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**The violation of the right to exist
by climate change:
the case of the Inuit indigenous population**

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*A mia madre, Francesca, per avermi spinta a conoscere il mondo e ad andare sempre oltre;
a mio padre, Roberto, per il costante supporto, anche quando forse non lo meritavo.
Senza voi la Terra non ruoterebbe intorno al Sole, semplicemente grazie.*

A me stessa, alla mia crescita. A ciò che ero, a ciò che sono, e a ciò che sarò.

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Introduction

The thesis aims to study indigenous peoples, with a particular focus on those of the Arctic region, and the impact that climate change – whose consequences are increasingly evident and clear – has on the enjoyment of their human rights. Millions of people are already suffering from the catastrophic effects caused by climate change. Global warming and its effects on the globe are now widely acknowledged, and with it comes worry about the damage it is causing and will continue to do to human rights, exacerbating already existing inequities. Its effects will continue to grow and worsen over time, creating great hardship for current and future generations.

The main topic of this work concerns the action of the indigenous peoples of the Inuit, who live mainly in Canada and Alaska, and the Petition that they have brought to the Inter-American Commission on Human Rights to denounce the United States that through their grasping greenhouse gas emissions, have violated the fundamental rights of the Arctic people. The thesis is divided into five Chapters, each dealing with a different yet complementary aspect of both indigenous peoples more generally and the violation of human rights caused by climate change.

The research questions sought to be answered are diverse. Among these, for instance, what defines indigenous peoples? How does climate change violate the fundamental rights of Arctic indigenous peoples? What are the difficulties in determining a State's responsibility for human rights violations? What are the challenges of engaging in human rights-based litigation?

The first Chapter aims to investigate the issues of indigenous peoples in its generality. They are vibrant communities with histories dating back thousands of years, who are still struggling to obtain fair recognition and protection. The characteristics that distinguish them, namely historical continuity with pre-colonial societies¹, the strong ties to the surrounding territories and natural resources, distinct social, economic or political systems, peculiar language, culture and beliefs, constitute uniqueness that must be protected and safeguarded. In this first part will be reconstructed the historical roots of the first indigenous peoples, and will be outlined the peculiar characteristics previously stated, in particular cultural diversity and ancestral relationship with the territory where they live. These elements will constitute the *fil rouge* of the entire elaboration of the work.

The interest in delving further into the difficulties and issues of indigenous peoples' protection – from an international legal perspective – has increased dramatically in recent years. Chapter two will focus on this very aspect. This phenomenon may be interpreted in light of important changes that have placed a premium on indigenous peoples' protection, frequently leading to tight collaboration in the implementation of international and national norms in

¹ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007.

order to better safeguard these communities. The rationale for this emphasis is due to the unique nature of indigenous peoples' claims to rights. It should be recognized, however, that the legal framework protecting indigenous peoples' rights is very new. It is based on a number of important international agreements, e.g. the Convention on Indigenous and Tribal Peoples and the UN Declaration on the Right of Indigenous People. Thus, the preservation of indigenous rights is founded on some international norms and principles. These normative instruments are then also accompanied by regional legislation and broader normative instruments, which while not focusing on protecting the rights of indigenous minorities, are concerned with protecting human rights in general.

The third Chapter contains an examination of the indigenous people featured in this discussion: the Inuit. This indigenous community, native of the coasts of America, distributed from Greenland to Alaska to Canada, has cultural peculiarities that define its existence. It is for this reason that, in light of the violations that will be presented later, it is necessary to frame the indigenous people from a historical and cultural perspective, trying to deepen the peculiar features that define them. The customs of the Inuit are outlined by their connection to the land, which is increasingly threatened by external forces: climate change, first and foremost, destroys their natural environment, going to undermine the survival of the places that keep the Inuit alive. Without the Arctic environment, such as it is, the life of this indigenous community ceases to make sense.

The fourth Chapter forms the central body of the entire work. It is critical to assess the substance of the Inuit Petition filed to the Inter-American Commission on Human Rights against the United States in 2005. It should be noted that the phenomenon of climate change litigation, i.e. court cases in which the issue of climate change is brought before the judges, has been gaining popularity since the last decade. The use of a human rights-based approach, which is built on the assumption that human rights are a means to contribute to human development just as development is a means to ensure the effective and lasting enjoyment of human rights, constitutes the motivational basis of this Petition. The Inuit litigation will be studied to determine the correlation between human rights violations and climate change as it relates to the indigenous Inuit ecosystem. Along with this will be presented data on global warming in the Arctic region, where its effects are felt more than in other places in the world. The timeframe that will be considered spans from the year 2000 until now, 2021. The predictions made by the experts will turn out not to be encouraging. After that, it will be possible to understand how three fundamental rights of the Inuit presented in the Petition – the right to benefit from culture, the right to subsistence and the right to life – are violated by climate change. The outcomes of the application to the Inter-American Commission will then be revealed, with the goal of determining whether mistakes and failures could be found.

The resonance achieved by the 2005 Petition opens the door to the last Chapter, the fifth. It investigates exactly what happened after the Inuit

application was filed. Sixteen years have passed, and many things have changed, most notably the world community's reaction to the climate catastrophe. It is clear that to date the global warming emergency is the biggest and most difficult challenge to face in terms of response to the phenomenon. The presentation of the Petition by the indigenous Arctic Athabaskan people in 2013 also to the Inter-American Commission on Human Rights will be the example, for the purposes of this thesis, that the climate issue related to human rights violations is an issue more compelling than ever. This relationship, confirmed to date, has been studied and observed in all developments since 2005. However, the problem that remains to be solved is how to combat and counter human rights violations by global warming. According to the human rights-based approach, development cooperation must aim at promoting and protecting rights, that is, guaranteeing access to goods and freedoms in the medium and long term, and not simply their immediate and contingent availability. The human rights-based approach will be analyzed more specifically, seeking to outline its shortcomings and limitations in addressing the climate crisis.

Chapter I

Who are Indigenous People?

This first Chapter aims to introduce the main characteristics of indigenous peoples, from their definition, which although not univocal, sees different interpretations by the international community. It is necessary, in order to fully understand the main subject of this paper, to determine the historical roots of indigenous peoples, the pre- and post-colonial period and how, in particular, the Arctic indigenous peoples were born. Next, it is important to study the features that most define these communities: cultural diversity and relationship to land and territory.

1.1 The term ‘Indigenous People’ under International Law

The changes and subsequent developments that have come gradually within the international order have allowed us to think of the term ‘indigenous people’ as those peoples who have maintained throughout history their attachment to their native land, playing a role apart from the global historical evolution². These are indigenous peoples who have struggled for self-determination, setting as their goals particular historical visions of human progress in very specific social and political contexts. Over the centuries, indigenous people have struggled for the affirmation of their identity as differentiated peoples, their language, their particular patterns of life, millennial knowledge and for their own cosmogony. To this day, indigenous peoples fight to maintain all of these elements. These characteristic aspects of the communities have been legitimized through the particular political, social and economic indigenous peoples’ organizations and through international forms of aggregation, constituting the common element of all indigenous peoples of the world. Each of these features has contributed to the affirmation of a strong cultural identity, which finds its essence and legitimacy in the management and use of the resources of the territories inhabited, preserved and handed down to indigenous peoples over the centuries. The organization and control of natural resources are elements inherent to the historical experience of self-determination itself, which gives indigenous peoples legitimacy over these to all intents and purposes³.

² TAULI-CORPUZ, ENKIWE-ABAYAO (2010).

³ *Ibid.*

The struggle that indigenous peoples are forced to endure is essentially posed by globalization and the need to conform to it. Not to mention the continuous contrast with civilization that imposes rules and restrictions to which indigenous people are not accustomed. Indigenous peoples, as mentioned above, continue to struggle in order to assert and keep alive their identity, language, traditions and lifestyles. However, the maintenance of these elements is disturbed by climate change, that, through its effects, is undermining the survival of these communities, putting their human rights at risk.

All the peculiarities that characterize indigenous peoples, including the rights that derive from such identification, are protected and safeguarded by international law, which provides a legal definition of who is an indigenous group. Because of the complexity of these characteristics, extremely different from people to people, the international community has not adopted a single definition, because it would have run the risk of excluding some indigenous communities from the description. The birth of the term dates back to just over fifty years ago and is therefore very recent.

The definition of 'indigenous people' is guaranteed through several instruments that provide a clear and concise definition, that derive both from literature-doctrine and international law. The chief sources in which they are described are: (1) Martinez Cobo's understanding of the term, which is the generally accepted definition of indigenous people, but believed to be an independent expert's definition; (2) the definition provided by the World Bank (WB) in the document Operation Policy 4.10 of 2005 – later updated in 2013 – which is not a binding source of international law. Nonetheless, the term used by the WB in its day-to-day work is being embraced by affected states, thus making it significant⁴. (3) The International Labour Organization Convention No. 169, which is a truly binding source of international law.

Indigenous peoples have been successful in setting up a platform at the United Nations. Indeed, in 2000, a United Nations Permanent Forum on Indigenous Issues (UNPFII) was established, representing an advisory body to the Economic and Social Council. The Forum's stated objective is to deal with issues concerning indigenous peoples, with special focus on economic, social, cultural, environmental and human rights aspects. While the UNPFII began its action in 2001, the Special Rapporteur on the Rights of Indigenous Peoples began to act as a guarantor of the rights of these communities. In 2007, the Expert Mechanism on the Rights of Indigenous Peoples was established. It serves as an advisory body to the United Nations Human Rights Council. From a legal perspective, however, one element that marks all of these efforts is that they have no direct enforceable consequences in international law.

What is legally-binding at the level of international law is the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which was adopted by the General Assembly in 2007 with the approval of 143 States, while fifteen states abstained or voted against the Declaration. Although it is

⁴ MORTENSENA, BARTENB (2016).

adopted in a resolution of the General Assembly, it is the only globally applicable document directed specifically at the protection of indigenous peoples. The Declaration, which will be extensively discussed in Chapter II, is far-reaching, with over thirty provisions on material rights; however, some of these reaffirm general human rights. UNDRIP aims to protect the unique characteristics that distinguish indigenous peoples. These features, which are cultural, social, economic and even political, encompass most of the elements that define an indigenous community's way of life. While the Declaration is one of the most relevant legal instruments for these populations, it does not contain a definition or description of the term indigenous people. This fact has been complained by different States where indigenous populations live⁵; however, in 2004 the Secretariat of the Permanent Forum on Indigenous Issues concluded that there is no universal definition needed⁶. The lack of a widespread definition to date is accepted as fact.

In order to be able to give a real definition to the term indigenous people, some profiles have been drawn on the peculiarities of these populations. One example among all is an important work dated 1986 entitled *Study on the Problem of Discrimination against Indigenous Populations*, drafted by the Special Rapporteur Jose Martinez Cobo, who has provided an accurate definition of the term 'indigenous people'. Specifically, paragraph 379 of the study, in Part III, reads as follows:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems”⁷.

Cobo presented subjective and objective criteria that must be met in order for the description to be matched. The subjective element focuses on self-identification which has two aspects. First, the group must see itself as distinct from those parts of society that are now predominant in all or part of the territory⁸. Second, the group must have a desire to preserve its distinctive identity and culture, which implies a conscious choice on the part of the group⁹. Martinez Cobo thus introduces a temporal aspect. He believes in the

⁵ DAVIDE (2007).

⁶ UN Doc. PFII/2004/WS.1/3 section 8, Secretariat of the Permanent Forum on Indigenous Issues, January 2004, *The Concept of Indigenous Peoples*.

⁷ UN Doc. E/CN.4/Sub.2/1986/7/Add.4, sections 379–382, J.R. Martinez Cobo, 1986, *Study of the Problem of Discrimination against Indigenous Populations*.

⁸ MORTENSENA, BARTENB (2016).

⁹ *Ibid.*

value of the past in order to determine what should be kept and preserved for future generations. The objective elements concern aspects that can be observed from the outside. The most significant element within the contribution made by Cobo is the status of forming a non-dominant part in society. Usually in looking at the domination of a society it is thought of possessing political power and therefore having the ability to blunt and change the society itself¹⁰. The second objective element that distinguishes this definition is historical continuity. It is identified with the link to pre-colonial and pre-invasion societies. Martinez Cobo has tried to identify the meaning of historical continuity. It can be demonstrated in several ways. One of these includes the relation to culture which, according to Martinez Cobo, includes religion, the living arrangements of a tribal community, the lifestyle, the livelihoods, and the occupation of the lands of one's ancestors¹¹. The description provided by Martinez Cobo offers a comprehensive definition of an indigenous population that emerges more clearly once other definitions of the term are being considered.

Just as Martinez Cobo, the World Bank and the International Labour Organization have also sought to provide a fair and equitable definition of indigenous peoples. Both organizations deal with indigenous communities, which is why their approaches are considered relevant.

The World Bank, among its various tasks, also deals with indigenous peoples in order to be able to guarantee them a fair process of determination of their future. The WB provided an initial definition of indigenous people in the document Operation Policy 4.10 in 2005, the version was later updated in 2013¹². The relevance of this description is generally accepted by States. Its major weakness is the fact that it does not emerge from a primary source of international law, as indicated by Article 38¹³ of the Statute of the International Court of Justice (ICJ) of June 26, 1945. Operation Policy 4.10 lists four points that must be satisfied to qualify as an indigenous people. As in Martinez Cobo's description, OP 4.10 comprises subjective and objective elements. First, group members recognize a special indigenous identity¹⁴. Second, the group has an indigenous language¹⁵. Third, the group has

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Operation Policy 4.10, World Bank, July 2005, rev. April 2013, OP/BP 4.10, no. 4, *Indigenous Peoples*.

¹³ Statute of the International Court of Justice, International Court of Justice, June 26, 1945, Article 28: The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply: a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states; b. international custom, as evidence of a general practice accepted as law; c. the general principles of law recognized by civilized nations; d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

¹⁴ Operation Policy 4.10, World Bank, July 2005, rev. April 2013, OP/BP 4.10, no. 4 (a), *Indigenous Peoples*.

¹⁵ MORTENSENA, BARTENB (2016).

traditional cultural, economic, social, or political institutions¹⁶. Fourth, the group has a connection to the land of its ancestors as such and to the natural resources that belong there¹⁷. The conditions set out in the World Bank definition can be met to varying degrees¹⁸, which allows for a flexible application of this description. At the same time, it must be considered that it meets most of the elements provided in Martinez Cobo's definitions and that of ILO Convention No. 169.

ILO Convention No. 169 is one of the very few treaties on indigenous peoples thus should be considered vital to the definition of the latter. The most controversial and weakest point of the Convention relies in the number of parties that took part to it: only twenty-two States have chosen to ratify ILO Convention No. 169.

The focus of this work is on the Arctic peoples, particularly the Inuit. Denmark is the only State among those who have ratified this Convention, in which indigenous Arctic peoples live. The definition, therefore, is legally binding to arctic indigenous peoples who live in Greenland. Norway, on the other hand, is the only coastal State in the Arctic Ocean to have ratified the ILO Convention.

According to Article 1, the Convention applies to:

(a) "The tribal peoples of independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is governed wholly or partly by their own customs and traditions or by special laws or regulations;

(b) the peoples of independent countries who are regarded as indigenous because of their descent from the peoples who inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the definition of the present State boundaries and who, regardless of their legal status, retain some or all of their social, economic, cultural and political institutions.

2. Self-identification as indigenous or tribal shall be considered a fundamental criterion in determining the groups to which the provisions of the present Convention apply"¹⁹.

The temporal aspect emerges within the enunciation of the quoted provisions. It is interesting to note that there is no direct requirement to be descendants of the very first inhabitants of a particular territory or land. The requirement on which the article is most pronounced is more concerned with ancestral connections to the group present at the time of colonization or occupation²⁰.

¹⁶ *Ibid.*

¹⁷ Operation Policy 4.10, World Bank, July 2005, rev. April 2013, OP/BP 4.10, no. 4 (b)–(d), *Indigenous Peoples*.

¹⁸ Operation Policy 4.10, July 2005, OP/BP 4.10, no. 4.

¹⁹ International Labour Organization Convention No. 169, 1989, C169, Part I, General Policy, *Indigenous and Tribal Populations Convention*.

²⁰ MORTENSENA, BARTENB (2016).

Comparing the definitions provided by Martinez Cobo, the World Bank and ILO Convention No. 169, it emerges that, while the one provided by Cobo may be the most comprehensive, all three emphasize essentially the same elements. The first is the historical continuity with the groups present at the time of colonization; the second is the existence of traditional institutions which heavily implies the presence of modern State structures; the third is the diversity that distinguishes them from other peoples; the fourth is the continuity with the past as a desire to preserve the identity of indigenous people in the future²¹.

1.2 Historical background of Indigenous People

Self-determination of indigenous peoples inevitably has a historical connotation that stems from the colonial experiences of Europeans. In this sense, the connection is mainly with the historical practices of the Americas and some areas of the Pacific. However, this same direct link is lessened if the peoples of Asia and Africa are taken into consideration²². The Western historical experience with indigenous peoples has a common matrix that can be traced back to classical times. The Greeks called those who were unable to speak their language *barbaros*, which literally means ‘stutterer’. Starting from that historical period, the opinion of Westerners began more and more to attribute to the indigenous condition a connotation of inferiority. These individuals were not recognized for the means and culture they possessed. In the late Middle Ages, with the strong influence of Christianity, the lands beyond Europe were considered as no man’s territory and therefore the native inhabitants of those domains, precisely because they were not believers, could not exercise any rights over them. It was the Pope who could have the latter at his disposal. The history of the second half of the 15th century, a period of intense colonial activity, was characterized by the issuing of many papal bulls aimed at providing sovereign title to these unexplored lands. For instance, the bull *Dum Diversas* of 1452, the bull *Romanus Pontifex* of 1454, the bull *Aeternis Regis* of 1481 and the bull *Inter Coetera Divinae* of 1493 were all aimed at granting rights to the sovereigns of Europe on the lands conquered outside the old continent²³. In particular, two papal bulls were the object of strong criticism and disapproval: the bull *Dum Diversas* and the bull *Romanus Pontifex*, issued in 1452 and 1455 by Pope Nicholas V. The first one decreed the right to kill, annihilate, capture and conquer all those of non-Christian faith, judged as enemies of Christ. The Christian kings, authorized by the Pope, acted by occupying the lands and possessions, forcing the people of the

²¹ *Ibid.*

²² COSSIGA, TAULI-CORPUZ (2012:13).

²³ *Ibid.*

places of conquest to slavery²⁴. The bull *Romanus Pontifex*, on the other hand, justified the numerous attempts to christianize the infidels. In it, in particular, the Portuguese exploration and conquest of the African Atlantic coast was encouraged and blessed. In the context of this expansion, the Pope urged the appropriation of goods and people of the non-Christian populations encountered, even reducing them to *perpetuam servitutem*²⁵.

Thinking of indigenous peoples, the date 1492 comes to mind: when Christopher Columbus reached the island of San Salvador in the archipelago of the present-day Bahamas. The people who already lived there were indigenous. The following decades, as history tells, led Europeans to a frenzied exploration of the American continent and especially of its southern territory, with the consequent encounter of some of these peoples. As has already been pointed out, for the Europeans of the late Middle Ages and early modern era, indigenous peoples represented an inferior race. Their culture lacked the sensitivity to respect for other civilizations. Columbus himself is described in literature as a man who was attentive to the natural phenomena he observed, and this is documented in the diaries he kept in connection with his travels around the new world. The indigenous peoples the explorer encountered were also described as elements of the landscape and therefore only in this sense they were worthy of being narrated and described²⁶. A passage from Columbus' diary is meaningful to quote, dated December 21, 1492 which reads: "[...] although naked, the Indians seem more like men than animals"²⁷. What seems evident is the detachment from the human figure of the natives. The indigenous person is not considered a human being on a par with a European and this inferiority is justified both in terms of cultural traits, which in reality are not recognized, and physical traits.

The historical experience of indigenous peoples cannot be analyzed univocally in its entirety. Because of the different social, cultural and geographical situations, it must inevitably encounter a type of analysis that highlights its peculiarities. In this sense, therefore, in the course of this work, it has been chosen to present in a more careful way, the main historical features that have had as protagonists the indigenous peoples of the Arctic.

The Arctic region today is inhabited by several and different indigenous communities, unevenly distributed over various national territories. There are vast cultural, historical and economic differences among the various peoples that distinguish them from one another. The region is inhabited by 4 million people of which about 10% are indigenous people, approximately 500.000 individuals²⁸. They are spread over 3 continents, 8 States and almost 30 million square miles²⁹.

²⁴ *Ibid.*

²⁵ Bullarium Romanum, Popoe Nicholas V, 7 February 1447, vol. 5, 1960, pp. 111-115, *Bollarium Romanum*.

²⁶ TODOROV (1999: 41).

²⁷ TODOROV (1999: 43).

²⁸ WRONSKA (2014).

²⁹ *Ibid.*

The first humans to colonize the Arctic arrived about 15.000 years ago, crossing from Siberia to Alaska via the Bering land bridge³⁰. The North American part represented one of the last parts of the world to be colonized by humans. According to archaeological remains that have been found, these early communities managed to survive extreme climatic conditions, characterized by glaciations and climate change. The exploitation of the means provided by nature, both flora and fauna, allowed them to shelter from these extreme living conditions and adapt with time. Overall, there were three migratory waves in the North American Arctic. The first occurred about 15.000 years ago following the opening of the Bering Bridge³¹. The other two followed about 10.000 and 5000 years ago³². Over time, these migratory flows have helped colonize and settle the Americas via coastal and inland migration routes. Before the arrival of the Europeans, which began from the 15th century onward, these ancient peoples intermingled with each other. Scholars have found evidence of what they call early American DNA in several indigenous groups living in Central and Latin America³³.

The first Europeans to colonize and settle in the Arctic were mostly Nordic. They came from Norway and decided to land in northern Scotland and then travel to Iceland. These settlers already from the second half of the 9th century were recorded on the edge of Greenland where they settled creating small realities that resisted for about 500 years. Among the major Nordic explorers, it is remarkable to remember Erik the Red³⁴. Famous Norman navigator, so called because of the bright color of his hair, became notorious for his feat of reaching Greenland, where he founded one of the first camps. He was particularly interested in the possible settlements present in the flowers of the southwest coast of Greenland. The name he chose "Greenland" was intended to make people leave Iceland to move and inhabit the new land.

For the next three centuries, the colonization process was led by two settlements: the eastern outpost and the western outpost³⁵. According to scholars, approximately 3000 people went to settle in southern Greenland, where they built more than 400 farms. The life of these people was divided between agriculture and hunting, they created trade networks based on the exchange of walrus ivory, furs, wool, whale and seal products³⁶. During the various colonization processes the Norse not only settled in Greenland, but also in the Arctic part of North America. These include the indigenous Thule and Inuit people, who represent the most important communities in the Canadian Arctic.

³⁰ *Ibid.*

³¹ DODDS, NUTTALL (2019:122).

³² *Ibid.*

³³ *Ibid.*

³⁴ Erik the Red (940 - 1007 approx.) reached around 985 the southern coasts of the island he called Grönland (Green Land), already touched about a century earlier by Gunnbirn Ulfsson, and established the first Norman colony. His name remained to the land placed over 70° of lat. N.

³⁵ DODDS, NUTTALL (2019: 123).

³⁶ *Ibid.*

In order to better study the indigenous population of the Inuit, who represent the case study treated in this research, it is interesting to observe the historical developments that have occurred in the area that they still inhabit and honor: the Central Sub-Arctic region of North America. With sub-arctic region is meant a set of territories characterized by a sub-arctic boreal climate and extremely low temperatures. According to the classification provided by Wladimir Köppen³⁷ it can be divided, by geographical area, in two distinct subclasses. The first includes in the Eurasian area the non-coastal Norway, Sweden, Finland and part of northern Russia. In North America this type of climate comprises Alaska and a fraction of Canada. The second subarctic climate includes the coldest places with trans-Siberian climate. They are mostly concentrated in eastern Siberia.

The Central Sub-Arctic region that extends from Hudson Bay and the Mackenzie River basin to the Rocky Mountains, is characterized by the presence of three great northern lakes: Athabaska, Great Slavey Lake and Great Bear Lake. The environment maintains a large number of lakes and streams and an extensive forest cover, but in the northernmost regions it gives way to the cold arctic tundra. The lifestyle of the people who inhabited these regions is basically based on hunting, fishing and collecting few edible wild plants. In the northern part of the *aream* between forests and tundra, fundamental for the subsistence of the communities, was the presence of large herds of caribou, which seasonally migrated from north to south, according to defined routes, which also determined the nomadism of the indigenous peoples of the area, who periodically met for collective hunts in the places of passage of the herds. Spiritual life and social organization were also rather simple, with small local bands, which maintained tenuous relationships and especially marital exchanges with neighboring ones, but without collective institutions, nor occasions for large ceremonial gatherings, or political or spiritual elites. Religiosity, however, was animistic and shamanic in character. In this area still live the descendants of one of the last migratory movements towards North America, the last one was that of the Inuit, since the 2000s. The Atapaskan who occupied this region, were the first to arrive around the 6th millennium B.C. from the Siberian regions, crossing Alaska and pushing south and east along the Yukon and Mackenzie directions. It was the Atapaskans who introduced the bow and arrow in North America, bringing it from the regions of Asia where this instrument was probably conceived. There is no certainty of the times and the ways of the colonization of the area, nor are there elements to reconstruct the most ancient history of these people, who have left behind very few traces of their past. An indication that can be drawn from the identification is in the southern and eastern part of the area, of a specific cultural pattern, defined as Thalteley, characterized by certain types of stone points and certainly attributable to the Atapaskan people.

³⁷ Wladimir Köppen was a Russian climatologist (1846 - 1940); he lived mainly in Germany, where he carried out almost all his long and intense scientific and operational activity. He is especially known for his organic classification of climates.

In this region, Europeans made their first appearance only after the middle of the 16th century, when the Hudson Bay Company³⁸ and other fur trading companies began to build a dense network of trading stations, inserting the natives in their system of economic relations. At that time, the indigenous peoples of the region were divided into a number of large ethnic and linguistic entities, without a precise tribal recognition, which then during the relationship with the Europeans, were further differentiated within them, for contingent reasons. Unsuitable for a real colonization, the region was less affected by the impact of the European penetration, and still today the indigenous, organized in small communities, constitute the majority of the inhabitants. These today are mostly engaged in defending themselves and their rights of hunting and fishing – which are still the main economic activities – from the profit aims of a mining exploitation, which could have catastrophic effects on the environment and traditional resources.

1.3 Cultural diversity

As it was possible to introduce through the different definitions of indigenous people, one of the main characteristics that distinguishes these peoples is the cultural diversity and uniqueness. It is useful, therefore, to start from cultural diversity that still exists among all indigenous peoples. The cultural, political, social and economic diversity that survives with the peoples, in spite of a system of increasing globalization, seems to be a wealth that can generate answers, if not solutions, to today's crises. These crises have different faces, affecting social, economic, political and ecological life³⁹. The existence, even today, of numerous indigenous peoples represents precisely a form of wealth in this sense. The cultural richness to which the existence of indigenous peoples contributes concerns many aspects of human social life and among these, certainly important are those of social and environmental values and sustainable development.

The terms culture and identity, which until now have been left in the background, require a separate examination, since they are related to the very way of life of these peoples. The first theorization of the term culture can be seen in the following definition: “culture in its broadest ethnographic sense, is that complex whole which includes the knowledge, beliefs, art, morals, law,

³⁸ Hudson's Bay Company is a company that occupies a prominent place in the economic and political history of Canada. It was incorporated in England on May 2, 1670 to seek a northwest passage to the Pacific, to occupy the lands adjacent to Hudson Bay and to carry on any trade with those lands that was profitable. It still exists as a trading company and is active in real estate, merchandising and natural resources, based in Toronto. It is the oldest stock merchandising company incorporated in the English-speaking world.

³⁹ COSSIGA, TAULI-CORPUZ (2012: 29).

custom, and any other skills and habits acquired by humans as members of a society”⁴⁰.

It should be emphasized that, even today, this definition has not lost its meaning and in fact has a more than current reference. It is therefore clear that the term culture also expresses the matrix from which derive inclinations and ways of acting, characteristic of a society.

The concept of culture is followed by the concept of cultural identification. It can be defined as “the understanding of recognizing one’s own cultural attributes-beliefs, values, practices, norms, traditions, heritages, and understanding how they do and do not reflect in one’s self”⁴¹. These cultural attributes are defined both internally and externally, as they are derived from personal choices and descriptions of other members of the society⁴². New generations of indigenous people are thus bound by the ideas of the past and present – those found in their traditional culture and those embedded in the dominant society⁴³. The outcomes of these processes, leading to a strong clarity of one’s identity and being, can be crucial to sustaining a healthy development.

With regard to the term identity, however, the question takes on more philosophical connotations. Indeed, there is no lack of overlapping reflections on this issue in different areas of study of the human sciences. An interesting analysis of the term is the one provided by the Italian scholar Carlo Tullio - Altan, who used to define identity “as the result of the combination of a series of elements and that on the whole he defines as *ethnos*”⁴⁴. These elements are the *epos*, that is the historical memory that gives the sense of belonging, the *ethos* that instead concerns the intimate acceptance of the rules that regulate the social life in which one is inserted, the *ghenos* that has a more sensory interpretation of the previous ones and that concerns the consciousness of being part of a whole that through the transitions generates an extra-temporal existence⁴⁵. Finally, the *logos* and *topos*, or the use of language and territory. Creating a strong cultural identity is especially essential in new generations of indigenous and other ethnic minorities who routinely deal with discrimination, racism, and prejudice⁴⁶. In the context of historical trauma due to colonization and discrimination, recognition of one’s cultural identity and the historical context itself can provide stabilizing resources for individuals to draw upon. In this way, a sense of belonging to indigenous culture creates and endows an identity structure in which individuals can contextualize themselves in relation to others, a larger shared context, and history. “The production of culture creates collective meaning, a perception of community through

⁴⁰ *Ibid.*

⁴¹ FERDMAN (1990).

⁴² WEXLER (2009).

⁴³ BAUMEISTER (1987).

⁴⁴ COSSIGA, TAULI-CORPUZ (2012: 30).

⁴⁵ COSSIGA, TAULI-CORPUZ (2012: 31)

⁴⁶ WAKEFIELD, HUDLEY (2007).

mythology and history and forms symbolic bases for ethnic mobilization”⁴⁷. For indigenous peoples, this turns into feelings of association, belonging, and drive.

Thus, cultural orientation and this historical foundation provide, for the younger generation and more broadly for indigenous people themselves, a sense of grounding, self-esteem, social connection and purpose. This strong sense of belonging also goes a long way to explaining why strong associations and various forms of cultural affiliation are created among indigenous people⁴⁸. For indigenous people, having a strong understanding of their past, present and future results in an easier sustained sense of connection and commitment to their future⁴⁹. That is why it has become an objective, also of the international community, to be able to preserve the richness of the cultural diversity of indigenous peoples, which guarantees their lives and therefore their upcoming.

1.4 Land and territory: holistic conception and source of life

A very important element related to the existence of indigenous peoples and their way of life is undoubtedly their relationship with the elements of land, territory, and natural resources. The connection with resources and territories is fundamental to the identity of these peoples and goes beyond a mere economic conception. This correlation is the basis for the sustenance of indigenous communities through traditional subsistence methods⁵⁰. These aspects play a fundamental role in the lives of indigenous groups, because they are given a spiritual significance that goes far beyond monetary value⁵¹.

The use of the earth’s environmental resources is part of this conception of territory and natural resources that serve subsistence, but in a perspective of reciprocity: one takes and gives back to the earth. The land and the territory are taken care of because they are an integral part of life, they are the mother that nourishes and must be nourished. From this perspective, the way of using resources is grounded on wise strategies and knowledge based on millenary experiences. It is for this reason that communities have been able to manage environmental sustainability in an optimal way, passing on their knowledge for generations⁵². Thanks to a cultural handing down from generation to

⁴⁷ NAGEL (1994).

⁴⁸ WAXLER (2009).

⁴⁹ *Ibid.*

⁵⁰ TAULI-CORPUZ, ENKIWE-ABAYAO (2010).

⁵¹ Thematic Paper towards the Preparation of the World Conference on Indigenous Peoples’ Issues, United Nations Inter-Agency Support Group on Indigenous Peoples’ Issues, June 2014, New York, *Lands, Territories and Resources*.

⁵² Resource Kit on Indigenous Peoples’ Issues, Secretariat of the United Nations Permanent Forum on Indigenous Issues/DSPD/DESA in cooperation with the International Labour Organization, the United Nations Children’s Fund, the United Nations Development

generation, indigenous peoples have managed to survive and adapt to their surroundings, despite the favorable or unfavorable conditions in which they may find themselves.

The life of the community itself depends heavily on carrying out land-related activities. The preservation and protection of land and environment is essential for the development of a model of life that is based mainly on hunting, fishing, gathering and cultivation activities. For these reasons, the protection of land rights, territories, resources, and traditional means of subsistence of peoples is a decisive element for the continued existence of indigenous communities as distinct peoples. From this perspective, it is easy to understand how the issues of poverty reduction, rights to land and territories and commitment to sustainable development are issues that have been given priority attention by international actors⁵³.

Land and territory not only represent a resource for these populations but are the basis of the very existence of the communities. Indeed, the territory is the custodian of the past, present and future, to be transmitted to coming generations; it is the essence of the society in which peoples live⁵⁴. The holistic vision that indigenous peoples attribute to the territory is in stark contrast to that of the West with regard to the concept of territory and territorial rights that derive from it⁵⁵. In fact, from a holistic perspective, indigenous peoples have a relationship with the territory in which they live, but also with the surrounding territory, whereby the individual is one of the elements that make up the territory in which he or she lives.

Not only does land represent for peoples a cultural and social element linked to their very identity, but it is also the basis of their means of sustenance and survival. The typical subsistence activities such as hunting, fishing and pastoralism, which depend on the precarious and delicate environmental balance, are undermined by the threats of climate change, which are altering the ecosystem, and by the expropriation of land that peoples experience every day⁵⁶. For instance, the African Commission on Human Rights and Peoples with the International Work Group for Indigenous Affairs, to which indigenous peoples have turned to defend their rights, has expressed its support for the defense of this balance. The Commission stated that: “[...] the close relationship indigenous people have with the land must be recognized

Programme, the United Nations Population Fund and the Secretariat of the Convention on Biological Diversity, August 2008, New York, *Resource Kit on Indigenous Peoples' Issues*.

⁵³ Thematic Paper towards the Preparation of the World Conference on Indigenous Peoples' Issues, June 2014.

⁵⁴ DE CHAVEZ, ENKIWE-ABAYAO, TAULI-CORPUZ (2010 :142).

⁵⁵ Thematic Paper towards the Preparation of the World Conference on Indigenous Peoples' Issues, June 2014.

⁵⁶ United Nations Declarations on the Rights of Indigenous Peoples, African Commission on Human Rights and Peoples in collaboration with the International Work Group for Indigenous Affairs, 2010, Doc A/61/295, *Advisory Opinion of the African Commission on Human and Peoples' Rights on the United Nations Declarations on the Rights of Indigenous People*.

and understood as the fundamental basis of their culture, spiritual life, integrity and economic survival”⁵⁷. It further adds that:

“For indigenous communities, the relationship with the land is not merely a matter of possession and production but a material and spiritual element that they must fully enjoy, including the preservation of the cultural bond in order to be able to transmit it to future generations”⁵⁸.

Related to this aspect is that of territorial claim. This claim has two dimensions: one is expressed in the demand for use of natural resources, while the other concerns control of the political, social, cultural and economic processes that ensure the continuity of resources and the cultural continuity of the human group. Therefore, territory takes on a further meaning, that of a place of resources and jurisdictional *locus* where all those collective rights held by indigenous peoples are developed⁵⁹.

In addition, attention must also be paid to the fact that communities in most cases find themselves in highly disadvantaged situations in terms of access to financial services. Access to markets is also unregulated and peoples experience difficulties in their economic capacity due to limitations arising from a partial enjoyment of rights such as the right to property and control over their territories. The challenges that these peoples face are still numerous and concern the lack of precise legislation that can protect communities from the loss of territories, unequal distribution of land, lack of public and private investment, conflicts in which communities can be involved. In addition, the erosion of resources and territories, the loss of traditional means of subsistence and pressures on traditional economic systems are leading to substantial changes in the life patterns of indigenous communities which risk, therefore, leading to an extinction of those cultural and social values which for centuries have been the basis of traditional lifestyles of these peoples⁶⁰.

Concluding remarks

This introductory chapter was intended to begin observing indigenous peoples. In particular, the study first focused on the definition of ‘indigenous people’. Doctrine as well as international law have provided definitions, such as that of the scholar Martinez Cobo, that of the World Bank with its latest update in 2013 and finally that of the International Labour Organization in the Convention No. 169. In addition, it has been possible to observe the historical

⁵⁷ African Commission on Human Rights and Peoples in collaboration with the International Work Group for Indigenous Affairs, 2010, Doc A/61/295, at 41.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Resource Kit on Indigenous Peoples’ Issues, August 2008.

development of indigenous peoples, starting from the time of the Greeks, up to the present day. Since ancient times, indigenous peoples have been attributed the connotation of inferiority, a sentiment that carried on until modern exploration began in 1492 with Christopher Columbus. Despite this, the elements that distinguish indigenous peoples – cultural diversity and the holistic view of the earth – have not been lost over the millennia. On the contrary, these features seem to show a strength of resistance to be able to face external threats.

Chapter II

Indigenous People sources of law: instruments over their land

In recent years, the interest in deepening the problems and issues which revolve around the protection of indigenous peoples from the international legal point of view, has grown exponentially. This phenomenon can be explained in view of significant developments that have given particular importance to the need for protection of indigenous peoples, often proceeding to a close coordination in the application of international and national standards in order to protect these communities more effectively⁶¹.

The reason for this emphasis lies in the particular character of the rights claimed by indigenous peoples. One may think, for instance, to the importance of belonging to a particular community, the principle of self-determination or territorial issues, the protection of cultural and natural resources, as well as property rights. These and many others constitute the juridical patrimony in order for survival and equality to be guaranteed to these peoples.

However, it should be noted that the regulatory framework to protect the rights of indigenous peoples is relatively recent. At the international level, it is based on a number of important international agreements (e.g., the Convention adopted by the International Labor Organization on June 27, 1989 on indigenous and tribal peoples) and on various soft law instruments formed mainly through the work carried out within the framework of the UN, as confirmed by the recent Declaration of the General Assembly of September 13, 2007, and other international organizations. Thus, from the normative point of view, the protection of indigenous rights is based on some international norms and principles specifically addressed to the protection of these peoples, but also on regional norms that are complemented by other international norms regarding human rights and the protection of minorities.

On the basis of what has just been recalled, the chapter will address the indigenous question and the protection of human rights by providing a general normative framework for the international protection of indigenous peoples, to provide insight into some of the fundamental issues for the livelihood of these peoples. The first part will analyze two normative instruments not directly dedicated to the protection of indigenous peoples, but which focus on human rights in general. In the second part will follow a focus on the main international instruments that aim to defend the individual and collective rights of indigenous peoples.

⁶¹ PUSTORINO, PALMISANO (2008).

2.1 The American Declaration of the Rights and Duties of Man and the American Convention on Human Rights

This paragraph is dedicated to the inter-American system of promotion and protection of human rights of the Organization of American States (OAS) that represents the world's oldest regional organization⁶². Its idea took shape as early as the First International Conference of American States, which was held from October 1889 to April 1890. On that occasion, the International Union of American Republics was created, which laid the foundations for the birth of an inter-American system, the oldest international institutional system. The Organization of American States sanctioned its birth in 1948 with the signing in Colombia of the OAS Charter, which went into effect in 1951.

Since its adoption, the OAS has aimed to provide legal instruments to protect the human rights of these States. Thus, the American Declaration of the Rights and Duties of Man was adopted in 1948, followed by the American Convention on Human Rights in 1969. These instruments are characterized by a generality in the delineation of human rights. Later on, these regulations were accompanied by the creation of specific structures aimed at the safeguarding and protection of human rights. Among them is the Inter-American Commission on Human Rights (IACHR), created in 1959, and the Inter-American Court of Human Rights, which entered into full swing in 1979⁶³.

The inter-American system strongly believes in the attention paid to the rights of indigenous peoples, both with regard to the protection of land and natural resources, but more generally to the safeguarding of all fundamental rights⁶⁴. The inter-American jurisprudential system in recent years has been able to build a structure of protection of the rights of indigenous communities based on the protection of common property over their lands, territories and natural resources⁶⁵. Within it, the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights encapsulate the protection of indigenous peoples' territorial rights, the former in Article XXIII stating that: "Every person has a right to own such private property as meets the essential needs of decent living and helps to maintain the dignity of the individual and of the home"⁶⁶. While the American Convention says in Article 21:

1. "Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

⁶² Organization of American States (OAS) site, Who we are.

⁶³ PUSTORINO, PALMISANO (2008).

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ American Declaration of the Human Rights and Duties of Man, Bogotá, May 2, 1948, Article XXIII.

2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law.
3. Usury and any other form of exploitation of man by man shall be prohibited by law⁶⁷.

It should be noted, however, that these provisions, and these instruments more generally, are not expressly entitled to the protection of indigenous or tribal communities. Indeed, the Inter-American Commission on Human Rights and the Inter-American Court insist on pointing out that both the Declaration and the Convention “protect the rights that these peoples and their members have with respect to their land and natural resources, that is, over their territories”⁶⁸. The American Declaration of the Rights and Duties of Man, while not legally binding as a declaration, the principles it contains represent a legal obligation also at the level of customary international law. The formation of a customary norm presupposes two elements: an objective or material element, that is, the constant repetition over time of a given behavior by the generality of subjects, and a subjective or psychological element, that is, the conviction that that behavior conforms to law or necessity⁶⁹.

One element that must be taken into account is the fact that the American Declaration is constantly evolving. Indeed, it must take into account relevant developments in both international law and human rights, but also all other norms of international law that are directly applied to member States⁷⁰. The Inter-American Commission on Human Rights is therefore obliged to take into account developments in changes in human rights as enunciated in treaties, customs and other relevant sources of law, such as the American Convention on Human Rights “which, in many instances, may be regarded as an authoritative expression of the fundamental principles set forth in the American Declaration”⁷¹.

The American Declaration addresses the norms and principles that affect the lives of indigenous peoples. In particular, the provisions are “applied with due regard to the particular principles of international human rights law that govern the individual and collective interests of indigenous peoples”⁷². These

⁶⁷ American Convention on Human Rights, San José, November 22, 1969, Article 21.

⁶⁸ Indigenous and Tribal’s People Rights over their Ancestral Lands and Natural Resources – Norms and Jurisprudence of the Inter-American Human Rights System, Inter-America Commission on Human Rights, December 30, 2009, OEA/Ser.L/V/II. Doc. 56/09, *Indigenous and Tribal’s People Rights over their Ancestral Lands and Natural Resources – Norms and Jurisprudence of the Inter-American Human Rights System*.

⁶⁹ Enciclopedia Treccani Online, Consuetudine. Diritto Consuetudinario, Rome, available online.

⁷⁰ Indigenous and Tribal’s People Rights over their Ancestral Lands and Natural Resources – Norms and Jurisprudence of the Inter-American Human Rights System, OEA/Ser.L/V/II. Doc. 56/09.

⁷¹ *Ibid.*

⁷² IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann, December 27, 2002, par. 163. I/A Court H.R., *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, in Indigenous and Tribal’s People Rights over their Ancestral Lands and Natural Resources –

principles conform to international law and focus on the protection of property, the maintenance and preservation of culture, the right to land and territory, and the conserving of the natural resources. These norms must conform to the principles of international law. For this reason, they enjoy adequate regard in the normative context of the protection of indigenous communities⁷³.

Regarding the American Convention on Human Rights, several provisions protect the rights belonging to indigenous people. Among these is Article 21⁷⁴, which defends the right to property, and thus the protection of the land rights of indigenous and tribal communities. It must be remembered, however, that neither the American Convention nor the American Declaration provides an explicit reference of these rights specifically to indigenous peoples. For this reason, for instance, for Article 21, the IACHR together with the Inter-American Court “have used the general rules of interpretation set forth in Article 31 of the Vienna Convention on the Law of Treaties and in Article 29.b of the American Convention”⁷⁵. Article 29 of the Convention prohibits any kind of restrictive interpretation of the principles enshrined in the Convention itself. Consequently, the Court together with the Inter-American Commission understand the interpretation of Article 21 following the changes in the norms of international law that show as protagonists the indigenous peoples; among these, the ILO Convention No. 169 and the Declaration of the United Nations represent the major normative sources. Furthermore, the Inter-American Court and the Inter-American Commission on Human Rights, in the inter-American context of human rights protection, apply the principle of effectiveness. It emphasizes that the distinctive characteristics that belong to the individuals of indigenous and tribal peoples, which define their cultural entity, must be given special attention to ensure “effective protection that takes into account their specificities, their economic and social characteristics, as well as their situation of special vulnerability, their customary law, values and customs”⁷⁶.

Norms and Jurisprudence of the Inter-American Human Rights System, OEA/Ser.L/V/II. Doc. 56/09.

⁷³ *Ibid.*

⁷⁴ American Convention on Human Rights, San José, November 22, 1969, Article 21: Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the cases and according to the forms established by law. 3. Usury and any other form of exploitation of man by man shall be prohibited by law.

⁷⁵ Indigenous and Tribal’s People Rights over their Ancestral Lands and Natural Resources – Norms and Jurisprudence of the Inter-American Human Rights System, OEA/Ser.L/V/II. Doc. 56/09.

⁷⁶ *Ibid.*

2.2 ILO Convention No. 169

The International Labour Organization (ILO) defines itself as a specialized agency that reports to and works closely with the United Nations. The only tripartite agency⁷⁷ in the UN system, it was created in 1919 through the Treaty of Versailles. It is composed of 187 member states, and its task is to establish labor standards, build policies, and create programs in order to foster work for all men and women⁷⁸. The Organization has been instrumental in providing important advances with respect to the promotion and recognition of the rights of indigenous peoples. Recognition of entitlements such as the right to land, religious practices, and the protection of natural resources have been recognized through the ILO by many states, which have not pursued the exclusion and marginalization of these communities, but rather their development⁷⁹. Although important steps have been taken in this direction, globalization is significantly affecting the preservation of culture of these peoples who risk not being involved in the correct way in the decision-making process. The ILO points out in one of its reports that “[...] although they represent only about 5% of the world's population, indigenous peoples account for almost 15% of the world's poor”⁸⁰.

The ILO's mandate began in 1920, dealing with the dilemma of indigenous and tribal peoples. Its work consists of leading member States to approve instruments that protect these peoples and make them visible. The means to achieve this goal are embodied in the provisions of the Indigenous and Tribal Peoples Convention No. 169 – also C169 – and the ILO has conducted various activities to advance the effectiveness of the principles it contains.

ILO Convention No. 169 is an international legally binding treaty. It represents the result of a consensus reached between ILO representatives on the issue of indigenous and tribal peoples and governments. It was finalized with the adoption by the International Conference (ILC) at its 76th session in 1989. It entered into force in 1991 and has been ratified by 22 States. The adoption of ILO Convention No. 169 was a response to the inadequacy of the previous ILO Convention No. 107 adopted in 1957. In the years, following the adoption of the latter, part of the international community noted that it was necessary to make some modifications to the text, in order to promote the principles of self-identification, cultural pluralism and autonomy of

⁷⁷ The ILO is unique among all organizations in the multilateral system in having a tripartite structure where representatives of governments, employers' organizations, and trade unions of member countries have an equal voice, and work together to adopt international labor standards and formulate international policies and programs that have an impact on the world of work and social policy.

⁷⁸ About the ILO, International Labour Organization, General Site.

⁷⁹ *Ibid.*

⁸⁰ State of World Indigenous People, United Nations Department of Public Information in collaboration with the Center for Indigenous Peoples' Autonomy and Development (CADPI), January 2010, DPI/2551/K, *State of World Indigenous People*.

indigenous peoples and in order to abandon the paternalistic vision adopted at that time towards these groups⁸¹.

In 1988, the first conference on the revision of ILO Convention No. 107 was held within the ILO, but one of the major criticisms of the process was precisely the fact that indigenous peoples were not allowed to take part in the conference⁸². In any case, at the end of the session for the revision of ILO Convention No. 107, some fundamental principles were established upon which the new treaty would be based. The terms “integration” and “assimilation” were to be eliminated; the need to ensure that it is the indigenous peoples themselves who decide and manage their own economic development and lifestyle, through their own institutions, was stressed. The perception of cultural superiority maintained in the 1957 text was to be abandoned⁸³. These principles are embraced in ILO Convention No. 169. The new vision recognizes the importance for indigenous peoples to maintain their own institutions, lifestyles and economic development, while preserving their cultural identity, language and religion, within the territories of the States to which they belong⁸⁴. The new Convention therefore aims to ensure respect for other cultures, traditional institutions, guaranteeing these peoples the right to protect the lands and resources that provide them with life, and the opportunity to pursue their development, based on shared objectives and priorities. Thus, the fundamental objective of the renewed Convention is to go beyond discrimination against indigenous peoples, seeking to involve them in different levels of decision-making on various issues, including health, education, security and more generally social rights.

The text of ILO Convention No. 169 can be divided into three sections. Part I which comprehends the general principles (Art. 1-12); part II includes substantive issues (Art. 13-32); land rights (Art. 13-19); employment and working conditions (Art. 20); vocational training, handicrafts and agriculture (Art. 21-23); social security and health (Art. 24-25); education and media (Art. 26-31); cross-border contacts and cooperation (Art. 32). Part III includes administration and general provisions (Art. 34-44).

The Convention applies to tribal peoples and indigenous peoples⁸⁵. Even if C169 provides elements that can be used to define the terms indigenous and

⁸¹ COBO (1987: 29).

⁸² BERMAN (1988:48).

⁸³ Report VI OIL, Partial Revision of the Indigenous and Tribal Populations Convention, Geneva, 1988, 75th session, Geneva, 1988, *Partial Revision of the Indigenous and Tribal Populations Convention*.

⁸⁴ International Labour Organization Convention No. 169, 1989, Preamble VI.

⁸⁵ International Labour Organization Convention No. 169, 1989, Article 1.1: “This Convention applies to: (a) 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; (b) peoples in independent countries who are regarded 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

tribal peoples, it should be noted that the Convention does not define these two groups. It only identifies certain elements that characterize them. With regard to tribal peoples, the following are mentioned as characteristic: traditional lifestyles, culture and ways of life different from the rest of society, social organization with its own laws⁸⁶. For indigenous peoples, essentially the same elements of distinction are mentioned, with one specification with respect to tribal peoples: indigenous peoples have maintained a continuity with their ancestors and live in the lands they inhabited before their arrival or invasion by outsiders⁸⁷.

The first innovation that the Convention of 1989 introduces with respect to that of 1957 and to the rest of the international instruments concerning indigenous peoples, is the criterion of self-identification as a fundamental parameter to establish the beneficiaries of the rights enshrined in the document. The C169 adopts an approach based both on the objective criterion based on the Convention, where a group that meets the requirements of Article 1 recognizes a person as part of the group itself; and on the subjective criterion – a person identifies himself as belonging to an indigenous group, or a people considers itself indigenous on the basis of the indications contained in the Convention. A second innovation, with respect to Convention No. 107 is found in the terminology used to define the subject of the treaty: from the use of “populations” to “peoples”. The term “peoples” would imply the right to self-determination in the international system⁸⁸. However, as specified in Article 1, paragraph 3: “The use of the term peoples in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law”⁸⁹. This clarification stems from the fact that the mandate of the ILO concerns economic and social rights, and it is therefore outside the organization’s competence to interpret the concept of self-determination politically. The Convention does not place any limits on the possibility of self-determination for these peoples and is compatible with any subsequent instrument guaranteeing this right⁹⁰. The term “peoples” reflects more incisively the distinct identity of these groups within a national society which is structurally and culturally different⁹¹, but despite the addition of paragraph 3 to Article 1, many States from the outset did not share this position and saw their territorial integrity threatened. The issue of the possible recognition of the right to self-determination became the main deterrent for the ratification of the Convention by many governments⁹². At the same time, representatives of indigenous peoples have expressed dissatisfaction for the

present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions”.

⁸⁶ International Labour Organization Convention No. 169, 1989, Article 1.

⁸⁷ *Ibid.*

⁸⁸ Fact Sheet No. 9/Rev.2, United Nations Office of the High Commissioner, Geneva, 2013, *Indigenous Peoples and the United Nations Human Rights System*, Paragraph 1.

⁸⁹ International Labour Organization Convention No. 169, 1989, Article 1.3.

⁹⁰ Fact Sheet No. 9/Rev.2, *Indigenous Peoples and the United Nations Human Rights System*.

⁹¹ Report VI OIL, Partial Revision of the Indigenous and Tribal Populations Convention.

⁹² SWEPTSON (1989).

opposite reason: they believe that their right to self-determination is compromised by the specification contained in paragraph 3 of Article 1 and define it as discriminatory to limit their right as “peoples” at the level of international law⁹³. In reality, the implications of Article 1 of the Convention certainly cannot limit the right to self-determination in the event that some peoples are holders of it; instead, it can have a positive effect in affirming in the international system the right of these groups to an independent existence with respect to the rest of the society of the state to which they belong⁹⁴.

Articles 2-12 of the Convention establish a series of general and transversal principles, such as the principle of responsibility for states to develop coordinated and systematic actions for the protection and promotion of the rights of these peoples, with their participation (Art. 2); the guarantee of fundamental human rights (Art. 3); the need for States to adopt special measures to safeguard the existence of indigenous individuals, their institutions, property, labor, culture and the environment in which they live (Art. 4). In addition, Article 5 protects the social, cultural, religious and spiritual values and practices of indigenous peoples. These must be recognized and protected, taking into account the problems they face both as groups and as individuals⁹⁵.

- (a) “the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;
- (b) the integrity of the values, practices and institutions of these peoples shall be respected;
- (c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected”⁹⁶.

Following the text of ILO Convention No. 169, the principle of consultation must be applied in relation to each provision contained in the treaty, as stated in Article 6.1:

- “In applying the provisions of this Convention, governments shall:
- (a) consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly”⁹⁷.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ International Labour Organization Convention No. 169, 1989, Article 5.

⁹⁶ *Ibid.*

⁹⁷ International Labour Organization Convention No. 169, 1989, Article 6.1.

The Convention does not give the right of veto to indigenous and tribal peoples but specifies that the purpose of consultation is to achieve full consensus between governments and indigenous or tribal peoples on issues, legislative and administrative measures, that directly affect them⁹⁸. The Convention provides basic rules for the consultation process. First is that the peoples to be consulted are those on whom the effects of the legislative or administrative measures under consideration directly fall. Second, the procedures for consultation must be appropriate, although it is accepted that the method of consultation may vary according to circumstances, and, for it to be defined as appropriate, it must be transparent must be transparent in relation to different situations. Third, the leaders of indigenous communities and institutions should be recognized as official spokespersons for the interests of these peoples⁹⁹.

The principle of participation is another transversal and fundamental concept enshrined in Article 7 of the Convention. It touches different aspects of the existence of indigenous peoples and in which several elements can be identified: the right of indigenous and tribal peoples to establish their own priorities in the development process; the right to exercise control over their economy, social and cultural life; the right to participate in the planning of national and local development programs that directly affect them¹⁰⁰. Peoples will be able to take part in all levels of decision-making and be represented by their own institutions and not through imposed structures¹⁰¹.

Two other important principles set forth in ILO Convention No. 169 are respect for cultural diversity and for the different model of economic and social development of these peoples. States must take steps to eliminate socio-economic differences between these groups and the rest of society, respecting their diverse aspirations and lifestyles¹⁰². The Convention also specifically protects the legislative systems of indigenous and tribal peoples, provided they are not contrary to fundamental human rights. States must also establish procedures to make the national legal system compatible and resolve any conflicts that may arise in the application of indigenous customary law in the national territory¹⁰³. Articles 13 to 32 of the Convention regulate peculiar

⁹⁸ International Labour Organization Convention No. 169, 1989, Article 6.2: “The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures”.

⁹⁹ International Labour Organization Convention No. 169, 1989, Article 6.3.

¹⁰⁰ International Labour Organization Convention No. 169, 1989, Article 7.1: “The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly”.

¹⁰¹ *Ibid.*

¹⁰² International Labour Organization Convention No. 169, 1989, Article 2.2 and Article 7.3.

¹⁰³ International Labour Organization Convention No. 169, 1989, Article 8: “1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs

matters of particular relevance to the collective survival of indigenous and tribal peoples and to guarantee a dignified existence to each individual belonging to these groups.

One of the most relevant issues that led to the revision of ILO Convention No. 107 is that of the problem inherent to the guarantee of the territorial rights of indigenous peoples: Articles 13 to 19 of ILO Convention No. 169 establish the rules for protecting the right to land, starting from the assumption that:

“In applying the provisions of this Part of the Convention governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship”¹⁰⁴.

A first terminological issue can be found in Article 13, paragraph 2, in Convention No. 169: the use of the term “land” should be understood as “territory” as a whole, thus including the entire environment in which indigenous peoples live¹⁰⁵. Some governments have stressed the fact that the term “territory” in their Constitutions is present only in relation to the national territory and that, therefore, the use of this word could have created ambiguities regarding the right to sovereignty within States¹⁰⁶.

Article 14.1 recognizes the right of ownership and possession of indigenous peoples over the lands they have traditionally occupied¹⁰⁷, i.e. the lands they currently inhabit, used for their own survival, and wish to pass on to future generations. This right is based on the traditional occupation and use of the lands. In particular, C169 protects the right to use land by certain peoples who do not necessarily occupy it, but to which they have access in order to ensure their subsistence through traditional activities (as for instance happens in the case of nomadic peoples).

A certain margin of discretion is left as for the “space” element, also for the “time” element. In the Convention no precise parameters are given to establish

or customary laws. 2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle. 3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties”.

¹⁰⁴ International Labour Organization Convention No. 169, 1989, Article 13.1.

¹⁰⁵ International Labour Organization Convention No. 169, 1989, Article 13.2: “The use of the term lands in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas which the peoples concerned occupy or otherwise use”.

¹⁰⁶ SWEPTSON (1989: 351).

¹⁰⁷ International Labour Organization Convention No. 169, 1989, Article 14.1: “The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect”.

the number of years necessary for the right of ownership of land to be exercised by the peoples in question and in fact the supervisory bodies of the ILO have expressed themselves in this sense:

“The Committee recalls that the fact that land rights have originated more recently than colonial times is not a determining factor. The Convention was drafted to recognize situations in which there are rights to lands which have been traditionally occupied, but also may cover other situations in which indigenous peoples have rights to lands they occupy or otherwise use under other conditions”¹⁰⁸.

The Convention only establishes that it will be up to the governments to define the necessary procedures to identify the lands traditionally occupied by indigenous people, as well as the measures to guarantee and protect the right to ownership and possession¹⁰⁹. The processes of delimitation and regularization of land ownership can be very lengthy and imply the creation of specific legislation and appropriate institutional mechanisms; in addition, disputes may arise for which states must provide procedures for resolving conflicts that may occur between different indigenous communities and private individuals¹¹⁰.

When defining the right to land and territory, it is necessary to specify whether this right also includes natural resources, renewable or non-renewable. ILO Convention No. 169 provides, in Article 15 paragraph 1 that indigenous peoples have the right to the natural resources found on their lands. They have the right to participate in the use, administration, protection and conservation of these resources, whether renewable or non-renewable (i.e. wood, water and minerals)¹¹¹. However, in many constitutions, States stipulate that ownership of minerals and other resources of the soil or subsoil is reserved to the States themselves. In view of this fact, Article 15 paragraph 2, specifies:

“In cases in which the State retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible anticipate in the benefits of such

¹⁰⁸ Guide to ILO Convention No. 169, International Labour Standards Department, 2009, *Indigenous Peoples & Tribal Peoples' Rights in Practice*, p. 103.

¹⁰⁹ International Labour Organization Convention No. 169, 1989, Article 14.2: “Governments shall take steps as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession”.

¹¹⁰ International Labour Organization Convention No. 169, 1989, Article 14.3: “Adequate procedures shall be established within the national legal system to resolve land claims by the peoples concerned”.

¹¹¹ International Labour Organization Convention No. 169, 1989, Article 15.1: “The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources”.

activities and shall receive fair compensation for any damages which they may sustain as a result of such activities”¹¹².

States parties are therefore obliged to consult the indigenous peoples concerned when making decisions about the use of natural resources belonging to their territories. Indigenous groups will be able to object to the reasons why a certain use of natural resources may not be appropriate, because they may have negative effects such as environmental damage, impact on sacred sites, loss of the basis for the economic subsistence of the communities concerned, etc.¹¹³. Article 15 must be interpreted in conjunction with articles 6 and 7.3 of the Convention, i.e. assessing with the participation of indigenous peoples the environmental, social, spiritual and cultural consequences of development activities that directly affect the groups in question. Once a consensus has been reached with indigenous peoples on the exploitation of natural resources, they will be entitled to receive a portion of the proceeds obtained from these resources. The benefits can take different forms, such as specific agreements with governments in favor of the communities or the allocation of part of the proceeds to development projects of specific interest to the peoples involved. In the event that activities related to natural resources on indigenous territories have caused damage to resident peoples, they will be entitled to fair compensation. The ILO has had to analyze numerous cases in which it is denounced the lack of consultation by governments with the indigenous communities affected in the context of exploitation of natural resources, e.g. the recognition of indigenous Sami rights in Norway in 2005. Articles 21-23 of the Convention establish the obligation for governments to take into account the traditional economies of indigenous peoples in order to allow a participatory development for these groups and take into account their cultural specificity. The traditional economy is recognized as an important element for the continuation of the existence of indigenous peoples and for this reason will have to be supported by specific programs promoted by the States of belonging.

Indigenous peoples’ rights related to the concept of “development” can be divided into thematic groups within the context of ILO Convention No. 169: the right to control their own economic, social and cultural development; the right to be consulted and participate in local, national and regional development plans; the right to an assessment of the social, cultural, spiritual and environmental effects of activities; the right to benefits, all development projects must improve the socio-economic situation of indigenous and tribal peoples; the right to lands, territories and natural resources as a fundamental and necessary condition for indigenous peoples to develop their own social

¹¹² International Labour Organization Convention No. 169, 1989, Article 15.2.

¹¹³ Guide to ILO Convention No. 169, International Labour Standards Department, 2009, *Indigenous Peoples & Tribal Peoples’ Rights in Practice*, p. 107.

system according to their interests and needs¹¹⁴. It must be considered that if the predominant ultimate goal of national and international development strategies is poverty reduction, not taking into account the perceptions and aspirations of indigenous peoples in national economic policies, it can lead to an aggravation of the situation, debilitating the traditional subsistence structures of these groups and promoting a model of development that is not sustainable over time¹¹⁵.

The other provisions of Convention No. 169 address several issues that will not be explored in depth here, as they do not fall within the area of interest of this paper. Among these, Articles 24 and 25 establish that indigenous individuals have the right of access to social security and medical services on the same basis as other citizens. However, these services should, when possible, take into account the particular cultural condition of these peoples, thus enhancing traditional medical knowledge.

Articles 26-31 of the C169 take up in part what was already provided for in ILO Convention No. 107 on education. The main problems in relation to indigenous people in education are difficulty of access to primary and secondary education facilities; language difficulties; incompatibility with the work that indigenous children often have to do¹¹⁶. Among the fundamental principles that the Convention seeks to introduce are the need to guarantee access to quality education for indigenous children¹¹⁷ and for States to create an education system that values the particular and historical aspects of each culture.

2.3 The United Nations Declarations of the Rights of Indigenous People (UNDRIP)

In recent decades, claims and acknowledgement of indigenous peoples have led to the formation of a system of rights, in order to protect these populations, linked to the principles and international human rights law. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is considered the most important international recognition of the rights of indigenous peoples. It incorporates normative advances that have evolved over the past three decades based on existing international human rights sources. The Declaration represents a fundamental instrument of international law, as it gives recognition to a series of collective rights, which will be explained in more detail below, that provide an important form of legal protection for indigenous peoples.

¹¹⁴ Guide to ILO Convention No. 169, International Labour Standards Department, 2009, pp. 118.

¹¹⁵ *Ibid.*

¹¹⁶ HENRIKSEN (2008).

¹¹⁷ International Labour Organization Convention No. 169, 1989, Article 26.

In 1971, the scholar Martinez Cobo was commissioned by the Sub-Commission on Prevention of Discrimination of Minorities in order to conduct a study – *Study of the Problem of Discrimination Against Indigenous Populations* – on indigenous peoples to protect their rights and avoid discrimination. From the results of the study, ten years later, the Economic and Social Council (ECOSOC) recognized the need to create a winch that would address the needs of indigenous communities.

The Working Group on Indigenous Populations (WGIP) had the function of carrying out research on the promotion of human rights of these peoples, listing the international legal names that would protect them. In 1985, the WGIP began working on the development of the United Nations Declaration on the Rights of Indigenous Peoples. In this phase there was also the participation of the indigenous peoples themselves, first through the representations of NGOs, then with the presence of experts funded by the Voluntary Fund for Indigenous Peoples¹¹⁸ of the United Nations.

The UNDRIP, after nearly 25 years of negotiations, was adopted on September 13, 2007 through the General Assembly Resolution No. 61/295. It was approved by 143 votes, with 4 against (Australia, Canada, New Zealand and the United States) and 11 abstentions. The four opposing States were contrasting to some specific articles such as those on land rights and natural resources (Art. 26), on self-determination (Art. 3) and on the right to consultation and consent (Art. 19).

In particular, the provisions on territory and land were not accepted because they seem to require recognition and rights on those lands to indigenous peoples, even if those territories are owned by other citizens, indigenous or not (Art. 26). Certainly, the various processes of colonization that have occurred also demonstrate the willingness or unwillingness of certain States to pursue and approve international legal instruments that go to protect their indigenous peoples.

Indigenous peoples, in the WGIP discussion and worktables, have stressed the importance of being able to obtain a right to self-determination so that they could have the ability to interact with the international community on issues of concern¹¹⁹. Past experience, in most cases, has shown that indigenous peoples cannot trust the governments that have represented them¹²⁰. Throughout history, governments have been able to change constitutions and enact laws for or against indigenous peoples at their own discretion. This is why indigenous peoples have insisted on international recognition of their right to self-determination. The political prerequisites for the development and

¹¹⁸ The United Nations Voluntary Fund for Indigenous Peoples was established on December 13, 1985 by General Assembly Resolution 40/131. It is intended to provide financial support in the form of grants. They are intended to help representatives of indigenous communities and organizations to take part in the United Nations mechanisms and processes most relevant to indigenous issues. Anyone who is a member of an indigenous community has the opportunity to apply for a grant.

¹¹⁹ Guide to ILO Convention No. 169, International Labour Standards Department, 2009.

¹²⁰ Amnesty International General Site, Indigenous Peoples.

maintenance of indigenous peoples' identity, such as autonomy and self-government, have been progressively recognized, but the degree of autonomy of indigenous peoples that States are willing to guarantee, depends on several factors. In particular, in cases where the areas where indigenous peoples live contain important natural resources, the issue of management of development projects and the right to consultation and consent arises. The whole issue is linked, once again, to the right of indigenous peoples to self-determination. This term acquired an extraordinary symbolic importance for the negotiation of the Declaration. As will be analyzed in the following paragraphs, among the most important rights recognized by UNDRIP are the collective right to decide on the lands and territories in which indigenous peoples live, to determine the nature and scope of development activities within that territory, and the rights to protect cultural identity.

The Declaration was adopted for the purpose of safeguarding and protecting the rights of indigenous peoples. This objective is emphasized in the sixth paragraph of the Preamble, which reads:

[...] "Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests",
[...] ¹²¹.

By affirming this, the Declaration establishes the 'reparatory' character of the Declaration, which aims to respond to the consequences of the process of colonization, which has prevented a just right to free determination of indigenous peoples and other fundamental human rights. UNDRIP provides a set of rights that comprise the minimum standards for the survival, dignity and well-being of indigenous peoples around the world¹²². The first article of the Declaration states that indigenous peoples enjoy the rights – collective and individual – recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and other international instruments for the protection of human rights¹²³. In addition to this general premise, the Declaration analyzes various contents that are divided by themes, identifying the relative connections with the instruments of international law in force.

The United Nations Declaration on the Right of Indigenous People, unlike ILO Convention No. 169, makes no direct reference to the definition of the subjects who are the recipients of the rights contained therein, although some characteristics regarding indigenous peoples can be identified in the

¹²¹ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Preamble, Paragraph 6.

¹²² United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 1.

¹²³ *Ibid.*

Declaration. As also in C169, the fundamental criterion for the definition of indigenous peoples is that of self-identification, specifically in Article 33.1:

“Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live”¹²⁴.

Article 9 of the UNDRIP also protects “the individual and collective right to belong to an indigenous community or nation in accordance with the customs and traditions of the community or nation concerned”¹²⁵. Implicitly, this article gives communities the right to recognize or not recognize an individual as indigenous. In this regard, some States have raised the question of whether there may be situations in which they exert pressure to include an individual against the individual's freedom of choice. In this case it is useful to emphasize that the individual in question would be primarily protected by Article 1 of the Declaration, which guarantees indigenous individuals the rights and freedoms assured by international human rights standards¹²⁶.

Another issue is aimed at indigenous peoples who are present in different States divided by borders. Article 36 of the UNDRIP guarantees the right to maintain contacts, relations and cooperation in spiritual, cultural, political, economic and social activities among members¹²⁷. A questionable point within the logic of the Declaration concerns the indigenous peoples protected as such and their adaptation over time and in relation to society. While the UNDRIP Declaration emphasizes in several articles the right of these peoples to develop according to their own aspirations, interests and needs¹²⁸, the text remains firm on the idea of “traditional indigenous people” and the need for them to maintain traditional political, economic and social structures. The UNDRIP does not take into consideration those peoples, whether individuals or communities, who are undergoing a process of evolution and cultural adaptation within the dominant society of the belonging country¹²⁹.

The right to self-determination was a very important, yet debated, point in the UNDRIP Declaration. Initially, this right was not mentioned among the seven

¹²⁴ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 33.1.

¹²⁵ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 9.

¹²⁶ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 1: “Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law”.

¹²⁷ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 36.

¹²⁸ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 3, 20, 21, 23, 29, 30, 32, 34, 38.

¹²⁹ THORBERRY (2003:114).

fundamentals of the UNDRIP project. As discussed above, however, indigenous peoples' representatives stressed the importance of the principle of self-determination, without which they would not have approved the Declaration. This right presupposes the recognition of indigenous peoples as “peoples” and, unlike the ILO Convention No. 169 which had declared its incompetence to resolve this issue, in the United Nations, particularly during the preparatory work for the Declaration, it was considered necessary to address this question. Finally, in 1993, after several debates and discussions between the representatives of indigenous peoples and the States, the right to self-determination was introduced in the final version of the 2007 Declaration. Indeed, in Paragraph 16 of the Preamble of the UNDRIP is emphasized the importance of the right of all peoples to free determination under the Charter of the United Nations. The right of self-determination is then stated in Article 3 of the Declaration: “Indigenous 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”¹³⁰. The self-determination of peoples is in fact a fundamental principle of contemporary international law. In a perspective of historical evolution, the emergence of this principle in general international law and in international covenant law is examined and its scope of application is defined, with particular reference to the recipients of the rights deriving from it and the situations in which these rights are recognized¹³¹.

2.3.1 UNDRIP – Right to land

Another thematic area of interest to the UNDRIP is that of the right to land. The guarantee of this right, one of the workhorses of indigenous peoples, is seen as a fundamental prerequisite for the realization of all the others found within UNDRIP, in light of the strong cultural and spiritual ties that bind indigenous peoples to their ancestral territories, vital to their survival and development. There is a need to emphasize that the rights to land and natural resources of indigenous peoples have always created economic and political debates between States and private actors. This has meant that the recognition of these rights has often been obstructed. Over time, indigenous peoples have seen their rights to land recognized by the international community, both through the jurisprudence of human rights courts and in specific treaties protecting these communities. As far as the working process of the Declaration is concerned, until 2005, the parties – the States and the representatives of the peoples – were not able to reach an agreement on the

¹³⁰ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 3.

¹³¹ MILANO (2014), *Autodeterminazione dei Popoli*, in *Enciclopedia Treccani*, Rome, available online.

issues of land and natural resources. In the working groups on indigenous issues, the right to land was one of the last issues on which an agreement was reached. States such as Australia and the United States have never explicitly declared their support on land rights issues. Finally, in 2006, the President of the WGIP presented the final text of the Declaration, aware that after eleven years of work no further progress could be achieved. The results of this lengthy process led to an acceptance by indigenous representatives that rights to subsoil resources were not defined in detailed terms, while States in turn allowed UNDRIP to make explicit what the international community had already implemented regarding the land rights of indigenous peoples¹³². A significant part of the doctrine believes that territorial rights are a corollary of the right of self-determination of indigenous peoples¹³³ and stresses the difficulties that these have encountered at the international level. The scholar Martinez Cobo in fact argues that:

“It is essential to know and understand the deeply spiritual special relationship between indigenous peoples and their land as basic to their existence as such and to all their beliefs, customs, traditions and culture. For such peoples, the land is not merely a possession and a means of production. The entire relationship between the spiritual life of indigenous peoples and Mother Earth, and their land, has a great many deep-seated implications. Their land is not a commodity which can be acquired, but a material element to be enjoyed freely”¹³⁴.

In a 2000 report, prepared by the Special Rapporteur to the Commission on Human Rights, Erica-Irene A. Daes, a number of substantive elements for understanding the concept of territory according to the indigenous view were identified. The passage from the text reads:

- (i) “a profound relationship exists between indigenous peoples and their lands, territories and resources;
- (ii) this relationship has various social, cultural, spiritual, economic and political dimensions and responsibilities;
- (iii) the collective dimension of this relationship is significant;
- (iv) the intergenerational aspect of such a relationship is also crucial to indigenous peoples’ identity, survival and cultural viability”¹³⁵.

¹³² State of the World’s Indigenous People—Right to Land, Territories and Resources, United Nations Department of Economic and Social Affairs, ST/ESA/375, *State of the World’s Indigenous People—Right to Land, Territories and Resources*.

¹³³ *Ibid.*

¹³⁴ COBO (1981).

¹³⁵ Final Work Paper Special Rapporteur UN Economic Social Council, Erica Irene Daes, 2001, E/CN.4/Sub.2/2001/21, *Prevention of Discrimination and Protection of Indigenous Peoples and Minorities: indigenous peoples and their relationship to land*.

The same indigenous representatives, from different countries, have argued the need for territorial rights to guarantee the right to development, in order to be able to use natural resources, according to their interests and in line with their lifestyles. For instance, a representative of the indigenous Maasai people from Kenya pointed out in a speech that indigenous communities' land and territory represent the main source of development and production¹³⁶. However, development must have a sustainable form in order to preserve land, water and resources in an environmental manner. At the same time, development must coincide with the needs and wants of these indigenous peoples. They solely know how to achieve this development and what is needed: education food, water and land rights, and securing the indigenous pastoral resource base¹³⁷. Based on what has been stated so far, indigenous representatives have cleverly linked the right to land, not only to the controversial principle of self-determination, but to the inalienable human right to development, enshrined in Article 1 of the Declaration on the Right to Development of 1986¹³⁸. In light of these positions, the UNDRIP emphasizes the injustices suffered by indigenous peoples throughout history as a result of the process of colonization and alienation of lands, territories and resources. These facts have prevented the natural growth and development of indigenous peoples according to their needs and interests¹³⁹. On the basis of this assumption, Article 8 prohibits any form of forced transfer, dispossession or alienation of land against indigenous peoples¹⁴⁰, a principle reiterated more strongly in Article 10 and affirmed in Article 26 in a direct form:

1. "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the

¹³⁶ *Ibid.*

¹³⁷ UN Sub-Commission on the Promotion and Protection of Human Rights, Economic and Social Council, August 11, 2003, E/CN.4/SUB.2/2003/22, *Prevention Of Discrimination And Protection of Indigenous Peoples; Report Of The Working Group On Indigenous Populations on Its Twenty-First Session.*

¹³⁸ Declaration on the Right to Development, United Nations, 1986, Article 1: "The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized".

¹³⁹ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Preamble, Paragraph 6.

¹⁴⁰ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 8.

customs, traditions and land tenure systems of the indigenous peoples concerned”¹⁴¹.

Article 28 of the Declaration, on the other hand, provides for the establishment by the States of measures for the restitution or indemnification of territories of which indigenous peoples have been deprived without consent. Article 29 establishes that indigenous peoples have the right to the protection and conservation of their ecosystem in relation to their relationship with the territory. Indeed, it states:

“Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination”¹⁴².

Land and territories have a material, cultural and spiritual dimension that is extremely representative for indigenous peoples. For this reason, they are fundamental to their existence and identity, given that over the centuries they have evolved in harmony with the specific ecosystem of which they feel part. The same principle applies to the management of natural resources present on the surface and in the subsoil of the areas in which they live, resources that they have been able to use sustainably for millennia and which are currently threatened by the processes of change and modernization¹⁴³. It is evident the importance that is given to the relationship between indigenous peoples and the lands on which they live, in order to protect their main human rights, starting from the survival of the same peoples. There are several key points that are of particular interest for future developments, including the impact that climate change has on the territory and the land are of extreme interest to indigenous peoples.

2.3.2 UNDRIP – Right to culture

The concept of cultural diversity permeates the whole UNDRIP as a fundamental prerequisite for the recognition of the rights of peoples who have maintained and developed a way of life, traditions, language and social principles different from the currently dominant culture in the countries to which they belong. The Declaration defines cultural diversity as the common

¹⁴¹ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 26.

¹⁴² United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 29.

¹⁴³ UN Sub-Commission on the Promotion and Protection of Human Rights, Economic and Social Council, August 11, 2003.

heritage of humanity in the third paragraph of the Preamble¹⁴⁴. Article 15 of the Declaration enshrines the dignity and diversity of indigenous cultures, requiring States to take educational and informational action to eliminate all forms of discrimination in this regard. The protection of cultural diversity against any kind of forced assimilation is instead enshrined in Article 8. It provides that States must necessarily establish a series of measures of prevention and reparation for any act that has as its purpose or consequence the deprivation of the integrity of indigenous peoples as distinct peoples, their cultural values or their ethnic identity¹⁴⁵. In particular, Articles 11 and 12 provide for the right to restitution and reparation of goods and places of spiritual, intellectual and religious value of which these peoples have been deprived without free consent and which are also considered necessary for the development of these cultures among future generations¹⁴⁶. The concept of “future generations” is also taken up in Article 13, since the Declaration does not want to categorize indigenous peoples as an object of the past, but rather as a current reality in constant evolution in relation to the rest of society. In this sense, the importance of guaranteeing educational systems that are in line with indigenous cultures, but not alien to the formal national school system, is highlighted¹⁴⁷.

Another aspect of indigenous cultural diversity that is taken into account in the UNDRIP is considered in Article 31. It protects the intellectual heritage of indigenous peoples in a broader sense:

“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 to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions”¹⁴⁸.

The principles presented in these articles are covered by various instruments of international law including those protecting human rights, *ad hoc* instruments for indigenous peoples, protections for minorities, and principles safeguarded by cultural heritage. The part related to cultural protection is

¹⁴⁴ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Preamble, Paragraph 3: “Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind”.

¹⁴⁵ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 8.

¹⁴⁶ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 11 and 12.

¹⁴⁷ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 13.

¹⁴⁸ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 31.1.

indicated in the UN document titled *Guidelines on Indigenous Peoples' Issues*. It refers mainly to the UNESCO Universal Declaration on Cultural Diversity of 2001 and identifies seven other fundamental Conventions for the protection of cultural diversity¹⁴⁹. According to part of the international doctrine, these Conventions fail to protect the culture of indigenous peoples with the best approach, because of a series of conceptual differences in the way these communities understand the same cultural heritage. The first limitation of international instruments mentioned consists in the conception of culture as “capital” and therefore as a patrimony accumulated by a particular group. In this sense, culture creates a series of rights that can be linked to the individual or to a group of individuals in the sense of the possibility of “access” to culture itself; or culture as national “cultural heritage” creates rights that are owned by States or by humanity as a whole¹⁵⁰. A second limitation, in relation to indigenous issues, is linked to the protection of culture understood as an “artistic and scientific process of creation”¹⁵¹. Not even this latter interpretation, shared internationally, coincides with the conception of culture of indigenous peoples, according to whom, culture cannot be created by a single individual, but derives from a set of ancestral and collective knowledge. This collective element is found in Article 1 of the UN Declaration on Minorities:

“States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity”¹⁵², but the rest of the document is written in individual terms referring to “persons belonging to minorities”¹⁵³.

Culture, according to the indigenous holistic conception, as seen in Chapter I, broadly encompasses all aspects of life, and the right to culture should protect knowledge, art, literature, philosophy, science, values, laws, customs and traditions¹⁵⁴. In order to protect all these aspects at the international level, it is necessary to refer to different instruments, while it is more complex to identify a binding, all-encompassing definition that protects all branches of culture so understood and at the same time the evolutionary process. Among the instruments that have contributed to a significant evolution with regard to the conception and guarantee of indigenous cultural rights is the Convention on

¹⁴⁹ Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), Convention for the Safeguarding of the Intangible Cultural Heritage (2003), Protection of the Underwater Cultural Heritage (2001), Protection of the World Cultural and Natural Heritage (1972), Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), Protection of Cultural Property in the Event of Armed Conflict (1954) and Universal Copyright Convention (1952 and 1971).

¹⁵⁰ STAVENAGHEN (1998:3).

¹⁵¹ STAVENAGHEN (1998:4).

¹⁵² Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, United Nations, 1992, Article 1.

¹⁵³ *Ibid.*

¹⁵⁴ THORNBERRY (2003:118).

the Protection and Promotion of the Diversity of Cultural Expressions. The definition of cultural diversity, contained in Article 4.1, turns out to be extremely interesting:

“Cultural diversity” refers to the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies. Cultural diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions, but also through diverse modes of artistic creation, production, dissemination, distribution and enjoyment, whatever the means and technologies used¹⁵⁵;

The Convention for the Safeguarding of the Intangible Cultural Heritage of 2003 also offers a broad definition of intangible cultural heritage. It stresses the importance of this concept for the sense of identity and continuity of the groups and the continuous evolution from generation to generation of the same, result of the interaction with the environment, nature and history¹⁵⁶. According to what is expressed by UNESCO, in spite of the important progress concerning the rights of indigenous peoples, especially in relation to the protection of cultural diversity, due to the continuous discrimination and threats against their identity, it is necessary to deepen and broaden the protection of these peoples, learning from their holistic vision and seeking compatible lifestyles, supporting the determination to transmit the values of these communities to future generations¹⁵⁷.

2.4 The American Declaration on the Rights of Indigenous People

On June 15, 2016, the General Assembly of the Organization of American States adopted the American Declaration on the Rights of Indigenous Peoples during its 46th working session. After about 20 years of waiting, it was possible to obtain protection for all individuals in the Americas who identify as indigenous. Despite this great step forward, its nature remains that of a declaration and therefore not binding on States. For the inter-American system of protection of human rights, the rights of indigenous and tribal peoples represent an element of great importance and interest. This is due, first of all, to the massive presence of indigenous groups in the American continent: about

¹⁵⁵ Convention on the Protection and Promotion of the Diversity of Cultural Expressions, UNESCO, 2005, Article 4.1.

¹⁵⁶ Convention for the Safeguarding of the Intangible Cultural Heritage, UNESCO, 2003, Article 2.

¹⁵⁷ UNESCO Publication, UNESCO, 2006, CLT.2004/WS/5 REV, *UNESCO and Indigenous Peoples: Partnership to promote Cultural Diversity*.

44 million people mainly present in Latin America¹⁵⁸. The protection of these rights is also fundamental despite the fact that these communities are formally recognized in numerous legal systems of the region, both in ordinary and constitutional legislation. Although in many cases this does not correspond to a concrete and effective protection in the national sphere¹⁵⁹. Indigenous groups and individuals, within the American Declaration of Human Rights and Duties of Man previously analyzed, did not get any kind of recognition in the text. However, particularly since the 1990s, indigenous protection has gained more prominence in local protection bodies, as evidenced by the recommendation of the General Assembly of the OAS to the Inter-American Commission on Human Rights to develop a specific continental instrument for the protection of indigenous peoples.

The Declaration contains forty-one provisions divided into six sections and it is applied to the indigenous people of the Americas, as stated in Article I. paragraph 1. It recognizes the fundamental right of indigenous peoples to self-determination (Art. III) and the right to their ancestral territories (Art. XXV). It also enshrines the right of indigenous peoples to be protected from genocide (Art. XI) and other forms of assimilation (Art. X), prohibits racial discrimination, intolerance and violence. The Declaration, which is based on the recognition of the right to self-identification, also promotes respect, development and strengthening of indigenous cultures, traditions, lifestyles and languages (Art. XIII and XIV) and recognizes the right of such peoples to education or to have access to education in their own language and culture (art. XV). It also protects, among others, the fundamental rights to indigenous health and a healthy environment (Art. XVIII and XIX) and the right to gender equality for indigenous women.

The Declaration is particularly innovative compared to other international legal instruments. Although it represents a regional instrument, it is the first to recognize the right of indigenous peoples and communities in voluntary isolation or initial contact to remain in that condition and to live freely, according to their culture and worldview¹⁶⁰. The imposition of the recognition of the juridical personality of indigenous peoples in Article IX goes beyond the provisions of the United Nations Declaration on the Rights of Indigenous Peoples. The article in fact reads: “States shall recognize fully the juridical personality of indigenous peoples, respecting indigenous forms of organization and promoting the full exercise of the rights recognized in this Declaration”¹⁶¹. In addition to this, the special protection in case of armed conflicts (Art. XXX), and the affirmation of their right to maintain and promote their traditional family systems (Art. XVII) are also crucial norms for guaranteeing the rights of indigenous communities.

¹⁵⁸ CEPAL (2014).

¹⁵⁹ POSENATO (2018).

¹⁶⁰ American Declaration on the Right of Indigenous People, Organization of American States, 2016, Article XXVI.

¹⁶¹ American Declaration on the Right of Indigenous People, Organization of American States, 2016, Article IX.

Several analyses have been made to compare the text of the UNDRIP with that of the American Declaration. There are some relevant differences especially in the application; an example is in the case of the principle of self-determination guaranteed by both texts. Bartolomé Clavero has pointed out an important difference. According to his views, the approach provided by the UNDRIP is innovative because it “conceives self-government as a form of excitation of the right to self-determination”¹⁶². Whereas the Declaration sees the right to self-determination as conditional on all its provisions being subject to the integrity of the State¹⁶³. Thus, the biggest distinction is that although the UNDRIP is a progressive text in interpreting the principle of self-determination, in the American Declaration it is presented as “a caution for the right of indigenous peoples”¹⁶⁴. Although the caution is present in both texts, what changes is the importance that the two conventions provide, and this is interpretable by the documents.

Another element that is highlighted by Clavero is the fact that the American Declaration expressly mentions both the UNDRIP and the ILO Convention No. 169 as main references. It does so both in the Preamble stating that: “Taking in consideration the international advances in the recognition of the rights of indigenous peoples and particularly the ILO Convention No. 169 and the United Nation Declaration on the Rights of Indigenous Peoples”¹⁶⁵, and in the final interpretive note no. 2 by recalling that: [...] “the rights recognized by this Declaration and the United Nations Declaration on the Rights of Indigenous Peoples constitute the minimum standards for the survival, dignity and well-being of the Indigenous Peoples of America”¹⁶⁶. The explicit reference that the American Declaration makes to the UNDRIP and the ILO Convention, places the latter in pre-eminence with respect to the Declaration, representing examples to be followed. As these are examples, the reproduction made by the American Declaration of the UNDRIP and the C169 is highlighted.

Another point of extreme importance concerns the issues addressed within Article XXV of the American Declaration. This provision refers to the right to land, territories and natural resources. It conceptualizes these rights under the legal framework of the States, not recognizing the traditional ownership of indigenous peoples’ lands¹⁶⁷. As is emphasized in paragraph 5 of Article XXV:

¹⁶² CLAVERO (2016: 23).

¹⁶³ *Ibid.*

¹⁶⁴ MALDONADO, DAQUI (2016:11).

¹⁶⁵ American Declaration on the Right of Indigenous People, Organization of American States, 2016, Preamble.

¹⁶⁶ American Declaration on the Right of Indigenous People, Organization of American States, 2016, Interpretative note n. 2.

¹⁶⁷ American Declaration on the Right of Indigenous People, Organization of American States, 2016, Article XXV.

“Indigenous peoples have the right to legal recognition of the various and particular modalities and forms of property, possession and ownership of their lands, territories, and resources, in accordance with the legal system of each State and the relevant international instruments. States shall establish special regimes appropriate for such recognition and for their effective demarcation or titling”¹⁶⁸.

This can be considered a regressive principle by the American Declaration, since for example UNDRIP does not take into account the legal systems of individual States with regard to the right to land, territory and natural resources. Nancy Yáñez Fuenzalida noted that by referring to the full text of the American Declaration, it almost seems as if the references to individual national legal systems are on an equal level with the international ones, especially when looking at the UNDRIP and the Convention No. 169¹⁶⁹. The latter take legal precedence over national legislations, as they enjoy a superior legislative status with regard to the protection of human rights.

Although it has been highly criticized, especially with regard to its provisions on indigenous peoples’ lands, territories, and natural resources, there are also “positives” to the American Declaration on the Rights of Indigenous Peoples. Indeed, it represents a fundamental tool to cover the legal vacuum in the inter-American system regarding the protection and recognition of indigenous communities. The Declaration represents a step forward in the regional legal contexts of the world, where the OAS system with its institutions and organizations has been consumed¹⁷⁰. However, it is considered as an important move in the inter-American system of human rights. The possibility of the start of working tables for the approval of an American Convention for the Rights of Indigenous Peoples would represent a further strong signal of interest in indigenous issues, in order to give the right exposure and visibility to these communities and be able to obtain a fair and complete recognition process.

2.5 The Arctic Council

Having observed developments regarding the rights of indigenous peoples within various Conventions and Declarations, which have emphasized the importance of protecting these particular communities and the rights they need to be safeguarded, it is now necessary to detect, for the purposes of this research, an instrument that belongs specifically to the Arctic States. These

¹⁶⁸ American Declaration on the Right of Indigenous People, Organization of American States, 2016, Article XXV, Paragraph 5.

¹⁶⁹ International Working Group on Indigenous Affairs Document, Nancy Yáñez Fuenzalida, June 28, 2016, *OAS: Regressive elements in the American Declaration*.

¹⁷⁰ MALDONADO, DAQUI (2016).

are states are Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America.

On September 19, 1996, through the Ottawa Declaration, the aforementioned Arctic States established the Arctic Council. This forum aims to advance the level of cooperation, coordination, and interaction among the eight States, through the proactive participation of Arctic indigenous peoples and all its citizens on the most difficult issues¹⁷¹. It was created to ensure that there would be a mechanism in place to address the difficulties and challenges of the Arctic peoples, with a focus on climate change in the Arctic environment and sustainable development as a means to improve the economic, social, and cultural well-being of the North¹⁷². The primary purpose of its establishment sees its origin in the desire for a better and efficient management of the Arctic, a region that due to climate change and its causes has had serious consequences on the life of the area and its indigenous communities.

The permanent participation of the indigenous component within the Arctic Council is evidence that the Arctic States recognize the importance of indigenous peoples in arriving at the best possible management of the climate emergency in the Arctic region. Their representation within the Council is welcomed. Indeed, newspapers of the time wrote that “the groups representing the native peoples of the Arctic consider the creation of the Council as a sort of political breakthrough for them. [...]. For native peoples, there is a more comprehensive representation than they say is typical of international bodies”¹⁷³. In establishing the Arctic Council, the countries representing the regions have made a major commitment to their duty to support and promote the rights of the indigenous peoples who inhabit these territories. In the Ottawa Declaration, the first three paragraphs belonging to the Preamble read:

“Affirming our commitment to the well-being of the inhabitants of the Arctic, including recognition of the special relationship and unique contributions to the Arctic of indigenous people and their communities;
Affirming our commitment to sustainable development in the Arctic region, including economic and social development, improved health conditions and cultural well-being; Affirming concurrently our commitment to the protection of the Arctic environment, including the health of Arctic ecosystems, maintenance of biodiversity in the Arctic region, and conservation and sustainable use of natural resources”¹⁷⁴;

As it is evident, the first paragraph emphasizes recognition on the part of Arctic countries in ensuring the possibility of a dignified life in the territory.

¹⁷¹McIVER (1997).

¹⁷² Joint Communiqué of the Governments of the Arctic countries on the establishment of the Arctic Council, September 19, 1996, *Ottawa Declaration*.

¹⁷³ Washington Post article, Howard Schneider, September 12, 1996, *Facing World's Population in the North: An Arctic Council Is Created to Protect People, Wildlife*.

¹⁷⁴Joint Communiqué of the Governments of the Arctic countries on the establishment of the Arctic Council, September 19, 1996, Preamble.

It also confirms the special relationship that indigenous peoples have with the territory and the surrounding land which, as it was possible to see, is defined as ancestral¹⁷⁵. The second and third paragraphs highlight the commitment of the Arctic States to protect the environment and development of the region. It is important to draw attention to the fact that both environmental interests and Arctic development coexist in the second paragraph. In this regard, environmentalists and representatives of indigenous peoples make a “fist” of protecting their own rights and those of the land, rather than focusing on the exploitation of the Arctic.

Immediately following the information provided by the Preamble, Article 1 of the Ottawa Declaration offers a clear identification of the legal status of the Arctic Council and its programmatic goals. Indeed, the Council defines itself as a forum and not as an international organization. The difference between an international organization and a forum lies in the fact that the former must be based on a founding agreement, agreed upon by more than three States, and must provide the characteristics and objectives of the organization that will define its permanent structure¹⁷⁶. The Arctic Council, on the other hand, being a forum, is based on a declaration between more than three States, in which the programmatic objectives are stated, but it does not define a permanent structure as in international organizations.

The Council in this case assumes more the characteristics of a conference that develops around certain issues every two years¹⁷⁷. The possible reason behind the choice of a forum rather than a formal international organization, lies in the possibility that the Arctic States are unwilling to confer to an external body a stronger discretion on issues around the Arctic. However, the possibility of changing the status of the Arctic Council to an international organization has been discussed for several years.

Within Article 1 of the Declaration, the goals of the Council are also laid out:

- (a) “provide a means for promoting cooperation, coordination and interaction among the Arctic States, with the involvement of the Arctic indigenous communities and other Arctic inhabitants on common Arctic issues, in particular issues of sustainable development and environmental protection in the Arctic.
- (b) oversee and coordinate the programs established under the AEPS on the Arctic Monitoring and Assessment Program (AMAP); Conservation of Arctic Flora and Fauna (CAFF); Protection of the Arctic Marine Environment (PAME); and Emergency Prevention, Preparedness and Response (EPPR).
- (c) adopt terms of reference for, and oversee and coordinate a sustainable development program
- (d) disseminate information, encourage education and promote interest in Arctic-related issues”¹⁷⁸.

¹⁷⁵ McIVER (1997).

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ Joint Communique of the Governments of the Arctic countries on the establishment of the Arctic Council, September 19, 1996, Article 1.

All of the objectives stated in this article speak to the need to look at environmental protection and the importance of creating a cooperative system among the Arctic States. During the working tables that characterized the establishment of the Council, the link between the policy of the Arctic region and the changes to which the environment is subjected was repeatedly stressed. This represents the main reason that prompted the eight founding countries to establish these goals.

Having clarified the objectives of the Arctic Council, it is important to see how decisions are taken within it. Article 7 of the Ottawa Declaration states that: “Decisions of the Arctic Council are to be by consensus of the Members”¹⁷⁹. All decisions that are agreed upon and made by the Council must have the consensus of all members, meaning there must be no unfavorable votes. This kind of “consensus” voting is very popular within international political bodies, as it gives each member the opportunity to decide and protect their interests in case they are harmed, without obtaining a majority.

The Arctic region represents to date one of the most disputed territories between international actors, who tend to master to obtain exclusive sovereignty over the territory. The interest towards the Arctic can be explained in the light of natural resources, which with the passing of time are becoming more and more inaccessible and precious. In this context live the indigenous peoples, who despite climate change are trying to make space in geopolitical dynamics to continue to survive. The Arctic Council plays a central role in ensuring a voice for these communities, reaffirming in its Declaration the commitment to their recognition and sustainable development of the Arctic region.

Concluding remarks

This chapter has outlined that indigenous peoples, so far described, show living with unique ways of life. Their worldview is based closely with the relationship they hold with the surrounding land that welcomed them thousands of years ago. Therefore, they demand legal protections that represent their needs and rights.

It was possible to observe how the interest in indigenous issues has grown over time, and how especially the international community is engaging, in one way or another, in providing tools of legal protection for indigenous peoples. Although provisions such as the American Declaration of Human Rights and Duties of Man and the American Convention of Human Rights do not expressly address the safeguard of these protected groups, ILO Convention No. 169, the United Nations Declaration of the Rights of Indigenous Peoples

¹⁷⁹ Joint Communiqué of the Governments of the Arctic countries on the establishment of the Arctic Council, September 19, 1996, Article 7.

and the American Declaration on the Rights of Indigenous Peoples have laid the groundwork for general normative instruments aimed at defending the collective rights of these communities.

Chapter III

Inuit as a people

For about 5000 years the Inuit people have occupied various territories, extending from the coasts of the Chukchi Peninsula¹⁸⁰ in Russia, east across Alaska and Canada, to the southeastern coast of Greenland. Their innate ability to survive freezing climates and their capacity to take advantage of the resources that the land offers means that the Inuit have been able to subsist in the Arctic region.

The Inuit are an indigenous people originally from Canada. They carved the first chapters of the North American country's narration, forming an epic tale of history from their settlement, to the social dynamics they face today. The story of the Inuit is about their relationship to the land and the people who grew up on it; it is about the changes they face, such as the threat of climate change, the dispossession of land and natural resources, and the aftermath of colonialism. The Inuit, however, have managed over time to gain cultural, economic, and political space through land claims and self-government.

In the end, the story of this indigenous people is about the people themselves and their culture, which allowed them to live together with the natural world. Upon these premises, the objective of this chapter is to frame the indigenous people of the Inuit from a historical and cultural point of view, trying to deepen the aspects that characterize them. The uniqueness that marks the indigenous – as regards lifestyle, cultural traditions and customs – is the reason why these peoples are to be considered protected groups. Their relationship with the land defines the customs of the Inuit, who increasingly seem to be challenged by external threats.

In particular, climate change, to date, poses one of the most dangerous threats to the survival of these people, affecting their human rights and therefore their ability to exist. Global warming and its consequences on human rights will be the protagonists of the next chapter with the illustration of the Petition to the Inter-American Commission carried out by the Inuit.

3.1 Who are the Inuit?

The Inuit people, whose name in the local language, *Inuktitut*, means “the people”, describe an indigenous group whose language and culture is

¹⁸⁰ The Chukchi peninsula constitutes the north-eastern extremity of Siberia and therefore of the Asian continent. It is wet to the north by the Arctic Ocean; to the east by the Bering Strait; to the south by the Bering Sea.

descended from the Thule¹⁸¹ – named for the place where the culture was discovered in Greenland – and Dorset peoples of the Arctic, who settled about 1000-1600 years ago, when the development of whaling techniques began to allow survival in the cramped climates of the Arctic¹⁸².

Everything that is known about the indigenous Inuit people is passed down through the oral tradition of the ancestors, who have told their own story. Through this, they got to know the people who preceded them and the source of their culture. With the help of archaeological evidence provided by the Western countries, the history and culture of the Inuit could be reconstructed. Inuit themselves, however, recognize that in talking about the origins of their history and culture they share a different view than those who are not part of the indigenous population, who are nonetheless scholars of their past¹⁸³. This is because history and their past have been passed down through the telling of stories, which have been transmitted from generation to generation and have developed a solid oral tradition. Inuit strongly believe in preserving this tradition as an integral part of their culture and way of learning concepts. At the same time, they are aware of the need to accompany the oral tradition to the study of archaeological activities and the analysis of historical artifacts and documents. Both modes of learning and knowledge, to this day, are being leveraged by Inuit to equip future generations of indigenous with the basic tools to understand their history.

According to the oral historical tradition and archaeological sources, the Inuit culture evolved through millennia of history, encompassing both the Thule and Sivullirmiut cultures¹⁸⁴. According to generation-to-generation drilling, the latter would constitute the true Inuit ancestors who migrated eastward from the northern Alaskan coast through Canada to Greenland about 5000 years ago¹⁸⁵. They were devoted primarily to marine hunting, in which they were successful, but not whaling, which was excluded from the activity. It was the Thule people in Greenland about 1000-1600 years ago who first approached whaling by building the proper tools to do so, including boats and weapons. Thus, they developed incredible skills in hunting the giant mammal¹⁸⁶. The resulting development most likely contributed to the rapid migration of the Thule people and to the absorption of the Sivullirmiut people¹⁸⁷. Approximately 1000 years ago the Thule people crossed most of the Arctic, settling from Alaska to northern Russia. That is how the current Inuit culture developed. Today the indigenous population of Inuit live in four countries of the Arctic: the Russian Federation, Alaska, Canada and Greenland. Despite

¹⁸¹ The Thule culture were predecessors to the modern and various Inuit and Yupik groups of Alaska, the Arctic, and High Arctic. They were a fast-moving culture spreading from the Russian Far East (Chukotka) throughout Southwest and Northern Alaska and to the Canadian High Arctic and to parts of Greenland.

¹⁸² CROWLEY (2005:13).

¹⁸³ KANATAMI (2008:2).

¹⁸⁴ KANATAMI (2008:5).

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

being located in different States, the Inuit share the same language and cultural traditions.

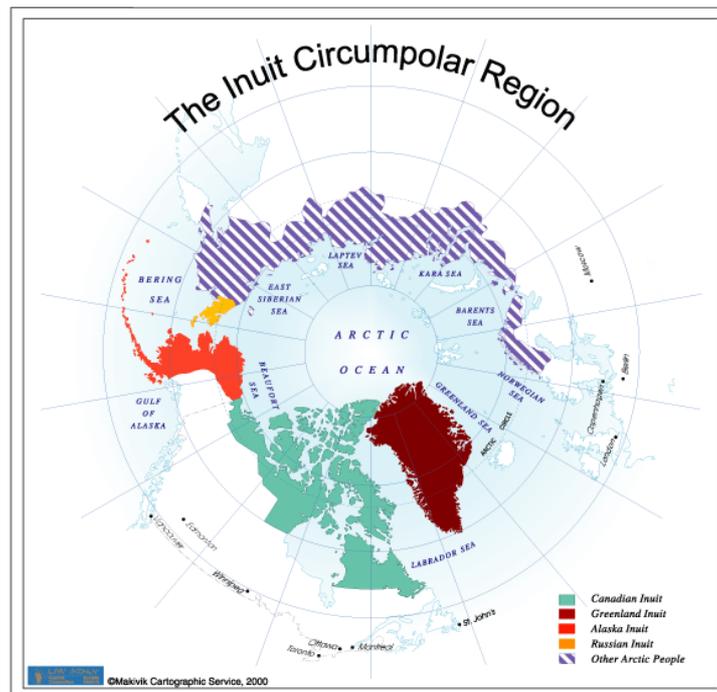


Figure 1: Arctic Council, The Inuit Circumpolar Region.

Encounters between early Inuit and European settlers began in the late 1500s, when they crossed Davis Strait and the waters of Hudson Bay and had the chance to approach with local indigenous peoples. Initially the first encounters between the Europeans and the Inuit were limited and dispersive, mainly due to the geographic diffusion and nomadism to which the indigenous people were accustomed. Although few in number, these encounters laid the groundwork for the transition of what is known as the ‘contact period’¹⁸⁸. A total of 22 explorers succeeded in penetrating Inuit territory, most notably Martin Frobisher’s¹⁸⁹ arrival in 1576 and John Franklin’s¹⁹⁰ unsuccessful

¹⁸⁸ KANATAMI (2008:10).

¹⁸⁹ Martin Frobisher (1535-1594) commanded, in search of a northwest passage, three expeditions: in the first (1576) he skirted southern Greenland, penetrating the bay that still bears his name and that was believed to be the passage sought. In the second (1577) and third trip (1578) continued the explorations along the same coasts, believed to be rich in gold deposits and, although without obtaining the desired results, collected many important geographical information.

¹⁹⁰ Franklin’s Lost Expedition was an Arctic exploration voyage led by Captain Sir John Franklin that departed England on May 19, 1845. Franklin, a British naval officer and experienced explorer, had taken part in three previous Arctic expeditions, the last two as

venture in 1848¹⁹¹. Although not many explorers managed to have any real influence on the history of this people, from the geographical point of view, through every expedition the Arctic has been appropriated and colonized by Europeans, for the exploitation of its countless natural resources. From there on, foreign claims to the territories began. It was only later in 1848, when American whalers discovered the bowhead whale in the Chukchi Sea, that commercial exploitation of the Inuit's main source of subsistence food began in a significant way¹⁹².

As the 19th century ended, colonizers forced the Inuit to settle in permanent villages in Arctic territories. The same happened in the Canadian part of the Arctic, but later on, as the Inuit of those territories preferred to remain nomads until 1950-1960. The forced stabilization of the Inuit in the Canadian Eastern Arctic caused several splits within the same people. Inuit families have always lived together and the relationship with their people has always been considered one of the indigenous cultural pillars. The colonization process deeply divided the families that depended on cohesion and cooperation to survive¹⁹³.

The first external contacts in the Arctic put a strain on indigenous peoples: the stabilization of settlements on land resulted in a significant loss of independence¹⁹⁴. Since the first contact with the Europeans, the Inuit have had to integrate with the changes that have taken place in their territory and lifestyle, from social to economic ones, trying to adapt their traditional way of life to that of the Westerns, pervaded by economic development. This long process of adaptation has made the Inuit active from a political point of view, in order to promote their rights, in particular their right to self-determination and ownership of the territories inhabited.

This activism was reconciled with national governments through the signing of several agreements.

The first of these agreements is the James Bay and Northern Quebec Agreement of 1975. It was approved by the Cree¹⁹⁵ and the Inuit of Northern Quebec. It has the primary objective of claiming the territories belonging to

commander-in-chief. With his fourth and last, which he undertook at the age of fifty-nine, he set out to cross the last stretch of the Northwest Passage, which had never been traversed until then. After a few setbacks, the two vessels under his command became icebound in Victoria Strait, near King William Island in the Canadian Arctic. All members of the expedition, Franklin and 128 men, were never found again, in NEATBY, MERCER (2008), *Sir John Franklin*, in *The Canadian Encyclopedia*.

¹⁹¹ KANATAMI (2008:10).

¹⁹² *Ibid.*

¹⁹³ *Ibid.*

¹⁹⁴ CROWLEY (2005:14).

¹⁹⁵ The Cree are one of the oldest indigenous peoples to settle in Canada. The traditional territory of the Cree extends mainly in the subarctic regions and plains that today correspond to the provinces of Alberta, Saskatchewan, Manitoba and Ontario, extending along the southern coast of Hudson Bay to Quebec. Divided into sub-groups based on region and dialect, the nation was composed of a myriad of bands united by the common use of the Algonquin language. As a result of multiple exchanges throughout their history, fostered by a policy of welcoming foreigners, the Cree became closely linked to several other foreign cultures.

indigenous peoples, but it also deals with ensuring the economic development and property of Northern Quebec. It also provides various guarantees to the cultural, social and governmental institutions given to these indigenous peoples.

The second agreement struck was in 1978, when the Danish parliament passed the Home Rule Act, officially coming into force in May 1979. It was a response to the referendum held in Greenland in order to gain more autonomy. It recognized the Greenlanders as a “special nation within the realm”¹⁹⁶. The Home Rule Act also formally established the Greenland Parliament.

The third agreement to consider is the 1984 agreement between the Government of Canada and the Inuvialuits¹⁹⁷, who agreed to the Inuvialuit Final Agreement (IFA). It is of historical importance because it was the first agreement dealing with land claims that was signed north of the 60th parallel and only the second in Canada at that time¹⁹⁸. The IFA provides for the relinquishment by the Inuvialuit of exclusive use of land considered ancestral, in exchange for obtaining rights to land, wildlife management and money, protected by the Canadian government for the indigenous population.

The fourth agreement that is worth mentioning is the Nunavut Agreement of 1993. It was signed by representatives of the Nunavut federation, the government of Canada, and the government of the Northwest territories. This agreement had a lot of resonance because it gave the Inuit of these territories a land of their own – called Nunavut – where they could live. It can be considered one of the most important Canadian agreements made between the government and indigenous peoples in claiming their territories.

The latest relevant agreement is the one established by the Government of Newfoundland and Labrador, the Government of Canada and the Labrador Inuit Association (LIA)¹⁹⁹. These signed in 1993 the Labrador Inuit Land Claims Agreement. The agreement provides for an equitable division of land and establishes the sharing of natural resources, always exalting the peculiar cultural characteristics of the indigenous Inuit people.

All of these agreements promote different objectives, but each of them in the same way allows indigenous Inuit to implement and study policies and projects that can advance the development of their territories in a sustainable way, so as to better coexist the “old” way of life with the “new” one. The implementation of the abovementioned agreements has the possibility to allow the expansion and subsistence of Inuit culture, protecting homelands

¹⁹⁶ The Greenland’s Home Rule Act, Greenland’s Home Rule, November 29, 1978, Act No. 577, *The Greenland’s Home Rule Act*.

¹⁹⁷ The Inuvialuit are Inuit people who live in the western region of Canada. Their homeland – the Inuvialuit Settlement Region – covers has been demarked by the Inuvialuit Final Agreement in 1984.

¹⁹⁸ Consolidated Version of Inuvialuit Final Agreement, Indian and Northern Affairs Canada, April 2005, *The Inuvialuit Final Agreement as Amended*.

¹⁹⁹ The Labrador Inuit Association was established in the 1970s by the indigenous people themselves, with the goal of promoting Inuit culture, health, welfare, and constitutional, democratic, and human rights that belong to them. The primary purpose of the association is to establish self-government.

and improving the standard of living of these, so that everyone can lead a dignified life²⁰⁰.

Climate change, in this context, has certainly put a strain on the guarantee and assurance of the rights of indigenous peoples and especially Inuit, who despite the implementation of agreements, struggle to assert their priorities.

3.2 The meaning of culture

Many questions about the Inuit still remain unanswered. The historical evidence that has been unearthed, however, confirms that the ancestors of the Inuit had “independently carved out a homeland and established a way of life that has maintained a cultural identity, social coherence, and territorial integrity throughout every phase of the history”²⁰¹. It could easily be argued that few ancient cultures that have survived to this day have been able to maintain a continuity and coherence of their culture across territory for such a long period. Therefore, it is important to be able to study the cultural perspective of this peculiar indigenous population.

“When we talk about the origins and history of our culture, we do so from a different perspective than that often used by non-Inuit who have studied our past. For example, in our culture we do not divide the past from the present, so we do not like to use terms like “prehistory”. Our history is simply our history, and we believe it is time for us Inuit to take more control in determining what is important and how it should be interpreted. To be of value, our history must be used to educate our youth and to inform all of us about who we are as Inuit in today's world. We do not want our history to confine us to the past”²⁰².

It is precisely the telling of the Inuit past that is preserved and passed down through the stories told by the elders of indigenous communities. The passage of information from one generation to another represents perhaps the greatest cultural heritage possessed by the Inuit, who invest in this activity particularly in schools.

“We must teach our children their mother tongue. We must teach them what they are and where they come from. We must teach them the values which have guided our society over the thousands of years. We must teach them the philosophies which go back beyond the memory of man [...]”²⁰³.

²⁰⁰ *Ibid.*

²⁰¹ KANATAMI (2008:4).

²⁰² *Ibid.*

²⁰³ AMAGOALIK (1977).

Inuit culture, in addition to being based on the ancestral relationship that this population lives with the land and territory, is strongly based on the process of hunting and consuming what the land itself offers. Every constituent element of their culture revolves around the value of the land and the knowledge that has been handed down from generation to generation for thousands of years. Sheila Watt-Cloutier, an activist and political representative of the Inuit, elaborated on this point, underlying that:

“Generations – young and old – meet on the land. The wisdom of the land and the process of hunting teach young Inuit to be patient, brave, tenacious, bold under pressure, reflective to endure stress, to focus and carry out a plan to achieve a goal [...]. Hunting and eating the animals we hunt are spiritual and cultural activities”²⁰⁴.

For the Inuit, as for most indigenous peoples, hunting is the major source of livelihood. Inuit feed primarily on whales, seals, caribou, Arctic hares, berries and fish. Hunting activity represents also the cultural activity which, since the beginning, is passed on to young people. As time has progressed, the Inuit have developed new strategies in hunting, with for instance, the use of rifles and motorboats, which ensure a successful hunt. Through the oral tradition and the study of the practice by hunters, it has been possible to maximize hunting and ensure a good harvest to the populations, which have also learned to deal sustainably with the animals and plant populations.

The Inuit have also established, over the millennia, a special relationship with the animals they feed on. They represent a gift of the earth in that they constitute the primary means of subsistence for the population. The Inuit study the life of the animals they hunt, following the places where they feed, reproduce and die. Each animal is different from the next and their activities also change based on the season of the year they are going through. Climate change has also made the Inuit notice the changes in flora and fauna and consequently the abundance that the territory offers of these. Inuit knowledge, in this sense, is not quantitative in nature but that does not mean it is not precise and accurate²⁰⁵. Although hunting methods and related technology are changing and updating with time, the need and want for this knowledge is a constant necessity for indigenous people. Skills are passed down from generation to generation, and new skills and abilities are tested through historical knowledge of the practice. The combination of tradition and innovation have made the Inuit “successful harvesters”²⁰⁶.

As far as the Inuit economy is concerned, it should be considered a mixture of new and old elements. Globalization has allowed the adaptation of their

²⁰⁴ Remarks by Sheila Watt-Cloutier, Chair of the Inuit Circumpolar Conference, The World Bank Environmentally and Socially Sustainable Development Week, Washington, DC, March 30, 2005.

²⁰⁵ KANATAMI (2008:7).

²⁰⁶ CROWLEY (2005:16).

unique culture to the changes that life has had to undergo. This has pushed the Inuit to the use and purchase of new tools that ensure a more sustainable, but above all, safer hunting²⁰⁷.

“It is impossible to discuss our future as part of the larger Canadian fabric without giving serious consideration to the role we will play in the next phase of economic and political development throughout the Canadian North. We cannot, however, assume that this new role will be developed at the expense of more traditional activities which characterize our mixed subsistence-based economies that are so vital for the long term economic and social health of our communities”²⁰⁸.

The value of the Inuit economy can thus be summed up in the totality of the indigenous people's traditional knowledge and their intellectual property. Although the latter should be considered protected, the West has not yet realized its value. The Inuit base their economy on these fundamental pillars of their lives, which are inherent in their way of life.

One of the most debated issues in Inuit affairs today is the development of their economy and the improvement of the community's way of life, while maintaining Inuit traditions and culture. The search for sustainable development requires the implementation of policies aimed at improving the lives of the Inuit, without compromising their unique way of life. The primary goal is to improve the future of these populations. For instance, traditional subsistence harvesting is considered one of the most sustainable strategies in the long term, which is why it represents a large portion of the environmental economic development strategy²⁰⁹. The changes that indigenous peoples, such as the Inuit, are experiencing have strong effects on their lives economically, socially, spiritually, and psychologically.

The necessity of having to move from a purely subsistence-based lifestyle to a mixed one has generated several hardships and insecurities in the lives of these indigenous communities²¹⁰. Culture has yet to fill the space that these changes have created. Inuit organizations and various State governments are mobilizing to fill the void of these upheavals, although land-based culture plays a key role in Inuit well-being²¹¹.

3.3 Living on the land

One of the most distinguishing elements of indigenous peoples, as it has been mentioned, is their attachment to the land on which they live. Indigenous and

²⁰⁷ Assessment, Arctic Climate Impact, 2004, *Impacts of a warming Arctic-Arctic climate impact assessment*.

²⁰⁸ CROWLEY (2005:16).

²⁰⁹ CROWLEY (2005:17).

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

aboriginal communities, through their different worldviews, have based their culture on the conservation of nature, which includes the protection of sacred places, and more generally of the ecosystem.

The Inuit, when referring to the term “land”, subtend to mean not only the land they walk on, but also the ice, oceans, lakes, tidal areas, islands, and the environment more generally²¹². Depending on where they stayed and the season of the year they were going through, the Inuit would change housing where they lived. It may include tents, the traditional dwelling of the indigenous people, houses built from whale, wood and scraps brought in by sea currents, or igloos. The latter has always been the ideal dwelling during the winter seasons, especially in the Canadian Arctic region. These are circular housing, built with blocks of ice and having the shape of a spherical dome. These winter homes are lined internally with reindeer skins to heat the room, while seal fat is essential to light the room and to be able to cook Inuit food. Although the myths about the Arctic populations predict their confinement in igloos, nowadays the Inuit live in permanent villages built with modern architecture. Albeit many Inuit are still traditionalists, many prefer to spend the seasons changing locations and living off the land.

Through the millennia, the Inuit have built an unbreakable bond with the land and with timing. In the Arctic region of Greenland, the Inuit use the word *sila* to define time. This term actually hides several meanings ranging from air, to intelligence or consciousness, but also mind²¹³. These are the elements upon which the natural world is built. *Sila* is in fact intrinsic in every person and can be defined in this way: “[...] it is an all-pervading and life-giving force, the natural order, consciousness and soul of breath”²¹⁴. The presence of *sila* in every living being has the ability to connect man to the rhythms of nature and more generally of the universe, thus creating a link with the earth. Because *sila* connects the human being and the surrounding environment, “a person who lacks it, is said to be separated from an essential relationship with the environment that is necessary for human well-being”²¹⁵.

Another element that denotes Inuit attachment to the land and culture is the status of hunting. Hunting is the Inuit way of life²¹⁶. The reasons for this are hidden in the traditional rationale that the community has in needing the support and sharing of all its members. Beyond that, however, there are practical reasons as well. First, hunting large animals requires cooperation and help from multiple parties. A single Inuit family would not be able to finish the hunting operation. Second, the hunting of huge mammals such as the whale, represents a great wealth of food for the Inuit community, but it needs processing and preservation. Third, the sharing of the hunt also depends on the possibility of an unsuccessful hunt. Indeed, no single Inuit can be certain that their hunting operation will be successful, so it is critical that all

²¹² KANATAMI (2008:4).

²¹³ CROWLEY (2005:18).

²¹⁴ *Ibid.*

²¹⁵ *Ibid.*

²¹⁶ GUPTA (1999:1747).

community stakeholders depend on and interconnect with each other so that hunter families who are ineffective in their hunts can still feed on the fruits of the earth²¹⁷. In addition to providing a system for sharing the land's resources, hunt distribution also offers several benefits from a human perspective. Indeed, it creates indissoluble bonds between the members of the Inuit community, throughout food and the practice of hunting that are the basis of indigenous culture. Not only for the Inuit, but in all the indigenous communities of the Arctic, the sharing and distribution of meat and fish sustains the existence of these individuals and creates unique social relationships. "Harvesting and the associated processing and sharing activities reaffirm fundamental values and attitudes toward animals and the environment and provide a moral foundation for continuity between generations"²¹⁸. The sharing and distribution of food, above all whale meat, is based on strict community rules, because its hunting represents an essential element of the Inuit culture and territory. For instance, its meat can be shared with people outside the family that hunted it, whether they are related or not to the hunter of the animal.

"The whale is more than food to us. It is the center of our life and culture. We are the People of the Whale. The taking and sharing of the whale is our Eucharist and Passover. The whaling festival is our Easter and Christmas, the Arctic celebrations of the mysteries of life"²¹⁹.

Whaling is a hallmark of Inuit culture, while many other groups depend more on hunting walrus seals, polar bears, and land mammals such as caribou, reindeer, moose, and musk ox²²⁰. According to traditional whaling rituals, the entire village participates in the hunting process involving the animal. Indeed, once the whale is captured, the whole community takes part in the landing, the slaughtering procedure and the processing of its meat²²¹. Each constituent part of the animal and each activity that revolves around the activity of the hunt takes on special names in the local Inuit language, the *Inuktitut*. Once the period of hunting expeditions has ended, stories about the exploits are told over and over again, becoming part of the community's oral history²²².

Concluding remarks

The Inuit people have built their existence and survival on the historical tradition of the first indigenous people who settled in the Arctic circumpolar region. Adaptation to the harsh living conditions of the Arctic has ensured the

²¹⁷ *Ibid.*

²¹⁸ CROWLEY (2005:19).

²¹⁹ EMHARDT (2014:523).

²²⁰ *Ibid.*

²²¹ *Ibid.*

²²² EMHARDT (2014:524).

survival of the Inuit over the years. Even when the European settlers arrived in late 1500s, their sense of adaptation served as a consequence of the introduction of new and different technologies. Despite their first contact with the colonizers, the Inuit have maintained the traditional practices of their culture and land such as the sharing of hunting, nomadism and attachment to nature. The first is based first and foremost on a sense of duty and solidarity with the community and social relationships with animals and the surrounding environment²²³. The sharing of these values through oral transmission are the essence of Inuit culture.

The changes facing indigenous peoples such as the Inuit to date have to do primarily with the negative impacts caused by climate change. It is the cause that has led the Inuit to lead a Petition against the United States, which due to the massive carbon emissions, has damaged the welfare of the indigenous population, who have suffered violations of their basic human rights. This is what will be covered in Chapter IV, along with a detailed analysis of the Petition and its results.

²²³ *Ibid.*

Chapter IV

Inuit Petition to the Inter-American Commission on Human Rights

Inuit culture evolved over thousands of years in response and in relation to the Arctic's physical ecosystem. The Inuit formed a close relationship with their surroundings, relying on their knowledge of the Arctic environment to create a civilization, complete with tools and skills that allowed them to survive and thrive in the face of limited resources. Everything depends on their culture, which determines their habits, customs, and ways of life. In turn, all of these elements are determined by the Inuit population's dependence on the ice, snow, land, and weather of the Arctic²²⁴.

In order to study the relationship between human rights violations and climate change, linked to the indigenous Inuit environment, it is crucial to analyze the contents of the Petition to the Inter-American Commission on Human Rights brought by the Inuit against the United States in 2005. To gain a deeper understanding of how global warming is transforming the lives of the Inuit and the Arctic environment, it is necessary to comprehend the changes that have occurred and are occurring from the climatic point of view, referring to the time frame from 2000-2005 to 2021. Afterwards, it will be analyzed the role of the United States, as the world's largest contributor to CO² emissions, whose unscrupulous attitude towards climate change impacts environment stability and Inuit survival. From this, it will be explored the effects of human rights violations by global warming on the indigenous population. Specifically, the violation of the right to enjoy the benefits of one's culture, the violation of the right to subsistence, and finally the infringement of the right to life will be under observation. The last sub-section will draw conclusions about the results and effectiveness achieved by the Petition to the IACHR.

4.1 Content of the Petition

As the implications of climate on human rights become better known and the ties between the two are more clearly expressed, global warming is increasingly being viewed as a human rights concern. Nonetheless, international attention on the nexus between climate change and human rights

²²⁴ GIBSON, SCHULLINGER (1998).

is new. A limited number of particularly vulnerable States and communities have attempted to leverage these links in the recent decade to promote their case for stronger international action, beginning with the Inuit Circumpolar Conference's (ICC) Petition to the Inter-American Commission on Human Rights in 2005²²⁵. Human rights-based responses to climate change can be applied in a variety of ways. Human rights language, which emphasizes the moral and ethical components of rights, can be used rhetorically to put pressure on responsible parties, or human rights concepts can be integrated into climate change decision-making and mitigation and adaptation strategies²²⁶. A human rights-based strategy to climate change, "in its most legalistic form, is filing claims under international or domestic law to seek accountability and compensation for infringement of legally protected rights"²²⁷. Several cases have previously been chased in national and regional legal systems to defend human rights within climate change; the Petition presented in this work being one of them.

On December 7, 2005, Sheila Watt-Cloutier, an Inuit human rights activist and international president of the Inuit Circumpolar Conference since 2002, led a Petition requesting the support of the Inter-American Commission on Human Rights to obtain justice regarding the many human rights violations resulting from the impacts of climate change and U.S. emissions. The ICC²²⁸ is an international organization representing approximately 180,000 indigenous Inuit living in the Arctic regions between Alaska, Canada, Greenland and Chukotka, Russia²²⁹.

The Petition filed was on behalf of the activists, 62 people whose names are written in the text, and all of the Inuit people in the Arctic region of the U.S. and Canadian sides who have most experienced the impacts of emissions and global warming that are presented in the Petition.

The climate change that is afflicting the earth refers to an increase in global temperatures caused by man-made emissions, which severely impacts everything that surrounds us, from flora to fauna and even humans. The broad scientific community agrees that global warming is mostly caused by concentrations of greenhouse gases in the atmosphere, which occur as a result of man's disproportionate actions.

As was noted in Chapter III, while living in different Arctic regions the Inuit are united by a distinctive culture that is based on "dependence on subsistence gathering in both terrestrial and marine environments, food sharing, snow and ice travel, a common base of traditional knowledge, and adaptation to similar

²²⁵ LEWIS (2018:153).

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ The main goals of the Conference are: a. "Strengthen unity among Inuit in the circumpolar region; b. Promote the rights and interests of Inuit internationally; c. Secure and further develop Inuit culture and society for present and future generations; d. To seek full and active participation in the political, economic, and social development of our homeland; e. Develop and encourage long-term policies that safeguard the Arctic environment; f. Work for international recognition of the human rights of all indigenous peoples".

²²⁹ Inuit Circumpolar Conference, About ICC.

Arctic conditions”²³⁰. Particularly in the aftermath of World War II, the indigenous population had to readjust so that they could bring in new elements within their customs, and so that they were able to transition to a mixed economy based on both subsistence and money. Although many of them are employed in contract work, many other Inuit continue to depend solely on food gathering. In addition to providing the energy needed to cope with the low temperatures of the Arctic, it represents “a spiritual and cultural affirmation, and is crucial to the passing of skills, knowledge and values from one generation to the next, thus ensuring continuity and cultural vitality”²³¹. Exactly as all indigenous peoples, Inuit have adapted over millennia to the natural environment in which they were born and raised. It is this adaptation that has led them to develop survival techniques that could allow them to live in harmony with the Arctic environment. The relationship that the Inuit have built with their territory has determined the development of the peculiar culture that has been possible to study previously. The Arctic with its snow and ice define the culture, economy, and identity of the Inuit, which heavily depend on them²³².

The Arctic, due to global warming, has been the most affected region in terms of climate impacts. According to the results that are annually reported by the Arctic Climate Impact Assessment (ACIA) – which represents one of the most significant scientific assessments of climate change in the Arctic – has been able to evaluate that:

“The Arctic is extremely vulnerable to observe and project climate change and its impacts. The Arctic is now experiencing some of the most rapid and severe climate change on earth. Over the next 100 years, climate change is expected to accelerate, contributing to major physical, ecological, social, and economic changes, many of which have already begun”²³³.

Rising temperatures due to climate change are severely impacting the Arctic ecosystem, twice as much as other regions of the world. The visible effects are melting ice and snow, abrupt weather patterns, and landscape disruption caused by thawing permafrost causing sea level rise, erosion, and coastal breakup. The Inuit, living in these territories for millennia, observe these environmental changes on a daily basis. Particularly in the last 30 years, the elders of the villages, who have seen the evolution of the territory, have highlighted climate-related changes in the context of generations of accumulated traditional knowledge²³⁴.

Arctic climate warming has had several effects on different elements of the natural environment, starting with sea ice. What has been observed, specifically, is a thinning of the ice sheet, later frosts and earlier thaws. Ice is of paramount importance to the indigenous Inuit population, as it ensures

²³⁰ CROWLEY (2005:1).

²³¹ *Ibid.*

²³² *Ibid.*

²³³ CROWLEY (2005:2).

²³⁴ *Ibid.*

movement from one hunting location to another more easily and quickly. With the change in its consistency and duration, the activities of fishing, traveling and gathering – which were previously carried out without problems – have become more dangerous and less safe²³⁵. Ice is a life supporter for the Inuit²³⁶. Snow serves as a vital resource for transportation, shelter, and habitat. The Inuit's safety has been jeopardized by changes in snow and ice. These changes have harmed their subsistence harvest, the animals they need to exist, and their cultural traditions, which are all important to their continuing survival as a people²³⁷.

Another element that has seen changing in the Arctic environment is snow, in its quality and quantity²³⁸. Currently, it has been possible to observe that the snow settles later and later and with the arrival of spring, which is early, it tends to melt much earlier. Snow, as well as ice, represents a fundamental source for the journeys of indigenous peoples to be completed. It is also used for the construction of the typical igloo dwellings. The absence of snow now forces the use of tents or other structures that are paradoxically colder and less safe.

“The snow is not the same anymore. The bottom of the snow is a lot softer than it used to be. It is not good for igloos anymore. [Twenty years ago] we used to be able to stop anywhere we needed a place to sleep just to build an igloo and sleep in that igloo. And nowadays you cannot just find good snow anywhere. In [those] days we used to find them anywhere. The condition of the snow is not very good, the bottom of it is very soft. So that is what I have noticed in the snow as well – not only on the bottom but on the top as well”²³⁹.

The change that is impacting Arctic snow is causing people to rethink traditional understandings of classic dwellings and lifestyle, elements that are fundamental to the survival of Inuit culture.

Permafrost is also undergoing changes. It – which functions “to hold together unstable underground gravel and inhibit water drainage”²⁴⁰ – is undergoing melting, leading to numerous collapses, landslides, erosion, and loss of soil moisture. The consequence is the creation of wetlands or, in the worst cases, lakes. The process of erosion leads to an earlier melting of the permafrost as it exposes it to warmer air and water, which promotes melting. These phenomena are having serious effects especially in the places inhabited by the Inuit that are flooded or collapsed²⁴¹. Much more frequently, a state of emergency is being called for, leading indigenous peoples to seek other

²³⁵ *Ibid.*

²³⁶ Arctic Climate Impact Assessment (ACIA), October 15, 2004, *Impacts of a Warming Climate: Final Overview Report*, p. 5.

²³⁷ *Ibid.*

²³⁸ CROWLEY (2005:2).

²³⁹ Interview with Lucas Ittulak of Nain, Newfoundland and Labrador, September 26, 2005, in CROWLEY (2005:3).

²⁴⁰ CROWLEY (2005:3).

²⁴¹ *Ibid.*

housing to stay in²⁴². However, water levels depend on many other variables, i.e. changes in rainfall and temperature that make shorter winters and longer warmer seasons. In spite of the large amount of water released as a result of thaws, rivers and lakes have very low water levels due to evaporation caused by high temperatures. This generates unavailability of natural sources of drinking water. The water level problem also spills over to fish life and their spawning grounds. In general, climate change is making the weather more unpredictable than in the past. About 50 years ago, Inuit village elders were able to predict the weather for the coming days, based on winds and clouds²⁴³. This system allowed them to plan expeditions and hunting trips. Today, the unpredictability of the weather leads to the impossibility of making definite plans. Climate change has also redefined the characteristics, numbers, and health of several plant and animal species²⁴⁴. According to the Arctic Climate Impact Assessment: “[...] marine species that depend on sea ice, including polar bears, ice-dwelling seals, walruses, and some seabirds, are very likely to decline, with some facing extinction”²⁴⁵. For Inuit, many other animal species are becoming inaccessible from a hunting perspective, as they tend to move the new places that become difficult to reach by travel. Many other animals are struggling to complete their migratory journeys due to melting ice that does not allow them to cross and flooding rivers. Typical Arctic animals such as the caribou are steadily declining, and for those that remain, their health is constantly put at risk. The consequences of climate change are endangering Inuit livelihoods. Indeed, again according to the 2004 ACIA report: “For the Inuit, warming is likely to disrupt or even destroy their culture of hunting and sharing food, as reduced sea ice causes the animals they depend on to decline, becoming less accessible, and possibly go extinct”²⁴⁶. The Petition was particularly directed at the United States, accusing them of having a serious impact on climate change through their own omissions and actions, thus violating the human rights of the Inuit which are protected by the American Declaration of Human Rights and Duties of Man and other international instruments²⁴⁷. The rights that have been violated are of the benefit to culture, to property, to the preservation of health, life, physical integrity, safety and livelihood, and to residence, movement and the inviolability of the home²⁴⁸. The Petition can be summarized, in terms of its most important points, in three factors that link U.S. climate policy and its effects on Inuit human rights:

- 1) “The US contributes a substantial portion of the world’s greenhouse gases but is not taking adequate policy steps to reduce those emissions;

²⁴² *Ibid.*

²⁴³ *Ibid.*

²⁴⁴ *Ibid.*

²⁴⁵ Arctic Climate Impact Assessment (ACIA), October 15, 2004, *Impacts of a Warming Climate: Final Overview Report*, p. 8.

²⁴⁶ Arctic Climate Impact Assessment (ACIA), October 15, 2004, p. 10.

²⁴⁷ CROWLEY (2005:5).

²⁴⁸ *Ibid.*

- 2) The resulting phenomenon of global climate change has significant impacts on the Inuit; and
- 3) These impacts violate rights of the Inuit protected under the Inter-American Human Rights System”²⁴⁹ .

The goals pursued by the Petition are explicitly stated by Watt-Cloutier:

“Following more than two years of preparation we have submitted today a Petition to the Inter-American Commission on Human Rights based in Washington D.C. [...] A declaration from the Commission may not be enforceable, but it has great moral value. We intend the Petition to educate and encourage the United States to join the community of nations in a global effort to combat climate change [...] I suggested that the Arctic is a bridge between regions of the world. Inuit have the same philosophy. We want to bring people together. Protecting human rights is ground occupied by both reasonable governments and civil society, including Inuit and other indigenous people. This Petition is our means of inviting the United States to talk with us and to put this global issue in a broader human and human rights context. Our intent is to encourage and to inform”²⁵⁰.

The United States, at the time of the Petition between 2004 and 2005, was the world’s largest contributor of greenhouse gas emissions. However, the U.S. has refused to take action to reduce its emissions. The scientific community has converged that most of the triggers for climate change over the past 50 years have been caused by human activity. This conclusion, in addition to being proven, has also been accepted by the United States. Different administrations over the past 20 years of the U.S. presidency have shown different and desperate lines towards the country’s action on climate change. “The protection of human rights is the responsibility of all civilized nations”²⁵¹. The basic rights of Inuit livelihood have been threatened by the reckless action of the United States, it is imperative that the United States take action to counter this phenomenon. The Inter-American Commission on Human Rights, as a Petition dealing with violations of the American Declaration of Human Rights and Duties of Man by the United States of America, has jurisdiction to receive and review the document²⁵². Violations that are submitted in the Petition could be remedied. To do so, the Petitioners requested that the Inter-American Commission on Human Rights:

1. “Make an onsite visit to investigate and confirm the harms suffered by the named individuals whose rights have been violated and other affected Inuit;
2. Hold a hearing to investigate the claims raised in this Petition;
3. Prepare a report setting forth all the facts and applicable law, declaring that the United States of America is internationally responsible for violations

²⁴⁹ HAVEMANN (2013:323)

²⁵⁰ Shaila Watt-Cloutier, Chair, Presentation at the Inuit Circumpolar Conference Eleventh Conference of Parties to the UN Framework Convention on Climate Change Montreal, December 7, 2005.

²⁵¹ CROWLEY (2005:7).

²⁵² *Ibid.*

of rights affirmed in the American Declaration of the Rights and Duties of Man and in other instruments of international law, and recommending that the United States²⁵³”.

It is therefore necessary to adopt obligatory steps to reduce greenhouse gas emissions and join efforts by the international community to reduce emissions at the global level. At the same time, it is important to establish with Indigenous people “a plan to protect Inuit culture and resources, including but not limited to land, water, snow, ice, and utilized plant and animal species”²⁵⁴. It is also critical to have a strategy in place so that Inuit may get the help they need to adapt to the unavoidable effects of climate change.

4.2 Climate change in the Arctic

The Inuit people in recent decades have been battling several challenges, climate change being the biggest one for their well-being and survival. Of all the places on earth, the Arctic region is the one that has suffered the most impacts and consequences. Indeed, being mostly made up of ice, the changes are more visible and rapid than in other areas of the earth, where the perception is quite different. Climate models have long indicated that the Arctic would be the most affected by global warming²⁵⁵. Indeed, during the last few decades, yearly arctic temperatures have risen at about twice the rate of the rest of the world²⁵⁶. This rapid temperature rise is confirmed and explained by the Arctic Climate Impact Assessment.

According to scientific agreement, global warming is believed to be caused by an increase in greenhouse gas concentrations in the atmosphere as a result of human activities. The Intergovernmental Panel on Climate Change (IPCC) publications, numerous scientific studies, declarations by US scientific groups, and the US government’s own research all support this statement. Just in August 2021, the IPCC published its latest report that does not present encouraging data on the situation of climate change. Later in the chapter it will be possible to look at the data it reported. Greenhouse gases are atmospheric elements that have the ability to capture and hold heat, warming the globe. “Greenhouse gases are translucent to short-wavelength radiation reaching earth from the sun, but opaque to longer-wavelength radiation, trapping some of the heat that earth would otherwise radiate back into space”²⁵⁷. This heat-trapping property is critical because it ensures that the earth remains warm enough to support life.

²⁵³ CROWLEY (2005:8).

²⁵⁴ *Ibid.*

²⁵⁵ CROWLEY (2005:33).

²⁵⁶ Arctic Climate Impact Assessment (ACIA), October 15, 2004, p. 14.

²⁵⁷ CROWLEY (2005:28).

Greenhouse gas emissions have risen inexorably since the industrial revolution at the end of the 18th century, owing principally to the increasing combustion of fossil fuels for energy and industrial operations. Furthermore, industry has released new, extremely potent greenhouse gases into the atmosphere, “such as chlorofluorocarbons (CFCs), hydrofluorocarbons (HFCs), hydrochlorofluorocarbons (HCFCs), perfluorocarbons (PFCs), and sulfur hexafluoride, which have aggravated the problematic of climate change”²⁵⁸. CO₂, the primary greenhouse gas, was around 280 parts per million (ppm) in the atmosphere during the start of the industrial revolution²⁵⁹. In pre-Petition years, the recorded level was around 375 ppm, an increase of 34% since 1950²⁶⁰. Since the pre-industrial era, methane, the second most prevalent greenhouse gas, has increased 150%, while nitrous oxide has risen 16%²⁶¹.

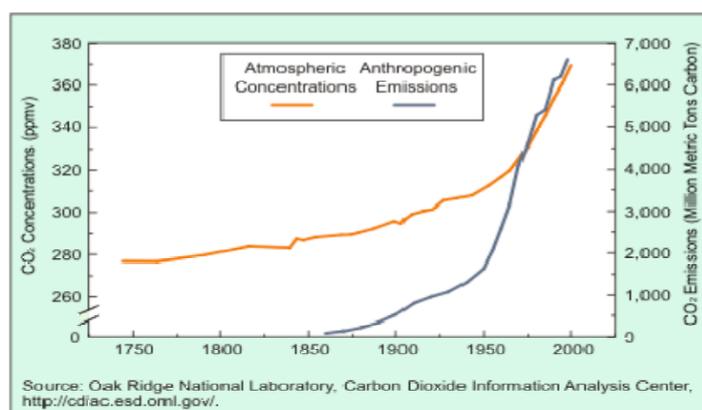


Figure 2: Trends in atmospheric concentrations and anthropogenic emissions of carbon dioxide, US Energy Information Administration, in CROWLEY (2005:29).

In light of these considerations, what are the effects of global warming in the Arctic region? “In an icy land, where even small changes in climate can be significant, the rapid changes caused by global warming are nothing short of catastrophic”²⁶². Human-caused climate change is making the Inuit and all Arctic peoples pay the price for their own development, with no corresponding benefit in return²⁶³. The effects that global warming is bringing are there for all to see. Those occurring in the Arctic are those described within the content of the Petition: melting ice and permafrost, rising sea levels, and

²⁵⁸ *Ibid.*

²⁵⁹ Contribution of Working Groups I, II and III to the Third Assessment Report of the Intergovernmental Panel on Climate Change, Watson, R. T. and the core Writing Team, 2001, p. 14.

²⁶⁰ *Ibid.*

²⁶¹ *Ibid.*

²⁶² CROWLEY (2005:21).

²⁶³ *Ibid.*

all the consequences that follow. Many other effects of global warming are less visible. Inuit however know that: “ice is less slippery, snow is not only scarcer but different, that ice is coming later and leaving earlier, and that changes are affecting the behavior, number, location, and quality of harvested animals”²⁶⁴. *Inuit Qaujimagatuqangit (IQ)*²⁶⁵ relates that in addition to the Arctic region becoming warmer, the once familiar landscape is also taking on unusual appearances, becoming unrecognizable.

Several recent studies on climate change show the need to reverse emissions by 2030, as the conclusion is always the same from most of the scientific community: the earth is getting warmer and its climate is changing, putting at risk the well-being of future generations²⁶⁶. There is also no longer any doubt about the premises posed by the Petition to the Inter-American Commission on Human Rights: CO² emissions are warming the Arctic, negatively impacting Inuit life and culture. In order to demonstrate the validity of the Petition brought forward by the Inuit, it is necessary to study the climatic data that characterized the years between 2004 and 2005 and even before. In order to show how the problem of climate change, 16 years after the denunciation by the indigenous population, has worsened, it is indispensable to take a look at the numbers that characterize the present day. These will show how the emergency is more relevant and more alarming than ever.

The United Nations, after observing the growing threat of climate change for years, decided in 1988 to establish the Intergovernmental Panel on Climate Change. It was created by the World Meteorological Organization and the United Nations Environment Program. The Panel is now the largest scientific body on climate change, bringing together world-renowned scientists. The goal of the IPCC is to observe climate change in order to lay the groundwork for policy action informed by scientific studies. At the same time, it aims to present impacts and possibilities for adaptation and mitigation²⁶⁷. The IPCC report that comes closest to the Petition years, i.e. the 2001 Third Assessment Report (TAR), had reported that the earth’s surface temperature had increased by 0.6 C° since the late 1800s²⁶⁸. This figure represented, at the time, a strong alarm for scientists who also estimated that the 90s had been the hottest decade

²⁶⁴ *Ibid.*

²⁶⁵ *Inuit Qaujimagatuqangit (IQ)* is a phrase in the *Inuktitut* language that has the meaning of “traditional Inuit knowledge”. Inuit Qaujimagatuqangit is a body of knowledge and cultural insights unique to the Inuit concerning the workings of nature, humans, and animals. “Inuit Qaujimagatuqangit has both practical and epistemological aspects that branch out from a fundamental principle that humans are learning and rational beings with infinite potential for problem solving within the dictates of nature and technology” in Education Framework, Inuit Qaujimagatuqangit for Nunavut Curriculum, Nunavut Department of Education, 2007, *Inuit Qaujimagatuqangit for Nunavut Curriculum*.

²⁶⁶ Arctic Climate Impact Assessment (ACIA), October 15, 2004, p. 15.

²⁶⁷ Contribution of Working Groups I, II and III to the Third Assessment Report of the Intergovernmental Panel on Climate Change.

²⁶⁸ Contribution of Working Groups I, II and III to the Third Assessment Report of the Intergovernmental Panel on Climate Change, Watson, R. T. and the core Writing Team, 2001, *Climate Change 2001: Synthesis Report. Contribution of Working Groups I, II and III to the Third Assessment report of the Intergovernmental Panel on Climate Change*, p. 15.

of the last millennium, with 1998 being the warmest year on record²⁶⁹. After the 2001 release of the IPCC report, then-U.S. President George W. Bush requested that the U.S. National Academy of Sciences (NAS) prepare a paper to confirm or overturn the Panel’s published data. The results matched. Indeed, the report affirmed that “global average surface air temperature warmed between 0.4 and 0.8 C° during the 20th century”²⁷⁰. Following the TAR’s findings in 2001 the World Meteorological Organization (WMO) also confirmed that the earth’s temperature was increasing. The period between 1995 and 2005 was the warmest decade on record²⁷¹. The five hottest years, in descending order, were 1998, 2002, 2003, 2004 and 2001²⁷².

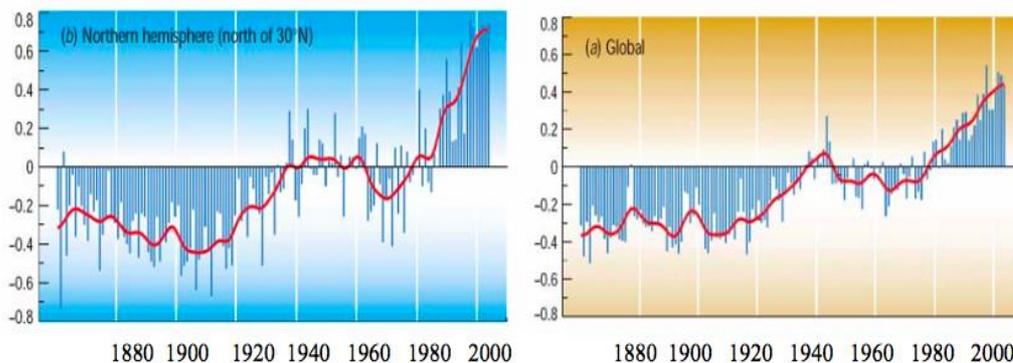


Figure 3: (b) Combined annual land and sea-surface temperature anomalies in the northern hemisphere from 1861–2004 (a) Combined annual global land and sea-surface temperature anomalies from 1861-2004; WMO Statement on the Status of the Global Climate in 2004, in CROWLEY (2005:23).

It will now be useful for the purposes of this discussion to look at data on the effects of global warming on the Arctic. Among the various consequences analyzed, the reduction in sea ice represents one of the most serious threats to the unstable Arctic system. According to data from the Arctic Climate Impact Assessment, it is estimated that there has been an average reduction in ice of 8% per year from 1975 through 2004²⁷³. These figures are only increasing each year. The greatest melting obviously occurs in the warmer months, where it has been estimated that there has been the greatest reduction in ice, which

²⁶⁹ *Ibid.*

²⁷⁰ Climate Change Science Program and the Subcommittee on Global Change Research, 2004, *Our Changing Planet*.

²⁷¹ World Meteorological Organization (WMO), 2005, *WMO Statement on the Status of the Global Climate in 2004*, p. 3.

²⁷² World Meteorological Organization (WMO), 2005, p. 4.

²⁷³ Arctic Climate Impact Assessment (ACIA), October 15, 2004, p. 17.

is around 10-15%²⁷⁴. In addition to melting, another phenomenon that has occurred is the thinning of ice thickness. Again, the ACIA has observed a reduction around 10-15% over the last twenty years through 2004²⁷⁵.

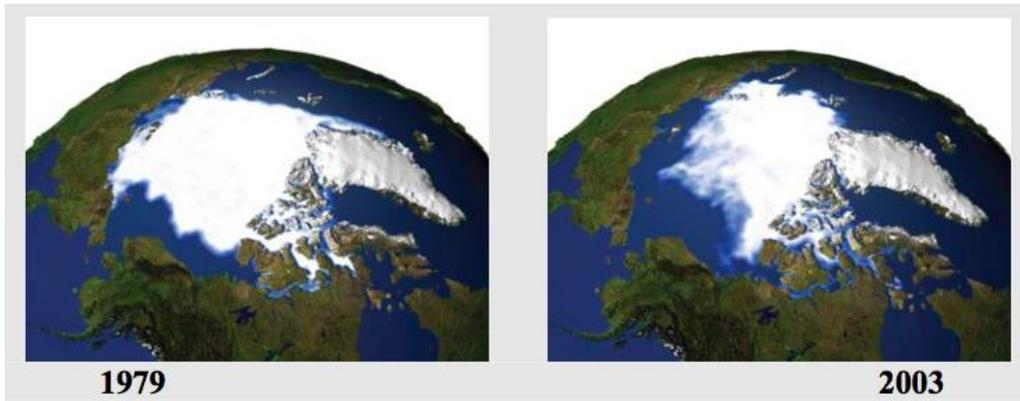


Figure 4: Melting Sea-Ice, observations from September, from NASA Goddard Space Flight Center, in CROWLEY (2005:24).

The melting and loss of ice thickness due to rising temperatures has disruptive effects on the lives of indigenous peoples and thus for the Inuit. A 2003 study conducted by the United States on the effects of climate change on Alaska native peoples states that:

“Rising temperatures have affected the thickness, extent, and duration of sea ice forming along Alaska’s western and northern coasts. The loss of sea ice leaves the coasts more vulnerable to waves, storms, and erosion. When combined with thawing permafrost along the coast, the loss of sea ice seriously threatens Alaska Native coastal villages. In addition, when the ice melts or recedes earlier, walrus, seals, and polar bears move with it, taking them too far to be hunted”²⁷⁶.

Permafrost, which could be seen above, is also an indispensable source for the well-being of Inuit life. Indeed, it constitutes 20-25% of the land surface in the northern hemisphere²⁷⁷. As permafrost melts, it makes the ground much more unstable, leading to its collapse. However, thawing also tends to deform the land, making it difficult to build railways, airport runways and gas pipelines. Since these soils cannot be exploited, they often remain unused. The major consequence of these melts is rising sea levels, which have increased at

²⁷⁴ *Ibid.*

²⁷⁵ Arctic Climate Impact Assessment (ACIA), October 15, 2004, p. 18.

²⁷⁶ Flooding and Erosion in Alaska Native Villages (“GAO Flood Report”), United States General Accounting Office, December 2003, GAO-04-142, *Flooding and Erosion in Alaska Native Villages* (“GAO Flood Report”), p. 8.

²⁷⁷ CROWLEY (2005:25).

a rate of ten times that of the past 3,000 years²⁷⁸. This melting has been estimated to contribute approximately 1.0 mm/yr to sea level rise²⁷⁹. Global warming in the Arctic has been estimated to contribute an average of 0.2 to 0.4 mm/yr per detection of water in the oceans²⁸⁰.

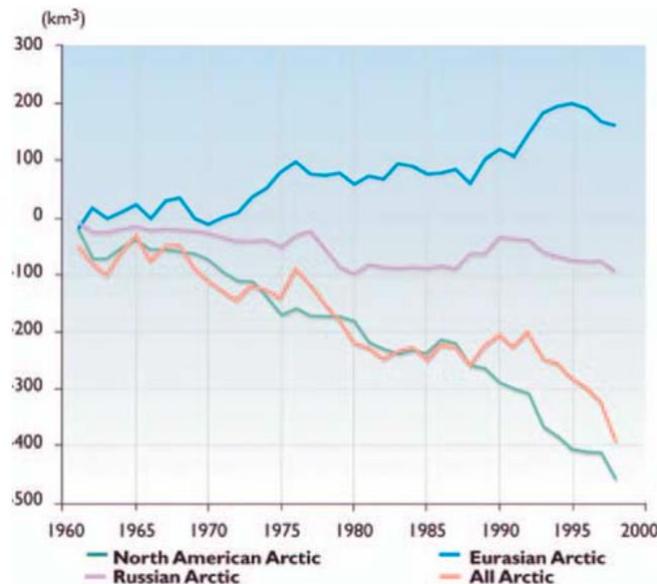


Figure 5: Changes in Arctic glacier volume from 1960 to 2000s, Arctic Climate Impact Assessment, in CROWLEY (2005:26).

Climate change has also disrupted the Arctic region's flora and fauna system. According to a large number of studies that were conducted and completed prior to 2001, about 61% of the habitat or species observed have shown changes²⁸¹. These include the timing of reproduction, which has been shortened; shifts in the natural habitats of several animals; and changes in the development, fitness and genetics of the animals themselves²⁸². Global warming has led to the extinction of many species, and many more are at risk, including 25% of mammals and 12% of birds²⁸³. Rising temperatures have led many bird species to migrate to the poles in search of cooler places to live. Plants, too, have undergone upheaval, having to readjust to rising temperatures. A 2003 study of more than 1,000 different species found that

²⁷⁸ Working Group II Contribution to the Intergovernmental Panel on Climate Change Fourth Assessment Report, Intergovernmental Panel on Climate Change, April 13, 2007, *Climate change 2007: Impacts, Adaptation and Vulnerability*.

²⁷⁹ *Ibid.*

²⁸⁰ *Ibid.*

²⁸¹ GITAY, HABIBA (2001: 247)

²⁸² *Ibid.*

²⁸³ GITAY, HABIBA (2001:271).

about 80% of them experienced alterations in behavior and even shape²⁸⁴. As temperatures have risen, insect infestations have grown exponentially, resulting in forests being more susceptible to wildfires. Indeed, since 1970, Alaska has experienced numerous wildfires, burning an average of 2.5 million acres per year²⁸⁵. Wildfires in turn cause severe damage to the State's economy, which sees homes, infrastructure, and industries destroyed. The threats posed by climate change, although the data and information reviewed in this section refer to the first five years of the 2000s, continue to be the focus of daily news around the world. According to scientists, changes in the earth's climate can be seen in every region and throughout the climate system. This was reinforced in the Intergovernmental Panel on Climate Change's recent assessment, which was released on August 9, 2021. The report states that many of the effects brought about by climate change are unprecedented, though still reversible, while others such as sea level rise, are deemed irreversible for hundreds or thousands of years²⁸⁶. Strong and long-term reductions in CO² and other greenhouse gas emissions, on the other hand, would restrict climate change. While the improvements to air quality would be immediate, stabilizing global temperatures could take 20-30 years. The research presents new estimates of the likelihood of exceeding 1.5°C global warming in the coming decades, concluding that limiting warming to 1.5°C or even 2°C will be impossible to achieve unless fast, quick, and large-scale reductions in greenhouse gas emissions occur²⁸⁷. The analysis indicates that human-caused greenhouse gas emissions are responsible for approximately 1.1°C of warming between 1850 and 1900, and that global temperature is anticipated to approach or exceed 1.5°C in the next 20 years²⁸⁸. This estimate is based on enhanced observational datasets for evaluating historical warming, as well as scientific progress in understanding of the phenomenon. According to the IPCC assessment, human activity is to blame for the retreat of glaciers since the 1990s and the decline in Arctic sea ice area between 1979 and 2019²⁸⁹.

²⁸⁴ ROOT (2003).

²⁸⁵ US National Assessment of the Potential Consequences of Climate Variability and Change Educational Resources Regional Paper, US Global Change Research Program, 2003, *US National Assessment of the Potential Consequences of Climate Variability and Change Educational Resources Regional Paper: Alaska*.

²⁸⁶ Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, Intergovernmental Panel on Climate Change, August 9, 2021, *Climate Change 2021: The Physical Science Basis*.

²⁸⁷ *Ibid.*

²⁸⁸ *Ibid.*

²⁸⁹ Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, August 9, 2021, p. 7.

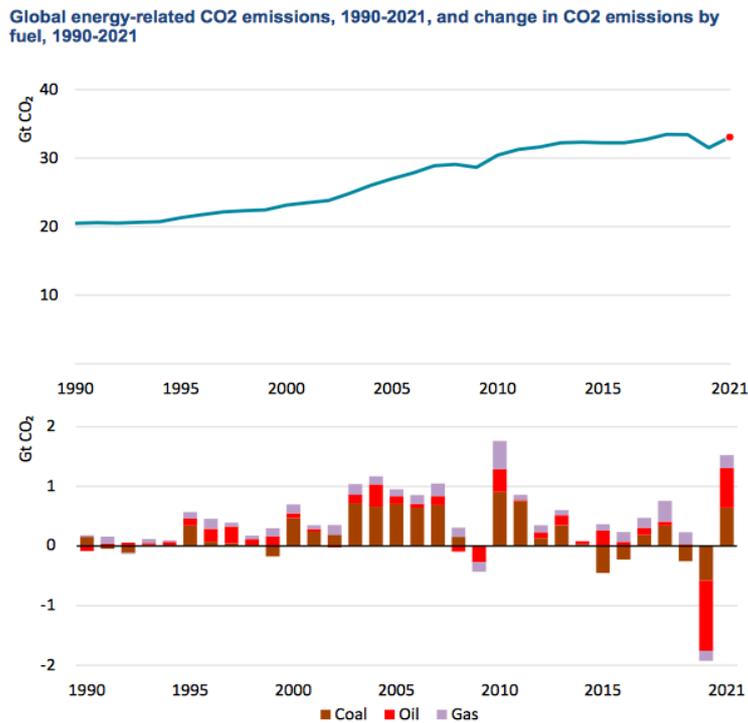


Figure 6: Global energy-related CO₂ emission between 1990 and 2021; change in CO₂ emission by fuel in the same range of years, Our World in Data, in RITCHIE, ROSER (2020).

All the events that are occurring in the Arctic right now can be linked back to human activity. Since 1950, it has also resulted in a drop in northern hemisphere spring snowpack. The observed surface melting of the Greenland ice sheet over the last two decades is very certainly the result of human impact. At nearly three times the rate of global warming, the Arctic is expected to see the greatest increase in the temperature of the coldest days. The frequency of marine heatwaves will continue to rise as global warming continues, particularly in the tropical ocean and the Arctic. Warming is expected to accelerate permafrost thawing, as well as the loss of seasonal snow cover, land ice, and Arctic sea ice. If nothing is done to improve emissions and if temperature increases continue, the Arctic will be nearly ice-free by 2050²⁹⁰.

²⁹⁰ Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change, August 9, 2021, p. 19.

4.3 Role of the United States

The Petition was presented against the United States which, however, is far from a monolithic organization, particularly when it comes to climate change policy²⁹¹. The executive branch is charged with setting climate change policy and negotiating international agreements. This branch, led by then-President George W. Bush, voted to withdraw from the Kyoto Protocol in 2001, when the Petition was being filed. Bush's reservations about the protocol were purely financial. The former president was concerned that the agreement would harm the US economy, lead to increased energy prices, and enable other countries to take advantage of a weak enforcement mechanism. This decision represented for the Petition to the Inter-American Commission on Human Rights a central element to appeal, as it refers to the inability of the United States to adequately control carbon dioxide emissions²⁹².

President Barack Obama's administration has been far more caring of domestic climate change regulation, with important measures from a number of agencies, including the first greenhouse gas emissions limits for vehicles and stationary sources. The Obama administration has also taken a strong participation in international climate change discussions, including taking the lead on drafting agreements. Two important examples are the 2009 Copenhagen Accord²⁹³ and the 2015 Paris Agreement, in which the United States committed. Despite this pledge by the Obama administration, subsequent disengagement by Donald Trump, and resumption by the Joe Biden, it remains complicated to prevent the real problems of the indigenous Inuit population, although a shift in mindset and policy seems to be coming. The first argument brought forward by the Petition is that despite the fact that the United States represented the largest contributor of GHGs to the world at the time, it has done nothing to advance appropriate policies in limiting its emissions. At the time, President Bush was aware of the situation. He was conscious that nearly 20% of the world's man-made greenhouse gases originated within its borders²⁹⁴. Even statistics and studies conducted by the United States in 2002 had indicated that CO² emissions would increase by 42.7% between 2000 and 2020²⁹⁵. According to Inuit petitioners, the unwillingness of the U.S. to join the Kyoto Protocol and the aversion of the Bush administration to make constructive change with respect to their

²⁹¹ HAVEMANN (2013:318).

²⁹² President George W. Bush, Speech Discussing Global Climate Change, June 11, 2001.

²⁹³ The Copenhagen Accord is a document that recognizes climate change as one of the greatest challenges of our time and underlines the need to limit the increase in global temperature well below 2°C. The text does not contain binding obligations but invites industrialized countries to indicate their reduction targets and developing countries to indicate the actions they intend to put into practice to limit the growth of emissions.

²⁹⁴ President George W. Bush, Speech Discussing Global Climate Change, June 11, 2001.

²⁹⁵ Third National Communication of the United States of America Under the United Nations Framework Convention on Climate Change, US Department of State, Washington, D.C., May 2002, *U.S. Climate Action Report – 2002*.

emissions have demonstrated a substantial refusal to undertake significant action to tackle global warming²⁹⁶.

The legislative branch develops the statutory laws that govern U.S. energy policy and other climate-related decisions. Despite the fact that major new global climate change legislation seems to be possible to date, with the changes that are taking place, at the time of the Petition everything seemed to be stalled in this regard. The primary way through which the legislative branch addressed climate change was the expansion of environmental, energy, and financial recovery statutes, as well as regulation by the executive branch agencies under them²⁹⁷. In February 2002, President Bush's administration announced the Global Climate Change Initiative, with the stated goal of reducing US greenhouse gas emissions "intensity" by 18% between 2002 and 2012²⁹⁸. In particular, the Clean Air Act was the primary foundation for the U.S Environmental Protection Agency's (EPA)²⁹⁹ greenhouse gas regulations, and the Energy Policy Act of 2005 was the foundation for efforts to create electric corridors of national interest as part of bringing more renewable energy onto the grid. The first Act mentioned, was introduced in 1970 and amended several times, is the key piece of legislation that establishes air quality regulations in the United States. Specifically, the Act requires the EPA to set national air quality standards for certain types of pollutants. President Bush signed the Energy Policy Act into law on August 8, 2005. The stated goal of the Act is to have safe, affordable, and reliable energy through measures designed to increase the supply of fossil fuels and nuclear energy, to seek greater energy efficiency, and to create incentives to encourage the growth of renewable energy sources. It has been observed that these two pieces of legislation have not accomplished their goals in promoting the development of renewable energy and decreasing the emission of greenhouse gases, but rather have given financial stimulus to existing energy interests, especially the oil and natural gas industries³⁰⁰. As a result, the former president's goal of lowering emissions intensity has had little effect on US emissions. Between 1990 and 2003, they climbed by over 13%³⁰¹. Thus, in light of the refusal to participate in the Kyoto Protocol and the inability and unwillingness of the George W. Bush administration – despite awareness of the massive amount of CO² emissions – to pursue constructive progress on climate change policies, the reasons for the Petition to the Inter-American Commission on Human Rights are well-founded.

²⁹⁶ CROWLEY (2005:45).

²⁹⁷ HAVEMANN (2013:320).

²⁹⁸ CROWLEY (2005:103).

²⁹⁹ The Environmental Protection Agency (EPA), established on December 2, 1970 by Richard Nixon, is an agency of the federal government of the United States of America, charged with the protection of the environment and human health, pursued through the timely enforcement of laws passed by the Congress of the United States of America.

³⁰⁰ HAVEMANN (2013:320).

³⁰¹ In Brief: The U.S. Greenhouse Gas Inventory, United States Environmental Protection Agency (EPA), 2005, *In Brief: The U.S. Greenhouse Gas Inventory*.

In order to understand the extent of the pollution contribution by the United States in the years before the Petition, however, it is necessary to reflect on some data.

The most industrialized countries in the world are among the largest consumers of energy, and therefore of fossil fuels. Carbon dioxide represents the most important by-product derived from these. This has made the United States, for many years, the largest emitter of CO² in the world. To quote some data: “as early as 1890, the USA was emitting 31% of the world’s energy-related carbon dioxide. By 1950, U.S. emissions peaked, relative to other countries, at 43% of the world’s CO² emissions”³⁰². The main takeaway from this is that the U.S. obtains the lead for cumulative emissions – representing a composite of total historical CO² emissions – in the world.

“From 1950 to 2000, the United States emitted 57,874 million metric tons (MMTC) of CO², making it the largest cumulative emitter over that time period. Indeed, this is more than two and a half times the emissions of the next largest emitter, the Russian Federation, over the same period. U.S. cumulative emissions for that period were about 30% higher than all transition economy states combined. They were also 46% larger than those of the European Union-15 (EU-15). In addition, U.S. cumulative emissions were about three times larger than those of China, twelve times larger than those of India, and twenty-nine times larger than those of Brazil”³⁰³.

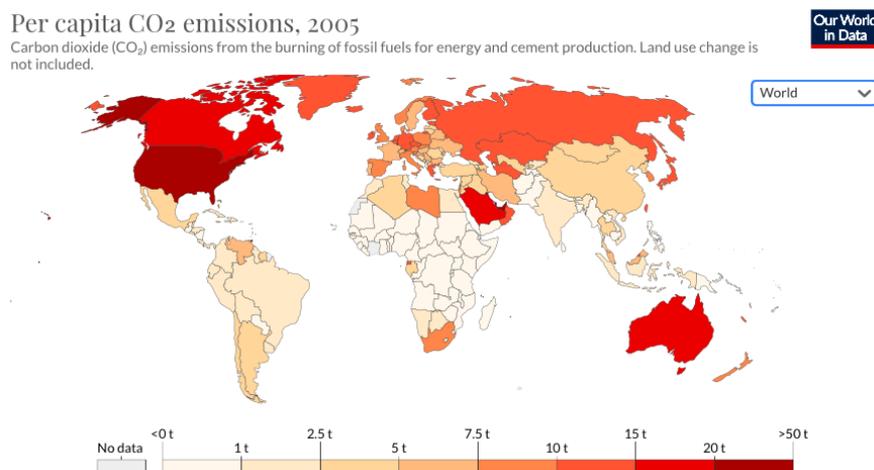


Figure 7: Our World in Data 2005 based on the Global Carbon Project; Gapminder & UN.

As pointed out earlier, however, the situation has changed dramatically thanks to the agreements that have been concluded to protect the climate. Most notably, the 2009 Copenhagen Accord and the 2015 Paris Agreement. The latter was rejoined by the U.S. under Joe Biden’s administration in February 2021, establishing a global framework to avoid dangerous climate change by

³⁰² World Resources Institute, Climate Analysis Indicators Tool (CAIT).

³⁰³ *Ibid.*

limiting global warming well below 2°C and continuing efforts to limit it to 1.5°C. It also aims to strengthen the capacity of countries to address the impacts of climate change and support them in their works. The U.S. effort has enabled a reversal in emissions, and thanks largely to the economic boom in the East, China now holds the negative record as the world’s largest emitter of carbon dioxide. United States, to date, represent the second nation in the world that emits more carbon dioxide producing about 4.888 Gigatonnes (Gt), to beat only China with a production of about 9.481 Gt, almost double³⁰⁴. Although the data on the chart below goes all the way back to 2019, it easily gives an idea of the leap forward China has made in emitting CO²:

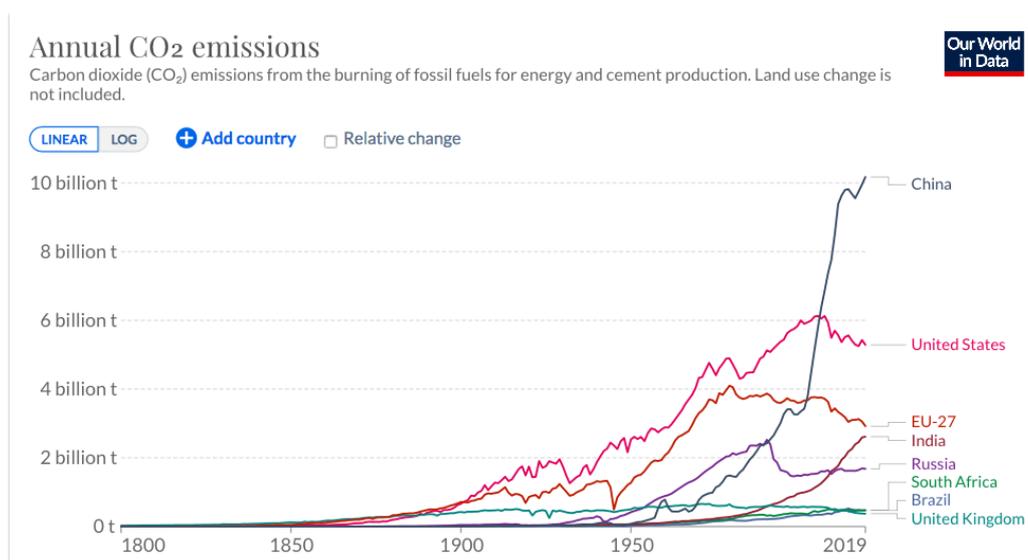


Figure 8: Global Carbon Project; Carbon Dioxide Information Analysis Centre (CDIAC), in Our World in Data.

4.4 The rights violations effect of global warming on Inuit population

The key conceptual aspect of the Petition is that global climate change, which is a supranational phenomenon caused by poorly managed emissions, has many effects on Inuit. Temperatures in the Arctic are rising at twice the rate of the world, according to the 2004 Arctic Climate Impact Assessment, and the effects of climate change are most serious in the region³⁰⁵. As it was possible to observe, these changes have serious consequences for the Inuit,

³⁰⁴ Ente Nazionale Idrocarburi (ENI), Luca Longo, *Un mondo di CO₂, Un rapporto della IEA fa luce su quali sono i paesi che contribuiscono di più alle emissioni globali di anidride carbonica.*

³⁰⁵ Arctic Climate Impact Assessment (ACIA), October 15, 2004, p. 13.

which have only gotten worse in the years since the Petition was filed. Inuit dwellings are being harmed by melting permafrost and increasingly severe storms. As hunting grows to a greater extent precarious, changes in animal populations endanger their livelihood. Traditional travel routes are perilous when the ice thaws. The earth beneath the Inuit's feet is physically shifting, and everything from weather prediction to igloo construction has changed³⁰⁶. The centrality of the Petition to the Inter-American Commission, however, lies in the effects that climate change and greenhouse gas emissions have on the human rights of Inuit.

“It argues that the impacts of global warming violate their right to enjoy the benefits of their culture, their right to use and enjoy the lands they have traditionally occupied, their right to use and enjoy their personal property, their right to the preservation of health, their right to life, bodily integrity and safety, their right to their livelihood and their rights of residence and movement and the inviolability of their homes”³⁰⁷.

Because the United States is not a signatory to the American Convention on Human Rights, the Petition relied on rights included in the regionally based American Declaration of the Human Rights and Duties of Man, analyzed in Chapter II³⁰⁸. The Declaration and the Convention have a complicated relationship. The latter can be used to understand the former, but it expressly denies that it has the power to exclude or limit the Declaration's impact³⁰⁹. Rights claims establish ties not only across the Americas, but also to the other regions and supranational organizations that shape international law, because the Commission interprets these rights in light of broader international legal trends³¹⁰.

“In both its actors and claims, the Inuit Petition simultaneously engages multiple scales, from the local to international; multiple branches of government, from executive to legislative to juridical; and multiple types of actors, from governmental entities to NGOs to corporations to individuals. These places and spaces represent a nuanced geography that makes discerning the Petition's potential impact difficult”³¹¹.

Both the Inter-American Court of Human Rights and the Inter-American Commission on Human Rights have stressed the importance of taking into account the specific context of indigenous culture and history when implementing the rights included in the American Declaration of Human Rights. The Inter-American Court and the Inter-American Commission on Human Rights have both ruled that the Declaration, despite being established

³⁰⁶ CROWLEY (2005:61).

³⁰⁷ HAVEMANN (2013:325).

³⁰⁸ *Ibid.*

³⁰⁹ American Convention on Human Rights, San José, November 22, 1969, Article 29 (b-d).

³¹⁰ CROWLEY (2005:96-102).

³¹¹ HAVEMANN (2013:325).

as the latter rather than a legally binding treaty, is now a source of international duties for Organization of American States member nations³¹².

An example of the Inter-American Court's work regarding the protection of indigenous rights occurred in the *Awás Tingni v. Nicaragua*³¹³ case. The Court in this case interpreted the protection of property under the American Convention as protection of property rights as understood by the indigenous community involved³¹⁴. Another interesting case was the *Yanomami*³¹⁵ case. In it, the Inter-American Commission ruled that "international law in its present state [...] recognizes the right of ethnic groups to special protection [...] for all those characteristics necessary for the preservation of their cultural identity"³¹⁶. Recognizing the human rights violations that had occurred to the *Yanomami* people, the Commission considered that:

"the Organization of American States has established, as a priority action for member States, the preservation and strengthening of the cultural heritage of these ethnic groups and the fight against discrimination that invalidates the potential of their members as human beings through the destruction of their cultural identity and individuality as indigenous peoples"³¹⁷.

The Commission noted that international law protects the rights of indigenous peoples. These, in order for them to be properly considered, must be placed in the context of the cultural history of these peoples. An example comes from the United Nations Human Rights Committee, which affirmed that the

³¹² *Ibid.*

³¹³ The *Awás Tingni* Settlement was a Nicaraguan indigenous community on the Atlantic coast. The Community's members subsisted on collective agriculture, fruit gathering, hunting, and fishing. The Community did not have a real estate title to the land it claimed. In 1996, the state granted a corporation a concession to construct roads and log in the forest in an area of around 62,000 hectares in the region where the community is located. The community then wrote to the minister, requesting that no further actions be made to grant the corporation the concession without first reaching an agreement with the community. They then filed a petition with the Inter-American Commission on Human Rights, alleging that the state of Nicaragua had failed to fulfill its obligations under the American Convention on Human Rights by failing to provide an effective remedy in response to the community's complaints about its property rights.

³¹⁴ CROWLEY (2005:70).

³¹⁵ The *Yanomami* indigenous people has filed a petition with the Inter-American Commission on Human Rights against the Brazilian government. The case was based on the construction of a road and the granting of mining licenses on indigenous land, which resulted in a large number of foreigners in the area and had serious consequences for the community's well-being, including the disruption of their traditional organization, the emergence of female prostitution, epidemics and diseases, and forced relocation to lands unsuitable for their ways of life.

³¹⁶ Case of *Yanomami* Indians, Case 7615, Inter-American on Human Rights, Brazil, 1985, OEA/Ser.L/V/II.66 Doc., *Case of Yanomami Indians v. Nicaragua*.

³¹⁷ *Ibid.*

conditions expressed in Article 27³¹⁸ of the International Covenant on Civil and Political Rights (ICCPR):

“depend on the ability of the minority group to maintain its culture, language or religion. Accordingly, affirmative measures by States may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to [practice] their religion, in community with other members of the group”³¹⁹.

While ILO Convention No. 169 in discussing the rights of indigenous and tribal peoples in independent countries affirmed that: “[the] rights of peoples concerned with the natural resources belonging to their lands must be particularly safeguarded”³²⁰.

4.5 The violation of the right to enjoy the benefit of culture

The United States is infringing on the Inuit’s right to cultural advantages by failing to take effective steps to limit greenhouse gas emissions. Climate change has harmed and may eliminate the subsistence way of life that is vital to the Inuit cultural identity. Because of the fast-changing environment, traditional Inuit knowledge, passed down from Inuit elders in their duty as caretakers of the Inuit culture, is becoming less effective.

In the previous chapters it was possible to observe the importance that indigenous peoples, more specifically the Inuit, give to the natural environment so that they and their culture can survive. The problems that plague the Arctic region because of climate change, result in the annihilation of the land of indigenous peoples. Thus, devastation of the fragile Arctic ecology is “incompatible with the Inuit’s right to be respected as [...] human beings”³²¹, and infringes different rights ensured by the American Declaration.

“The protection of the environment is likewise a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to health and the right to life itself. It is scarcely necessary to elaborate on this as damage to the environment can impair and undermine all

³¹⁸ International Covenant on Civil and Political Rights (ICCPR) General Assembly resolution 2200A (XXI) March 23, 1976, Article 27: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”.

³¹⁹ General Comment No. 23: The Rights of Minorities (Art. 27), Office of the Commissioner for Human Rights, 1994.

³²⁰ International Labour Organization Convention No. 169, 1989, Article 15.1.

³²¹ JAMES, WILLIAMS (2001).

the human rights spoken of in the Universal Declaration and other human rights instruments”³²².

The Inuit Petition to the Inter-American Commission on Human Rights challenged that climate change and related CO² emissions had violated the right for Inuit to enjoy the benefits of their culture. The American Declaration of Human Rights and Duties of Man guarantees the latter, stating in Article XIII that: “Every person has the right to take part in the cultural life of the community, to enjoy the arts, and to participate in the benefits that result from intellectual progress, especially scientific discoveries”³²³.

Cultural development and respect for culture are both prioritized in the Charter of the Organization of American States. This is particularly done in Article 30 and 48 where it is essentially emphasized that:

“The Member States, inspired by the principles of inter American solidarity and cooperation, pledge themselves to a united effort to ensure international social justice in their relations and integral development for their peoples, as conditions essential to peace and security. Integral development encompasses the economic, social, educational, cultural, scientific, and technological fields through which the goals that each country sets for accomplishing it should be achieved”³²⁴.

While Article 48 says that The Member States will work together to satisfy their educational needs, support scientific research, and promote technological advancement in order to achieve their overall development goals. They will regard themselves as individually and collectively obligated to maintain and enrich the American people’s cultural legacy³²⁵.

Similarly, in its protection of freedom of association and progressive growth, the American Convention on Human Rights acknowledges the significance of cultural freedom to human dignity. It does so in Article 16 stating that: “Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes”³²⁶. The Convention lays the groundwork for ensuring progressive development:

“The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the

³²² International Court of Justice, Case Concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia), September 25, 1997, 1997, *Case Concerning the Gabcikovo-Nagymaros Project (Hungary v. Slovakia)*.

³²³ American Declaration of the Human Rights and Duties of Man, Bogotá, May 2, 1948, Article XIII.

³²⁴ Charter of the Organization of American States, 1948, Article 30.

³²⁵ Charter of the Organization of American States, 1948, Article 48.

³²⁶ American Convention on Human Rights, San José, November 22, 1969, Article 16.

Organization of American States as amended by the Protocol of Buenos Aires”³²⁷.

The rights to enjoy the benefits of culture are also guaranteed by other fundamental human rights instruments. These include the Universal Declaration of Human Rights with Article 27 stating that: “Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits”³²⁸. As well as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), in their respective Articles 27 and 12:

“Members of minority groups shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language”³²⁹.

“The States Parties to the present Covenant recognize the right of everyone to take part in cultural life”³³⁰.

The activity of the United Nations Human Rights Committee further emphasizes the centrality of natural resources to the right to cultural benefits. The Committee has acknowledged that depletion of natural resources may infringe on the right to enjoy culture guaranteed by the ICCPR:

“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. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them.... The protection of these rights is directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole”³³¹.

Environmental degradation induced by a State’s action or inactivity has long been recognized by the Inter-American Court and Commission as a violation of the human right to cultural advantages, particularly in the context of indigenous cultures. Indeed, they argue for the need to protect the cultures of indigenous peoples while encompassing the preservation of “aspects related

³²⁷ American Convention on Human Rights, San José, November 22, 1969, Article 26.

³²⁸ U.N. Doc A/810, Universal Declaration of Human Rights, 1948, Article 27.

³²⁹ International Covenant on Civil and Political Rights (ICCPR), New York, 1966, Article 27.

³³⁰ International Covenant on Economic, Social and Cultural Rights (ICESCR), New York, 1966, Article 12.

³³¹ General Comment No. 23: The Rights of Minorities (art. 27), Office of the Commissioner for Human Rights 50th Session, 1994, *General Comment No. 23: The Rights of Minorities*.

to productive organization, which includes the issue of ancestral and common lands”³³².

For instance, in examining the right to property, the Inter-American Court – citing the *Awás Tingni v. Nicaragua* case – emphasized the link between cultural integrity and indigenous groups’ lands: “The close connection of indigenous peoples with the land must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity and their economic survival”³³³. It is precisely for this reason that the Inter-American Court, in analyzing issues related to the right to property, has acknowledged the connection between cultural integrity and the lands of indigenous peoples. To cite a case already reported, in the *Yanomami* case, the Commission remarked that the State had an obligation under the OAS Charter to place greater emphasis on the “the preservation and strengthening [...] of the cultural heritage of indigenous peoples” establishing that “the granting of subsoil resources on indigenous lands – with all the negative consequences for their culture – violated the rights of the *Yanomami*”³³⁴. The Commission further recognized the importance of and need for protection for ancestral lands, which are a fundamental component of the right to culture for indigenous peoples. The direct relationship of land, environment, and climate to culture is recognized in the national reports prepared by the Commission. In the 1997 one, it noted that: “certain indigenous peoples maintain special ties to their traditional lands and a close dependence on the natural resources found there, respect for which is essential to their physical and cultural survival”³³⁵. Indigenous peoples’ cultural rights are also guaranteed in the previously detailed United Nations Declaration on the Rights of Indigenous Peoples, which further connects them to the natural environment. Indeed, it states that:

“indigenous peoples have the collective and individual right to [...] prevention and redress for [...] any action that has the purpose or effect of depriving them of their integrity as distinct societies, or of their cultural or ethnic characteristics or identities; [...] As part of the right to the benefits of culture, the draft also includes the right to revitalize, use, develop, and transmit to future generations the histories, languages, oral traditions, philosophies, writing systems, and literatures of indigenous peoples, and to designate and maintain their proper names for communities, places, and persons”³³⁶.

³³² The Human Rights Situation of the Indigenous People in the Americas, Inter-American Commission on Human Rights, 2000, OEA/Ser.L/V/II.108, *The Human Rights Situation of the Indigenous People in the Americas*.

³³³ Caso de la Comunidad Mayagna (Sumo) *Awás Tingni* (“*Awás Tingni*”), Inter-American Commission on Human Rights, Nicaragua, 2001, *Caso de la Comunidad Mayagna (Sumo) Awás Tingni* (“*Awás Tingni*”).

³³⁴ Case of *Yanomami* Indians, Case 7615, Inter-American on Human Rights, Brasil, 1985.

³³⁵ Report on the Human Rights Situation in Ecuador, Intern-American Commission on Human Rights, April 24, 1997, OEA/Ser.L/V/II.96, *Report on the Human Rights Situation in Ecuador*.

³³⁶ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 7.

The American Declaration, as well as other sources of international law, guarantee the Inuit's human right to profit from their exceptional culture. Indigenous peoples' right to culture is inextricably linked to the State of the lands they have historically occupied, according to international and inter-American human rights treaties. As a result, the United States has a well-defined obligation not to degrade the Arctic ecosystem to the point that the Inuit's human right to enjoy the benefits of their culture is jeopardized. But rather it has a duty to ensure that the indigenous population can live through their culture, which is intrinsic to their territory. Greenhouse gas emissions, however, do not go well with the Arctic environment. Thus, what the U.S. should do is reduce its emissions in favor of the survival of the Inuit, but more broadly for all people.

4.6 The violation of the right of subsistence

Climate change is violating and destroying the livelihoods of the indigenous Inuit people³³⁷. Their livelihoods rely on the ability of these communities to harvest crops, an activity central to their lives, but one that is becoming increasingly difficult and unreliable. Inuit have been deprived of their capacity to rely primarily on subsistence harvests due to changes in ice, snow, weather, seasons, and land, infringing on their right to self-sufficiency. Inuit's right to substance will be harmed more if the Arctic environment continues to change. The central issue always revolves around the activity of travel. Indeed, as has been pointed out many times, it constitutes the fundamental activity through which the indigenous Arctic populations can guarantee their daily needs. "The deprivation of safe and reliable means of travel deprives the Inuit of their means of subsistence"³³⁸. Summer sea ice loss has also made boating more unsafe due to the absence of multi-year ice's wave-suppressing function³³⁹. Snow travel, which is vital for sled or snowmobile travel, has been hampered by later snowfall, a lack of snow cover, an earlier and more rapid thaw, and the loss of multi-year snow cover. The shift in the orientation of snowdrifts has made navigation using them unreliable for proper guidance. Their ability to survive on gathered food has deteriorated as a result of this. Because of the unpredictability of weather and climate conditions, Inuit are no longer able to establish arrangements for their excursions. The dramatic impacts that climate change has had on traveling have robbed Inuit of their livelihoods.

In addition to the paralysis in travel arrangements, global warming has crippled subsistence harvesting through its effect on harvested food. Terrestrial animals winter food sources are now trapped under a hard, impenetrable layer of ice caused by the new fall freeze-thaw pattern, resulting

³³⁷ Arctic Climate Impact Assessment (ACIA), October 15, 2004, p. 32.

³³⁸ CROWLEY (2005:94).

³³⁹ *Ibid.*

in fewer, less healthy, and less accessible terrestrial animals for harvest”³⁴⁰. Animals, typically accustomed to the Arctic environment, are disappearing as their natural habitat is rapidly changing, not allowing them to adapt to the new environment. Arctic animals are decreasing more and more, and this trend is expected to increase in the coming years³⁴¹. At the same time, those that are adapting are changing habits and locations, so it is becoming more difficult to find them and consequently hunt them. The actions of the United States, through its reckless CO² emissions, violate the Inuit’s right to their own subsistence, and therefore their survival.

The right to livelihood is a fundamental component within the bundle of fundamental human rights, such as property, health, culture, and life. They are all guaranteed by the American Declaration of Human Rights and Duties of Men. Also, the ICCPR under Article 1 paragraph 2, recognizes that:

“All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence”³⁴².

The United Nations Declaration on the Rights of Indigenous Peoples also guarantees the protection of this right by specifying that:

1. “Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress”³⁴³.

In relation to indigenous peoples, the right to self-determination and to their own livelihoods are recognized as tenets of international human rights law. Even the UN Human Right Committee, being a human rights body, recognizes a people’s right or control over their own livelihoods. For instance, in 2002, in its concluding remarks to Sweden regarding its policy towards the indigenous *Sami*³⁴⁴ people, it recommended to the Scandinavian country to “take steps to involve the indigenous Sami people in decision-making processes concerning their traditional lands and economic activities”³⁴⁵.

³⁴⁰ *Ibid.*

³⁴¹ Arctic Climate Impact Assessment (ACIA), October 15, 2004, p. 34.

³⁴² International Covenant on Civil and Political Rights (ICCPR), New York, 1966, Article 1, Paragraph 2.

³⁴³ United Nations Declaration of the Right of Indigenous Peoples, United Nations, 2007, Article 20, Paragraph 1 and 2.

³⁴⁴ The Sami, about 70,000 individuals, live in the northernmost region of Scandinavia and Russia (Kola Peninsula); due to their historical and ethnic characteristics they are not part of the Lapp population. More than half are in Norwegian territory, 20,000 in Sweden, a few thousand in Finland and Russia.

³⁴⁵ CROWLEY (2005:93).

Specifically, it is required to “give them greater influence in decision-making processes that affect their natural environment and livelihoods”³⁴⁶. Similarly, in its recommendations to Canada for the allocation of Aboriginal lands and resources, the Human Rights Committee emphasized the country’s obligations under Article 1 of the ICCPR and ICESCR, stating that “peoples [...] cannot be deprived of their livelihoods”³⁴⁷.

Several instruments of international law protect the right to subsistence. These include, in addition to those already noted, ILO Convention No. 169, which protects a people’s right to their own means of subsistence. Indeed, Article 14, first paragraph reads:

The rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect³⁴⁸.

The Convention further asserts that:

“the subsistence economy and traditional activities ... such as hunting, fishing, trapping and gathering, must be recognized as important factors for the maintenance of their cultures and for their economic self-sufficiency and development”³⁴⁹.

After considering these factors, it is clear that the Inuit have a right to self-sufficiency, which is guaranteed by international law and established by the American Declaration. As a result, the United States has an onus in ensuring that Inuit have access and assurance to their livelihoods.

4.7 The violation of the right to life

United States actions and omissions with respect to climate change have led to serious violations of Inuit rights to life, personal safety, and integrity. Thus, the survival of the Inuit is jeopardized by the effects of global warming. Due to climate change, Inuit accessibility to some species for harvest is also becoming scarce. Travel becoming increasingly dangerous prevents access to

³⁴⁶ Concluding Observations: Sweden 24/04/2002, United Nations Human Rights Committee, April 24, 2002, 74th Session, U.N. Doc. CCPR/CO/74/SWE, *Concluding Observations: Sweden 24/04/2002*.

³⁴⁷ Concluding Observations: Canada 07/04/99, United Nations Human Rights Committee, April 7, 1999, 65th Session, U.N. Doc. CCPR/C/79/Add.105, *Concluding Observations: Canada 07/04/99*.

³⁴⁸ International Labour Organization Convention No. 169, 1989, Article 14, Paragraph 1.

³⁴⁹ International Labour Organization Convention No. 169, 1989, Article 23, Paragraph 1.

certain foods. The location of game is also changing³⁵⁰. The U.S. Congress has acknowledged that, for many members of the Inuit community: “no practical alternative means are available to replace the supplies of food and other items harvested from fish and wildlife that supply rural resident’s dependent on subsistence uses”³⁵¹. The harm to Inuit livelihood crops infringes on their right to life.

The right to life is guaranteed through the American Declaration of the Human Rights and Duties of Man, which states in Article I: “Every human being has the right to life, liberty, and security of person”³⁵². Indeed, the right to life forms the basis of all human rights and is found in all major international conventions that deal with these issues. The United States, having always been a proponent of civil rights, has been committed to supporting the right to life. They have ratified the charter of the Organization of American States and the ICCPR, adopted the American Declaration, and signed the American Convention on Human Rights³⁵³. The right to life is also contained within the U.S. Constitution in Amendment XIV, section 1, which reads:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws”³⁵⁴.

The Inter-American Commission on Human Rights has determined that climate change can have a direct impact on individuals’ right to life. Citing again the *Yanomami* case, the Commission determined a connection between environmental quality and the right to life³⁵⁵. In that particular event, the government of Brazil had decided to build a highway through the territory belonging to the *Yanomami*, using and exploiting the natural resources that the land offered. Indigenous people as a result, seeing their territory reduced, were forced to share land with non-indigenous people who brought contagious diseases that spread to the *Yanomami*, causing illness and death³⁵⁶. The inability of the Brazilian government to maintain the integrity of *Yanomami* territories, according to the Commission, infringed their rights to life, liberty, and personal security, as provided by Article 1 of the American Declaration³⁵⁷.

³⁵⁰ Arctic Climate Impact Assessment (ACIA), October 15, 2004, p. 28.

³⁵¹ Federal Climate Change Expenditures Report to Congress U.S. Office of Management and Budget (OMB), March 10, 2005, *Federal Climate Change Expenditures Report to Congress U.S. Office of Management and Budget (OMB)*.

³⁵² American Declaration of the Human Rights and Duties of Man, Bogotá, May 2, 1948, Article I.

³⁵³ CROWLEY (2005:89).

³⁵⁴ United States of America Constitution, 1787, Amendment XIV, Section 1.

³⁵⁵ Case of *Yanomami* Indians, Case 7615, Inter-American on Human Rights, Brazil, 1985.

³⁵⁶ CROWLEY (2005:90).

³⁵⁷ Case of *Yanomami* Indians, Case 7615, Inter-American on Human Rights, Brazil, 1985.

The Commission, also, in its Report on the situation in Ecuador, underscores the veracity of the consequences that climate change and land alteration can have on the rights of the individual, but especially on his or her right to life.

“The realization of the right to life, safety, and physical integrity is necessarily linked to and somewhat dependent on one’s physical environment. Accordingly, where environmental contamination and degradation pose a persistent threat to human life and health, the aforementioned rights are implicated”³⁵⁸.

Precisely in explicating the relationship between the environment and the right to life, the report ultimately noted that land degradation can “give rise to an obligation on the part of a State to take reasonable measures to prevent the risk to its own safety that is associated with it”³⁵⁹. Environmental degradation can cause physical and mental illness, impairment and suffering to indigenous peoples. It is clear that this conclusion is incompatible with the right to be respected as a human being and the right to life³⁶⁰.

In light of these considerations, the United States has a responsibility to protect the human rights of the indigenous Inuit population to life and personal safety. The obligation that follows from this is the protection of the Arctic region so that U.S. omissions do not go to the detriment of Inuit life and safety. Indeed, the Petition’s objective is to persuade the United States of America to join the international community in its efforts to safeguard the Arctic ecosystem, Inuit, and, ultimately, the entire globe. The objective is to educate rather than criticize and to inform rather than condemn³⁶¹. The ultimate objective is to persuade governments and non-governmental groups all around the globe to embrace the goal and, in turn, combat climate change, which is a human rights problem.

4.8 The results of the Petition

The Inuit Petition to the Inter-American Commission on Human Rights was filed in December 2005. On November 16, 2006, the IACHR provided a two-paragraph response letter to the Petition, in which it subscribed that: “the information provided does not enable us to determine whether the alleged facts would tend to characterize a violation of the rights protected by the American Declaration³⁶²”, adding furthermore that the Commission did not consider the Petition because “the information it provided was insufficient for

³⁵⁸ Report on the Human Rights Situation in Ecuador, Inter-American Commission on Human Rights, April 24, 1997, OEA/Ser.L/V/II.96.

³⁵⁹ *Ibid.*

³⁶⁰ *Ibid.*

³⁶¹ CROWLEY (2005:101).

³⁶² Letter from the Organization of American States (OAS) to Sheila Watt-Cloutier, et al. regarding Petition No. P.1413-05, November 16, 2006.

making a determination”³⁶³. Sheila Watt-Cloutier, who is recalled at the time to be President of the Inuit Circumpolar Conference, upon receiving the response – together with Earthjustice³⁶⁴ and the Center for International Environmental Law – asked the Commission for further explanations and information on the decision that had been communicated, and also asked to be heard on the issues of climate change and human rights set out in the Petition³⁶⁵. On February 1, 2007 IACHR agreed to take part in the hearing that would be held a month later on March 1, 2007 at the Organization of American States in Washington D.C. The purpose of the hearing was to re-address the issues within the Petition without revising it³⁶⁶. The hearing that took place in March of the same year resulted in some important steps forward on human rights and climate change issues. Specifically, the Inter-American Commission emphasized its interest in addressing and focusing on the rights of indigenous communities. The attention of this subject was introduced in IACHR’s top eight issues of interest. Former Commission Chair, Dinah Shelton, who was in office from 2010 to 2014, promoted environmental issues related to indigenous rights during her years in office, being a leading expert on the problem. Despite frustration over the rejection of the Petition, Martin Wagner, a lawyer for Earthjustice, said that:

“We believe that our Petition may have helped educate the Commission about the relationship between global warming and human rights, and thus may have contributed to the Commission’s desire to investigate the issue. Whatever its genesis, however, this hearing is a very positive step in the direction of recognizing the obligations of states to prevent human rights violations resulting from their contribution to global warming”³⁶⁷.

Watt-Cloutier after the hearing was also nominated for the Nobel Peace Prize³⁶⁸. This drew further attention to the work she had done on the Petition. The Inuit appeal is noted by scholars as the first case of combining the domains of human rights and climate change, even if it did not result in any tangible legal outcomes.

It should be stressed, however, that it appears unlikely that the Commission would directly examine whether U.S. caused climate change has violated or continues to infringe the rights of the indigenous Inuit community. Although the Commission did not at the time and still does not hold the authority to force the United States to reduce CO² emissions or compensate Inuit for the damage caused, the petitioners hoped that a positive decision would increase

³⁶³ *Ibid.*

³⁶⁴ Earthjustice is a non-profit public interest group located in the United States that litigates environmental concerns.

³⁶⁵ Letter from Sheila Watt-Cloutier, Martin Wagner and Daniel Magraw to Santiago Cantòn, Executive Secretary, Inter-American Commission on Human Rights, January 15, 2007.

³⁶⁶ Letter from Ariel E. Dulitzky, Assistant Executive Secretary, Inter-American Commission on Human Rights to Sheila Watt-Cloutier, February 1, 2007.

³⁶⁷ Email from Martin Wagner, Petitioner, to Jessica Gordon, February 14, 2007.

public awareness of the negative effects of climate change and alert governments and businesses to the real effects that global warming has³⁶⁹. It is possible to argue that the issues around climate change to date are taking on extraordinary relevance. Even if a positive decision on the Inuit Petition by the Commission was not achieved, it has exemplified as an important case of “sustainable lawyering in both substance and form”³⁷⁰. The key feature of this Petition lies in the framing of the question it addresses. In it, an issue that is typically treated as an environmental problem is analyzed through the lens of human rights and moves beyond the boundaries of U.S. law into a supranational forum³⁷¹.

“The Petition is unique in that it is making this connection between climate change and human rights. It is unique because it is raising an environmental claim against the United States. It is asking the Commission to recognize the international obligation of the United States for its failure to take action to protect the environment, and to recognize the implications of US inaction for people both inside and outside the United States”³⁷².

In conclusion, it is possible to say that the Inuit Petition played a groundbreaking role in framing a new issue: that of human rights violations caused by climate change. It must be said, however, that not all actors have been affected by the Petition. “Little evidence was found, for instance, that the climate rights framework of the Inuit Petition resonated with policymakers in the two countries most directly affected by the Petition: the United States or Canada”³⁷³. Indeed, both the U.S. and Canadian administrations at the time decided not to abandon their fossil fuel exploitation policies in favor of climate change and human rights. They continued to base their policies on economic accountability. Not only have they failed to change their climate strategies, they have deliberately impeded international attempts to address climate change. The United States by refusing to ratify the Kyoto Protocol and Canada by deciding to withdraw.

The Petition, on the other hand, has had a good impact on the legal and political procedures around climate change at the international level, which is a plus. As one of the supporters of the petition remarks:

“With the Petition we started the connection between human rights and climate change [...] and now people are making a living with it and the connection is being made in other areas as well and I think it has shifted the public rhetoric and discussion about climate change”³⁷⁴.

³⁶⁹ GOLDBERG, WAGNER (2004).

³⁷⁰ HAVEMANN (2013: 314).

³⁷¹ *Ibid.*

³⁷² Emily Gertz, *Inuit fight climate change with human rights claim against U.S.*, July 26, 2005, Grist.

³⁷³ COROBOW, JODOIN, SNOW (2020).

³⁷⁴ *Ibid.*

It also fostered the credibility of human rights embedded within the climate framework, “because of its alignment with a broader climate justice framework that had been emerging in global climate politics since the early 2000s”³⁷⁵. Further as Marc Limon, a lawyer who promoted the introduction of the climate issue into the UN human rights system, noted that:

“The Inuit case introduced the idea that, rather than being a global and intangible phenomenon belonging to the natural sciences, global climate change is actually a very human process with demonstrable human causes and effects. It could therefore, like any other aspect of human interaction, be placed within a human rights framework of responsibility, accountability, and justice”³⁷⁶.

Concluding remarks

The Petition conducted by the Inuit Circumpolar Conference against the United States had the main goals of raising awareness about the plight of the Inuit in the Arctic region and at the same time educating and encouraging the United States to do something in order to change its reckless climate policies. At the same time, the goal was to get real restrictions on greenhouse gas emissions and create a plan to protect the indigenous population from the effects of climate change.

Indeed, it was demonstrated to have serious consequences on the Arctic, where the effects appear twice as great as in the rest of the world. According to the 2001 Intergovernmental Panel on Climate Change report, the temperature since the industrial revolution has increased by 0.6 C°, generating an 8% reduction in ice until 2004; an increase in sea level of 1.0 mm per year; and changes in the behavior and habits of 61% of Arctic animals. The data coming from the most recent IPCC Report of 2021 confirms this trend: some effects such as rising levels are irreversible, but it is still possible to turn back, only by reducing carbon dioxide emissions.

The United States plays a key role in this dynamic, as it was the world’s largest contributor of CO² at the time, accounting for about 20% of all global emissions. It is necessary to underline that many aspects have changed since 2005, but the administration of George W. Bush was aware of its destructive and deteriorating action on the Arctic and Inuit specifically. Although the government set a goal of reducing U.S. emissions “intensity” by 18%, it was by no means achieved. The United States was being found to have conducted unsuitable and counterproductive policies towards the phenomenon of climate change. Thus, abandoning the Kyoto Protocol and increasing emissions by 13% demonstrated an unwillingness to address climate change.

³⁷⁵ ALLAN, HADDEN (2017).

³⁷⁶ LIMON (2009: 441).

Among the various rights violated by climate change, the first one analyzed is the right to enjoy the benefits of culture. It was concluded that culture manifests itself in different forms and methods. One of these, for indigenous peoples and the Inuit, is the attachment to the territory, from which arise traditions, customs and ways of life. The Inuit's human right to benefit from their special culture is guaranteed by the American Declaration, as well as other sources of international law. The right to subsistence is also included in the list of violations. It is essentially manifested in the inability of the Inuit to find the means to survive. If the land changes, subsistence activities such as fishing, and hunting can no longer be guaranteed as before. It is impossible to ensure the right to life, if the first two rights are violated. Environmental deterioration can result in indigenous peoples' incapacity to survive in a different and continually changing environment, as well as physical and mental sickness and suffering. This is incompatible with the right to be respected as human beings and the right to life.

The Petition proved to be an early experiment in linking expressly, in an international forum, climate and human rights issues. Although it did not achieve much from a practical point of view, it spread awareness and demonstrated how the phenomenon of climate change is closer to human beings than previously believed.

Chapter V

Human rights and climate change: evolution after 2005

The purpose of this final chapter is to research what has happened since the Inuit Petition to the Inter-American Commission on Human Rights made in 2005. As already mentioned, even though the Inuit did not obtain any compensation for the damages suffered by climate change, the resonance of the Petition has increased the interest and attention for the issue of global warming related to the effects on human rights.

Initially, the steps taken by the international community towards the issue of climate change and its impact on human rights will be explained, specifically asking what the developments since 2005 have been. In particular, two United Nations Human Rights Council Resolutions dated 2009 and 2011 will be discussed. These will show how the need to spread awareness and take serious and fast action to combat the phenomenon of global warming is more necessary than ever. Both Resolutions, then, will be central to developing the discourse around the second Petition submitted to the Inter-American Commission on Human Rights.

The 2013 Petition to the IACHR brought forward by the Athabaskan Arctic indigenous people will then be presented. It will be possible to notice similarities with that of the Inuit, both in terms of responsibility and arguments that are brought forward. It will be interesting to assess – through comparison with the 2005 request – whether or not it can be considered as a successful example of a Petition, although it has yet to receive a response from the Commission.

It will be followed by an analysis of the evolutions that the recognition of the relationship between climate change and human rights has undergone from 2005 to the present. The 2015 Paris Agreement is the first major change, as it represents the first agreement that holds a set of goals for all States to achieve. Then two reports of 2016 and 2019, made by the Special Rapporteur on Human Rights, were crucial because they once again emphasized the need to put more attention and protection towards this issue³⁷⁷. In 2018 the Inter-American Court on Human Rights gave an advisory opinion in which it

³⁷⁷ Human Rights Council Report, Human Rights Council, February 1, 2016, A/HRC/31/52, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on Climate Change* and Report of the Special Rapporteur on Human Rights and the Environment, United Nations Human Rights Special Rapporteur, 2019, A/74/161, *Safe Climate. A Report of the Special Rapporteur on Human Rights and the Environment*.

recognized the indissoluble link between environmental protection and human rights³⁷⁸. Finally, in 2020, through a case involving the peoples of Argentina, the violation of a fundamental provision of the American Convention on Human Rights was recognized.

The last subchapter analyzes the main difficulties that lie in the human rights-based approach to climate change. The reasons that will be provided will try to explain why, for instance, the Inuit Petition was not successful.

5.1 The Human Rights Council Resolutions of 2009 and 2011

As a result of the Inuit Petition in 2005 several things changed. The goal certainly most achieved after the work of the indigenous population has been to create and raise awareness around an issue that had never before truly interested the international community. The intersection of the sphere of climate change with that of human rights has generated astonishment, but at the same time has persuaded the world of the real existence of the problem. In order to determine how it was possible to arrive at a new Petition, on the issues already presented, by an Arctic indigenous population, it is necessary to look at what actually happened after 2005, and how the link between climate change and human rights gained more resonance in international dynamics. In particular, two important Resolutions adopted by the UN Human Rights Council in 2009 and 2011 are indicative for the purposes of this research.

Both place a focus on climate change-related impacts. In addition to damaging the surrounding environment, it has indirect implications for human life, and thus for the effective enjoyment of fundamental rights³⁷⁹. The Resolutions stress that people should not be robbed of their livelihoods under any circumstances and that they have the right to health protection³⁸⁰.

First of all, the Human Rights Council Resolution 7/23 of 2009, which was requested by the United Nations High Commissioner for Human Rights, had the objective of carrying out an analysis on the connection between human rights and global warming, taking into consideration the views of States and other stakeholders. The result of the 2009 report stems from the considerations that were made in Resolution 7/23 in 2008, a year earlier, in which the Human Rights Council emphasized the need to broaden the discussion around these issues. Climate change arguments have usually centered around scientific, environmental, and economic factors. The emphasis of these arguments has

³⁷⁸ Official Summary Judgement issued by the Inter-American Court of Human Rights, Inter-American Court of Human Rights, February 6, 2020, *Case of Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina*.

³⁷⁹ SZPAK (2020:1578).

³⁸⁰ Annual Report of the United Nations High Commissioner for Human Rights and Report of the Office of the High Commissioner and the Secretary-General, United Nations Human Rights Council, January 15, 2009, A/HRC/10/61, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*.

been increasingly extended, with greater exposure to the human and social elements of climate change, as scientific knowledge of the causes and effects of climate change has grown and the repercussions on human livelihoods have become more evident. Human Rights Council special procedures have also discussed the effects of climate change in several statements and reports, for instance a joint statement on International Human Rights Day, on 10 December 2008³⁸¹. On the other hand, the Organization of American States has produced reports on issues such as *Human rights and climate change in the Americas* 2008; while the Alliance of Small Island States (AOSIS)³⁸² has ratified the Malé Declaration on the Human Dimension of Global Climate Change³⁸³ in 2007.

The report of the Human Rights Council illustrated all the dynamics that climate change is establishing, thanks to the results brought by the Fourth Assessment Report of 2007 by the Intergovernmental Panel on Climate Change. It tries to illustrate the response measures to counter the effects of climate change on human rights. In particular, according to the report there are two ways to address the problem: mitigation and adaptation.

“Mitigation aims to minimize the extent of global warming by reducing emission levels and stabilizing greenhouse gas concentrations in the atmosphere. Adaptation aims to strengthen the capacity of societies and ecosystems to cope with and adapt to the risks and impacts of climate change”³⁸⁴.

Mitigation is the primary focus of international negotiations to mitigate climate change. Mitigation measures would be necessary tools to stabilize greenhouse gas emissions and “prevent dangerous anthropogenic interference with the climate system”³⁸⁵. A question, however, arises about the term

³⁸¹ Annual Report of the United Nations High Commissioner for Human Rights and Report of the Office of the High Commissioner and the Secretary-General, United Nations Human Rights Council, March 23, 2008, A/HRC/RES/7/23, *Human Rights and Climate Change*.

³⁸² The Alliance of Small Island States (AOSIS) is a non-profit organization made up of coastal and small island countries. In 1990, before of the Second World Climate Conference, AOSIS was founded. The alliance's principal goal is to unite the perspectives of Small Island Developing States (SIDS) in the fight against global warming.

³⁸³ The Malé Declaration on the Human Dimension of Global Climate Change is a pact signed in November 2007 by leaders of the Alliance of Small Island Developing States. The purpose of the Declaration was to put forth a clear approach for linking climate change and human rights. The Declaration also aimed to shift attention of the climate change campaign away from just the environmental effects of climate change and toward the human rights implications of climate change. The right to a healthy environment is a precondition for all other basic human rights, according to the Declaration.

³⁸⁴ Annual Report of the United Nations High Commissioner for Human Rights and Report of the Office of the High Commissioner and the Secretary-General, United Nations Human Rights Council, January 15, 2009, A/HRC/10/61, *Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights*.

³⁸⁵ *Ibid.*

‘dangerous’ and in which understanding it should be read. Adaptation measures also play a central role within international climate change discussions. Indeed, although we can act at the level of mitigation of emissions and therefore of the consequent effects, “due to the inertia of the climate system and the long-term effects of previous greenhouse gas emissions”³⁸⁶, some phenomena – as described in the last report 2021 of the IPCC – are now unfortunately irreversible. For this reason, adaptation measures are essential to counteract, but not eliminate, the ‘no-win’ effects of climate change. Among the most popular adaptation measures the following can be mentioned: “construction of marine defenses, relocation of populations from flood-prone areas, improved water management and early warning systems”³⁸⁷. While these strategies and projects aid in the adaptation process, it is also necessary to develop individuals’ and communities’ capacities and defense mechanisms.

The 2009 UN Human Rights Council report also recognizes that the effects of climate change are felt most acutely by segments of the population that are defined as more vulnerable. Factors such as poverty, gender, age, minority status, and disability³⁸⁸ combine to increase the already disastrous effects of climate change. States are legally obligated under international human rights law to tackle these risks in accordance with the principles of equality and non-discrimination³⁸⁹. The impacts of climate change that these sectors of the population experience most are primarily in the general economic area, such as health and water, rather than the vulnerability of specific segments of the population³⁹⁰.

The report of the Human Rights Council includes indigenous peoples among those most vulnerable to the consequences of climate change, as they live in fractions of territories that are very sensitive and subject to alterations of the surrounding environment³⁹¹. The case of the Inuit, in the Petition’s description, was exemplary of the hardship these communities are forced to experience. For this reason, indigenous peoples have begun to demand that their voice be heard in the construction and shaping of policies to combat climate change, both nationally and internationally, so as to “take into account and develop their traditional knowledge”³⁹². Indeed, as the IPCC’s Fourth

³⁸⁶ *Ibid.*

³⁸⁷ *Ibid.*

³⁸⁸ Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Intergovernmental Panel on Climate Change, 2007, *Climate Change 2007: Impact, Adaptation and Vulnerability. Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change*, p. 374.

³⁸⁹ Annual Report of the United Nations High Commissioner for Human Rights and Report of the Office of the High Commissioner and the Secretary-General, United Nations Human Rights Council, January 15, 2009.

³⁹⁰ *Ibid.*

³⁹¹ MACCHI (2008).

³⁹² Permanent Forum on Indigenous Issues: report on the 7th session, Un Permanent Forum on Indigenous Issues, May 2, 2008, E/C.19/2008/13, *Permanent Forum on Indigenous Issues: report on the 7th session*.

Assessment Report states: “Incorporating indigenous knowledge into climate change policies can lead to the development of effective adaptation strategies that are cost-effective, participatory, and sustainable”³⁹³.

Resolution 10/4 of 2009 expressed a strong alarm regarding the general issue of climate change, paying particular attention to the effects that this has on the most vulnerable population groups, it is necessary to ensure that every individual can enjoy their rights. Above all, because often the effects of global warming on human rights are not determined by climatic factors, but rather by discrimination related to power scales³⁹⁴. This places greater emphasis on the need to address this issue through measures that are *ad hoc* and in line with the goals set by international treaties. Human rights criteria and principles should be used to inform and reinforce policy initiatives related to climate change.

The second Resolution of the UN Human Rights Council of great importance to identify how the relationship between climate change and human rights has evolved and become more relevant, is the 18/22 dated October 17, 2011. It took place in the year of the twenty-fifth anniversary of the Declaration on the Right to Development, which unequivocally establishes the right to development as a human right, placing people at the center of the development process³⁹⁵. Resolution 18/22 is the result of the process of the United Nations’ recognition of the relationship between human rights violations and global warming. That is why it recalls and keeps into consideration the already mentioned Resolutions 7/23 of 2008 and 10/4 of 2009, which analyze and dwell on the problem in depth. The Resolution reaffirms and endorses the 1992 Rio Declaration that focuses on the environment and development, as well as Agenda 21³⁹⁶ with its programmatic goals and the Johannesburg Declaration³⁹⁷ on Sustainable Development. Recognition and support of all these instruments places the individual and his or her rights at the center of international debate along with concern for sustainable development. This must be implemented in such a way that everyone can participate and in a way that meets current and future environmental needs. The HRC Resolution argues that:

³⁹³ Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Intergovernmental Panel on Climate Change, 2007, pp. 865.

³⁹⁴ Annual Report of the United Nations High Commissioner for Human Rights and Report of the Office of the High Commissioner and the Secretary-General, United Nations Human Rights Council, January 15, 2009.

³⁹⁵ United Nations Declaration on the Right to Development, Resolution 41/128, December 4, 1986.

³⁹⁶ Agenda 21 is a document of intentions and programmatic objectives on environment, economy and society signed by more than 170 countries from all over the world, during the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro in June 1992. This document is divided into four sections: economic and social dimensions, conservation and management of resources for development, strengthening the role of social forces and implementation tools.

³⁹⁷ At the World Summit on Sustainable Development (WSSD), also known as Earth Summit 2002, the Johannesburg Declaration on Sustainable Development was signed, along with the World Summit on Sustainable Development Plan of Implementation.

“climate change-related impacts have a number of implications, both direct and indirect, for the effective enjoyment of human rights, including, *inter alia*, the right to life, the right to adequate food, the right to the highest attainable standard of health, the right to adequate housing, the right to self-determination, and the right to clean water and sanitation, and recalling that under no circumstances can a people be deprived of their livelihoods [...]”³⁹⁸.

Again in 2011 it is emphasized, as in Resolution 10/4, the concern that the effects of climate change will be felt mostly by those parts of the population most fragile and vulnerable due to internal and external factors such as: geography, poverty, gender, age, indigenous or minority status and disability³⁹⁹.

After highlighting the importance of addressing these issues, the Resolution calls for a number of actions from the Office of the United Nations High Commissioner for Human Rights. These include the need to convene a seminar that can address the negative consequences of climate change on the full enjoyment of human rights, so as to spread awareness and “create a stronger interface and cooperation between the human rights and climate change communities”⁴⁰⁰, inviting States, stakeholders, organizations, and representatives of the most fragile segments of the population to participate. The workshop should build on the work already done by the UN Human Rights Council, taking into account all external dynamics including the United Nations Framework Convention on Climate Change held in Cancun in 2010⁴⁰¹ and all relevant issues arising from the 17th session of the Conference of the Parties to the Durban Convention⁴⁰² in 2011.

³⁹⁸ Human Rights Council Report, Human Rights Council, October 17, 2011, A/HRC/RES/18/22, *Resolution adopted by the Human Rights Council 18/22 human rights and climate change*.

³⁹⁹ *Ibid.*

⁴⁰⁰ *Ibid.*

⁴⁰¹ Cancun hosted the 16th of the UNFCCC Conference of Parties and the sixth session of the Conference of Parties functioning as the Meeting of the Parties to the Kyoto Protocol. The conference laid the groundwork for the biggest global and far-reaching international response to climatic, reducing carbon emissions and establishing a framework that held all countries responsible for those reductions.

⁴⁰² Durban 2011, the United Nations Climate Change Conference, was a watershed moment for the world community's response to climate change. The discussions progressed the implementation of the Convention and the Kyoto Protocol, the Bali Action Plan, and the Cancun Agreements in a balanced manner at the second largest gathering of its kind. A determination by Parties to create a universal legal agreement on climate change as soon as practicable, but no later than 2015, was one of the outcomes.

5.2 The Arctic Athabaskan Council's Petition to the Inter-American Commission: an example of success?

The Inter-American Commission on Human Rights was submitted two independent Petitions brought forward by two Arctic indigenous peoples who accused a State of failing to act on climate change, thereby violating their human rights. The first is the one conducted by the Inuit in 2005. It represented the first example of an Arctic-specific petition, accusing the United States of being responsible for human rights violations resulting from climate change. The Commission found the petition inadmissible because there was insufficient information present to make a decision. Indeed, the first problematic issue involved the problem of extraterritorial jurisdiction, i.e. a state's responsibility for protecting the human rights of people outside their territory⁴⁰³. Another issue was the element of the future that may be seen in charges of human rights breaches in the context of climate change. The latter involves the use of climate change projections as the foundation for human rights claims, which are often established only after the harm has been done. In 2013, also the Arctic Athabaskan Council (AAC), which carries on the representation of the Athabaskan indigenous people, carried on a Petition to the Inter-American Commission on Human Rights. In the year 2000, the year the Council was founded, the ACC represented approximately 32,000 indigenous peoples of Athabaskan descent⁴⁰⁴. To date, ACC members in Alaska, Yukon, and Northwest Territories span 76 communities and account for approximately 45,000 people⁴⁰⁵. With frequent contributions to Chairmanship work plans, the AAC collaborates with Arctic states, working groups, and other permanent participants on circumpolar relations. The Council is particularly interested in achieving a balance between environmental protection and economic viability. The main objective of the Petition was to demand real reparations for Athabaskan human rights that had been violated due to climate change, and emissions from Canada. Before analyzing the characteristics of the Petition, it is good to briefly talk about the Athabaskan indigenous people, so as to provide an idea of the aggrieved subject.

The Athabaskan peoples have traditionally populated a huge geographic area of around 3 million square kilometers in Arctic and Subarctic Alaska, the United States, the Yukon Territory, and the Northwest Territories of Canada⁴⁰⁶. The ancestors of the Athabaskan people were mostly nomadic hunter-gatherer peoples. The cultural and lifestyle characteristics of this people are very similar to those of the Inuit, continuing to survive with the ancient traditions handed down from generation to generation. They primarily

⁴⁰³ SZPAK (2020:1556).

⁴⁰⁴ Arctic Athabaskan Council, About us.

⁴⁰⁵ *Ibid.*

⁴⁰⁶ *Ibid.*

hunt caribou, moose, beaver, and fish. One of the most commonly used hunting systems was to build fence-like traps on the migratory routes of these animals, which were then corralled and shot with bows and arrows. This method was used during the spring or fall, while during the summer, in the tundra, it was preferred to shoot caribou from canoes while crossing rivers. In the warm season, a secondary prey that provided a large amount of meat was also the musk ox that inhabited the northernmost regions at the edge of the Arctic Ocean. Millennia later Athabaskan are able to maintain the traditional diet practices, although with some difficulties caused by climate change for the finding of these foods. In the solitude of the taiga, the young hunter would establish a special bond with a particular animal that from then on would be his spirit guide. This totemic bond, deep and secret, was not to be divulged to the rest of the community and all subsequent religious manifestations were filtered through personal experience and relationship with the chosen animal, from which they obtained assistance, power and knowledge. The first European explorers – Samul Hearne⁴⁰⁷, Joseph Thomson⁴⁰⁸ and Alexander Mackenzie⁴⁰⁹ – noticed in these populations an almost absolute lack of religious ceremonies and practices. Indeed, the spiritual life of these Indians was quite rich, but it was lived through individual experiences. Many tribes sent young hunters still in their teens into the thick of the forest in search of dreams and visions, much like prairie Indians used to do. In terms of political and cultural organization, it differs based on where the Athabaskan people live. For example, in Alaska, the indigenous people are organized through federations that provide funding to the government. The Indian Reorganization Act⁴¹⁰, which applies to tribal governments, the Alaska Native Claims Settlement Act⁴¹¹, which applies to incorporated villages, and a variety of state and traditional political bodies are among them.

⁴⁰⁷ Samul Hearne Samuel (1745 - 1792), entered the Navy, took part in the Seven Years War and then passed in Canada in the service of the Hudson Bay Company. He explored in three voyages (1768-70) the regions around the bay itself, reaching the Coppermine River, of which followed the course to the mouth in the Arctic Sea.

⁴⁰⁸ Joseph Thomson (1858 -1895); left for an expedition in East Africa (1878), explored the regions of lakes Niassa and Tanganyika. Returning the following year, he penetrated from Kilimanjaro in the region of lakes Naivasha and Baringo, then reached Kenya. He then traveled in the Niger basin, in the Great Atlas. In a last expedition tried in vain to penetrate the territory of Katanga. He published several travel reports, including Through Masai land.

⁴⁰⁹ Alexander Mackenzie (1755 - 1820), organized for the Canadian Northwest Company an expedition north of Great Slave Lake, discovering the river that bears his name. Setting out again two years later from Fort Chipewyan, he succeeded, after a daring voyage, in reaching the Pacific Ocean at Burke Channel, thus making the first ocean-to-ocean crossing of North America.

⁴¹⁰ The Indian Reorganization Act (IRA), signed into law on June 18, 1934, addressed the position of American Indians in the United States. The major purpose was to strengthen, nurture, and perpetuate Native American tribes and their ancient traditions in the United States, rather than the conventional goal of cultural assimilation into American society.

⁴¹¹ On December 18, 1971, President Richard Nixon signed the Alaska Native Claims Settlement Act (ANCSA) into law, making it the largest land claims settlement in US history at the time. The Alaska Native Claims Settlement Act (ANCSA) was created to address long-standing disputes involving native land claims in Alaska, as well as to spur economic

Returning to the central theme of the Petition led by the Athabaskan people, it thoroughly analyzed both the individual and collective human rights violations that resulted from climate change, as well as the human rights context from the perspective of international law and case law that could support the plaintiffs' claims. As in the case of the Inuit Petition, the Athabaskans argued that because Canada was unable to regulate its own black carbon emissions, it had to take responsibility for the effects of its actions. These included violating the people's rights to the preservation of their health, their livelihoods, their property and the maintenance of their culture, as defined in the American Declaration of Human Rights and Duties of Man⁴¹². In addition, the Petition claimed Canada failed to preserve the environment and avoid transboundary damage in accordance with the precautionary principle. The precautionary principle was explicitly recognized at the United Nations Conference on Environment and Development (UNCED) in the 1992 Rio de Janeiro Declaration. It is stated as Principle 15 within the Declaration, and it reads:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”⁴¹³.

It is therefore the duty of a state to take precautionary measures to anticipate, prevent or mitigate the causes of climate change and limit its harmful effects. When faced with a risk of severe or irreversible disruption, the lack of absolute scientific certainty should not be an excuse for postponing such measures, bearing in mind that policies and measures necessitated by climate change require cost-effectiveness, so as to ensure global benefits at the lowest possible cost.

Climate change denounced by the Petition has threatened the lives of the Athabaskan people who have seen their rights and cultural identity put at risk. The subsistence of these indigenous communities, as for all, depends heavily on the link that it has created with the surrounding environment. As stated by Roger Alfy, one of the signatories of the Petition: “Our traditional values, our cultural values, our connection to the land and the wildlife and the fish and the environment: those are the most important things in an Indian world”⁴¹⁴.

development across the state. By transferring rights to twelve Alaska Native regional organizations and more than 200 local village corporations, the settlement established Alaska Native claims to the property.

⁴¹² SZPAK (2020:1557).

⁴¹³ Rio Declaration on Environment and Development, 1992, Principle 15.

⁴¹⁴ Petition to the Inter-American Commission on Human Rights, Earth Justice, 2013, *Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting by emissions of Black Carbon by Canada*, p. 1.

The space that surrounds them guarantees the health, property, biodiversity and culture of these people. Black carbon has posed a serious threat to the maintenance of all of these elements. The greatest challenge for the Athabaskan, as well as the Inuit, has been to provide evidence of a legally sufficient nexus between the acts or omissions of the Government of Canada and the harm caused by climate change⁴¹⁵.

The Petitioners wished to highlight the strong and growing link, even in light of the similar 2005 Inuit Petition, between human rights violations and climate change. They did so by taking into consideration the UN Human Rights Council Resolutions of 2009 and 2011, analyzed above. As already seen in both, it is explicitly noted that: “climate change-related impacts have a number of implications, both direct and indirect, for the effective enjoyment of human rights”⁴¹⁶. They also stress that all people, indigenous or not, should not be deprived of their livelihoods under any circumstances, and that they have the right to health protection. In terms of the States’ commitments, each resolution states that human rights obligations and duties may inform and reinforce international and national policies on climate change, adding to their legitimacy, coherence, and long-term effects. States in this regard must hold themselves accountable and take legal obligations to individuals whose rights are obstructed by climate change⁴¹⁷.

One of the main issues for these Petitions is how to recognize that such human rights violations are caused by climate change. The direct impact of environmental degradation on human rights was observed in the Report of the Office of the United Nations High Commissioner for Human Rights where it is stated that:

“while the universal human rights treaties do not refer to a specific right to a safe and healthy environment, the United Nations human rights treaty bodies all recognize the intrinsic link between the environment and the realization of a range of human rights, such as the right to life, to health, to food, to water, and to housing”⁴¹⁸.

The relationship between human rights violations and the effects of climate change was also addressed following the Petition in 2016 by the Special Rapporteur on the issue of human rights obligations related to the enjoyment of a safe, clean, healthy, and sustainable environment⁴¹⁹. A report was published stating the human rights obligations in relation to climate change.

⁴¹⁵ SZPAK (2020:1557).

⁴¹⁶ SZPAK (2020:1558).

⁴¹⁷ Petition to the Inter-American Commission on Human Rights, Earth Justice, 2013, p. 3.

⁴¹⁸ Annual Report of the United Nations High Commissioner for Human Rights and Report of the Office of the High Commissioner and the Secretary-General, United Nations Human Rights Council, January 15, 2009.

⁴¹⁹ Human Rights Council Report, Human Rights Council, February 1, 2016, A/HRC/31/52, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on Climate Change*.

In particular, the paper represented the difficulties and challenges that most often tend to recur in these matters. These include:

1. “how to prove the causality of GHG emissions or adaptation policy failures in a specific country in relation to specific instances of climate change impacts, which ultimately have negative influence on human rights observance (‘causality challenge’);
2. how to use predictions of climate change impacts likely to occur in the future as the grounds for human rights violations claims before actual harm occurs; (‘cross-temporal challenge’) and
3. how to ensure rights protections in extraterritorial cases, i.e. when harmful actions take place in a state other than the one most acutely affected by the results (‘extraterritorial challenge’)⁴²⁰.

Ultimately, the report supports the petitioners’ arguments by directly stating the connection between human rights and the environment, as well as identifying human rights obligations in relation to climate change.

The Athabaskan Arctic Council in the Petition has essentially focused its attention on two principles: the duty to avoid transboundary harm and the duty to adhere to the precautionary principle⁴²¹. The first duty is part of the rules of customary law and is recognized in international law⁴²². Essentially, it involves preventing the territory of a state from being misused to cause harm that goes beyond the jurisdiction of the state. In the case of the Athabaskan Petition, Canada’s black carbon emissions have negatively impacted territories outside its borders, i.e. Alaska where the petitioners live. Black carbon emissions – as seen above in the case of CO² emissions for the United States – have negative effects on the environment, these include “increased temperatures, earlier melting of ice and snow in the spring, extended dry seasons and increased incidence of forest fires, reduced glaciers, melting permafrost, and even more extreme weather events”⁴²³. Inadequate control of black carbon emissions is a failure of Canada, resulting in a breach of the state’s international obligations to protect domestic activities from inflicting environmental harm across borders. As a result, human rights are being violated. Canada must then comply with the precautionary principle, which was noted above. According to the Athabaskan people, the North American country has failed to regulate its emissions, which are particularly harmful to the environment and human health. This threatens to inflict irreversible harm on the Arctic and is the biggest confirmation of the state's failure to respect the precautionary principle.

⁴²⁰ Human Rights Council Report, Human Rights Council, February 1, 2016, A/HRC/31/52, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment on Climate Change*.

⁴²¹ SZPAK (2020:1560).

⁴²² *Ibid.*

⁴²³ *Ibid.*

“Rapidly accelerating changes in average annual temperatures, snow cover and melt patterns, shrinking permafrost and glaciers, as well as alterations in forest and species composition are all linked to black carbon emissions. These then contribute to another harm that is difficult or impossible to reverse: they alter the traditional way of life of Arctic communities”⁴²⁴.

Thus, what did the Athabaskans request from the Inter-American Commission on Human Rights? Essentially, just as the Inuit did, a site visit to directly observe changes in climate change and a hearing before the Commission. They also required a declaration by the Commission of Canada’s actual violation, due to its non-regulation of black carbon emissions, and a plan to protect the indigenous people to be implemented and agreed upon with the Athabaskans themselves.

It should be noted that the Athabaskan Petition has yet to receive a final decision from the Inter-American Commission, despite the fact that eight years have passed since it was filed. However, considering that in 2005 the Commission refused to focus on the Inuit Petition, which addressed the same dynamics as the Athabaskan Petition, the former has served to increase principle and authority on issues related to climate change and its effects on human rights. In light of these new developments and the novel attention the subject is garnering, the potential for success of the Athabaskan Petition has been strengthened⁴²⁵. It is unlikely that the Athabaskan Petition will perform any better than the Inuit petition in the hands of the Commission; however, while the strategy is comparable, several differences between the two can be noted.

Both Petitions look to be fairly similar when examined closely. The respondent nation is a member of the Organization of American States and a signatory to the American Declaration but not to the American Convention in both cases. It is essential to mention that States are not obligated to respect or protect most human rights by default; the legal principle of state sovereignty requires States to choose whether or not to participate in regional human rights organizations like the Organization of American States, as well as their level of commitment⁴²⁶. The Petitions are easily comparable because the States sued – the United States and Canada – have made the choice to adhere to the same inter-American rights. Thus, the same rights and practices apply to both Petitions⁴²⁷. Both also describe the history, customs and culture of the indigenous people. Since both are based in the Arctic region, they are extremely alike, along with the impacts on the environmental circumstances and the rights of individuals. Although all of these elements seem to coincide between the Inuit and Athabaskan Petitions, one must focus on some elements of difference.

⁴²⁴ SZPAK (2020:1580).

⁴²⁵ SZPAK (2020:1588).

⁴²⁶ MCCRIMMON (2016).

⁴²⁷ *Ibid.*

The Athabaskan petitioners' choice to focus on black carbon as a cause of climate change differs from the argument brought forward by the Inuit. For while the former focus on regional pollution, the latter sue total U.S. CO² emissions by stressing "anthropogenic carbon dioxide as the main driver of climate change"⁴²⁸. Inuit blamed violations of their human rights on global cumulative emissions, citing the United States because at the time, in 2005, it represented the largest contributor to carbon dioxide emissions in the world, and because the George W. Bush administration did not cooperate to take action against the phenomenon⁴²⁹. This was a key weakness of the Inuit Petition's strategy, which could not link specific United States' emissions to rights abuses in the Inuit community. Instead, US emissions, being meaningful, could only be described as contributing to global climate change. While for the Athabaskans the issue is different. They focused on the exploitation of black carbon and Canadian emissions, which according to the indigenous people, have damaged their way of life and environment. The difference also lies in the emissions themselves. Unlike CO², which is distributed across the ecosystem and has global consequences, black carbon emissions in the Arctic exclusively warm the Arctic⁴³⁰.

"Black carbon emissions, as described in the Petition, are "short-lived" in the atmosphere, existing for about a week and then settling to the ground, darkening snow and ice and increasing their ability to absorb heat and facilitating melting"⁴³¹.

As a result, it is feasible to claim that, in comparison to the Inuit Petition, the Athabaskan Petition describes a much closer and more direct link between governmental activity and the effect on indigenous people's rights. It relies on a local pollutant that contributes to specific regional warming, which infringes on their human rights. Inuit's case focuses on the world's largest polluter, the United States, and claims that it is to blame for the petitioners' problems.

"When comparing the rejected Inuit Petition to the pending Athabaskan Petition, it is clear that the Athabaskan Petition provides a stronger, but imperfect, connection between the state, climate change, and the violation of petitioners' human rights. The Athabaskan Petition's assertion that climate change violates their right to property is more persuasive than that made by the Inuit Petition because of developments in inter-American human rights law. The Athabaskans potentially establish a closer causal relationship between state action and a rights violation, but holes remain, and the Athabaskan Petition does not clearly state that Canadian black carbon emissions cause environmental impacts in Canada"⁴³².

⁴²⁸ CROWLEY (2005:31).

⁴²⁹ *Ibid.*

⁴³⁰ MCCRIMMON (2016).

⁴³¹ Petition to the Inter-American Commission on Human Rights, Earth Justice, 2013, p. 16.

⁴³² MCCRIMMON (2016).

5.3 New significant developments for climate change litigation in the context of human rights

What emerged from the analysis carried out until now is that several decades ago the phenomenon of climate change was seen and treated as a merely environmental or economic issue⁴³³. As noted, however, this has now changed. Indeed, recent developments recognize the interconnectedness between the human and social dimensions of climate change⁴³⁴. A shift in perspective on climate change and human rights is needed in order for these to be correlated.

“Thinking about climate change from a human rights perspective is not only a fundamental necessity in terms of guiding our international development policy framework, it also offers us an opportunity to reappraise the most pressing needs of a highly inequitable global society, with greatly differing social, environmental and economic levels of development”⁴³⁵.

The consequences of climate change are often so severe that they affect individuals, leading to violations of the human rights of communities and populations. The Inuit and Athabaskan Petitions are important examples of the real effects of climate change on the Arctic region and its inhabitants. As citizens and entire countries become unsatisfied with the pace of decision-making on climate change issues, the Intergovernmental Panel on Climate Change predicts that litigation will become more frequent⁴³⁶. This assessment can be supported by the Petitions of the Inuit Circumpolar Conference and the Athabaskan Arctic Council. This illustrates the interconnectedness of climate change, environmental protection, and human rights, as well as – in this case – indigenous peoples and nation-states⁴³⁷.

As the Inuit Petition has been rejected by the Inter-American Commission on Human Rights, all that remains is to place hope in the Athabaskan Petition, which, as noted above, has several possibilities for a positive response from the Commission. This is certainly also aided by developments that have strengthened the theories of the indigenous petitioners. One of the biggest developments that brought attention to climate change was certainly the 2015 Paris Agreement. It constituted the first agreement at the international level that explicitly acknowledged the significance of human rights to the environment. Indeed, in its preamble it emphasizes that:

⁴³³ SZPAK (2020:1587).

⁴³⁴ Opening Remarks by Ms. Navi Pillay at the Human Rights Council Seminar “The Adverse Impacts of Climate Change on the Full Enjoyment of Human Rights”, February 23, 2012.

⁴³⁵ *Ibid.*

⁴³⁶ Contribution of Working Group II to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change, Intergovernmental Panel on Climate Change, 2007, p. 793.

⁴³⁷ OSOFSKY (2009).

“Acknowledging that climate change is a common concern of humankind, Parties should, when taking action to address climate change, respect, promote and consider their respective obligations on human rights, the right to health, the rights of indigenous peoples, local communities, migrants, children, persons with disabilities and people in vulnerable situations and the right to development, as well as gender equality, empowerment of women and intergenerational equity [...]”⁴³⁸.

The Paris Agreement, which is a legally binding instrument under the United Nations Framework Convention on Climate Change (UNFCCC), includes elements for a progressive reduction of global greenhouse gas emissions and is based for the first time on common principles that apply to all countries. Among these principles is the objective of limiting average global warming to below 2°C compared to the pre-industrial period, aiming for a maximum temperature increase of 1.5°C. The Agreement also commits all countries, in a legally binding form, to present and comment every five years at the international level on a national emission reduction target i.e. Nationally Determined Contribution (NDC). The achievement of the target is only binding from a political point of view, whereas the implementation of national measures and the report on the degree of achievement of the targets are legally binding, and therefore must be pursued and achieved. It also establishes the first rules for defining the reduction targets for individual countries. To date, the Paris Agreement provides a critical bridge between today’s policies and climate neutrality by the end of the century.

Two reports on climate change and human rights and the environment were released in 2016 and 2019, respectively, by the Special Rapporteur on the topic of human rights obligations relating to the enjoyment of a safe, clean, healthy, and sustainable environment. Both were specifically related to the connection between human rights and environmental change. The Special Rapporteur highlights the desperate demand for action to guarantee a safe climate for humanity in his report, demonstrating the disastrous impact of the current global climate emergency on human rights, as well as the critical role of human rights in catalyzing climate change action⁴³⁹. The Special Rapporteur then presents practical proposals on how to tackle society’s dependence to fossil fuels, accelerate other mitigation initiatives, improve adaptation to protect vulnerable people, increase climate finance, fund loss and damage, and strengthen UN institutions. Finally, a healthy climate is a critical component of the right to a healthy environment and is fundamentally necessary for human life and well-being⁴⁴⁰.

Another important and decisive step towards the recognition of the effects of climate change on human rights has been taken by the Inter-American Court

⁴³⁸ Paris Agreement, United Nations Framework Convention on Climate Change, 2015, FCCC/CP/2015/10, Preamble.

⁴³⁹ Report of the Special Rapporteur on Human Rights and the Environment, United Nations Human Rights Special Rapporteur, 2019, A/74/161, *Safe Climate. A Report of the Special Rapporteur on Human Rights and the Environment*.

⁴⁴⁰ *Ibid.*

on Human Rights. In 2017, the Court released a crucial advisory opinion on the issue discussed, and it acknowledged that environmental conservation and the fulfilment of other human rights are inextricably linked, because environmental deterioration affects the successful enjoyment of those rights⁴⁴¹. Human rights, sustainable development, and the environment are all interrelated and indivisible, according to the Court, because human rights can only be completely realized in an appropriate environment⁴⁴². The advisory opinion then concluded that: “(i) the right to a healthy environment is recognized in many human rights systems as a right in itself; simultaneously, it is undeniable that (ii) many other human rights are at risk due to environmental degradation”⁴⁴³. As a result, it establishes a number of environmental standards that States must fulfill in order to satisfy their duty to respect and protect fundamental human rights.

On the question of jurisdiction, particularly extra-territorial jurisdiction, the Inter-American Court stated that:

“the exercise of jurisdiction outside the borders of a state under Article 1(1) of the American Convention is a special situation to be examined strictly on a case-by-case basis; however, States have an obligation to use all necessary measures to prevent activities conducted on their territory or under their control from affecting the rights of individuals, no matter whether or not they are residents of the territory of that state”⁴⁴⁴.

The exercise of jurisdiction, according to the Court, occurs when the state that caused the damage exercises effective control over the activities that caused the environmental damage and consequently the human rights violation. The key concern today is whether the state of origin can effectively manage the actions that resulted in transboundary damage. Transboundary human rights claims relating to transboundary environmental damage can now be brought before the Court or the Inter-American Commission on Human Rights, according to this advisory decision⁴⁴⁵. For instance, in the case of the Athabaskan indigenous people’s Petition, it would be difficult for Canada to limit control over the actions that cause black carbon emissions. Bearing in mind that the Inuit Petition to the Commission in 2005 was denied and addressed these very issues, the Court’s advisory opinion has increased the principle and authority around issues of climate change and its negative effects on the rights of individuals⁴⁴⁶. It is a vitally important point as it provides the Athabaskans, who are still waiting for an acknowledgement of the injury, and other indigenous peoples in the future, the opportunity to be supported and

⁴⁴¹ Inter-American Court of Human Rights Advisory Opinion, Inter-American Court of Human Rights, November 15, 2017, OC-23/17, *Inter-American Court of Human Rights Advisory Opinion Requested by the Republic of Columbia*.

⁴⁴² *Ibid.*

⁴⁴³ *Ibid.*

⁴⁴⁴ *Ibid.*

⁴⁴⁵ FERIA-TINTA, MILNES (2018).

⁴⁴⁶ *Ibid.*

joined in the process of reversal that must occur to counter the threat of climate change. The Athabaskan Petition's chances of success have improved as a result of these considerations. Of course, it is impossible to predict how the advisory opinion will fare in comparison to the Inuit Petition currently before the Commission; however, it provides a new opportunity to establish that the damage done by black carbon emissions is a human rights violation with an extraterritorial dimension⁴⁴⁷.

The last development, the most recent, occurred on February 6, 2020, a day in which a decision was reached that represents an important milestone for the rights of indigenous communities. It was made by the Inter-American Court on Human Rights in the case of *Lhaka Honhat Association v. Argentina*. The Lhaka Honhat Association⁴⁴⁸ requested that the 132 indigenous communities that have lived on the land for 400 years be given a unique communal property title. The lawsuit was first submitted in 1991, but due to the state's inability to respond, it was taken to the Inter-American Commission on Human Rights in 2012⁴⁴⁹, which found that indigenous groups' rights have been infringed. Argentina did not follow the Commission's recommendations; thus the lawsuit was filed in 2018. The Court recently ruled that indigenous tribes had the right to a distinct communal property title for the 400,000 hectares they occupy, and it set compliance deadlines⁴⁵⁰. Argentina also breached a number of rights, according to the Court, by failing to develop procedures to protect communal property rights, failing to give communities with a legitimate and effective title, and failing to effectively consult them. The Court also determined that the state had violated the rights to cultural identity, a healthy environment, adequate food, and water, thus finding a violation from Article 26 of the American Convention on Human Rights for the first time in a contested case. It states:

“The States Parties undertake to adopt measures, both internally and through international cooperation, especially those of an economic and technical nature, with a view to achieving progressively, by legislation or other appropriate means, the full realization of the rights implicit in the economic, social, educational, scientific, and cultural standards set forth in the Charter of the Organization of American States as amended by the Protocol of Buenos Aires”⁴⁵¹.

This is the first time the Court has employed Article 26 of the Convention to evaluate the right to a healthy environment in a contentious matter, creating a significant precedent with this decision. The Court defined rules on the right

⁴⁴⁷ SAVARESI, AUZ (2019).

⁴⁴⁸ Over 10,000 people live in the communities, which are united under the banner of Lhaka Honhat (Our Land) and have been fighting for their ancestral lands since 1984.

⁴⁴⁹ Lhaka Honhat land claim of July 28, 1991.

⁴⁵⁰ Official Summary Judgement issued by the Inter-American Court of Human Rights, Inter-American Court of Human Rights, February 6, 2020, *Case of Indigenous Communities of the Lhaka Honhat Association (Our Land) v. Argentina*.

⁴⁵¹ American Convention on Human Rights, San José, November 22, 1969, Article 26.

to a healthy environment, grounded on the approach taken in the 2018 advisory opinion⁴⁵².

5.4 Human rights-based approach to climate change: the challenges still facing

Human rights are a relevant and suitable lens through which the problem of devastating implications of climate change on human life⁴⁵³ can be examined. It is precisely global warming with its effects that is increasingly observed through human rights, as the impacts of its consequences make the two spheres increasingly interconnected. It has been possible to observe that the interest of the international community towards these issues has developed relatively recently, since the Inuit Petition of 2005, which has perhaps represented the starting point of all that has followed.

Climate change and its effects on human rights are being addressed in a variety of ways. They range from the rhetorical use of human rights language to impose pressure on responsible parties by emphasizing the moral and ethical components of rights, to the incorporation of human rights concepts into climate change judgments as well as mitigation and adaptation strategies⁴⁵⁴.

The examples that have been discussed in this work consider the more legalistic approach, which includes claims pursued through frameworks of international or national laws with the aim of obtaining recognition of responsibility and sometimes reparations for the violations suffered⁴⁵⁵.

Although the claims approach may seem as the most useful one to appeal to, the phenomenon of climate change brings with it several difficulties in terms of legal frameworks for all those impacted by it. One of these relates primarily to “the cumulative and transnational impact of greenhouse gas emissions: the impact of a state’s emissions is not limited to the territory of that state but contributes to global warming everywhere”⁴⁵⁶. This factor presents a major difficulty for traditional jurisprudence. Typically, the rights and duties of citizens must be guaranteed by the state as part of that territory and jurisdiction. However, with climate change this is no longer easily possible. In addition, past CO² emissions must be taken into account, i.e. the cumulative responsibility of states towards future generations. These issues make climate change and actual human rights among the most difficult issue in international law that can be addressed today.

Several cases, both at the national and regional legal level, have been conducted to expose the issues of populations related to climate change, in

⁴⁵² TIGRE (2020).

⁴⁵³ LEWIS (2018:171).

⁴⁵⁴ *Ibid.*

⁴⁵⁵ *Ibid.*

⁴⁵⁶ LEWIS (2018:172).

addition to Inuit and Athabaskan. These include *Leghari v. Pakistan* in 2015⁴⁵⁷; *Greenpeace Norway and others v. Norway*⁴⁵⁸ in 2018. Some cases, such as the Inuit one was not as successful as hoped, while others such as *Leghari v. Pakistan* achieved a favorable outcome. Undoubtedly, the growing attention to the issue implies an increasing consideration also from the courts or tribunals that have to examine the different cases. However, the greatest difficulty lies in the facts of replicating these victories at the international level as well. In order to conclude this discussion, it is now necessary to consider the difficulties and challenges that a human rights-based approach has in pursuing climate change violations.

In the course of this work, it has been possible to speak of climate change as a violation of the human rights of indigenous peoples and individuals more generally. However, one of the thorniest issues lies in these questions: “To what degree, therefore, can climate change be considered a violation of human rights? How can we tell the difference between climate change’s human rights consequences and climate change’s human rights violations?”⁴⁵⁹. It could be said that:

“Legally, climate change no more violates human rights than does a hurricane, earthquake, volcanic eruption or meteor impact. Human rights are “human” by virtue of not only their victims but also their perpetrators. And they represent human rights “violations” only if there is some identifiable duty that some identifiable duty-holder has breached”⁴⁶⁰.

The key question is whether it is possible to identify a legal obligation that has been breached. The definition of human rights duties lies at the heart of this debate. Global warming and the resulting climate change phenomena present a test case with respect to traditional human rights duties. Taking into account that CO² emissions have been taking place since the industrial revolution, the cumulative effect considers that all actions of every state have contributed to climate change, and consequently to the resulting rights violations in all parts of the globe. It must be considered, however, that international law does not “require States to respond to threats to human rights wherever they arise”⁴⁶¹. But their obligations are limited to the jurisdiction and territory of the state itself, never going beyond that. While this helps States in better defining their

⁴⁵⁷ In the 2015 Lahore High Court case *Asghar Leghari vs. Federation of Pakistan*, the government was found to be in violation of the National Climate Change Policy of 2012 and the Framework for Implementation of Climate Change Policy (2014-2030) by failing to reach the policies’ goals. As a result, a Climate Change Commission was established to assist Pakistan in meeting its climate goals.

⁴⁵⁸ A coalition of conservation activists from Greenpeace asked the Oslo District Court for a declaration that Norway’s Ministry of Petroleum and Energy had broken the Norwegian constitution by granting a block of deep-sea oil and gas licenses for locations in the Barents Sea.

⁴⁵⁹ LEWIS (2018:173).

⁴⁶⁰ BODANSKY (2010:520).

⁴⁶¹ LEWIS (2018:173).

duties, this approach does not take into account the reality of human rights violations from climate change⁴⁶².

Another complication related to identifying the “perpetrator” of human rights violations relates to the fact that a proportion of GHG emissions are produced by non-state actors, primarily private companies and industries. These entities are not parties to human rights treaties, nor are they involved in international law⁴⁶³. States, in this sense, have the ability to legislate the level of emissions of non-state actors, but these remain only contingently committed to human rights law⁴⁶⁴. States, in any event, have an obligation to prevent and repress violations by private individuals, on pain of incurring liability. These considerations make it difficult to effectively apply human rights legislation to climate change. It is critical to be able to clearly identify what obligations nations are bound by and how they must be implemented in order to maximize the advantages of a human rights-based strategy to climate change. It must be feasible to identify a rights holder and a matching duty holder, as well as the nature of the duty holder’s responsibilities to the rights holder, in order to show a violation of human rights legislation⁴⁶⁵.

According to international law, with regard to human rights, there are three levels of obligations that states must exercise: duties to respect, protect, and fulfill⁴⁶⁶. The first requirement, the duty to protect human rights, often requires a state to refrain from taking any positive action that obstructs the exercise of the right in issue. In this sense, there is a negative duty: the need to refrain from actions that would infringe on the right⁴⁶⁷. The responsibility to defend human rights, the second degree of obligation, requires a state to take proactive measures to avoid human rights violations, whether by non-state actors or other external causes. Last but not least, the duty to fulfill obligates nations to take efforts to guarantee that all persons have access to their human rights.

When environmental degradation happens on or within a state’s territory, or when it is under its control, the content of responsibilities to respect, protect, and fulfill human rights in connection to environmental degradation is clearly established⁴⁶⁸. It is unclear whether these obligations extend extraterritorially, which might restrict the efficacy of a human rights-based strategy to dealing with climate change’s global implications. The broad consensus is that nations should not engage in acts or omissions that hurt people and States outside their boundaries.

Because climate change is likely to have a detrimental impact on a wide variety of human rights, governments would be required to refrain from actions that lead directly to climate change under the responsibility to protect

⁴⁶² BODANSKY (2010:522).

⁴⁶³ MCCORQUODALE (2009)

⁴⁶⁴ LEWIS (2018:180).

⁴⁶⁵ *Ibid.*

⁴⁶⁶ STEINER (2007).

⁴⁶⁷ LEWIS (2018:175).

⁴⁶⁸ MCCORQUODALE (2009).

those rights. If all people's human rights are affected by climate change, at least to some extent, then all nations, presumably, have a duty to uphold those rights. States are obligated to avoid, or at the very least minimize, CO² emissions as part of the obligation to comply. This obligation is commonly considered to apply to States' own activities; thus, it would largely relate to assets owned or operated by the state. The responsibility to decrease GHG emissions in order to comply with human rights must, however, be balanced against other human rights duties. States may claim that a certain level of emissions is an unavoidable result of attempts to fulfill other human rights, notably economic, social, and cultural rights⁴⁶⁹. In this scenario, there is a possible contradiction between the obligations to respect and implement human rights⁴⁷⁰. Because of this dichotomy, the general need to safeguard human rights may not always imply a positive obligation to limit emissions. The responsibility to protect is the second degree of duties. According to this, nations must safeguard their populations from the effects of climate change, which include studying and implementing appropriate adaptation measures inside their borders⁴⁷¹. States may be required to limit emissions from both public and private sources under the duty to defend human rights. In reality, this is comparable to the duty to fulfill, but it is founded on the state's positive responsibility to take preventative and protective actions, rather than the negative responsibility to refrain from interfering⁴⁷². Yet, the cumulative impact issue is evident here as well: while decreasing emissions inside a state has no direct impact on the human rights of that state's inhabitants, states may not be obligated to do so. According to this logic, only the greatest polluters, – as China and the United States– would be obligated to decrease their emissions, because all other States might argue that lowering their emissions would have a minimal impact. The last obligation is the duty to fulfill. It in turn can be broken down into three other duties: facilitate, promote, and provide human rights⁴⁷³. This is the most difficult degree of duty since it demands States to take concrete efforts to guarantee that all individuals, at the very least those who live within the state's territory or authority, have access to the entire range of rights. In the context of climate change, it is also perhaps the hardest to implement.

“The duty to fulfill requires affirmative action to address the negative effects of climate change, primarily through undertaking and sustaining adaptation measures that can ensure that people continue to enjoy their human rights in the face of climate change”⁴⁷⁴.

However, placing the responsibility for upholding human rights in the face of climate change on the state on whose territory the negative consequences

⁴⁶⁹ LEWIS (2018 :176).

⁴⁷⁰ DOELLE (2004).

⁴⁷¹ KNOX (2013 :19).

⁴⁷² LEWIS (2018 :178).

⁴⁷³ DE SCHUTTER (2016 :31).

⁴⁷⁴ QUIRICO (2016).

occur raises issues of equity, because many of the governments that will be hit hard by the effects do not have the means to adequately address them. One example is the entire Sub-Saharan area, which does not have the means to deal with the consequences of climate change and will be forced to live with them. Furthermore, several of these countries have made little contributions to global greenhouse gas emissions. This issue is partially addressed by the concept found in international human rights law of ‘progressive realization’⁴⁷⁵.

Awareness of the advantages and limits of a human rights-based response to climate change requires an understanding of the extent to which human rights obligations transcend beyond state borders. It exemplifies yet another challenge of a human rights-based strategy. As the above analysis demonstrates, a state’s duties to respect, defend, and fulfill human rights also apply to climate change. They specifically demand States to take adaptation measures in order to protect themselves from the negative consequences of climate change. States must also take efforts to cut pollution from both public and private sources, as well as to cooperate on answers in good faith. They must also guarantee that mitigation and adaptation measures have no unintended consequences for human rights⁴⁷⁶. However, in the case of climate change, the typical jurisdictional limitations of States’ responsibilities under international law restrict the application of human rights. While the reasons and consequences of climate change are generally global, human rights law only allows for extraterritorial enforcement of human rights obligations in restricted instances. According to international law, before a state may be held responsible for the international consequences of its acts or omissions, it must be proven that the repercussions are the result of some exercise of state authority or control.⁴⁷⁷ This test seems to be easier to prove for transboundary pollution, while it appears to be harder for global CO² emissions, where the cumulative effect of many State and non-State actors comes into play⁴⁷⁸.

Having shown that climate change has a detrimental impact on persons all over the world, a human rights-based approach to environmental concerns must be able to resort to human rights legislation that has extraterritorial applicability⁴⁷⁹. Finding methods to broaden human rights responsibilities such that they apply extraterritorially appears to be vital. John Knox, a former Special Rapporteur on Human Rights and the Environment, addressed this problem and proposed two options. One approach could be to build on current

⁴⁷⁵ ‘Progressive realization’ occurs when the international norm requires the state to act in order to ensure gradually over time the full realization of the result sought by the norm. Typical examples are many norms on economic, social and cultural rights, the full realization of which requires a certain amount of time. However, it should be noted that the State is not free in time and means, but is obliged to proceed, as quickly and effectively as possible, and to use all appropriate means and all available resources, in order to achieve the final result intended by the norm.

⁴⁷⁶ LEWIS (2018:180).

⁴⁷⁷ KNOX (2013:17).

⁴⁷⁸ LEWIS (2018:180).

⁴⁷⁹ KNOX (2013:17).

human rights law doctrine to create responsibilities for governments that are applicable beyond national borders⁴⁸⁰. The alternative possibility – he suggests – is to establish new law based on an international duty to collaborate⁴⁸¹. Indeed, Knox argues:

“in the human rights context, climate change is probably not best understood as a set of simultaneously occurring transboundary harms that should be addressed by each state seeking to account for its individual contribution to the effects of climate change in every other state in the world”⁴⁸².

For these considerations, Knox advocates for a new approach to climate change and human rights, one built on a responsibility to cooperate internationally. While the idea of an international duty to collaborate is appealing, there is no legal support for it in human rights law, and it would not offer a foundation for expanding existing human rights responsibilities beyond their present territorial limitations⁴⁸³. As a result, the extraterritorial reach of international human rights responsibilities is restricted. Human rights responsibilities will apply if it can be proved that a State has effective control over activities or people in another State’s territory. If it can be demonstrated that a State’s activities within its own territory create direct injury to people in another State, that government will be held liable. When the link between action and consequence is more lenient, and especially when the repercussions are the cumulative product of the acts of many States, establishing responsibilities and accountability becomes more difficult⁴⁸⁴.

Concluding remarks

The process of recognizing climate change as linked to human rights issues became increasingly important after 2005. The Human Rights Council Resolutions of 2009 and 2011 are examples of this evolution. The first one analyzes the issues of climate change related impact. It shows that there are two ways to address the matter: mitigation and adaptation. The first requires a reduction in greenhouse gas emissions in order to combat – though not eliminate – climate change. Adaptation involves enhancing the ability of individuals to adjust to the new climate reality ahead. The Resolution also recognizes how those who suffer most are the vulnerable people, including indigenous communities. The 2011 Resolution only confirms what was

⁴⁸⁰ KNOX (2013:25).

⁴⁸¹ *Ibid.*

⁴⁸² Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John Knox, February 1, 2016, UN Doc A/HRC/31/52, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*.

⁴⁸³ LEWIS (2018:184).

⁴⁸⁴ *Ibid.*

outlined in the 2009 Resolution. In it, however, the necessity and the will to agree in an international seminar is sanctioned, in order to spread even more awareness about climate change and its negative impact on human rights.

The Petition brought in 2013 by the Athabaskan indigenous people denounces Canada, which through its black carbon emissions, has violated the right to preserve the health, livelihoods, property and culture of the Arctic people. It also accuses the North American State of having failed to preserve the environment, according to the precautionary principle. The problems, however, with these Petitions lie in the several challenges revolving around the concepts of causality, cross-temporality, and extraterritoriality. Because of these factors, it becomes difficult to accuse a State and the emissions it emits of violating human rights. Although the Petitions of the Inuit and the Athabaskan people are quite similar in their demands, in the characteristics of the people and in those of the accused countries, they differ for many other reasons that explain why the 2013 Petition has not yet been “trashed” by the Inter-American Commission. It is possible to argue that the Athabaskan Petition depicts a much tighter and more direct relationship between governmental activities and the impact on indigenous people’s rights. It is based on a local pollutant that violates their human rights. The petitioners’ concern, according to the Inuit, is caused by the world’s greatest polluter, the United States.

According to developments since 2013, climate change litigations involving human rights will tend to increase over the years, as the effects of global warming – if emissions are not mitigated – will be felt more keenly by the most vulnerable individuals. For this reason, the Paris Agreement was born with the aim of representing a fundamental bridge between current environmental policies and future climate change neutrality. The advisory opinion of the Inter-American Court on Human Rights has only confirmed the most topical issue of today: global warming is a human rights issue. And it did so by arguing that the rights of the individual along with sustainable development and the environment must be treated as interrelated and indivisible, in order for a solution to be found. Finally, the 2020 case brought by the Lhaka Honhat Association against Argentina has finally stirred the waters on developments in the issue. For the first time, it has been recognized that a State has violated an Article of the American Convention – the Article on the right to a healthy environment – in litigation. The creation of this legal precedent will set the stage for new developments.

The human rights-based approach, however, presents many difficulties. The first concerns the greenhouse gas emissions produced by different countries and the impact that these have on human rights. Emissions have the characteristic of being cumulative and transnational, that is, they accumulate over time and have impacts beyond the territory of the emitting State. Another issue concerns quantity. The most industrialized countries, such as China and the US, emit the most CO². The poorest countries produce less. Thus, there is a problem of emissions’ accountability. It would be unfair to require less industrialized countries to decrease. From here also follows the problem of

identification of the perpetrator, State and non-State, and how to define the legal obligations to be paid. The three levels of human rights obligations – respect, protect, fulfill – are intended to push States to take measures for adaptation and mitigation to counter the effects of climate change on human rights. But States can only act within the jurisdiction of their own territory and not beyond. The difficulties of the human rights-based approach at the moment are too deep to solve in a successful and satisfactory way the litigations observed.

Conclusions

The goal of this work was to provide a broad and accurate view of the issues surrounding the lives of indigenous peoples, the violations of their human rights, and the threat of climate change.

Indigenous communities, non-dominant subjects within society, define themselves as different and unique from the standards imposed by the latter because they live with a pre-colonial and pre-invasion heritage. The desire of indigenous peoples for self-determination stems from a historical connotation rooted in the colonial experience of Europeans. The colonial period defined the vision of Westerners towards indigenous communities. The historical experience describes today's inequalities and deep discrimination against these peoples: the past is reflected in modern dynamics. To date, indigenous populations struggle to maintain and preserve their identity – built on a special relationship with the land defined as ancestral – in order to pass it on to future generations who will have the opportunity to live with the same cultural, social and legal structures⁴⁸⁵. These characteristic aspects of indigenous communities have, over time, legitimized the construction of particular social, political and economic organizations, while at the same time building forms of international aggregation. This has contributed to the creation of a strong cultural identity, which is perhaps the most deeply rooted peculiarity of indigenous peoples.

The cultural richness of indigenous peoples is one of their most important qualities, as it contributes to the stability of many elements of human social existence. Culture and identity are two notions that are linked, yet separate. Future generations of indigenous groups, who will face prejudice and persecution as they do now, will require the development of a strong and stable cultural identity. Indigenous people, through their culture, are able to situate themselves within a group, resulting in a shared meaning and social connection. Indigenous identity can only be sustained if there is a strong sense of culture within it, as cultural traditions are the soul of Indigenous communities. The components that the land, the territory and the natural riches offer, on the other hand, provide these populations with a rare spirituality. Because all indigenous lives are heavily reliant on activities connected to the land, its preservation is essential.

The indigenous Arctic Inuit people was examined as a specific case in order to better comprehend these notions. This community's culture, which is built on customs and traditional activities including communal hunting, nomadism, and connection to nature, gives them a strong sense of identity. Despite this, it has been shown that these activities are becoming increasingly difficult owing to substantial changes in the Arctic region as a result of climate change in recent years. Because of this, the Inuit filed a Petition against the US, which

⁴⁸⁵ BARTENB, MORTENSENA (2017:107).

has affected the indigenous population's well-being as a result of massive carbon emissions, resulting in a violation of their basic human rights.

The major aims of the Inuit Circumpolar Conference's Petition against the US were to raise awareness about the situation of the Inuit in the Arctic while also educating and urging the US to alter its dangerous climate policies. Simultaneously, the objective was to impose meaningful limits on greenhouse gas emissions and develop a strategy to safeguard indigenous peoples from the consequences of climate change. Such phenomenon has been shown to have major implications in the Arctic, where the impacts appear to be twice as severe as elsewhere. The United States is a crucial player in this dynamic since it was the world's greatest CO² emitter at the time, accounting for around 20% of total worldwide emissions. Many things have changed since 2005, but George W. Bush's government was well aware of its harmful and worsening actions in the Arctic, particularly with the Inuit. The US was judged to have pursued inappropriate and harmful measures in response to the phenomena of climate change. As a result, rejecting the Kyoto Protocol and raising emissions by 13% indicated a refusal to deal with global warming.

The right to enjoy the benefits of culture, the right to subsistence, and the right to life are the three violations that were considered and presented to the Inter-American Commission. It is possible to say that without the first two, namely culture and food to be able to survive, the right to life cannot be guaranteed in any way. The degradation of the ecosystem is leading to the inability of the Inuit to adapt to a new and changing environment. This is irreconcilable with the right to life and the right to be recognized as human beings.

The Petition has been the springboard for human rights litigations that trace human rights violations back to a State's greenhouse gas emissions. Although the Inuit Petition was ruled inadmissible by the IAHRIC it raised awareness and highlighted how climate change is closer to humans than previously thought.

The process of recognizing climate change as linked to human rights issues has become increasingly important after 2005. The Petition led by the indigenous Arctic Athabaskan people in 2013 confirms this claim. Here the accused State is Canada which, with its black carbon emissions, has violated the right to preserve the health, livelihoods, property and culture of the Arctic community. The issues that reside in these Petitions, however, are the challenges that revolve around the concepts of causality, 'intertemporality', and extraterritoriality between the accused country and the reported rights violations. Because of these factors, it becomes complicated within human rights litigations to accuse a State and the greenhouse gas emissions it emits of violating human rights.

The human rights-based approach in litigations presents many difficulties. The first concerns the greenhouse gas emissions produced by different countries and the impact that these have on human rights. Emissions have the characteristic of being cumulative and transnational, that is, they accumulate over time and have impacts beyond the territory of the emitting State.

Another issue concerns quantity. The most industrialized countries, such as China and the US, emit the most CO². The poorest countries produce less, since they have lower levels of industrialization. There is a problem of emissions' accountability. It would be unfair to require less industrialized countries to decrease. From here also follows the problem of identification of the perpetrator, State and non-State, and how to define the legal obligations to be paid. The three levels of human rights obligations – respect, protect, fulfill – are intended to push States to take measures for adaptation and mitigation to counter the effects of climate change on human rights. But States can only act within the jurisdiction of their own territory and not beyond. The difficulties with the human rights approach at present appear to be too profound for observed human rights disputes to be resolved effectively and satisfactorily.

According to developments since 2013, climate change controversies involving human rights will tend to increase over the years, as the effects of global warming will be felt more acutely by the most vulnerable individuals. Climate change is the defining crisis of our time, and its effects especially touch the world's most defenseless people. Indigenous and tribal communities are at the top of this list. Although they are the most exposed to global warming, they are paradoxically the least likely to contribute to it. They live in areas where climate change has the greatest impact, and their livelihoods and lifestyles are heavily reliant on the natural environment. The land and the territory are the custodians of the past, of the present, but above all of the future. Without these there is no sense of existence of indigenous culture and spiritual life, and therefore of the indigenous peoples themselves. As a result, indigenous peoples must play a central role in the battle against global warming. They are the most powerful stewards of the natural world; they have a unique understanding of their surroundings. Despite this, their voices are drowned out or marginalized.

On August 9, 2021 on the occasion of the International Day of the World's Indigenous Peoples, the United Nations Framework Convention on Climate Change (UNFCCC) took the opportunity to highlight the essential contribution made by indigenous peoples to the fight against climate change and its impacts. The UN climate agency stressed that despite making up fewer than 5% of the global population, indigenous communities help protect 80% of the world's biodiversity and hold many of the answers to the climate problem⁴⁸⁶. For this very reason, UNFCCC Executive Secretary Patricia Espinosa highlighted that: "Indigenous peoples must be part of the solution to climate change. This is because they have the traditional knowledge of their ancestors. The important value of that knowledge simply cannot – and should not – be underestimated"⁴⁸⁷.

⁴⁸⁶ United Nations Framework Convention on Climate Change article, United Nations Framework Convention on Climate Change, August 9, 2021, *Indigenous Peoples Increasingly Engaging in Climate Action*.

⁴⁸⁷ *Ibid.*

Respecting the rights of indigenous peoples and strengthening their participation in climate policy is critical to achieving the Paris Agreement's goals of limiting global temperature increase to 1.5°C above pre-industrial levels and promoting climate resilience. The Intergovernmental Panel on Climate Change's most recent report, released in August 2021, speaks clearly: while some impacts, such as rising sea levels, are irreversible, it is still possible to reverse the trend by lowering carbon dioxide emissions. Solving the climate crisis and preventing it from affecting individual human rights is not only an issue for indigenous peoples; it is a problem that affects all of us, individually.

Addressing the problem of the rights of indigenous peoples is to come to terms with the deepest and most unresolved human contradictions. It is to contemplate man's eternal battle with nature, the failures of peace strategies, and the difficulty to create equitable societies in which human, technical, and scientific development does not exclude growing segments of the population from well-being and enjoyment⁴⁸⁸. Indigenous peoples' identity and sense of progress may hold the key to addressing climate change and the accompanying human rights violations. Aware of the fact that they are going through a time that is not at all immobile and full of transformations, they have chosen not to renounce to their identity. Change includes the idea of development, because, like any other people on earth, indigenous peoples aspire, as much as we do, to improve their living conditions without altering the balance of the land and the environment⁴⁸⁹. Perhaps the real solution to climate change, human rights, and injustice lies not in the capacity to move forward, but in the capacity to know how to move back.

⁴⁸⁸ MORESCO FORNASIER (2013:7).

⁴⁸⁹ *Ibid.*

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Summary

This thesis seeks to research indigenous peoples, with a special focus on those in the Arctic, and the influence that climate change – whose effects are becoming increasingly visible and obvious – has on their ability to exercise their human rights. Millions of people are already suffering as a result of climate change's devastating impacts. Global warming and its consequences are now generally recognized, and with it comes concern about the damage it is causing and will continue to do to human rights, exacerbating existing inequalities. Its consequences will progressively increase, causing significant suffering for present and future generations.

Indigenous communities, non-dominant subjects within the society, self-define themselves as different and unique from the standards imposed by the same, because they live with the pre-colonial and pre-invasion heritage. They are now struggling to retain and preserve their identity, which is based on a particular link with ancestral land, in order to pass it on to future generations who will be able to experience the same cultural, social, and legal frameworks. These characteristic aspects of indigenous communities have, over time, legitimized the construction of particular social, political and economic organizations, while at the same time building forms of international aggregation. This has contributed to the creation of a strong cultural identity, which is perhaps the most deeply rooted peculiarity of indigenous peoples. Globalization can be considered today as the greatest challenge that such communities face, so that their peculiar identities, languages, traditions and ways of life can survive what are “normal” standards of living. The complexities surrounding the figure of indigenous peoples are also reflected in the difficulty for the international community to adopt an unambiguous definition of them. It was possible to observe three of the main definitions: the independent definition by the expert Martinez Cobo, that provided by the World Bank, and finally that given by the International Labor Organization Convention No. 169. What emerged from studying all three definitions is that the only one that comes from a legally binding instrument is the one provided by C169. The first is historical continuity with the groups present at the time of colonization; the second is the presence of traditional institutions, which heavily implies the presence of modern State structures; the third is diversity, which distinguishes them from other peoples; and the fourth is historical continuity as a desire to preserve indigenous peoples' identities into the future⁴⁹⁰. The right to self-determination by indigenous peoples descends from a historical connotation that is based on the roots of the colonial experience of Europeans. The colonial period has defined the vision of westerns towards indigenous communities, going to delineate what are the characteristics so

⁴⁹⁰ COSSIGA, TAULI-CORPUZ (2012:13).

peculiar that still define them today. Already at the time of the Greeks, the natives were nicknamed *barbaros*, and then followed with the Church and the Popes claimed to have control over all those lands inhabited by non-believers. From there began the process of expropriation and exploitation of indigenous lands. The historical colonial experience today defines the inequalities and deep discrimination against indigenous peoples. The processes of colonization, which occurred in all parts of the world, from America to the Arctic region, are the result of struggles for independence from European monarchies, which, however, did not want to come to terms with the historical roots of the land and indigenous past. The past is reflected in modern dynamics; not much has changed since colonial times. One of the central characteristics of indigenous peoples is the cultural richness that contributes to the stability of many aspects of human social existence of indigenous people. Culture and identity are two closely related, if distinct, concepts. The creation of a strong and solid cultural identity is necessary for future generations of indigenous communities, who will have to deal, as now, with prejudice and discrimination. Indigenous individuals, through their culture, are able to contextualize themselves within a community, thus creating a common meaning and social connection. Indigenous identity is only solid because at its foundation is a powerful sense of culture. On the other hand, the elements of the land, the territory and the natural resources it offers give this population an uncommon spirituality. Indeed, the use of the land is based on strategies and techniques rooted in a millenary, almost mystical knowledge. The life of all individuals strongly depends on activities related to the land, for this reason it is necessary to preserve it. The land and the territory are the custodians of the past, of the present, but above all of the future. Without these there is no sense of existence of indigenous culture and spiritual life, and therefore the indigenous peoples themselves.

Researching and analyzing sources of law that apply to indigenous peoples and safeguard their fundamental rights were the second step performed in this work. Within the Inter-American System for the promotion and protection of human rights there are two main legal instruments: the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights. Both turn their attention to the indigenous peoples even though they do so through general provisions. Both are not legally binding instruments, but the provisions they contain have the objective of protecting the individual rights and collective interests of indigenous peoples, through the protection of property, the right to the preservation of culture, the right to land and territory. The ILO Convention No. 169 represents the most important and comprehensive binding international instrument for the protection of indigenous peoples. If on the one hand it is necessary to underline, as a negative note, the fact that indigenous representatives were not involved in the process of drafting the Convention of 1989, it is necessary to value the evolution that this treaty has represented in the affirmation of the rights of these peoples and the positive influence it has had on subsequent international legislation on the subject, as well as in the national laws of the State's parties.

ILO Convention No. 169 introduces the criterion of self-identification to establish the subjects who will benefit from the rights recognized in it. For the first time the term ‘peoples’ is used in relation to indigenous peoples, emphasizing the distinct cultural and social identity in the national context of belonging. The transversal principles affirmed by the Convention of 1989 are those of consultation and participation of indigenous subjects, through their own institutions, in all matters affecting them. On this occasion, the ILO declares itself not competent to define the right of self-determination of indigenous peoples: a very precise choice aimed at avoiding that a provision of such scope could discourage States to ratify the treaty. Following a similar logic, the term ‘land’ is used in the text of the Convention, instead of ‘territory’, since some States, in their constitutions, refer to it only in relation to the national territory. The right to traditionally occupied land is therefore affirmed in the ILO Convention No. 169, without specific definitions regarding the elements ‘space’ and ‘time’, necessary to establish the parameters of reference of this right, in relation to which a margin of discretion is left to the States parties, when they will have to establish effective mechanisms for delimitation of indigenous areas within their borders. The ownership of land, in its collective dimension, is considered by the ILO, in several recommendations to States parties, essential to ensure the survival and avoid the dismemberment of indigenous communities. Having established the right of ownership over traditionally occupied lands, ILO Convention No. 169 also specifies that indigenous peoples should be able to participate in the management of natural resources present in the areas in question. The ILO has had to ensure in many States that indigenous communities are involved in decision-making processes related to the use of natural resources, so that the fundamental rights of individuals are not violated, and they are not excluded from the proceeds of operations. While it is true that the parameters for the protection of indigenous rights established in the ILO are particularly cutting edge and comprehensive, it should also be noted that the limitation of the ILO Conventions in question is that they have only been ratified by a minority of States.

The international community has brought together numerous principles of guarantee for indigenous peoples, which have emerged over the last sixty years, in the United Nations Declaration of the Rights of Indigenous Peoples, a declaration of a “restorative” nature, which aims to establish at least some benchmarks at the universal level, not being a legally binding instrument. The rights established by UNDRIP seem to want to pick up the threads of indigenous issues, starting from the very beginning, guaranteeing the right to self-determination, autonomy, the right to land, ancestral territories and natural resources, also establishing a broad protection of cultural diversity. Within the United Nations, various mechanisms have also been created to oversee the rights of indigenous peoples, and agencies will have to operate in different countries according to the spirit of UNDRIP. It is considered the most important international recognition of the rights of indigenous peoples. It incorporates normative advances that have evolved over the past three

decades based on existing international human rights sources. The Declaration represents a fundamental instrument of international law, as it gives recognition to a series of collective rights that provide an important form of legal protection for indigenous peoples. The UNDRIP, after nearly 25 years of negotiations, was adopted on September 13, 2007 through the General Assembly Resolution No. 61/295. It was approved by 143 votes, with 4 against (Australia, Canada, New Zealand and the United States) and 11 abstentions. The four opposing States were contrasting to some specific articles such as those on land rights and natural resources (Art. 26), on self-determination (Art. 3) and on the right to consultation and consent (Art. 19). A fundamental thematic area of interest to the UNDRIP is that of the right to land. The guarantee of this right, one of the workhorses of indigenous peoples, is seen as a fundamental prerequisite for the realization of all the others found within UNDRIP, in light of the strong cultural and spiritual ties that bind indigenous peoples to their ancestral territories, vital to their survival and development. There is a need to emphasize that the rights to land and natural resources of indigenous peoples have always created economic and political debates between States and private actors. This has meant that the recognition of these rights has often been obstructed. Over time, indigenous peoples have seen their rights to land recognized by the international community, both through the jurisprudence of human rights courts and in specific treaties protecting these communities. Land and territories have a material, cultural and spiritual dimension that is extremely representative for indigenous peoples. For this reason, they are fundamental to their existence and identity, given that over the centuries they have evolved in harmony with the specific ecosystem of which they feel part. The same principle applies to the management of natural resources present on the surface and in the subsoil of the areas in which they live, resources that they have been able to use sustainably for millennia and which are currently threatened by the processes of change and modernization⁴⁹¹. In addition, the concept of cultural diversity permeates the whole UNDRIP as a fundamental prerequisite for the recognition of the rights of peoples who have maintained and developed a way of life, traditions, language and social principles different from the currently dominant culture in the countries to which they belong. Culture, according to the indigenous holistic conception, broadly encompasses all aspects of life, and the right to culture should protect knowledge, art, literature, philosophy, science, values, laws, customs and traditions⁴⁹².

Another legal tool that protects indigenous rights is the American Declaration on the Rights of Indigenous Peoples. On June 15, 2016, the General Assembly of the Organization of American States adopted the American Declaration during its 46th working session. After about 20 years of waiting, it was possible to obtain protection for all individuals in the Americas who identify as

⁴⁹¹ UN Sub-Commission on the Promotion and Protection of Human Rights, Economic and Social Council, August 11, 2003.

⁴⁹² THORNBERRY (2003:118).

indigenous. Despite this great step forward, its nature remains that of a declaration and therefore not binding on States. For the inter-American system of protection of human rights, the rights of indigenous and tribal peoples represent an element of great importance and interest. The Declaration contains forty-one provisions divided into six sections and it is applied to the indigenous people of the Americas, as stated in Article I. paragraph 1. It recognizes the fundamental right of indigenous peoples to self-determination (Art. III) and the right to their ancestral territories (Art. XXV). It also enshrines the right of indigenous peoples to be protected from genocide (Art. XI) and other forms of assimilation (Art. X), prohibits racial discrimination, intolerance and violence. The Declaration, which is based on the recognition of the right to self-identification, also promotes respect, development and strengthening of indigenous cultures, traditions, lifestyles and languages (Art. XIII and XIV) and recognizes the right of such peoples to education or to have access to education in their own language and culture (art. XV). It also protects, among others, the fundamental rights to indigenous health and a healthy environment (Art. XVIII and XIX) and the right to gender equality for indigenous women. The Declaration is particularly innovative compared to other international legal instruments. Although it represents a regional instrument, it is the first to recognize the right of indigenous peoples and communities in voluntary isolation or initial contact to remain in that condition and to live freely, according to their culture and worldview⁴⁹³.

Having observed developments regarding the rights of indigenous peoples within various conventions and declarations, which have emphasized the importance of protecting these particular communities and the rights they need to be safeguarded, it is now necessary to detect, for the purposes of this research, an instrument that belongs specifically to the Arctic States. These are Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America. On September 19, 1996, through the Ottawa Declaration, the aforementioned Arctic States established the Arctic Council. This forum aims to advance the level of cooperation, coordination, and interaction among the eight States, through the proactive participation of Arctic indigenous peoples and all its citizens on the most difficult issues⁴⁹⁴. It was created to ensure that there would be a mechanism in place to address the difficulties and challenges of the Arctic peoples, with a focus on climate change in the Arctic environment and sustainable development as a means to improve the economic, social, and cultural well-being of the North⁴⁹⁵. The primary purpose of its establishment sees its origin in the desire for a better and efficient management of the Arctic, a region that due to climate change and its causes has had serious consequences on the life of the area and its indigenous communities. The permanent participation of

⁴⁹³ American Declaration on the Right of Indigenous People, Organization of American States, 2016, Article XXVI.

⁴⁹⁴ McIVER (1997).

⁴⁹⁵ Joint Communique of the Governments of the Arctic countries on the establishment of the Arctic Council, September 19, 1996, *Ottawa Declaration*.

the indigenous component within the Arctic Council is evidence that the Arctic States recognize the importance of indigenous peoples in arriving at the best possible management of the climate emergency in the Arctic region.

The indigenous population featured in this work is the Arctic Inuit. The Inuit people, whose name in the local language, *Inuktitut*, means “the people”, describe an indigenous group whose language and culture is descended from the Thule⁴⁹⁶ – named for the place where the culture was discovered in Greenland – and Dorset peoples of the Arctic, who settled about 1000-1600 years ago, when the development of whaling techniques began to allow survival in the cramped climates of the Arctic⁴⁹⁷. The Inuit people have relied on the historical legacy of the earliest indigenous peoples to establish in the Arctic circumpolar region for their existence and survival. The Inuit have survived for thousands of years by adapting to the severe living conditions of the Arctic. For the Inuit, as for most indigenous peoples, hunting is the major source of livelihood. Inuit feed primarily on whales, seals, caribou, Arctic hares, berries and fish. Hunting activity represents also the cultural activity which, since the beginning, is passed on to young people. As time has progressed, the Inuit have developed new strategies in hunting, with for instance, the use of rifles and motorboats, which ensure a successful hunt. Through the oral tradition and the study of the practice by hunters, it has been possible to maximize hunting and ensure a good harvest to the populations, which have also learned to deal sustainably with the animals and plant populations.

Even when the first European settlers came in the late 1500s, Inuit were forced to adjust as a result of the arrival of new and diverse technology. Despite their first encounter with colonists, the Inuit have preserved traditional cultural and land traditions such as hunting sharing, nomadism, and connection to nature. The first is founded on a sense of responsibility and solidarity with the community, as well as social ties with animals and the environment. The core of Inuit culture is the transfer of these ideals through oral transmission. Indigenous peoples, such as the Inuit, have seen significant changes in recent years, largely as a result of the detrimental effects of climate change. It is this because that has prompted the Inuit to spearhead a Petition to the Inter-American Commission on Human Rights against the United States, which has harmed the indigenous population’s wellbeing as a result of huge carbon emissions, resulting in infringement of their basic human rights.

The major aims of the Inuit Circumpolar Conference’s Petition of 2005 against the US were to raise awareness about the situation of the Inuit in the Arctic while also educating and urging the US to alter its dangerous climate policies. Simultaneously, the objective was to impose meaningful limits on greenhouse gas emissions and develop a strategy to safeguard indigenous

⁴⁹⁶ The Thule culture were predecessors to the modern and various Inuit and Yupik groups of Alaska, the Arctic, and High Arctic. They were a fast-moving culture spreading from the Russian Far East (Chukotka) throughout Southwest and Northern Alaska and to the Canadian High Arctic and to parts of Greenland.

⁴⁹⁷ CROWLEY (2005:13).

peoples from the consequences of climate change. It has been shown to have major implications in the Arctic, where the impacts appear to be twice as severe as elsewhere.

Greenhouse gas emissions have risen inexorably since the industrial revolution at the end of the 18th century, owing principally to the increasing combustion of fossil fuels for energy and industrial operations. The effects that global warming is bringing are there for all to see. Those occurring in the Arctic are those described within the content of the Petition: melting ice and permafrost, rising sea levels, and all the consequences that follow. According to the Intergovernmental Panel on Climate Change's 2001 report, the temperature has risen by 0.6°C since the industrial revolution, resulting in an 8% reduction in ice until 2004; a 1.0 mm annual rise in sea level; and changes in the behavior and habits of 61% of Arctic animals. The most current Intergovernmental Panel on Climate Change Report, published in 2021, maintains this pattern: while certain impacts, like as rising sea levels, are irreversible, it is still feasible to reverse the trend by lowering carbon dioxide emissions.

The United States is a crucial player in this dynamic since it was the world's greatest CO² emitter at the time, accounting for around 20% of total worldwide emissions. Many things have changed since 2005, but George W. Bush's government was well aware of its harmful and worsening actions in the Arctic, particularly with the Inuit. Although the government established a target of decreasing US emissions "intensity" by 18%, it was far from met. The US was judged to have pursued inappropriate and harmful measures in response to the phenomena of climate change. As a result, rejecting the Kyoto Protocol and raising emissions by 13% indicated a refusal to deal with climate change. The right to enjoy the advantages of culture is the first of the numerous rights infringed by climate change. Culture presents itself in a variety of ways, according to the findings. One of these is the Inuit's and indigenous peoples' affinity to the land, which gives rise to traditions, customs, and ways of life. The American Declaration, as well as other sources of international law, protect the Inuit's human right to profit from their unique culture. The right to food is also in the list of rights that have been violated. It is mostly apparent in the Inuit's failure to discover a method of survival. Subsistence activities such as fishing, and hunting will no longer be possible if the terrain changes. If the first two rights are infringed, it is impossible to secure the right to life. Degradation of the ecosystem can lead to indigenous peoples' inability to adapt to a new and constantly changing environment, as well as physical and mental illness and suffering. This is irreconcilable with the right to life and the right to be recognized as human beings. The Petition revealed to be an early effort in explicitly connecting climate and human rights problems in an international arena. Although it did not achieve much in terms of practical results, it raised awareness and highlighted how climate change is closer to humans than previously thought.

After 2005, the process of identifying climate change as a human rights issue became more essential. This development may be seen in the 2009 and 2011

Human Rights Council Resolutions. The first examines the concerns of climate change's consequences. It demonstrates that there are two options for dealing with the problem: mitigation and adaptation. To counteract – but not eradicate – climate change, the first needs a reduction in greenhouse gas emissions. Individuals' capacity to acclimatize to the changing climate reality is improved by adaptation. The Resolution also emphasizes that the most vulnerable people, particularly indigenous populations, are the ones that suffer the most. The 2011 Resolution just restates what the 2009 Resolution stated. However, it sanctioned the need and desire to convene a worldwide symposium in order to raise even more awareness about climate change and its detrimental impact on human rights.

A similar example of a Petition to that of the Inuit, is that of the indigenous Athabaskan people. This appealed in 2013 accusing Canada of violating the right to protect the health, livelihoods, property and culture of the Arctic people by emitting black carbon. It accuses the North American state of failing to follow the precautionary principle in protecting the environment. The issues with these Petitions, on the other hand, revolve on various obstacles including the ideas of causality, cross-temporality, and extraterritoriality. As a result of these circumstances, accusing a State and the emissions it produces of breaching human rights becomes more difficult. Although the requests of the Inuit and the Athabaskan peoples are quite similar, as are the features of the people and the accused nations, they differ for a variety of other reasons, which explains why the 2013 Petition has yet to be “trashed” by the Inter-American Commission. The Athabaskan petitioners' choice to focus on black carbon as a cause of climate change differs from the argument brought forward by the Inuit. For while the former focus on regional pollution, the latter sue total U.S. CO² emissions by stressing “anthropogenic carbon dioxide as the main driver of climate change”⁴⁹⁸. Inuit blamed violations of their human rights on global cumulative emissions, citing the United States because at the time, in 2005, it represented the largest contributor to carbon dioxide emissions in the world, and because the George W. Bush administration did not cooperate to take action against the phenomenon⁴⁹⁹. This was a key weakness of the Inuit Petition's strategy, which could not link specific United States' emissions to rights abuses in the Inuit community. Instead, US emissions, being meaningful, could only be described as contributing to global climate change. While for the Athabaskans the issue is different. They focused on the exploitation of black carbon and Canadian emissions, which according to the indigenous people, have damaged their way of life and environment. The difference also lies in the emissions themselves. Unlike CO², which is distributed across the ecosystem and has global consequences, black carbon emissions in the Arctic exclusively warm the Arctic⁵⁰⁰. It is conceivable to claim that the Athabaskan Petition illustrates a far closer and more direct link

⁴⁹⁸ CROWLEY (2005:31).

⁴⁹⁹ *Ibid.*

⁵⁰⁰ MCCRIMMON (2016).

between government actions and indigenous people's rights. It is based on a local contaminant that infringes on their civil liberties. According to the Inuit, the world's largest polluter, the United States, is the source of the petitioners' worry.

Climate change lawsuits including human rights have been on the rise since 2013, since the impacts of global warming – if emissions are not reduced – will be felt more acutely by the most disadvantaged people. As a result, the Paris Agreement was conceived with the goal of serving as a crucial link between current environmental measures and future climate change neutrality. The Inter-American Court on Human Rights' advisory decision has merely reaffirmed the most pressing issue of the day: global warming is a human rights concern. And it did so by arguing that, in order to find a solution, individual rights, sustainable development, and the environment must all be viewed as interconnected and indivisible. Finally, the Lhaka Honhat Association's lawsuit against Argentina, filed in 2020, has sparked new interest in the subject. In litigation, it was acknowledged for the first time that a State had breached an Article of the American Convention i.e. the Article on the right to a healthy environment. The establishment of this legal precedent will pave the way for further advancements in the future. The human rights-based approach, on the other hand, is fraught with problems. The first is concerned with different countries' greenhouse gas emissions and their effects on human rights. Emissions are cumulative and transnational in nature, meaning they build up over time and have an influence beyond the borders of the emitting country. Another point to consider is quantity. CO² emissions are highest in the most industrialized countries, such as China and the United States. The poorest countries generate the least amount of goods. As a result, there is an issue with emissions accountability. It would be unjust to expect less industrialized countries to reduce their output. From here, the issue of identifying the culprit, both State and non-State, as well as how to define the legal responsibilities to be paid, arises. The three tiers of human rights duties – respect, protect, and fulfill – are designed to encourage nations to implement adaptation and mitigation measures in order to mitigate the consequences of climate change on human rights. States, on the other hand, can only operate inside their own territorial jurisdiction. The challenges of a human rights-based strategy are now too great to resolve the litigations in an effective and satisfying manner.

On August 9, 2021 on the occasion of the International Day of the World's Indigenous Peoples, the United Nations Framework Convention on Climate Change (UNFCCC) took the opportunity to highlight the essential contribution made by indigenous peoples to the fight against climate change and its impacts. The UN climate agency stressed that despite making up fewer than 5% of the global population, indigenous communities help protect 80% of the world's biodiversity and hold many of the answers to the climate

problem⁵⁰¹. For this very reason, UNFCCC Executive Secretary Patricia Espinosa highlighted that: “Indigenous peoples must be part of the solution to climate change. This is because they have the traditional knowledge of their ancestors. The important value of that knowledge simply cannot – and should not – be underestimated”⁵⁰².

Addressing the issue of indigenous peoples’ rights requires confronting the deepest and most unresolved human conflicts. It is to ponder man’s unending fight with nature, the failures of peace methods, and the challenge of constructing fair societies in which human, technological, and scientific progress does not exclude expanding parts of the population from happiness and satisfaction. The identity and feeling of development of indigenous peoples may hold the answer to tackling climate change and the resulting human rights violations. They have decided not to surrender their identity, despite the fact that they are living in a period that is not at all immobile and full of alterations. Change involves the concept of development, because indigenous peoples, like any other people on the planet, want to enhance their living conditions without disrupting the natural balance of the land and environment. Perhaps the actual solution to climate change, human rights, and injustice is the ability to know how to go backwards rather than forwards.

⁵⁰¹ United Nations Framework Convention on Climate Change article, United Nations Framework Convention on Climate Change, August 9, 2021, *Indigenous Peoples Increasingly Engaging in Climate Action*.

⁵⁰² *Ibid.*