effectively against an already constituted State, to thrive inside the latter, but not to constitute a new State [19].

Articles 3 and 4 of the 2007 statement specify that “the Aboriginal people (...)” have the right to be autonomous and self-govern for all matters relating to their internal and local affairs, as well as the means of financing their autonomous activities” [14,15] and Ahmed [16] adds that, it is clear that statement seems stronger than the traditional international law on one plan only, that of autonomy. Section 4 enshrines a right to self-government of indigenous peoples.

It is in the context of self-determination that Aboriginal people

can defend their rights and consequently combat discrimination due to their belonging to a different group than that of the majority. Under these reasons, "States take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other components of society The Declaration on the rights of indigenous peoples opens a path to recognition of "principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith" for those peoples who have long been the object of discrimination and oppression. Therefore, indigenous peoples must be respected and their own characteristics recognized [14,15].

The Right to Difference and Protection of the Specificities of Indigenous Peoples

Individual rights, cultural rights are expressed, in a generic manner, by the right to be different. Right of an individual to be oneself, this right is registered within principles of equality and non-discrimination without which there cannot be genuine fundamental human rights. It follows the free choice of culture, and language, the right to education, cultural heritage, and religion. We can therefore see that the minority dimension is far from ignored in the individualistic speech on human rights. But cultural rights are collective rights, thus granting the individual his own social existence. Symmetrically, the collective dimension of the rights can be granted by the generic right of "cultural self-determination" [9].

The close relationship between the cultural rights of indigenous peoples and the right to self-determination is expressed in article 3 of the Declaration on the right of indigenous peoples which states that under their right of self-determination indigenous peoples freely assure their own cultural development. An integral part of the right to self-determination, the promotion and protection of all rights necessary to this cultural development, which highlights the indivisibility, interdependence and connectedness of the rights of indigenous peoples. Cultural and linguistic rights are inherent to the rights contained in the Declaration and, as such, are critical for the implementation of the Declaration as a whole [20].

Rouland [9] adds that none of the rights of indigenous peoples is excluded from the right to be different, since all the current effort of international law is to preserve their specificities while remaining tolerable by States and the dominant societies. However, a notion seems especially important, that of cultural rights, insofar as Aboriginal priority claim respect for their cultures, in the anthropological sense of the term, a demand that is constantly reiterated in international bodies.

The recognition of the right to self-determination allows us to deduce that indigenous peoples are allowed to organize "to improve their situation, in political, economic, social and cultural terms, and put an end to all forms of discrimination and oppression everywhere they occur" [14,15].

In fact, it is recognized that indigenous peoples contribute to the diversity and richness of civilizations and cultures.

However, a positive concept of diversity effect is to recognize that all human beings are truly equal in dignity. Designed in a negative way, diversity can be used to "legitimize" the idea of superiority of some human communities over any other [4].

The Declaration on race and racial prejudice of UNESCO says that:

"all individuals and all groups have the right to be different, to consider them and be perceived as such." However, the diversity of forms of life and the right to be different may in no case serve as a pretext for racial prejudices; they cannot legitimize either in law or in fact any discriminatory practice whatsoever, nor be the base of apartheid policy which is the extreme form of racism. (...) The differences between the achievements of the different peoples are entirely due to geographical, historical, political, economic, social and cultural factors. These differences can in no case serve as a pretext for any hierarchical ranking of nations and peoples [21,22] believes that for diversity management, the traditional conception of individual rights should be expanded considerably to ensure that minorities are protected from all forms of social discrimination. In this same regard, Deroche [23] sees that aboriginal people would thus have a distinct cultural specificity from the dominant society in which they live.

The right to be different, one way or another, is an essential human right affirmed by several instruments of human rights including the Universal Declaration of human rights which condemns all discrimination based on race, religion or opinion. Particularly, the UN Declaration on the rights of indigenous peoples reminded "that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider them different and to be respected as such".

The rights to difference and tolerance have the merit to be the pillars of the understanding of equality of peoples and their mutual acceptance. Indeed, "tolerance is respect, acceptance and appreciation of the richness and diversity of the cultures of our world, of our modes of expressions and our ways of expressing our beings as human." Tolerance is encouraged by knowledge, openness, communication, and freedom of thought, conscience and belief. Tolerance is harmony in difference. It is not only an ethical duty; it is also a political and legal necessity. Tolerance is a virtue that makes peace possible and contributes to a culture of peace instead of the culture of war [3]. The Declaration of principles on tolerance insists on two points: (1) the acceptance and appreciation of diversity; (2) the recognition of the fact that the ideas and beliefs of others have the same dignity and should enjoy the same respect as ours.

This is even more important in the sense that "the sustainability of Aboriginal communities is closely related to their ability to influence their own destiny and to preserve and develop their cultural and social institutions. Lifestyles, livelihoods, spirituality and Aboriginal cultures are inextricably mixed with their traditional environment UNESCO [15]. "The Declaration on the rights of indigenous peoples stressed "the urgent need to respect and promote the rights intrinsic to the indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, their history and their philosophy, especially their rights to their lands, territories and resources" [14,15] and expresses the conviction that "control by indigenous peoples, of the events that concern them and their lands, territories and resources, will allow them to perpetuate and strengthen their institutions, cultures and traditions and to promote their development according to their aspirations and needs according to the same sources. For the purpose of valuation of the rights of indigenous peoples, the Declaration on cultural diversity contains a specific reference to indigenous peoples in article 4 in the following terms: "the defense of cultural diversity is an imperative, inseparable from respect for the dignity of the human person. It involves a commitment to respect the human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of

indigenous peoples. No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.”

At the center of all these rights is the right of indigenous peoples to self-determination, which includes the right to freely provide their cultural development, the right to autonomy and the right to participate fully, if that is their choice, to the political, economic, social and cultural life of the State (art. 3, 4, and 5).

The Committee on human rights, interpreting the right to culture under article 27 of the international Covenant on Civil and political rights, said that States have a positive obligation to protect the cultural rights of indigenous peoples, including their rights affecting their lands, territories and resources and their traditional activities, it stressed the need to involve indigenous peoples in policy decisions that affect them and to interpret the right to culture consistently with the right to self-determination for everything concerning indigenous peoples, and he asked the States to adopt measures to revitalize the cultures and the languages of these peoples. The Committee on the elimination of racial discrimination has asked States to recognize own indigenous culture, history, language and way of life to enrich the cultural identity of States to respect them as such and to promote their preservation, “to offer indigenous people an environment suitable for sustainable economic and social development which is compatible with their cultural characteristics” and to “ensure that indigenous communities can exercise their rights to observe and revitalize their cultural traditions and customs, as well as to preserve and use their languages”.

The right to culture, for indigenous peoples, includes the right for them to decide for themselves their own culture and language and to practice them and celebrate them openly. The cultures of indigenous peoples include their ‘ justice systems and practice of these ‘, as well as their “right to maintain and strengthen their political, legal, economic, social and cultural institutions distinct, while maintaining the right, if they choose, to participate fully in the political, economic, social and cultural life of the State [14,15]. This recognition entails not only equality of individual rights, but also the right to be a member of a different ethnic community [22]. The Convention 169 (1989) is based on a philosophy which tends to recognize and preserve native specificities as noted by Rouland et al. [24] in their conjoint study that revealed that the right to difference leads to the respect of the specificities of indigenous peoples and in any case, this differentiation must not be interpreted as a justification of their oppression. Indeed, it is recognized that, despite this difference, they assume, “Aboriginal peoples and individuals are free and equal to all others and have the right to not be the object, in the exercise of their rights, of any form of discrimination, particularly founded on their Aboriginal origin or identity [14,15].

Conclusion

As a result, the right to self-determination states that international law is an essential tool for managing diversity and the protection of minorities.

Overall, “everyone has the right to his own ethnic culture or national (...); to the creation of their own schools and the teaching of their own language, as well as the use of this language in the press, in meetings, courts and other institutions of [25] administration. “This point of view defended by the Soviet Union in contrast with the affirmation of Rouland [26] who explains that if the UDHR evokes neither minorities nor indigenous peoples, it is not an oversight because “for indigenous

peoples, we think that economic development will integrate them into dominant societies.”

This idea that recalls the policy of forced assimilation faced by different peoples seems less accepted today and hardly compatible with the current trend which recognizes the invaluable contributions of cultural diversity in the consolidation of international solidarity.

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