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THE RIGHTS OF INDIGENOUS PEOPLES IN THE LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW

HARALD CHRISTIAN SCHEU, LUISA MARÍA VILLA YEPES

Abstract: In this paper the authors deals with the concept of the protection of indigenous peoples and minorities from the perspective of international human rights law and the international protection of minorities. First, a brief introduction to the definition of indigenous and other ethnic (national) minorities is presented, followed by a discussion of the reasons for the particular vulnerability of indigenous populations. In addition to the complex legacy of colonialism we have to consider the current context of climate change and environmental destruction and their impact on the traditional way of life of indigenous communities. The third part of this paper deals with the question to what extent the interpretation of the right of indigenous peoples to self-determination has been influenced by human rights paternalism. It is clear that a human rights argument may under certain circumstances introduce a new form of colonial domination.

Práva indigenních národů z pohledu mezinárodní ochrany lidských práv
V tomto příspěvku se zabýváme koncepcí ochrany indigenních národů a menšin z pohledu mezinárodní ochrany lidských práv a mezinárodní ochrany menšin. Po stručném úvodu do problematiky definice indigenních a dalších etnických (národnostních) menšin následuje pojednání o důvodech zvláštní zranitelnosti indigenního obyvatelstva. Kromě složitého dědictví kolonialismu je třeba zmínit i aktuální souvislosti týkající se dopadů klimatických změn a znečištění životního prostředí na tradiční způsob života indigenních národů. Ve třetí části klademe otázku, nakolik právo indigenních národů či menšin na sebeurčení je v lidskoprávní dogmatice vyvažováno lidskoprávním paternalismem. Je zřejmé, že lidskoprávní argument může za určitých okolností představit novou formu postkoloniální dominance.

Key words: human rights, minority definition, protection of indigenous peoples, environment, human rights paternalism

Klíčová slova: lidská práva, definice etnických menšin, ochrana indigenních národů, životní prostředí, lidskoprávní paternalismus

INTRODUCTION

In this contribution we want to highlight some issues concerning the specific status of indigenous peoples. We believe that the legal protection of indigenous minorities throws some light on conceptual problems concerning international human rights law and international minority protection. Therefore the subject shall be introduced from a broader perspective and with regard to general conceptual problems.

In the first part of this study we are going to deal with the problem of definition of indigenous peoples in order to identify the subjects of international legal protection. We will examine the question of which specific criteria shall be met by a group so that it can be defined as an indigenous minority. It will be clarified in which respect indigenous peoples and minorities differ from traditional national and ethnic minorities.

At a second stage it is necessary to seek possible justifications in favor of a special protection of indigenous minorities. Why shall indigenous minorities be granted a privileged status under international law? Special legal protection is usually legitimized by the specific vulnerability of social and ethnic groups. Consequently we will have to identify some characteristics of indigenous vulnerability.

In the third part of this contribution we will focus on indigenous protection from a general human rights and anti-discrimination perspective. It has to be understood that indigenous rights are an integral part of international human rights law. However, the internal cultural and religious self-determination of indigenous peoples has to be conceived in line with the basic principles of human rights protection. Therefore we will have to ask whether, after centuries of colonialism, human rights doctrine applies a paternalistic approach towards indigenous minorities and introduces a new kind of colonial domination.

THE DEFINITION OF THE TERM INDIGENOUS PEOPLE

Within the scope of international human rights law, several instruments attempt to define the term indigenous peoples. Certain lines that delimit this term have been traced also by the jurisprudence of international bodies and by legal doctrine. The first legal instrument that offered a concrete definition was ILO Convention No. 169 of 1989.[1] According to its Article 1 the Convention applies to tribal peoples in independent countries "whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations". It further covers peoples in independent countries who are identified as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. Besides those objective criteria, Article 1 of Convention 169 (1989) also refers to the element of self-identification of a group as indigenous or tribal.

In a similar manner the Draft American Declaration on the Rights of Indigenous People[2] combines objective and subjective elements of indigenous peoples. According to its

[1] Convention (No. 169) Concerning Indigenous and Tribal Peoples in Independent Countries, concluded 27 of June of 1989, entered into force 5 of September 1991.

[2] Proposed American Declaration on the Rights of Indigenous Peoples (approved by the Inter-American Commission on Human Rights in February 1997), OEA/Ser/L/V/.II.95 Doc.6 (1997). Currently, there is a working group designated with the finality of inviting delegations to adopt each of the provisions of the Draft American Declaration by consensus: http://www.oas.org/dil/indigenous_peoples_preparing_draft_american_declaration.htm.

Article 1, the Declaration applies to indigenous peoples as well as peoples "whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations". Like in the case of ILO Convention 169 (1969), self-identification as indigenous shall be regarded as a fundamental criterion.

In international law there is no legally binding definition of the term national or ethnic minority. However, legal doctrine offers a set of objective and subjective criteria. The Special Rapporteur of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities Francesco Capotorti in his famous study of 1977 identified the objective criteria of numerical inferiority, non-dominant position, citizenship, and distinct ethnic, religious and linguistic characteristics. He also emphasized the importance of a sense of solidarity within the community, directed towards preserving minority culture, traditions, religion or language.[3] Other experts on the subject of minority protection have used similar definitions.[4]

In its General Comment 23 of 1994,[5] the Human Rights Committee offered a complex interpretation of Article 27 of the International Covenant on Civil and Political Rights, which is the only legally-binding universal norm codifying specific minority rights in favor of members of ethnic, religious and linguistic minorities. The Human Rights Committee found that a way of life which is closely associated with territory and the use of its resources is covered by Article 27 ICCPR. Further, the Human Rights Committee clarified that especially in the case of indigenous peoples a minority culture may manifest itself through the use of land resources, traditional activities such as fishing or hunting, and the right to live in reserves.

From General Comment 23 of 1994 it becomes clear that indigenous minorities are ethnic minorities within the meaning of Article 27 ICCPR. Also a crucial study on indigenous minorities which was carried out by José Martínez Cobo reinforces the assertion that indigenous populations are ethnic minorities.[6] Being considered as ethnic minorities, indigenous populations shall be granted certain positive measures.

But at the same time, UN bodies have clarified that indigenous people form a specific category of minorities which, to a certain degree, differs from other ethnic minorities. The UN system started shaping its position towards indigenous peoples in the 1950s and 1960s, i.e. at a time when the colonial debate arose. This circumstance had a clear impact on the discussions held on the level of the UN human rights bodies.

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3 CAPOTORTI, Francesco: *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities*. New York: UN Publications, 1979.

4 SCHEININ, Martin: What Are Indigenous Peoples? In GHANEA, Nazila – XANTHAKI, Alexandra (eds.): *Minorities, Peoples and Self-Determination*. Leiden: Martinus Nijhoff Publishers, 2005, pp. 3–13. Also THORNBERRY, Patrick: Self-Determination and Indigenous Peoples: Objections and Responses. In AIKIO, P. – SCHEININ, M. (eds.): *Operationalizing the Right of Indigenous Peoples to Self-Determination*. Åbo Akademi University, 2000, pp. 39–64.

5 U.N. Doc. HRI/GEN/1/Rev.1 at 38 (1994).

6 J. Martinez Cobo was appointed Special Rapporteur for issues concerning the discrimination of indigenous populations in 1971. Within his mandate given by the Sub-Commission on Prevention of Discrimination and Protection of Minorities he published the "Study of the problem of discrimination against indigenous populations" (E/CN.4/Sub.2/1986/7 and Add.1-4).

According to a working definition offered by J. Martínez Cobo, indigenous communities have a historical continuity with the pre-invasion and pre-colonial societies that developed on their territories. Such communities are determined to transmit to future generations their ancestral territories, and their ethnic identity. Although States use in practice some slightly different criteria for a definition, we may conclude that there should be a blood link between members of indigenous minorities and the natives of the country, which means the so called ancestry. Indigenous minorities shall live under a tribal system which determines their way of life. This considers, for example, their survival and economy.

In 1999, Miguel Alfonso Martínez, who had been appointed Special Rapporteur for issues concerning indigenous minorities in 1991, published a report on treaties, agreements and other constructive arrangements between States and indigenous populations[7] in which he identified the close connection between the difficult situation of indigenous minorities and the phenomena of colonialism, domination and assimilationist policies. According to Alfonso Martínez, international law had served as an instrument of colonialism.

So the heritage of colonialism is a crucial part of the definition of indigenous peoples. The term indigenous minority was shaped by the events which occurred in conquered territories. Indigenous populations were not considered capable of effectively occupying and ruling their territories so that colonizers could "validly" access the juridical title of property by discovery, according to the laws that their civilizations created and named as international law. In line with the doctrine of colonizers, the theory of acquired land rights was used in order to diminish the role of indigenous minorities. First, indigenous peoples did not legally exist as a civilization. Second, territories that originally belonged to indigenous peoples were acquired by the colonizers through negotiations and treaties.[8]

THE ISSUE OF SPECIAL VULNERABILITY

The colonial heritage does not only affect the definition of indigenous peoples but it is also one reason for the special vulnerability of indigenous communities in the context of contemporary societies. Special vulnerability of social and ethnic groups may automatically lead to the assumption that special rights shall be granted in order to provide full equality to the members of those groups. Therefore, we have to ask whether special privileges shall be granted also to members of indigenous communities.

With respect to the assumption that current social problems of indigenous communities were at least in part caused by colonialism, specific protection might by justified as a form of historical compensation and as a legal recognition of the abuse that indigenous

[7] E/CN.4/Sub.2/1999/20.

[8] GILBERT, Jeremie: *Indigenous Peoples' Land Rights under International Law: From Victims to Actors*. Ardsley, N.Y.: Transnational Publishers, 2006. Also CASTAN, Melissa: DRIP feed: The slow reconstruction of self-determination for indigenous peoples. In: JOSEPH, S. – McBETH, A. (eds.): *Research Handbook on International Human Rights law*. Edward Elgar Publishing, 2010, pp. 492–511.

communities have undoubtedly suffered in the past. As an example, the right to self-determination, which is usually interpreted as a right to a certain degree of independence and autonomy in the decision making process, may be understood as a tool of historical compensation.[9] This is why the right of indigenous peoples to self-determination is expressly mentioned in Articles 3 and 4 of the UN Declaration on the Rights of Indigenous Peoples of 2007.[10] By virtue of the right to self-determination, indigenous peoples shall freely determine their political status and freely pursue their economic, social and cultural development. Autonomy shall be granted with respect to matters related to the internal affairs of indigenous peoples. Articles 25 and 26 of the UN Declaration further highlight the spiritual relation between indigenous communities and their traditional land. Among other things, States shall give legal recognition and protection of indigenous lands and territories with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

The struggle for the conservation of indigenous identities during colonization was very difficult, but this fight seems to be even harder after and during the decolonization process. Due to the exploitation of natural resources in the colonized territories, great damage was caused to the indigenous lands and, therefore, nowadays those lands cannot provide indigenous communities with what they need for surviving. This is one of the reasons why the above mentioned ILO Convention 169 (1989) was aimed at materially protecting the substantial way of life of indigenous communities. Article 2 (2) of the ILO Convention identifies the connection between the indigenous way of life and the realization of economic rights, as it calls upon States to assist members of indigenous peoples to eliminate socio-economic gaps with due respect for their cultural identity.

Besides very complex issues related to the heritage of colonialism, we may identify two major problems that currently affect the environment and, as a consequence, the status and the rights of indigenous peoples.[11] One of those problems is the intervention of private corporations into the lands traditionally owned by indigenous communities for the purpose of exploiting natural resources. This process can be seen as a form of modern colonization. The inconvenient thing is that such exploitation, especially in less developed countries, can be very abusive towards indigenous peoples and may cause irreparable damage to traditional indigenous lands. As a result, such exploitation may lead to the displacement of entire communities.[12] Already in its report "Our Common Future" of 1987, the World Commission on Environment and Development concluded

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9 DAES, Erica-Irene A.: Indigenous Peoples's Rights to Land and Natural Resources. In: GHANEA, N. – XANTHAKI, A. (eds.): *Minorities, Peoples and Self-Determination: Essays in honour of Patrick Thornberry*. Leiden: Nijhoff, 2005, pp. 75–91.

10 UN Doc. A/RES/61/295.

11 TROPP, Jacob Abram: *Natures of Colonial Change: Environmental Relations in the Making of the Transkei*. Athens: Ohio University Press, 2006. Also METCALF, Ch.: Indigenous Rights and the Environment: Evolving International Law. In: SHELTON, D. L. (ed.): Human Rights and the Environment (Vol. II). Cheltenham: Elgar, 2011, pp. 71–108. TSOSIE, R.: Indigenous People and Environmental Justice: The Impact of Climate Change. *University of Colorado Law Review*, Vol. 78, pp. 1625–1677.

12 The Belo Monte case in Brazil may serve as an example of possible disastrous effects of economic projects on the environment and the way of life of indigenous communities. In 2011, the Inter-American Commission for Human Rights granted precautionary measures for the members of the concerned indigenous communities. For further details see the decision of the Inter-American Commission of April 1, 2011 (PM 382/10) at http://www.oas.org/en/iachr/indigenous/protection/precautionary.asp#382/10.

that indigenous peoples will need special attention as the forces of economic development disrupt their lifestyles. According to the report some indigenous communities were threatened with virtual extinction by insensitive development over which they had no control.[13]

The second problem affecting the vulnerable status of indigenous peoples is climate change. Although various factors may contribute to the problem of climate change, it is assumed that a major share is contributed by the most developed countries, which are producing the biggest amount of pollutants. Indigenous peoples are not prepared to fight the negative effects of climate change on their traditional natural environment. Unlike in cases of TNC interventions, it is difficult to identify a concrete subject which is responsible for the damage caused by climate change. The phenomenon is mainly linked to the excessive production of carbon dioxide in the atmosphere, preventing the sun from leaving the atmosphere, thereby overheating the earth and causing damage to the ecosystems, such as e.g. the one of the Arctic region. Randall Abate and Elizabeth Ann Kronk have well described that, for thousands of years, whales, walrus, seals, waterfowl and fish have provided the critical subsistence resources and cultural foundation for Alaska natives.[14] Therefore it affects the life of those indigenous communities very severely when they no longer have access to these resources due to processes caused by climate change.

Moreover, climate change is likely to affect areas which are inhabited by indigenous minorities. Indigenous peoples often reside in isolated areas, such as islands or mountains, where fauna and flora which have traditionally been used as medicine are now disappearing as the temperature increases. This development may cause the involuntary internal displacement of members of indigenous communities from rural to urban areas.

According to Mirjiam Macchi, a Swiss expert on development issues, certain geographic locations are also susceptible to natural catastrophes such as unpredictable precipitation and variation of temperature, which cause floods and droughts, affecting with this the livelihood of indigenous communities. Macchi assumes that climate change will have a harder effect on ethnic minorities due to the lack of economic resources, limited real effect of their human rights, and restricted means of mobilization of women and children, among other things.[15]

Whereas in cases of direct economic exploitation of indigenous lands by private corporations it seems to be easier to define positive measures of protection, with regard to climate change it is difficult to propose concrete measures that shall be adopted in favor of indigenous communities. How can economic and social development that is inherent to modern civilizations be reconciled with the traditional way of life of indigenous peoples?

[13] The report was transmitted to the UN General Assembly as an annex to UN Doc. A/42/427.

[14] ABATE, R. – KRONK, E.: *Climate Change and Indigenous Peoples: The Search for Legal Remedies*. Cheltenham, 2013, pp. 268–271.

[15] MACCHI, Mirjam (ed.): *Indigenous and Traditional Peoples and Climate Change*, Issues Paper, IUCN, March 2008 (accessible at https://cmsdata.iucn.org/downloads/indigenous_peoples_climate_change.pdf).

There is a strong moral argument in saying that indigenous minorities shall be granted special legal protection in order to secure their very existence and survival as a distinct group. As we have learned so far, such approach may be justified in the light of historical injustice suffered by indigenous communities during the period of colonialism. We also recognize that indigenous communities are specifically vulnerable in the context of environmental degradation and climate change. Nevertheless, from a general human rights perspective any privileges granted to groups on account of their vulnerability raise a number of problems and questions.

First of all, the case of indigenous minorities shows that ethnicity still matters and that it is a key element in minority protection. Ethnic characteristics constitute an objective criterion that distinguishes indigenous minorities from other vulnerable groups (e.g. persons with disabilities, women, children, sexual minorities). The ethnic bond is also a crucial factor concerning the feeling of solidarity inside the community.

However, the approach of current human rights law and minority protection law views distinction based upon ethnicity as very problematic. There is, indeed, a very broad consensus within the UN human rights community and regional human rights activists that the development of international human rights law has replaced the traditional notion of *jus sanguinis* with the concept of equal rights for all individuals.[16] In the light of the International Convention on the Elimination of All Forms of Racial Discrimination[17] and European anti-discrimination law, preferential treatment based upon ethnic origin is, in principle, suspicious. UN bodies have repeatedly argued that basic human rights shall be granted to all individuals and that with respect to civil, political, economic and social rights States should not distinguish between members of different ethnic groups, not even between nationals and foreigners.[18]

International minority protection goes in a similar direction. According to the practice of the Advisory Committee on the Framework Convention on the Protection of National Minorities,[19] States Parties shall not draw a strict line between traditional national minorities and new migrant minorities and shall grant at least some typical minority rights to both new and old minorities.[20] Also the Human Rights Committee in its above mentioned General Comment No. 23 of 1994 found that minority rights under Article 27

[16] See e.g. STAMATOPOULOU, E.: Protection of National Minorities and Kin-States. An International Perspective. In: *Protection of National Minorities by their Kin-state*. Strasbourg: Council of Europe Publication, 2002, pp. 85–105.

[17] Adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of 21 December 1965.

[18] See e.g. Committee on Economic, Social and Cultural Rights: General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (UN Doc. E/C.12/GC/20 (2009)).

[19] The Framework Convention was adopted by the Committee of Ministers of the Council of Europe on 10 November 1994 and opened for signature by the member States of the Council of Europe on 1 February 1995

[20] ANGST, D. Artikel 3. In: HOFMANN, R. – ANGST, D. – LANTSCHNER, E. – RAUTZ, G. – REIN, D. (eds.): *Rahmenübereinkommen zum Schutz nationaler Minderheiten. Handkommentar*. Baden-Baden: Nomos, 2015, p. 174.

of the ICCPR shall not be restricted to citizens and that they shall be granted to migrant workers, short-term residents and even visitors.

The current scepticism towards ethnic differentiation[21] directly affects the interpretation of human rights and minorities rights. It is also linked to the very notion of statehood. The current debate on the European refugee and migration crisis shows that it is possible to identify two basic concepts of a permanent population, which is a key element of statehood.[22] The conservative approach favors ethnically homogenous societies and views the emergence of multi-ethnic, multi-religious and multi-cultural societies as a risk to social coherence, democratic identity and public order. According to the second concept, reference to ethnicity is antiquated and unenlightened and can hardly be justified in the light of modern constitutional principles. Therefore, the notion of a permanent population, the nation, shall not be defined in ethnic terms but as a community of citizens adhering to democratic values and constitutional principles, irrespective of their national and ethnic origin.

We may conclude that modern human rights doctrine is based upon the idea of full social integration of minority members and inclusive societies. This conflicts with the paradigm of ethnic segregation which, under specific circumstances, may be considered as a crucial approach in minority protection. In its above mentioned report "Our Common Future" of 1987, the World Commission on Environment and Development confirmed that the isolation of indigenous communities, e.g. in North America, in Australia, in the Amazon Basin, in Central America, in the forests and hills of Asia, in the deserts of North Africa, contributed to the preservation of a traditional way of life in close harmony with the natural environment. Therefore, physical segregation of ethnic groups, as long as it is self-chosen with respect to survival as a distinct pre-modern society, may be considered as a positive tool in favor of indigenous protection.

The World Commission on Environment and Development stated in 1987 that the isolation of indigenous communities may also have a very negative impact. As they are excluded from economic and social development, they may suffer from poor health, nutrition and education. The Special Rapporteur of the UN Human Rights Council on the rights of indigenous peoples stated in a report of 2014 that indigenous peoples shall fully benefit from development efforts and achieve "an adequate standard of living". At the same time they shall be granted the right to pursue their self-determination development in order to safeguard their cultural identity.[23]

How shall the two paradigms of inclusion and segregation, which are mutually exclusive, be reconciled? The notion of cultural identity evidently does not mean that the specific precolonial identity of indigenous peoples shall be conserved at any cost. It is evident that even in remote areas very few indigenous communities will be living an authentic pre-colonial and pre-modern life. Various forms of territorial autonomy such as reservations in the United States, reserves in Canada or similar protected areas in Australia or Northern Europe may easily lead to the creation of some kind of parallel world.

[21] See also CDL-INF(2001)019-e, Report on the Preferential Treatment of National Minorities by their Kin-State, adopted by the Venice Commission at its 48th Plenary Meeting (Venice, 19–20 October 2001).
[22] Montevideo Convention on the Rights and Duties of States, 1933, 165 I.N.T.S. 19.
[23] UN Doc. A/69/267.

But there is little dispute that even in such a parallel world certain standards of modernity will have to be respected. The argument in favor of ethnic segregation does not mean that members of indigenous communities shall be denied the benefits of modern education, consumer goods markets, transportation and health-care. In the light of legally binding human rights standards, even those who make a conscious choice to live inside indigenous areas shall have access to those benefits.

With respect to international human rights law, a solution simply based upon individual or collective choice is not possible. The concept of universal and indivisible human rights is, in principle, a paternalistic one. Jakeet Singh has rightly identified a concept of self-determination which may be called a "recognition from above", in which the State decides on which claims for recognition from subordinate groups shall be accepted.[24]

Human rights shall be granted to all individuals, including those who choose to live in parallel worlds. Some examples show why such approach is reasonable. It would be very problematic if indigenous parents decided on behalf of their children that they will not have access to modern medical treatment. Another example is the organization of criminal justice. Indeed, with respect to reservations and autonomous territories, national law in some cases stipulates that criminal jurisdiction may be exercised by indigenous courts. But it is evident that the procedure before such courts shall respect modern concepts of procedural rights and fair trial. Also the sanctions imposed by indigenous tribunals have to be carried out in line with the prohibition of torture and inhumane treatment.

In practice, it may be very difficult to establish such limits precisely. For example, there will be little dispute concerning the protection of indigenous women against gender-based physical violence. But shall the State also interfere with indigenous autonomy in cases of discrimination?[25] Despite such difficulties we may conclude that States which are bound by international human rights obligations have to interfere with indigenous cultures. It is clear that human rights law imposes certain limits of tolerance with respect to indigenous segregation.

CONCLUSIONS

In this contribution we have presented some key elements of a definition of indigenous peoples. It has been shown that indigenous peoples differ from traditional national and ethnic minorities, and that they also need special legal protection. Such

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[24] SINGH, Jakeet: Recognition and Self-Determination: Approaches from Above and Below. In: EISENBERG, A. – WEBBER, J. – COULTHARD, G. – BOISSELLE, A. (eds.): *Recognition versus Self-Determination: Dilemmas of Emancipatory Politics*. Toronto: UBC Press, 2014, pp. 47–74.

[25] See e.g. the case of Sandra Lovelace v. Canada (Communication No. 24/1977) in which the Human Rights Committee has established that a group member may successfully challenge the indigenous group. With respect to the conflict between individual rights of community members and collective rights of the indigenous community see also CASTELLINO, Joshua: Conceptual difficulties and the right to self-determination. In GHANEA, Nazila – XANTHAKI, Alexandra (eds.): Minorities, Peoples and Self-Determination. Leiden: Martinus Nijhoff Publishers, 2005, pp. 55–74.

protection shall sufficiently reflect the specific vulnerability of indigenous communities in the light of exploitation of traditional lands by private corporations, environmental degradation and climate change.

Ethnic and indigenous segregation may be understood as an appropriate tool which enables indigenous minorities to cope with the problem of historical injustice and the problem of special vulnerability. However, indigenous segregation poses a number of questions related to the concept of human rights and minority rights that are not easily solved from a conceptual perspective. It seems paradoxical that the international doctrine of human rights which aims at empowering indigenous peoples and providing them with the right to self-determination is, by its very nature, paternalistic and sets clear limits to self-determination. The limits of tolerance towards specific pre-modern elements of indigenous cultures will be defined from outside. However, the doctrine of universal, indivisible and inter-related human rights could hardly accept any other solution.

Autoři:
doc. Mag. phil. Dr. iur. Harald Christian Scheu,
Právnická fakulta Univerzity Karlovy v Praze,
Luisa María Villa Yepes, LLM.,
Právnická fakulta Univerzity Karlovy v Praze