

# **The Indigenous movement: the emerging role of the international civil society as a challenge to the nature of international relations**

## **Summary**

The UN Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly in 2007. The Declaration clearly affirms that Indigenous peoples have acquired the *status* of peoples according to the international law and thus, they are entitled to the right of self-determination which nation-states cannot arbitrarily deny.

The Declaration is a step forward within the social movements history: it finally recognizes the rights of a special group – such as the world’s Indigenous peoples – who has been able to create a transnational network and address their claims directly to the international arenas, by passing beyond the states’ boundaries. For the first time, leaders of the Indigenous diplomacy gained little attention from the UN and the nation-states by framing their claims for rights recognition into the human rights discourse: this kind of approach reveals the strategy underneath the Indigenous movement and consisting in asking for individual and collective rights on the basis of the existing global consensus on universal human rights.

The aim of my thesis is to analyze the way the Indigenous movement has gained recognition and important achievements – such as the above Declaration – at the international level. Moreover, it further describes Indigenous actions as being part of a peaceful social movement which has gradually developed rights consciousness and diplomatic strategies, particularly thanks to the strong support of the UN bodies. In fact, this paper will show how the traditional resource mobilization and political opportunity approaches fail to explain the complexity of a movement which has lingered, over three centuries, under the states’ colonialism, while the convergence of Indigenous diplomacy has taken no more than thirty

years to organize itself and develop a new vision of a global order based on the human rights frame. I will argue that Indigenous movement has been able to challenge the nature of international relations because it has framed its diplomatic actions on the critics of the modern international system and the “ongoing colonialism” of the states in relation to the Indigenous peoples. However, this thesis also recognizes that Indigenous peoples would not have been able to achieve consensus in the international arena without the institutionalization of their claims within the UN *fora*.

The first chapter of the thesis focuses on the historical evolution of the international law, highlighting its way to approach Indigenous peoples. The importance of the chapter lies in the fact that it tries to show how different theories may influence the life and destiny of a social group: in fact, Indigenous peoples have always been considered such as populations or minorities under the international law regime, and this is the main cause which has taken these peoples at the edge of the society for centuries.

The chapter is divided into three key historical doctrines involving different definitions of the Indigenous peoples. The first one is based on the law of nature, whose maximum figures have been Bartolomé de las Casas and Francisco de Vitoria. The former asserted the essential humanity of the American Indians, while the latter argued that those peoples were rational beings because of the social and political organization of their communities<sup>1</sup>. As a consequence, Vitoria held that Indians possessed entitlement to the land where they lived and certain power of self-government, which European settlers were bound to respect<sup>2</sup>. However, the naturalist frame approach failed to recognize full independence to the Indigenous, always subject to the European precepts of just war and conquest.

Along with the rise of modern states, according to the new Westphalian order, the natural rights became universally recognized as applying to all individuals as well as to the states.

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<sup>1</sup> Anaya (2004: 16-17).

<sup>2</sup> Ibid.

The dichotomy individual/state acquires a central role with the emergence of the law of nations: according to Vattel's definition, it is "*the science of the rights which exist between Nations or States, and of the obligations corresponding to these rights*"<sup>3</sup>. Vattel's wide definition of state and nation had an Hobbesian origin: it was the consensus and the transfer of natural rights from the individuals to the state which have assured protection to the former and a legitimate power to the latter<sup>4</sup>. However, the Indigenous peoples have not been concerned within this new vision of the global order. They were still being considered such as minority within the sovereign states' borders for several reasons: their nomadic way of life, which means no political sovereignty on the land; their lack of an understanding of private property; and, the presence on the territories - declared *terra nullius* - of European settlers<sup>5</sup>.

The Eurocentric perspective was justified by the diffusionist theory which distinguishes a European identity from the International otherness, including Indigenous peoples which were felt by the international regime as other with respect to sovereign nation-states<sup>6</sup>. It will be only with the creation of the League of Nations and the birth of new independent states – after world war I – if the question of self-determined Indigenous peoples would be raised within the international community. Nevertheless, Indigenous peoples have continued to be integrated into national structures because considered as a domestic affairs issue.

The second chapter focuses on the active and direct involvement of the Indigenous peoples at multi-level arenas. With the failure of the League to decolonize Aboriginal nations and end racial discrimination, and the creation of the United Nations, a new concept of peoples started to gain consensus within the international community<sup>7</sup>, along with the establishment of an internationally protected code of human rights<sup>8</sup>. That is why Indigenous nations have

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<sup>3</sup> Vattel in Anaya (2004: 20).

<sup>4</sup> Ibid.

<sup>5</sup> Blaut in Henderson (2008: 19).

<sup>6</sup> Ivi, p.18.

<sup>7</sup> See Art 1, UN Charter.

<sup>8</sup> Henderson (2008: 30).

attempted to present their shared grievances to the international community, in order to see at least their *status* as self-determining peoples legitimized. However, they soon found that this new UN regime was not meant to apply to the Indigenous; they also found that the international Western concepts of nation-states and sovereignty hardly coexist with Indigenous cultures, their systems of knowledge and language<sup>9</sup>. A new awareness of being invisible in the international system - “*neither a minority nor peoples*”<sup>10</sup> -, has prompted Indigenous peoples to organize themselves into a diplomatic global network whose efforts, along with the UN material and normative support, were mainly directed to the Indigenous human rights recognition and their entitlements to self-determination and to the lands, as well as, the achievement of an official representation of the Indigenous movement in the international platforms.

Then, I start a comparative analysis of the theories that could be at the basis of the growing consensus in favour of the Indigenous diplomacy and its great development.

First, I consider the resource mobilization approach as the process which led to a movement’s success by assuring to it a collective control on the resources –both material and intellectual – necessary for the deployment of social actions<sup>11</sup>. However, leaders of the Indigenous movement cannot be considered as rational actors – from a costs/benefits point of view – because they have always preferred institutionalized actions which take place within the legitimized structures of the international institutions. Even if this approach is not suitable to explain the increasing global development of the Indigenous movement, is it in order to understand the inner mechanisms of sociability: such transnational linkage of the world’s Indigenous groups is due to the construction of a common identity and shared past grievances, the two factors which have deeply contributed to the rise of an Indigenous’ single and

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<sup>9</sup> Henderson (2008: 35).

<sup>10</sup> Ibid.

<sup>11</sup> McCarthy & Zald in Jenkins (1983: 539).

stronger voice<sup>12</sup>. However, the resource mobilization theory does still not able to tell us about the international success of the Indigenous movement.

The second theory I examine is the political opportunity structures (POS) which I consider as a failure to approach the Indigenous case being a movement “outside the polity”<sup>13</sup>, which means that, at a domestic level, there is a weak participation of the Indigenous peoples with the local and national political structures. In fact, Indigenous diplomacy has directly addressed its claims to the international arena because of the lack of domestic political opportunities. I would rather say that this theory represents more an obstacle than an incentive to the Indigenous movement. This is particularly witnessed by the fact that Indigenous organizations, parliaments and state agencies rarely agree on Indigenous issues; moreover, there is still being the lack of a mutual recognition between the state and an Indigenous distinctive identity; and, finally, the development of co-governance institutions have failed to be oriented towards shared solutions<sup>14</sup>.

Finally, I get on examine the strategy which I suppose being the one that perfectly fit the case of the Indigenous global movement. The Indigenous mobilization has achieved a formal representation at the international level because of two reasons: first, the emergence of a collective Indigenous identity and, second, the strategic choice to address the claims directly to the UN bodies. Since the Sixties, it is possible to talk about a “*global indigenism*” as a “*discourse and movement aimed at advancing the rights and status of Indigenous peoples worldwide*”<sup>15</sup>.

The United Nations have been essential for this movement by developing the so-called “*informal inclusive strategies*”<sup>16</sup>: a guaranteed access to international *fora*, fundraising actions, and institutional accreditation for the Indigenous movement. However, the thing that

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<sup>12</sup> See Tilly, 1978 -“catnet”.

<sup>13</sup> Goldstone (2004: 334).

<sup>14</sup> Howitt (2010: 825).

<sup>15</sup> Morgan (2007: 278).

<sup>16</sup> Passy in Morgan (2007: 279).

is unique to the Indigenous case is the way the diplomacy has framed its actions into the human rights discourse, by asserting, in the international arena, the right to self-determination of the Indigenous peoples as a prerequisite for the fully enjoyment of human rights<sup>17</sup>. Their struggle has been mainly focused on the message that the Indigenous, as peoples, need to be recognized as collective rights - rather than individual - holders. It has been this recent awareness of their “discrimination” at the international level which has prompted the Indigenous diplomacy to strengthen their claims by referring to the UN Charter and the international human rights regime.

The adoption of the UN Declaration on the Rights of Indigenous Peoples clearly affirms the existing international consensus on the recognition of the *status* of peoples to the Indigenous groups, and it further reveals a new balance between the divergent interests of the states and of the Indigenous. Nowadays, the Declaration represents a starting point for further implementation of the Indigenous rights, and their increasing involvement in the democratic decision-making process. However, the Declaration is still being a document which needs further implementation from the part of the states and the passing of some technical difficulties.

The firm reaction of the states to the local and national implementation of the indigenous rights - asserted in the Declaration - is due to the so-called “politics of distraction”<sup>18</sup> that particularly concerned the term “self-determination”, understood as a legitimation to secession or independence by the states, while for Indigenous peoples it only asserts the right “*to negotiate freely their political status and representation in the States in which they live*”<sup>19</sup>.

On the other part, there is the fact that international human rights regime does not include collective rights which would guarantee to Indigenous peoples entitlements to self-

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<sup>17</sup> Henderson (2008:31).

<sup>18</sup> Alfred & Corntassel (2005: 600).

<sup>19</sup> Daes in Lightfoot (2008: 86).

determination and to land ownership as well as their international protection. Moreover, the presence of the “saltwater thesis”, which states that only overseas colonial territories are eligible for decolonization and self-determination, makes those rights as not totally applying to the case of the Indigenous peoples worldwide<sup>20</sup>.

However, I then argue that the diplomatic action of the Indigenous leaders, facing all these complexities, has been particularly effective by asserting that “*international human rights protections are to apply universally and indivisibly*”<sup>21</sup>, and that the deny of self-determination, for the so-called Indigenous “belated state-building”<sup>22</sup>, would have created an international double standard, discriminatory of the indigeneity.

I also suggest a constructivist approach as the suitable paradigm applying to the international community, enlarged by the entrance of new subjects of international law<sup>23</sup>.

In the third part of this thesis, I examine the ongoing issues which challenge the attainment of “being Indigenous”<sup>24</sup>. A truly relation nation-to-nation with the territorial state is hindered by minority groups which seek themselves the identification as indigenous. This fact is due to the uncertain international regime concerning the protection and rights of minority groups, in contrast to the growing interest and international openness for indigenous rights<sup>25</sup>.

The new directions of the Indigenous diplomacy are mainly oriented in raising awareness in three different areas: the states’ recognition of the Indigenous peoples’ rights to ancestral lands and resource property; an understanding of the importance of the bio-cultural heritage and the implementation of the role of Indigenous peoples such as keepers of the world

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<sup>20</sup> Lightfoot (2008: 86).

<sup>21</sup> Moses in Morgan (2007: 284).

<sup>22</sup> Daes in Henderson (2008: 71).

<sup>23</sup> See Lightfoot, 2008.

<sup>24</sup> See Alfred & Corntassel, 2005.

<sup>25</sup> See Kymlicka, 2008.

biodiversity as well as their greater involvement – established during the Rio Summit in 1992 - in the international governance for sustainable and ecological development<sup>26</sup>.

The future developments of the Indigenous international movement could be outlined as the “Fourth World” theory, which gives to the Indigenous struggle against settler colonialism the dimension of a spiritual and environmental clash<sup>27</sup>.

In conclusion, this thesis has sought to argue that it has been thanks to the UN workshop if the Indigenous movement has reached an international accountability, by building a transnational Indigenous identity. However, further scenarios are still opened for the concrete affirmation of the Indigenous rights: the movement, which has already challenged the existent system of international relations by resting on the human rights frame, needs now to switch from a global approach to a strategy of deeper engagement and participation of the Indigenous peoples within the national arenas, by achieving greater representation in local decision-making and standard-setting processes.

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<sup>26</sup> <http://indigenous-movement.org/HOME.html>.

<sup>27</sup> Alfred & Corntassel (2005: 610).