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EUROPEAN MASTER'S DEGREE IN HUMAN RIGHTS & DEMOCRATISATION 2004/05



***Indigenous Peoples in Isolation:
Beyond the silence of the Ecuadorean Amazon Rainforest***

Are there tools to grant the rights of the hidden?

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ABSTRACT

The remaining indigenous peoples in isolation in Amazonian Ecuador face imminent extinction due to uncontrolled exploitation of rainforest natural resources and interethnic conflicts. The national legal protection system has failed because of traditional state lack of commitment, and indigenous customary law has been misused as coordination mechanisms with human rights system have not been developed within the Ecuadorean plurinational constitution. The Taromenane massacre in 2003 reflects the contradictions of indigenous advancement in the framework of national societies dominated by stereotyped visions of indigeness that the mass media replicates. Depicted as noble or ignoble savages to reinforce the majority society "self", stereotypes prevent aboriginal participation in the national public sphere. Striking use by natives of mainstream stereotypes for advancement, linked to self-determination, self-identity and self-representation policy, has raised questions about the essentialization of culture and the disregard of individual rights. The reluctant attitude of a sovereign state to protect its most vulnerable peoples, who lack even citizenship, can only be pressurized in the international human rights environment, and through imaginative deployment of existing instruments into this new framework of the indigenous peoples in isolation.

INTRODUCTION: VOICES OR SILENCE?



Voices...

For centuries, an invisibl gag inhibited indigenous peoples' ability to speak. There was silence. A forced silence imposed by law, by institutions, by territorial states shaping the words and the pages of official history.

Now there are voices. Voices of resistance, struggling voices gathering together to reclaim their space. Voices seeking justice. Voices building audiences. Voices that have to choose when to speak, to whom and how. Voices that make their way by speaking loud or by whispering. Voices seeking to fall on the right ears.

But there are also many deaf ears. Reluctant ears protect legacies and privileges. The mighty are being addressed. Is there a willingness to hear? Willing or not, the quest for indigenous peoples is to open doors to their words. And keep them open. For them, there shall be no return to silence.

... and Silence...

Is there something beyond the sighs and the measured footsteps of the Amazon rainforests? Indigenous peoples in isolation are there. Hidden voices within ancestral frontiers, that choose to live beyond the deafening limits of the colonised world.

Silence is a place. *Silents* are.

But remoteness is being besieged. And the right to existence, the right to an isolated life remains under threat. The silence is about to be definitely broken and the silent ones, exterminated.

For indigenous peoples, there is a right to a voice, there is a right to silence.

Indigenous peoples in voluntary isolation represent a major challenge for society. Formerly inhabiting wide territories, they are now hidden in remote lands that colonising forces besiege, conquer and, eventually, devastate. They are hidden, so their problems are hidden too. Nobody cares about them, except when they emerge as the last obstacle to complete colonization of planet Earth. Legal instruments developed for the protection of contacted indigenous peoples still wait for the premiere with the isolated ones. Time is running out for them. Nearing dangers threaten the survival of the last free "Jaguar's sons"¹.

Indigenous peoples in isolation in the Ecuadorean Amazon are endangered by the same threats as the already contacted groups, but they are even more vulnerable. Traditionally, uncontacted or recently contacted indigenous peoples have constituted a large field of work for anthropologists. However, international human rights activism has not paid attention to them. Perhaps because they are almost invisible to everybody including their indigenous "brothers" and "sisters"², who do participate in the international indigenous movement. Invisibility and muteness are being slowly defeated in the public sphere by indigenous peoples' voices but, in the case of the isolated, invisibility and muteness have been consciously adopted. Given this scenario, how does the corpus of rights relevant to indigenous peoples apply to groups in isolation and what role do the media and the principle of self-representation play in this context?

In this dissertation, I will analyse the struggles that indigenous peoples are currently undergoing in order to overcome the discrimination that the state framework has inflicted on them. The first chapter includes an overview of the main issues that Latin American indigenous peoples are facing. The appropriateness of granting collective rights, on the basis of fixed concepts of culture, encompasses some opportunities to overcome the historical marginalization and level with mainstream society. But collective rights also bear risks of trapping individuals in obsolete and hostile cultural cages. For indigenous peoples, once their cultures recovered the dignity in the texts of plurinational constitutions, the task consists of opening real spaces in the public sphere

¹ The Huaorani are called the "Jaguar's sons".

² "Brothers and sisters" is the terminology used in the international indigenous movement, specifically in the United Nations Permanent Forum on Indigenous Issues.

through self-representation. Historically, aboriginals have been depicted in the media through stereotypes that have contributed to their withdrawal from the enjoyment of *de facto* citizenship. In general, all nation-state mechanisms have raised barriers for indigenous peoples. Three decades ago, native peoples realised that international human rights fora were appropriate opportunities for a second decolonization and started the process of establishing a transnational indigenous movement to pressurize national governments. Developments in the United Nations framework have proved successful but there is yet a long way to run.

The second chapter zooms in on the last indigenous peoples in isolation in the Ecuadorean Amazon. The Taromenane massacre, which occurred in 2003 and was widely covered by the media, is taken as a case-study to describe the dangers that threaten the uncontacted indigenous peoples' physical and cultural survival, such as the threat of oil and logging companies and interethnic conflicts. For these Amazonian natives, all protective mechanisms within the national framework have failed. The traditional state lack of commitment has now been enhanced by the misuse of indigenous customary law that the new plurinational constitution grants. The failure of law is simultaneous with other failures, such as the controversial role of the media. In the case of the Taromenane massacre, mainstream media deployed an extensive use of stereotypes to depict an extremely confusing case where indigenous peoples themselves tried to take advantage for political progress or for promoting particular interests. Meanwhile, the 2003 victims as well as future victims among the isolated indigenous groups remain unprotected. This particular case was brought to the UN Permanent Forum on Indigenous Issues in May 2005, with the purpose of engaging the international human rights community in the granting of rights to a few hundred human beings who have been deprived of everything, even the right of existence. For them, tomorrow may be too late.

Chapter 1:

Historical Discrimination and the Role of Human Rights Raising Unheard Voices

1.1 Mapping the voices: Indigenous peoples in the world today

From the icy plains of the Arctic seas to the windy straits in the Land of Fire³, over thirty million indigenous peoples walk the snow or the streets, the highlands or the jungles of the American 'walking' continent.

America is being remade. The voices of the descendants of the original inhabitants have emerged. The second half of the twentieth century has witnessed an incipient effort for accommodating indigenous' claims into the existent systems. Both at the national and the international level, institutions have developed policies and bodies to meet indigenous demands. Whether or not these programmes have succeeded, due to a variety of reasons, foundations are laid for increasing the participation of indigenous peoples in processes affecting their lives.

1.1.1 Current figures, issues and struggles

Although the purpose of this work is to raise awareness on the threaten indigenous peoples in isolation living in the Ecuadorean Amazon, a wider view of the indigenous situation in the world will be tackled first to bring some light to regional developments.

Around 350 million people in the world are considered to be indigenous, belonging to about 5.000 cultures scattered across five continents⁴. The current working definitions of indigenous peoples⁵ referred to them as the disadvantaged descendants of the peoples that inhabited the lands prior to the formation of the state. The umbrella-term 'indigenous peoples' encompasses the peoples of the Americas, Europe, Africa, Asia

³ *Tierra del Fuego* - the extreme south of the South American continent.

⁴ Statistics according to the International Working Group for Indigenous Affairs (IWGIA). Available at www.iwgia.org

⁵ Definitions provided by J.R. Martínez Cobos, in *Study of the Problem of Discrimination Against Indigenous Populations Final Report* (1982); Erica-Irene Daes (Chairperson of the Working Group for Indigenous Affairs), ILO Convention 169 and World Bank (Operational Directive 4.20.1991).

and Oceania by attribution of two main characteristics. Firstly, the identification of a particular people to a particular area and, secondly, the cultural distinctiveness from other groups settled in the same territory. These features try to include populations belonging to different continents and historical developments, but have been challenged by some scholars, as I will discuss later in this chapter.

Discrimination and the struggle for recognition of rights are at the core of indigenous issues. Dominant societies disregard other cultures and deprive them of basic rights to fully enjoy citizenship within the state framework. Historical marginalization inflicts a sense of inferiority in indigenous peoples. By claiming the right to self determination, indigenous peoples that consider themselves as such, are trying to preserve their ancestral territories and ethnic identity, and transmit them to future generations. Their existence as peoples depends on the maintenance of their own cultures by exercising traditional legal and institutional systems.

Common daily threats for indigenous peoples in the world are also related to their status as outsiders to the liberal democratic state. Territorial invasion, murder and deprivation of their natural resources go side by side with conditions of extreme poverty and government indifference, if not harassment. As mainstream societies are reluctant to recognize indigenous peoples' right to land, the "self" policy (self identity and self determination) constitutes the first step in the task of pulling rights out of the state. I would add a third "self" to this tandem: the right to self representation as the recognition of voices that are independent and equal. Participation in the public sphere, both at the institutional level and in the media environment, contributes to reinforcing self identity and, thus, to fostering self determination.

1.1.2 Rights and Approaches to 'Culture': Evolving or static voices?

As mentioned above, indigenous peoples' struggle for self determination aims to preserve their cultures and make them endure. However, culture is a controversial concept itself, as are its implications. The opposing approaches to culture as a static body or as a concept under permanent construction have further consequences in the elaboration of instruments granting the protection of culture, such as the Draft Declaration on Indigenous Peoples' Rights. As representation of culture has become a

means to express self identity and to demand self determination, diverse manifestations of indigenous traditions undergo deep scrutiny by scholars who discuss the appropriateness of granting collective rights. Debate on collective rights (the rights that aim to redress the historic discrimination faced by indigenous peoples and minorities and are gathered in the Draft Declaration), centres on the constrictions that protected culture may inflict on individual rights. But, before tackling collective rights controversy, I will deal with the notions of culture.

The concept of culture was first defined⁶ by Tylor in 1871 as the whole way of life of a group or society⁷. This definition was later enhanced by Malinowski who discovered that cultures work as an organic whole, in which each institution supports the entire system. Influenced by colonization and decolonization processes, new transformations of the concept occurred during the 20th century. The founding idea of cultures as islands, with no outside interaction, was later replaced by cultural pluralism, in which the existence of boundaries does not prevent some closer relations among cultures. Later on, decolonization boosted the idea of creolisation or weaker cultures borrowing from the strongest. Finally, current developments argue that modern nation-states contribute to integration between cultures, thus configuring themselves as intercultural states.

On the whole, according to Susan Wright, concepts of culture include the old idea of culture with the following features: “[B]ounded, small scale entity; defined characteristics; unchanging, in balanced equilibrium or self-reproducing; underlying system of shared meanings: ‘authentic’ culture; identical, homogeneous individuals”. On the contrary, new meanings consider culture as “a dynamic concept, always negotiable and in process of endorsement, contestation and transformation”.⁸

Indigenous peoples’ representation of their own culture, such as the Kayapó⁹ case in Brazil that will be dealt with later, has sparked debate about the essentialisation of

⁶ “Culture is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society”. Tylor, 1871.

⁷ Susan Wright, *The politicization of ‘culture’* in “Anthropology Today”, vol. 14, no. 1, February, 1998.

⁸ Ibidem.

⁹ The Kayapó, in Brazil, performed their traditional ceremonies in representations for western media and used it as a resource in negotiations with government and other international agencies. They presented themselves as a homogeneous group. Ibidem.

culture. On the one hand, scholars such as Kirsten Haastrup argue that the recognition of collective rights based on notions of culture would lead to "minorisation and fixity; exclusion and exclusiveness of indigenous peoples".¹⁰ International legal instruments, such as the Draft Declaration on Indigenous Peoples' Rights¹¹ or the Declaration on Minorities, are reflecting culture as an essence, a well-bounded whole. Such developments may lead indigenous peoples to be regarded as conservative or traditional and may also suggest that only minorities have a culture, while majorities are cultureless.¹² For indigenous individuals, a legalized concept of culture as a fixed entity might become a mental prison.

On the other hand, given the essential role of traditional culture in indigenous societies, the advocates of the right to culture argue that indigenous peoples have the right to choose whether they preserve traditional culture or adapt it to new experiences. For Inger Sjoerslev, "the majority [of indigenous peoples] want individual rights and the protection of cultural and collective rights in the form of self determination, which they see as the right to determine their own development, whether this means modernization or preservation of traditional lifestyles or both".¹³ Through the right to self determination, indigenous peoples would achieve the capability to develop their own culture according to their own wishes. In this context, indigenous peoples' representation of their own culture by using modern technology, in order to access national or international development resources, is also understood as a matter of survival. "This does not necessarily lead to 'essentialism' and ethnic absolutism, although the dangers of this must be constantly kept in mind".¹⁴ I will below analyse the risks of the concept of culture deployment in the indigenous world, in relation to the issue of collective rights.

¹⁰ Kirsten Haastrup, *Collective Cultural Rights: Part of the Solution or Part of the Problem?*, in Kirsten Haastrup (ed) *Legal Cultures and Human Rights: The Challenge of Diversity*. Kluwer Law International. Great Britain, 2001.

¹¹ Report of the Working Group on Indigenous Populations on its Eleventh Session: Draft Declaration on the Rights of Indigenous Peoples, as Agreed Upon by the Members of the Working Group, U.N. ESCOR, Commission on Human Rights, 45th Sess., Annex I, Agenda Item 14, at 50, U.N. Doc.E/CN.4/Sub.2/1993/29, Annex I.

¹² Supra note 10.

¹³ Henriette Rasmussen & Inger Sjoerslev, *Culture and indigenous rights*. In Lourdes Arizpe (ed), *World Culture Report 1998*. UNESCO.

¹⁴ Ibidem.

1.1.3 Collective rights: opportunities and risks

So-called collective rights are included in the third generation of human rights, whose emergence can be dated from the 1993 Vienna Declaration, and include rights such as the right to land, language, representation and culture. Given that modern national societies are pluricultural, collective rights are meant to redress the discrimination faced by minorities, for whom liberal individual rights seem not to be enough for ensuring freedom and equal citizenship. Indigenous peoples can claim collective rights as they usually are minorities and marginalised groups. But, on the contrary to other minorities, they are also entitled to self-determination as they constitute the original inhabitants of the territories.

Collective rights have been widely discussed from a liberal perspective, as they are said to collide with individual rights of members of a culture. In order to illuminate the debate, and according to Will Kymlicka¹⁵, it is pertinent to clarify the term "collective". The above mentioned rights were called "collective" as opposed to the previously existent individual rights and, clearly, with a purpose of dismissing them. But collective rights do not necessarily stand against individual rights. Kymlicka, who prefers the term "group-differentiated rights", makes a distinction among different *de facto* situations.

Group-differentiated rights traditionally include external protections and internal restrictions. Both levels carry benefits and risks. External protections, meant to reduce the impact of the decisions of majority society on the discriminated minority, may lead to the discrimination of other sectors of the population. Internal restrictions, aiming to protect culture from internal dissent and thus, ensuring its survival, may produce individual oppression.

Multiculturalism, taken to the extreme, would lead to the tolerance of internal traditions that conflict with human rights or constitutional principles. But, today, most groups that claim external protection are ready to protect individual rights within their community. However, there are still some cases of traditional practices or judicial procedures that potentially clash against human rights and continue to ignite the debate on individual-

¹⁵ William Kymlicka, *Individual rights and collective rights* in William Kymlicka (ed) *Multicultural citizenship*. Oxford Clarendon Press 1995, pp.35-48.

collective rights. As Kymlicka argues, group-differentiated rights “promote fairness between groups”.¹⁶ However, this debate does not fit with most current situations and, on the contrary, may run counter to the cultural survival of most discriminated populations.

Although rare, these situations should not be underestimated. Darlene M. Johnston has pointed out: “The communitarian impulse to jettison justice must be tempered in order to retain some notion of rights, collective or otherwise. The potential for conflict both within and among communities cannot be ignored”.¹⁷ It is necessary to escape from romantically stereotyped conceptions of indigenous traditions and admit that intolerance or injustice occurred in every human community. When internal restrictions threaten individuals or whole communities, proper mechanisms should be made available to protect those at risk.

1.2 A History of Silence: Burying Indigenous Peoples’ Voices

Until recently, there was no map of indigenous peoples. Political maps are drafted by nation states and depict sharply defined boundaries, centralized capital cities and official numbers of inhabitants. These maps are validated by the club of nation states.¹⁸ On the world map, each country has one colour and this colour only changes beyond the thick and black boundary line. One nation state, one colour. So maps and states are gagging the plurality of voices inside. Behind the maps, there is a long history of silence.

1.2.1 The emergence of the state, the fall of the voices

Five hundred years ago, “people living on the continents now called North and South America began to have encounters of a kind they had not experienced before.

¹⁶ Ibidem, p.37.

¹⁷ Darlene M. Johnston, *Native rights as collective rights: A question of group self-preservation*. In William Kymlicka (ed) *The Rights of Minority Cultures*. Oxford, 1995. pp. 179-201, at 182.

¹⁸ Parallelism with Article 1 of the Montevideo Convention on Rights and Duties of States, that provides the classical definition of statehood: ‘The state as a person of international law should possess the following qualifications: a permanent population, a defined territory, government and capacity to enter in to relations with other states’. The ‘club of nation states’ refers to the United Nations.

Europeans arrived and started to lay claim of their lands, overpowering their political institutions and disrupting the integrity of their economies and cultures".¹⁹

The colonization of the Americas by several European empires presents a common framework. Beginning in the 16th century, colonization occurred during the European transition from Natural Law to the Law of System. As divine authority was replaced by State law and the nation-state emerged, this process was reflected in the colony by removing the original inhabitants from the state sphere. In Europe, legal pluralistic orders slowly declined as strong, centralized governments progressively seized the control of the whole territory.²⁰

Meanwhile, in South America, early natural law considerations of the humanity of the Indians did not prevent conquerors from excluding them from the "nation" category that would have entitled their statehood and, thus, their enjoyment of rights by participation in international law. On the contrary, the Spanish Empire dismissed the Indians as "barbarians" and, subsequently, their lands were declared "terra nullius". This enabled the conquerors to seize natives' lands and, within the positivist, hierarchical, territorially-dominant and centralized nation-state, colonizers' property rights have endured to the present day. Similarly, and before state law became predominant, early European settlers in North America signed agreements with first nations recognising their customary law.²¹

A 2003 report²² published by the Office of the UN High Commissioner of Human Rights in Mexico points out that mainstream Mexican society considers indigenous peoples as "expendable". By depriving original inhabitants of their identity, colonization processes have expelled them from the human community. Furthermore, the colonial power removed two basic characteristics of indigenous cosmovision:

¹⁹ James Anaya, *Indigenous peoples in International Law*. Oxford University Press, 1996. p. 3.

²⁰ According to Lauren Benton, the attempts to define 'legal system' are influenced by Hobbesian ideas: "Each legal system coheres around a single coercive authority, and more powerful authorities subsume those that are weaker. State law caps the plural legal order through its ability to establish a monopoly on violence". Lauren Benton, *Law and colonial Cultures: Legal regimes in World History 1400-1900*. Cambridge University Press, 2002. pp 1-30, at 8.

²¹ James Anaya, *The capacity of International Law to Advance Ethnic or Nationality Rights Claims*. In Will Kymlicka (ed): *The Rights of Minority Cultures*. Oxford University Press, 1997. pp 321-330, at 323.

²² Report on the Situation of the Human Rights in Mexico. Office of the UNHCHR in Mexico, 2003. p.159.

nature's space and their status as peoples.²³ Later liberal struggles leading to independence and establishment of the state further cemented the exclusion of indigenous peoples.*

Native inhabitants' understanding of their ancestral lands, which includes a close relation with nature, was substituted with the liberal concept of land as private property. Scholars such as Asier Martínez argue that the right to territory should be linked to the rights to culture and ethno development; all of them, included in the umbrella-right to self-determination. Only through improved constitutional legal pluralism, re-constructed with the participation of indigenous peoples, would intercultural dialogue take place. In this context, self-determination is the right claimed by indigenous peoples to overcome the imposed silence and to level their voices with mainstream voices within national boundaries.

1.2.2 Stereotyping: How racist marginalization persists

History, politics and legal developments have a reflection in everyday life. Individuals and societies' understanding of their contemporary events is, often, influenced by stereotypes. The "noble" and the "ignoble" primitive is the stereotyping framework that has succeeded during the last five centuries and still persists. In stereotyping, all individuals in a category are assumed to possess the same set of characteristics²⁴. To simplify, stereotypes deny the history and culture of peoples. Created by the cultural prism of dominant society, stereotypes are difficult to avoid as they are part of daily life, are present in popular culture and in media, and affect law, politics, economy and science. Furthermore, representation of indigenous peoples in metropolis societies is linked to the construction of the "self" in opposition to the "others", a process that has taken place in modernity. By constructing the other as a primitive, indigenous peoples are deprived of a place in the modern world. Racism, which often operates in conjunction with stereotypes, makes discrimination endure.

²³ Asier Martínez de Bringas. *Los pueblos indígenas y el discurso de derechos*. Cuadernos Deusto Nº24. Bilbao. 2003

²⁴ *The Internet and a Timeless Stereotype*. Available at: <http://staff.washington.edu/nezr/project1.html>

However, there is a twist in the use of the stereotype. Although stereotypes seem to emerge spontaneously in mainstream societies, they may also be consciously employed by indigenous peoples in order to reach political, economical or cultural purposes. The utilization of stereotypes from both directions is a recent phenomenon with challenging consequences, as will be explained later. Firstly, I will focus on the construction of stereotypes in Western societies and, secondly, I will deal with the strategic use that indigenous peoples, such as the Brazilian Kayapó, have made of stereotypes imposed on them.

Early visions of the Noble and Ignoble primitive were employed by Bartolomé de las Casas and Juan Ginés Sepúlveda. In the colonization context of 16th century Spain, Emperor Charles V promoted discussions among a group of theologians and jurists to hear arguments about the legitimacy of incorporating the Indians into the Spanish empire. Scholar Sepúlveda, who supported the use of force for evangelization, contributed strongly to the creation of the stereotype of the ignoble primitive, as Bonar Ludwig Hernández summarizes his arguments:

“First, the Indians were barbarians; second, they committed crimes against natural law; third, the Indians oppressed and killed the innocent among themselves; and fourth, they were infidels who needed to be instructed in the Christian faith”.²⁵

By exaggerating other characteristics, Las Casas, a friar who became the Indians’ advocate, argued for more peaceful and persuasive conversion:

“God made all the people of this area, many and varied as they are, as open and as innocent as can be imagined. The simplest people in the world—unassuming, long-suffering, unassertive, and submissive—they are without malice or guile, and are utterly faithful and obedient both to their own native lords and to the Spaniards...”²⁶

²⁵ Bonar Ludwig Hernández, *The Sepúlveda-Las Casas controversy: 1550-1551*. Available at: <http://userwww.sfsu.edu/~epf/2001/hernandez.html>

²⁶ Bartolomé de Las Casas, *A Short Account of the Destruction of the Indies*, trans. Nigel Griffin. New York, 1992. pp. 9-11.

Las Casas, with the purpose of stopping Spanish violence against the natives, promoted the Indians' image as childlike, frail, vulnerable and defenceless. This image created a stereotype that has provided other European nations with reasons to justify their abuse of Indians. Throughout colonization, the Indians were stigmatised: classed as inferiors, and judged to be stupid and lazy.

Although the qualities attributed to the noble and ignoble primitive have evolved through the centuries, the framework persists. American scholar Chris Tennant has analysed the international organizations' approach to indigenes in the 20th century. During the ILO period (1945-1958), the vision of the Indian as ignoble primitive led to the implementation of pragmatic programs of development and policies of national assimilation of indigenous populations. Institutions considered the Indian as a prehistoric, illiterate and incapable individual that led a miserable life. In the subsequent UN period (1971 to present day), indigenous peoples are regarded as noble primitives and, thus, encouraged to participate in international organizations that wish to gain legitimacy. Indigenous peoples are seen as victims of progress who still constitute a permanent hope for mankind as they have managed to preserve their spirituality and their environmentally-friendly practices. Tennant argues that both the noble and the ignoble primitive have in common a helplessness in the face of modernity:

“[T]his helplessness gives legitimacy to those advocates and technocrats who assume the role of defenders of the threatened primitive, whether the objective of that defence is simply to slow the pace of modernization and thus make it more humane, or to protect and preserve the primitive because of its transformative and redemptive value”.²⁷

Stereotypes helped to build the myth of Europeans as civilization providers. Dominant societies construct their hegemonic system by reinforcing their mission of conquest and christianization of savage, pagan, retarded and culturally deprived Indians. Stereotyping and power are mutually reinforcing and collaborate to preserve the status quo. Imperialism is based upon dehumanization and political and economical subordination.

²⁷ Chris Tennant, *Indigenous Peoples, International Institutions and the International Legal Literature from 1945-1993*. In “Human Rights Quarterly”, vol. 16. 1994. p.11

By excluding the others, the colonialist self is strengthened. But, on the other hand, colonialist societies also suffer cultural guilt.

The current public discourse in Western societies is tamed by political correctness. But, still, mainstream society does not perceive most stereotypes as such. The powerful pay less attention to disadvantaged peoples, as they are overloaded with information. Each new generation has reinvented the Indian in the image of its own era. Cinema industry has fostered romanticized images of the wise elder, the Indian princess or the loyal sidekick. The emergence of sustainable development policies have given indigenous peoples the attribute of being "the first ecologists", according to the American academic Rennard Strickland, due to their special link to nature. The New Age trends have also appointed the indigenous as spiritual and almost magic creatures that preserve the ancient wisdom that Western societies have lost, re-establishing a contact for Western man and his severed roots.²⁸

As mentioned above, stereotypes may foster racism. Racism, reflected in practices, discourses and representation, is spreading now into new forms²⁹. Apart from the traditional discrimination of "others" because of skin colour or religious practices, "racism without race" is emerging. This new concept, mainly developed in Western countries facing increasing immigration, reflects an impossibility to overcome cultural differences, life-styles and traditions. But, still in this scenario, proposals from national societies are based upon assimilation, as they were during the ILO period. Once again, mainstream society considers two types of cultures: the "universalistic and progressive" and the "particularistic and primitive".³⁰ For the latter, as perceived by mainstream, the only alternative would be integration.

Stereotypes create a sense of inferiority. For indigenous peoples, who are constantly misrepresented and made to seem second-class, stereotypes work together with existing conditions of poverty, deprivation and repression, damaging self-identity and self-confidence. But, recently, the poisonous stereotype has been reversed and has become a

²⁸ Merete Demant Jakobsen, *Shamanism: Traditional and Contemporary Approaches to the Mastery of Spirits and Healing*. Berghahn Books New York, 1999

²⁹ Etienne Balibar, *Is there a 'Neo-Racism'?* In Etienne Balibar & Immanuel Wallerstein (eds), *Race, nation, class: Ambiguous identities*. Verso. New York, 1991. pp.15-28.

³⁰ Ibidem, at 25.

tool for indigenous peoples to redress their handicapped situation. Both new technology and the alliance with environmentalist movements have allowed some indigenous groups to reach a highly specialised, international audience by representing their own culture.

The Kayapó, a Brazilian Amazon indigenous peoples, have made extensive use of filming technology since the 1960s in order to present their traditional culture, receive recognition of their rights by national governments or gain access to funding from international NGOs. Western audiences concerned about the preservation of nature are also sensitive to the protection of "authentic" inhabitants of threatened lands. In this Western imaginary, the ecologically noble savage, specially connected to Mother Earth, has succeeded in managing natural resources over generations and represents an alternative to Western destructive practices.

Certain aspects of exoticism and primitivism fit with Western stereotypes. The Kayapó have represented their culture in a manner sustainable with these Western criteria, underlining some features and hiding others, in order to meet the authenticity expected by Western stereotypes. Through representation, before the media, of ceremonies in which they wear their traditional headdress, body paint, beads and feathers, or representation for the camera of rituals that had already been abandoned, the Kayapó have managed to raise awareness about their situation. These stereotyped representations have produced different effects in national and international audiences. By reaching a world public of NGOs and international organizations, they have also influenced the Brazilian national sphere and, consequently, gained a status that allowed them to negotiate an income in profits from companies using their resources. But, equally, representation of culture disturbs Brazilian society, which often considers the indigenous peoples as "threatening, subhuman or simply invisible"³¹. The effect in national politics is subject to controversy.³²

³¹ Beth A. Conklin, *Body paint, feathers, and vers: Aesthetics and authenticity in Amazonian activism*. In "American Ethnologist" vol. 24, no. 4. November 1997. Quoted from Alison Brysk (1996:46) pp. 711-737, at 721.

³² American scholar Laura R. Graham explains the complexity of intercultural relations within national boundaries, by analysing the Kayapó case. In front of a national audience, if indigenous leaders choose the national language to speak, they are accused of "unauthenticity" by national society. However, if they choose to speak in their own language, the translator misses most of concepts. And, what is even worse, the indigenous representative might lose legitimacy before indigenous peoples when her discourse does not reflect the cultural complexity. Laura R. Graham, *How should an Indian Speak? Amazonian Indians*

Through stereotypes expected by Westerners, the Kayapó have staged an essentialised vision of culture. This is an anthropologist's common fear.³³ As explained above, today, culture is understood as an evolving set of characteristics of a human group in permanent contact with other groups. However, the implicit notion of culture included in new legal instruments drafted by international legal experts and indigenous peoples themselves, apparently does not take into consideration recent advancements in anthropological thinking.³⁴

Without a doubt, the essentialisation of culture constitutes a danger when it runs against the rights of individuals within the group and the protection they are entitled from the indigenous authorities. Appropriated mechanisms should be designed to meet deficits. However, some kind of affirmative action is also necessary, such as the Draft Declaration on the Rights of Indigenous Peoples, to face the historical marginalization that other human rights instruments have proved insufficient to redress. The Kayapó's smart use of Western technology and stereotypes to advance their rights' struggle and their living conditions may disturb Westerners. Former colonizers unpleasantly realize that they have lost the leading role and may feel used through their own stereotypes. The Western ego, built in contraposition to the otherness, would be at risk.

In sum, from the dominant societies point of view, stereotypes and images play a double role. First, they work as a discursive system of control and legitimisation, by reinforcing the universalistic vocation of the Western civilisation. But stereotypes also generate the mainstream societies' self criticism, with the emergence of cultural guilt due to the annihilating colonization practices. On the other hand, indigenous peoples such as the Kayapó have taken advantage of stereotypes in order to get immediate benefits from international audiences, but this utilisation might generate problems in the middle term with the national societies. While constructed or self constructed as

and the Symbolic Politics of Language in the Global Public Sphere. In Kay B. Warren & Jean E. Jackson, (ed) *Indigenous Movements, Self-Representation and the State in Latin America.* University of Texas, 2003.

³³ Kirsten Haastrup analyses the topic in *Collective cultural rights: Part of the solution or part of the problem?* In Kirsten Haastrup (ed) *Legal cultures and Human Rights. The challenge of diversity.* Kluwer Law International, The Hague, 2001. pp. 169-188.

³⁴ *Ibidem*, at 176.

primitive, no matter if noble, ignoble or authentic, they are being pushed to the margins of the world.

1.2.3 Is Self-representation of divergent voices possible in mainstream media?

Stereotypes and prejudices are a constant presence in the public sphere. As distorting loudspeakers used by a variety of actors (on both the national and international stage), stereotypes are mainly deployed in mainstream media. And it is mainstream media that reflects the interests and values of the majority of society. It would therefore seem impossible for indigenous peoples to speak with their own voices in the “traditional” media. However, it is precisely in this area that small actors have to make themselves heard. The fight for physical and cultural survival faced by so many indigenous peoples today makes it vital for them to use all resources available. Self-representation should be developed at all levels of the public sphere: in local, national and international organizations, as well as the media, both mainstream and new technologies of the information society. The next few pages present an analysis of indigenous self-representation and how aboriginals have made their voices heard in the last decades, as well as discussing the likelihood of successful self-representation within mainstream media.

As mentioned before, the indigenous “self” policy consists of claims and practices of self-determination, self-identity and self-representation. While the first pursues self-government and right to territory, the second is aimed at achieving the right to culture and, generally, collective rights. Finally, self-representation constitutes an essential support for the others: the right to a voice. An own, free and equal voice. The emphasis on the “self” arises from the invisibility of indigenous peoples throughout history. Time and again, aboriginals have been exterminated or enslaved. For centuries, the optimum scenario for indigenous peoples was set under the rule of alien systems, forced to be integrated into the majority culture and, eventually, represented by paternalistic institutions.

The principle of self-representation constitutes a *sine qua non* for indigenous peoples in modern world. Representation is a difficult task that raises the questions of the representatives’ legitimacy and the representation strategies. Although indigenous

leaders emerge from the grassroots and, thus, enjoy credibility, it is also common that national or international indigenous representatives lose contact with the local communities. But rather than focusing on internal issues, we are going to deal with representation conflicts before national societies and international fora.

Until recently, indigenous peoples had been represented by left-wing organizations, NGOs, missionaries and indigenist institutes. The last decades, however, have witnessed the emergence of the indigenous peoples' own voice. Bearing in mind the asymmetrical power relations, decisions had to be made on representation strategies. Generally, to interest outside audiences, organizations need to educate bilingual representatives who also show control of western discourses in order to translate indigenous imagery into a language pertinent to the alien audience. These audiences are most commonly reached through partnership with non-indigenous organizations such as environmentalist, human rights and development NGOs, in order to support local needs and the broader public.

As analysed above, representation may suggest essentialisation of culture. In general, indigenous leaders have to choose carefully the language and wording that they use. For instance, by deploying the Western concept of "biodiversity", they usually intend to claim the right to territory and demand ethno-development opposed to natural resources exploitation by transnational companies.³⁵ In the political arena, it is common for indigenous organizations asking for collective rights to establish alliances with mainstream political parties³⁶, ranging from the policies of exclusion to the policies of inclusion. A similar twist in the discursive techniques is deployed by Mapuche activists in Chile: "(they) may brilliantly employ official discourse on democracy and justice while simultaneously making it clear that negotiating in these terms by no means implies acceptance of the discourse"³⁷. These policies, as well as the Kayapó double rhetoric, show the flexibility that indigenous peoples possess for navigating the turbulent waters of self-representation, when the goal is self-determination.

³⁵ Laura R. Graham explores the use of Western concepts for indigenous claims. Supra note 32.

³⁶ The Ecuadorean political party Sociedad Patriótica, led by Colonel Lucio Gutiérrez, established a governmental coalition in 2003 with Pachacutik, the indigenous political party. The coalition was dissolved by Pachacutik six months later due to the President's lack of engagement with promises given.

³⁷ Supra note 32.

Finally, there are cases, such as with isolated indigenous groups, for whom the old-style advocacy is the only possible tool. However, in general, indigenous groups represent themselves and have strategically chosen partnerships more suitable to moving within different public sphere scenarios.

We have seen how indigenous peoples have adapted their voices to other discursive styles. But have they tried to master media language? Today, the media landscape is broad and possibilities for self-representation are increasing, although obstacles within the national arena do remain.

The *new media era* is becoming increasingly fragmented and diverse, due to the expansion of neoliberalism, in contrast to the older forms of mass media. This new media landscape can both improve and slow down the “workings of power and the potential of activism; the enforcement of inequality and the sources of imagination; and the impact of technologies on the production of individual and collective identities”.³⁸ For the purposes of this study, we can establish two mediascapes³⁹: Firstly, the classic one, produced by governmental or commercial institutions whose intent consists of building modern citizens and consumers. And secondly, the practice of indigenous peoples where cultural material is deployed in order to advance their cause. From the 1980s onwards, indigenous peoples have gained access to new media and have used it to overcome the stereotypes they had been forced to accept. New media, including film, video and the Internet depicts struggles for self-determination through representations of culture. But these indigenous productions do not reach mainstream society. They are produced and consumed by indigenous groups themselves or by highly specialised western audiences, through film festivals or human rights forums. In the case of the Internet, it is mainly used for establishing partnerships or raising funds in the social movements and NGOs framework.

Today, media producers and audiences still consider the nation state environment as the primary context. The national mediascape creates the community imagery, usually by

³⁸ Faye D. Ginsburg, Lila Abu-Lughod & Brian Larkin (ed) *Media Worlds: Anthropology on New Terrain*. University of California Press, 2002. Introduction pp. 1-36, at 3.

³⁹ Mediascape, concept invented by Arjun Appadurai that refers to the centrality of mass media in the life of the late twentieth century. Richard Fox, *Global Ethnoscapes: Notes and Queries for a Transnational Anthropology*. In Richard Fox (ed) *Recapturing Anthropology*, School of American Research Press. Santa Fe, 1991. pp.191-210.

replicating the codes/values of the dominant society. This scenery is hostile to indigenous peoples demands. In the media, old stereotypes substitute 21st century aboriginals, and racist points of view are still common.

Within the media environment, news programmes are a mechanism allowing people to become aware of current events. Even reflecting the mainstream ideology, news bulletins are supposed to assume a certain degree of impartiality or, at least, they claim to do so. But this is far too idealistic. Today, most readers and spectators in the world assume that information provided is biased and, consequently, scepticism prevails to some extent.⁴⁰ This constitutes a problem for audience ratings and, thus, for publicity, so the media have managed to attract attention by making the news ever more spectacular. Gone are the days when journalists worked under a tight mandate to elaborate deep analysis on the issues. Information programmes and entertainment products are melting to meet advertising demands and this trio runs against indigenous peoples' interests. What is more, providing impartial and accurate information about an unknown culture, where sources are set in remote locations and the information provided is usually contradictory, does not seem an easy task.

For indigenous peoples, consequently, national media gates are frequently blocked. In the case of publicly owned media, states should promote access but this is not a common scenario. On the whole, the prospect is not good for indigenous peoples. In international indigenous fora, representatives have discussed for years how to mainstream issues, how to educate journalists in ways to avoid stereotypes and racism, how to encourage codes of conduct, and which schools of journalism or systems of quotas should be implemented in majority media. It is now when indigenous activists and indigenous journalists have realized that self-representation is only possible when there is a direct control in the production and funding by the indigenous communities themselves. Therefore, only small self-produced projects are possible to realistically depict indigenous daily life.

⁴⁰ Scepticism about media corporations is also an issue in Ecuador. In the events happening in April, 2005, that eventually force President Lucio Gutiérrez to resign, television networks manipulated the news to make the popular upheaval against the President appeal diminished. However, Quito dwellers used La Luna Radio Station both to get impartial information as well as an instrument for gathering and leading masses to several key governmental buildings.

1.3 Removing the Gag: The International Indigenous Movement

The situation of Latin American indigenous peoples in the 1950s, when the struggle to get their rights granted started in the international arena, was set very much apart from the most disadvantaged national population sectors. Invisible, voiceless and caged apart. Today, stunning developments have replaced the forced silence and their voices are being heard internationally. How have indigenous peoples' raised awareness of their situation? Through the instruments of international human rights law.

1.3.1 The capacity of human rights to advance Self-determination

International law, through human rights, has constituted a tool for the advancement of indigenous peoples' rights for the last few decades. Although international law is built upon a nation state structure that disregards alternative cultures within its boundaries, human rights developments opened new windows of opportunity after the Second World War. United Nations bodies have hosted indigenous peoples' voices and claims. Nowadays, the challenge consists of spreading the indigenous peoples' action beyond the human rights framework that has been in operation so far.

The right to self-determination, as the synthesis of rights explained above, has been the main claim of indigenous peoples in international fora. Self-determination, recognized in the International Bill of Human Rights⁴¹, has been exercised after the Second World War in two main waves: during decolonization and in the period following the collapse of communism in Europe. For states, therefore, self-determination equates to the establishment of new states, a situation that frequently involves conflict and alters international principles of peace and stability.

Through the liberal prism, states interpret the indigenous struggle for self-determination as a secessionist threat to their territorial integrity and control over resources. On the

⁴¹ Article 1 in both the ICCPR (International Covenant on Civil and Political Rights) and the ICESCR (International Covenant in Economic, Social and Cultural Rights)

other hand, most indigenous peoples in the world seek autonomy as a means for survival, given the historical negligence of the state.⁴²

James Anaya has explored this 'autonomy' approach to self-determination.⁴³ He argues that, although international law recognizes self-determination, this right is denied in practice. However, a human rights approach would grant a degree of autonomy while preserving peace and stability. Kofi Annan also suggests more imaginative solutions to foster disadvantaged indigenous populations' rights.⁴⁴ These solutions have often been realized through constitutional legal pluralism that recognizes indigenous peoples' local authorities and indigenous customary law.

Far from the often voiced risks of balkanization or apartheid, the indigenous claim for self-determination emerges as an uncomfortable challenge to the sovereign state, which remains unable or unwilling to tackle the issue.

1.3.2 Indigenous peoples in the UN system. Instruments and institutions

The advancement of the indigenous movement in the international community during the last three decades has been impressive. From a starting point of invisibility within the national boundaries, indigenous activism has reached the highest possible level of influence in the United Nations system. Organised action in the international community stands as an excellent back-up for progress within the state framework but it is not a substitute. However, too often, the UN has constituted the only forum where indigenous activists have been heard. And the participation of the indigenous movement has aimed to influence particular states through international agencies. The second,

⁴² Other indigenous peoples of the world, such as the Greenlandic Inuit, have already achieved significant autonomy. For them, Home Rule granted by the Danish Realm is just another step on the way to self-determination as secession. Given the insularity of Greenland and the dubious procedures of Danish authorities in 1953, Greenlanders are demanding sovereignty to be the masters of their own house. Despite the reasons, the United Nations are not willing to support self-determination nowadays unless in a situation of gross violations of Human Rights or under the occupation of a foreign army. For more, see Sjurður Skaale, *A Phrase Loaded with Dynamite. Impressions from Walking the Corridors of the UN*. In Sjurður Skaale (ed) *The Right to National Self Determination. The Faroe Islands and Greenland*. Martinus Nijhoff Publishers. Leiden & Boston, 2004. pp.147 -168.

⁴³ James Anaya. *Indigenous peoples in International Law*. Oxford University Press. 1996. Chapter 1: The Historical Context. pp 9-39.

⁴⁴ Kofi Annan, Secretary General of the United Nations, in his speech to the Council of World Affairs in Jakarta on February 16th, 2000: "Breaking up large States into smaller ones is often a wasteful and unimaginative way of resolving political differences. But those who oppose separatism have got to show that their solution is less wasteful and more imaginative". Supra note 42.

symbolic de-colonization in Latin American states is a process largely promoted from the outside.

The next few pages intend to analyse indigenous progress within the UN landscape, their institutions, instruments and claims, and reflect on their successes and future challenges. In the case of the Latin American system, although certain legal recognition has been achieved, indigenous living conditions still remain far below national standards, if they have not worsened.⁴⁵ This situation shows the need for strengthening efforts, maintaining connection with grassroots activism and keeping unity of action. The international context, with the increase in the participation of civil society and the blurring of national frontiers due to economic globalization, is favourable to the indigenous movement. Still, the advancement of the indigenous movement constitutes a unique case within the UN and stands as an example of participatory democracy for future developments that might occur in the rapidly evolving global landscape.⁴⁶

The two main indigenous movement's milestones in the UN are the Working Group on Indigenous Populations (WGIP) and the Permanent Forum on Indigenous Issues (PFII). Although their mandates, status and longevity are different, the PFII, in practice, has become a prominent successor of the three decade-old WGIP. In the Working Group, indigenous peoples' discursive line evolved from "eco-cultural politics of morality" in the 1980s to a current broader framework where "valuable knowledge, cultural diversity and biodiversity"⁴⁷ are unbreakably linked to the notion of self-determination that identifies the right to territory with the right to life and ethno-development. The emergence of the concept of "sustainable development", in the Rio Conference in 1992, has contributed to establish the connection with the environmental movement and constitutes one of the flags that indigenous peoples hold today as an alternative to the

⁴⁵ The 2005 World Bank report on the situation of indigenous peoples in Latin America points out that main indigenous advancement in the last ten years has been their increasing participation in the political arena, while social, economical and cultural conditions of indigenous peoples in Mexico, Guatemala, Ecuador, Bolivia and Peru have not improved. The report underlines that indigenous peoples still face discrimination, inequality and lack of attention from the state. Health, education and infrastructure systems are inefficient and aboriginals' living conditions remain under non-indigenous living standards. Gillete Hall & Harry Patrinos. *Indigenous peoples, poverty and human development in Latin America: 1994-2004*. World Bank, June 2005. Available at www.worldbank.org

⁴⁶ Andrea Muehlebach points that the WGIP is an event that shows how things are becoming rather than how things currently are. 'Making place' at the United Nations: *Indigenous cultural politics at the UN Working Group on Indigenous Populations*, in "Cultural Anthropology" vol.16, no.3, 2001 pp.415-448.

⁴⁷ Ibidem.

aggressive Western relationship with nature. Although this discourse has become common place and has also been idealized, it constitutes one of the continuous lines in the indigenous peoples' international work and is widely depicted in the developments of the Convention on Biological Diversity.

The Working Group on Indigenous Populations, established in 1982, holds its annual session in the UN Geneva offices. The WGIP depends on the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, a subsidiary organ of the Commission on Human Rights of the ECOSOC. The WGIP has mainly dealt with rights and human rights. Its most significant achievement is the formulation of the Draft Declaration on the Rights of Indigenous Peoples. However, as Victoria Tauli-Corpuz points out: "(The WGIP) was not meant to respond to each and every issue which we brought before it. The standards being set forth in the Draft Declaration were one response but it was not enough"⁴⁸. At the beginning of the 1990s, simultaneously with world events mentioned before, such as the 1992 Rio UN World Conference on Environment and Development or the 1993 Vienna Conference on Human Rights, the indigenous movement, from the WGIP, started to develop new mechanisms to meet the needs of the Working Group's mandate.

The International Decade of the World's Indigenous Peoples (1994-2004) raised significant expectations. "More than an institutional fact, the Decade has been a symbol"⁴⁹. The general well-being of the indigenous peoples worldwide has not improved much but notable progress has been taken to raise awareness within the international community. The establishment of the PFII and the appointment of the Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples stand as the major successes of a Decade that the UN General Assembly has agreed to extend, in order to pass the Draft Declaration and to implement nationally what has been achieved at the international level.

⁴⁸ Victoria Tauli-Corpuz, an Igorot from the Philippines, is the current chairperson of the Permanent Forum on Indigenous Issues and, also, executive director of Tebtebba Foundation in the Philippines. Victoria Tauli-Corpuz, *The Permanent Forum on Indigenous Issues. Future challenges: How do we meet them?* In "Indigenous Affaires" 3/04. IWGIA. Copenhagen, 2004. pp 20-27, at 24.

⁴⁹ Jens Dahl. *The UN Decade on Indigenous Peoples*. In "Indigenous Affaires" 3/04. IWGIA. Copenhagen, 2004. pp.8-19, at 9.

The Permanent Forum on Indigenous Issues' broader mandate and decision-making capacity has allowed the examination of indigenous issues in terms of economic and social development, culture, environment, education, health and human rights. Since its first session in 2002, participation has steadily increased up to 1.200 delegates this year. The PFII main challenges would be to ensure that UN member states respect indigenous peoples' rights⁵⁰ and to coordinate the various UN agencies to ensure that their programs meet indigenous needs. And, as an immediate goal, the PFII will engage in the implementation of the recommendations made in the first four sessions.

In relation to the PFII working procedures, the two week event is attended by representatives of indigenous organizations, states and UN bodies, members of the PFII, NGOs, scholars and students. The event includes the general sessions, the side-events and the caucuses strictly for indigenous delegates. The PFII is a complicated environment for beginners. Many indigenous representatives expect to meet on an equal basis with governments and, instead, they find themselves lost in an endless succession of statements provided during the general meetings. As mentioned before, it seems that the first four sessions of the PFII have focused on letting the voice of indigenous peoples be heard at the highest UN level rather than on implementation of recommendations. But once many voices have taken the floor, it is time to go to ground with policies. Recommendations are reiterated from one year to the next. Conclusion documents may look rather similar, and even the Special Rapporteur has encouraged the writing of different conclusions. As I understand it, he tries to avoid the opinion that indigenous peoples are moving in circles. On the other hand, aboriginals continue to face the same problems due to states' lack of commitment, so drafted recommendations can not be different. And, what is more, recommendations can hardly be implemented with the current lack of economical resources.⁵¹

⁵⁰ In Tauli-Corpuz opinion, the PFII will evolve in a permanent world-wide structure for the protection of indigenous peoples. As the major indigenous institution, its first goal should be to foster sovereign states to honour their obligations to indigenous peoples. First, respecting their basic human rights including their right to self-determination. Second, ensuring that they have the means to participate fully and permanently as citizens in local and national political processes that impact their lives. Third, by providing them with the opportunity to give or not their free, prior and informed consent before development projects are implemented or resources are extracted from their lands. Fourth, making available education they need to defend their rights. Supra note 48.

⁵¹ Personal impressions collected during the 4th Session of the Permanent Forum on Indigenous Issues, held in UN Headquarters in New York in May, 2005.

The PFII, apart from its strong political agenda for indigenous advancement, also offers a platform for participants to establish networks and learn best practices. The side-events constitute an appropriate space for presenting projects with potential echoing in the indigenous world. One of the initiatives in 2005 was the report on the situation of the indigenous peoples in isolation in the Ecuadorean Amazon. The Forum represents the last chance for these peoples to survive, as all local and national mechanisms have failed to protect them. The issue of peoples in isolation had not been yet taken into consideration in the international community and also seemed to be invisible for their indigenous brothers and sisters. Raising awareness about their situation is a necessary step, but indigenous developments in the UN usually only see results in the long term. And the long term will be too late for ensuring their physical and cultural survival.

The best example of long term UN developments is, undoubtedly, the Draft Declaration on the Rights of Indigenous Peoples. The text of 45 articles "recognises the wide range of basic human rights and fundamental freedoms of the indigenous peoples",⁵² such as self-determination, collective rights related to territory, the right to maintain and develop their own political, religious, cultural and education institutions, the right to protect their cultural and intellectual property or prior and informed consultation. The Draft Declaration stands as a highly controversial document. Although it was formulated by the WGIP in 1994, it has not yet been passed by the Commission of Human Rights. The main obstacle consists in the right to self-determination that states reject. There are also other reasons, recently unveiled by Jens Dahl, consisting of the diversity of objectives and backgrounds of indigenous peoples coming from different areas of the globe.⁵³ For instance, while North American First Nations enjoy international status treaties with their state authorities, indigenous peoples in Africa are not yet considered as such. None of these obstacles prevent the Draft Declaration from becoming morally binding, from where some principles are being applied in the Inter American Court of Human Rights, and which has also "provided indigenous activists world-wide with an argumentative arsenal enabling them to voice their claims".⁵⁴ Passing the Draft Declaration constitutes one of the main objectives for the second decade.

⁵² IWGIA. *The UN Permanent Forum on Indigenous Issues*. Copenhagen 2003. p.51.

⁵³ Supra note 49, at 16.

⁵⁴ Supra note 46, at 441.

The second major success of the International Decade, along with the establishment of the PFII, consists of the appointment in 2001 of the Special Rapporteur on the Situation of the Human Rights of Indigenous Peoples. With a mandate that includes the gathering of information and the formulation of recommendations to prevent and remedy violations of the basic human rights, Rodolfo Stavenhagen's active commitment has produced reports to the Commission on Human Rights and several country visits. However, the Special Rapporteur's mandate does not include enforceability of his recommendations.

Other institutions created for granting economic support to the indigenous movement, or at least to ensure participation in international processes that affect them, are the Voluntary Fund for Indigenous Peoples, the Voluntary Fund Relating to the International Decade of the World's Indigenous Peoples, the Trust Fund in support of the United Nations Permanent Forum on Indigenous Issues and the World Bank Global Forum for Indigenous Peoples.⁵⁵ These initiatives attempt to address the extremely scarce resources and prevent financial sponsors from influencing indigenous decisions. Clearly, funding is a key issue for indigenous affairs. Being the most vulnerable populations of states and mostly living in underdeveloped countries, lack of economic resources represents a huge barrier for participation both in national and international fora. The sentence "without financial implications" has become a *leit motiv* attached to almost every proposal for future work in indigenous international organizations.⁵⁶

Apart from the institutions specifically created for and by indigenous peoples, there are a number of UN bodies whose work affects indigenous peoples. Through the preparation of labour standards, the International Labour Organization seeks to promote social justice for workers. The ILO has worked on indigenous issues since 1930. In 1957, it adopted the controversial Convention No.107, considered "paternalistic and assimilationist"⁵⁷. The more recent Convention No.169⁵⁸, although also criticized for the lack of participation of indigenous peoples from underdeveloped countries in its

⁵⁵ For more, see Ellen Lutz & Nicole Yukna, *Addressing indigenous rights at the United Nations*, in "Cultural Survival Quarterly". Fall 2004. pp.23-26, at 26.

⁵⁶ Impressions and testimonies collected in the 4th Session of the PFII.

⁵⁷ Supra note 52 at 19.

⁵⁸ ILO, Convention 169: Convention concerning Indigenous and Tribal Peoples in Independent Countries.

drafting, stands as the most comprehensive international treaty that has turned many indigenous demands into legal rights. Plurinational constitutions such as the Ecuadorean have directly drafted their articles from this ILO document.

Other UN specialised agencies of relevance to indigenous peoples are the World Bank, the World Intellectual Property Organisation (WIPO), the World Trade Organisation (WTO), and the World Health Organisation (WHO). There are also some UN programmes and funds important to indigenous peoples such as the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the United Nations Development Programme (UNDP), the UN Environment Programme (UNEP), the UN Children's Fund (UNICEF), the UN Institute for Training and Research (UNITAR), the International Fund for Agricultural Development (IFAD) and the UN Conference on Trade and development (UNCTAD), among others⁵⁹.

Human rights law and its international developments, thus, have a capacity to advance indigenous peoples claims, albeit with slow progress. However, correcting 500 years of injustice in barely three decades is a task indeed.

1.4 Conclusion

We have seen how indigenous peoples' demands are articulated around the right to self-determination. As peoples, they are free to decide their government and to own their ancestral territory and its resources. As groups that have suffered marginalization for centuries, states have an obligation to respect their culture through the necessary legal measures. As citizens of a liberal state, national authorities have to ensure the principles of equality and freedom.

But these positive and negative state obligations remain violated and indigenous peoples must seek support elsewhere. The United Nations has proved a friendly environment to host voices and hopes. However, no matter what project indigenous peoples propose, it always finds fierce opposition from westerners, in the form of state representatives or mainstream societies. The colonialist-self still prevails in the majority population,

⁵⁹ For more on UN agencies dealing with indigenous peoples, see IWGIA, *The Permanent Forum on Indigenous Issues*. Copenhagen 2003. pp 18-35

dismissing indigenous individuals with 16th century stereotypes purely to reinforce their discriminating imagery. However, when indigenous peoples' irony reverses mainstream prejudices to gain some advancement, great individual rights discourse takes the floor to magnify some dangers that states themselves can prevent if they adequately apply national legislation or properly debate new international instruments within the international fora.

The progress of indigenous peoples clashes against the liberal state wall. However, with current global events, native populations enjoy a momentum in the UN and they are making the most of it. The achievements have been remarkable. But if they knocked on Geneva or New York headquarters in order to open the blocked doors back home, the success is somewhat lessened. The fight yet to fight has not moved from the national boundaries and indigenous international movement will have to develop new tools to raise awareness and produce effective results in the (at least globalising and weaker) national sphere.

The indigenous international movement and its hosting UN institutions are the last chance of survival for indigenous peoples in isolation in the Ecuadorean Amazon. At the national level, the Tagaeri-Taromenane case shows that collective rights are essential for ensuring the cultural and physical endurance of threatened populations. However, devastating economic projects and other interests at stake promote the failure of actors to deal effectively with indigenous populations, as well as pervert *de iure* protective legal mechanisms, transforming them into new potential dangers for the isolated peoples. International developments that pressurize the national sphere seem to be the last hope for voiceless. Having decided to remain alone, free, independent and silent, the isolated communities of the Ecuadorean Amazon pose a serious challenge to the universal human rights movement, one that requires imaginative but urgent action.

The next chapter will analyse how national and international legal developments have applied to indigenous peoples in the Ecuadorean Amazon, both the isolated and the contacted. It will then discuss the role of mainstream media in advancing the all-important notion of self-representation of indigenous peoples.

Chapter 2:

Indigenous Peoples in Isolation in the Ecuadorean Amazon: On the Verge of Extinction

2.1 Introduction: The Situation

There are voices penetrating the silence. Beyond the rainforests blurred frontiers, voices also make claims by remaining mute. When silence does not mean emptiness, it is necessary to pay careful attention. Uncontacted indigenous peoples, being indigenous peoples with needs to fulfil and with rights to be granted, have chosen to remain isolated. Outside society has a duty to respect. There is much at stake.

The approximate number of indigenous peoples in isolation in the Ecuadorean Amazon is believed to be up to 300 individuals. Past and present colonization processes have gravely affected the number of original inhabitants and pushed them into a hidden, precarious existence in order to survive as individuals, as cultures, as peoples. Complete lack of protection by state mechanisms expose the last uncontacted indigenous peoples to the predatory forces currently clashing in the Amazon forest.

2.1.1 A bloody incident to start with.

Extermination of hidden indigenous peoples has always been hidden in the Amazon, where the impenetrable and exuberant jungle rapidly eliminates evidence. This silent process was abruptly interrupted by an incident that encouraged scholars and missionaries to take action before a final genocide. The exemplifying case described in the next pages has been brought to the United Nations in an attempt to engage the international community, given the Ecuadorean society indifference to the extinction of indigenous peoples in isolation.

2.1.1.1 *Hot news cools rapidly*

On May 28th 2003, under the headline of “Killing among savages”⁶⁰, Ecuadorean television networks screened a sequence of disturbing images showing several burned

⁶⁰ Telerama TV Network. El Comercio.com, 3 June 2003.

human bodies impaled by three metre long, strong spears. News programmes also included the decapitated head of an indigenous male.

These unexplained, out of context images were filmed in a jungle clearing of the Ecuadorean Amazon, where a Taromenane indigenous community had its main residence hut. Burned and speared bodies corresponded to members of this group, a voluntarily isolated community that had refused contact with other human cultures. The Taromenane constituted a self sufficient group who preserved their traditional culture and lived within the borders of their ancestral territory, practising hunting, gathering and a little agriculture.

The Taromenane community was attacked by a party of nine Huaorani indigenous males. The Huaorani are an ethnic group that was contacted in 1960s. Their ancestral territory is currently under constitutional protection but they are forced to share it with oil and logging companies and thousands of settlers.

Television screens depicted about a dozen⁶¹ speared bodies; old people, nursing mothers and children that were being buried by Police forces and Huaorani individuals. The Huaos⁶² themselves gave notice of the killing to Ecuadorean authorities and led them to the jungle clearing.

These images, showing extreme violence and cruelty, horrified the eyes of TV spectators for a few days before networks moved on to another hot issue. The debate about accountability lasted only a little longer. Claiming the plurinational character of the 1998 Ecuadorean constitution, the Huaorani demanded to apply their traditional customary law. Powerful indigenous organizations gave them their support. Ecuadorean authorities did not show much interest in opposing the indigenous peoples. Several months later, the nine perpetrators were forgiven by the Huaorani Council of Elders, on condition that they did not commit the same crime again.

⁶¹ The total number of Taromenane individuals that were killed remains unknown. Several bodies were found in the settlement and buried. Researchers point out that others, probably wounded, would have escaped and would die later on. Sources do not agree on the number of bodies found. Figures range from twelve to thirty.

⁶² The terms "Huaorani", as the ethnic group, and "Huaos", for the individuals, are used here interchangeably.

2.1.1.2 *Beyond the screen: the hidden genocide*

The Taromenane killing reflects a broader situation whose causes have been deliberately neglected by the agents involved and whose consequences will lead to the extermination of the last isolated cultures of the Ecuadorean Amazon. Apparently being a case of “justice among indigenous”⁶³, Ecuadorean state institutions refused to take further action. The judiciary that initially became involved was later forced to abandon the case due to the inability to identify the remains, preventing them from being recognised as citizens of the Ecuadorean state, and thus victims of assassination whose perpetrators must be prosecuted.

The state’s permanent *laissez faire* policy aims to facilitate oil companies’ work in the Amazon, that provides the country with 40% of its GNP, an essential income to pay external debt. From the 1960s, oil companies have constructed roads cutting through indigenous peoples’ traditional territories and bringing along thousands of landless peasants. The roads have also facilitated illegal logging activity that invades the indigenous natural and protected areas. Mainly in the 1960s, oil companies supported missionaries to establish reserves where indigenous peoples were resettled. One of these indigenous groups, who had not previously been contacted, was the Huaorani.

Nowadays, the presence of settlers, oil and logging workers constitutes a menace for isolated indigenous peoples. Encounters with the former, bearing fire guns, have usually resulted in many indigenous deaths. Isolated indigenous peoples are also attacked from helicopters by military air-forces. In all cases, the indigenous populations feel a threat over their territories and try to defend them from intruders by using their only weapons: spears.

Finally, colonization of the jungles is not helped by tourists and pharmaceutical researchers who have brought western diseases to the Amazon indigenous that has also contributed to decline of the indigenous population. For the original inhabitants of the

⁶³ Miguel Ángel Cabodevilla, *Introducción general*. In Mikel Berraondo & Miguel Ángel Cabodevilla (ed) *Pueblos no contactados ante el reto de los derechos humanos: Un camino de esperanza para los Tagaeri y Taromenani*. CICAME-CDES. Quito, 2005. pp 15-24, at 23.

Ecuadorean Amazon, developments in their traditional forests in the last four decades are synonymous with death.

These events may need further explanation in order to understand both the roots and the implications of the silent genocide of indigenous peoples in isolation. The following pages aim to identify the main agents involved and the immediate consequences of their activities.

2.1.2 Indigenous peoples in isolation in the Ecuadorean Amazon

Distant memories of Spanish colonization or closer experiences of the arrival of the oil companies since the 1950s, as well as the introduction of western diseases that have decimated indigenous populations, may have lead some indigenous original inhabitants of the Ecuadorean Amazon to preserve their isolation. They will be called “indigenous peoples in isolation” or “uncontacted indigenous peoples”⁶⁴ in this study, although this denomination is biased by the ethnocentric point of view of mainstream society. From the indigenous’ perspective, they live in their traditional forest. Indigenous peoples, who ignore the major changes that happen around them, have shown their rejection of establishing sustained contact with national society. Feeling threatened in their physical, cultural and territorial integrity⁶⁵, they have opted for isolation in remote locations in order to ensure their continued existence as peoples.

2.1.2.1 *The Amazon, a general overview*

For centuries, the Amazon represented the last frontier to western occupation. This frontier has already been trespassed⁶⁶ to seize its apparently endless resources. The Amazon, which constitutes the largest area of tropical forest on the planet, offers a great variety of ecosystems, species and genetic resources. It also hosts huge hydrocarbon

⁶⁴ The terms “indigenous peoples in isolation” and “uncontacted indigenous peoples” will be used as synonymous in this dissertation although they present different features. The issue has been dealt with by several authors such as D.Ribeiro, A. Zarzar, T.Moore, J.Álvarez and G.Shepard. These indigenous peoples have also received other names such as nomads, free, excluded or hidden. Outsiders often refer to them with insulting names: naked, savages or local words with similar meanings such as aucas, lluchos, calatos, mashcos. In contrast, indigenous peoples usually name themselves “human beings”, as in the case of the Huaorani. Beatriz Huertas Castillo. *Indigenous peoples in isolation in the Peruvian Amazon*. IWGIA. Copenhagen, 2004. pp.21-22.

⁶⁵ Ibidem, at 14.

⁶⁶ Gina Chávez, *Ecuador: The Amazon or the last torn down frontier*. In “Iniciativa Amazónica Magazine”, no. 9, December 2003. p.33

reserves and precious timber species. The colonization of the Amazon began with the Rubber Fever⁶⁷, between 1880 and 1920. After a brief period of relief, the discovery of oil reserves in the 1950s led to extensive exploitation, mainly from the oil crisis of the 1970s. Simultaneously, legal and illegal logging companies took advantage of the existent infrastructure for their activity. Nowadays, "the Amazon is considered as the territory where the future for humanity is"⁶⁸ and is the target of a range of projects such as infrastructure, the tourist business, agriculture and biodiversity. These regional projects, operating across the national boundaries of Brazil, Peru, Ecuador, Colombia, Bolivia, Guyana and Surinam, are controlled both by institutions⁶⁹ and by military forces related to the Plan Colombia⁷⁰. For investors, the Amazon represents a market of opportunities. Accountability to national legal systems seems not to be taken into consideration. Nor the original inhabitants of the Amazon.

The Interoceanic corridor is one of the mega-projects for the Amazon, strongly supported by the Brazilian president, Lula da Silva. Running from the Brazilian city of Belem, on the Atlantic ocean, to the Ecuadorean city of Guayaquil, on the Pacific, it would facilitate transportation, trade and colonization of the forest. In the Ecuadorean Amazon, initial building work of an access road to one of the oil extraction blocks has raised concern about the future use of this road as a stretch of the Interoceanic corridor. Roads usually cut through indigenous, not demarcated, territories without their prior consent, set a barrier for accessing resources and, thus, constitute a threat to their survival. Roads penetrating the forest have played this role for the last forty years in the Ecuadorean Amazon.

⁶⁷ The Rubber Fever occurred late in the 19th century and led to massacres, persecution, slavery and epidemics during almost four decades. Ibidem.

⁶⁸ Ibidem.

⁶⁹ Institutions, here, include global organisations such as the World Bank, the International Monetary Fund or the World Trade Organization and the regional trade organisations, Mercosur.

⁷⁰ Plan Colombia is a Colombian government project, mainly funded by the US, to stop the illegal growing of cocaine and to break up the two guerrilla and paramilitary forces operating within Colombian territory and bordering areas. Many voices claim that this project extends US control to the whole region. According to Gina Chávez, military control in Amazon areas includes the establishment of military bases in the forest zones and crop spraying from light aircrafts. Fumigation pushes indigenous peasants to flee, thus leaving these areas available for other activities.

2.1.2.2 *A historic approach to indigenous peoples of the Ecuadorean Amazon*

The Amazon covers almost half of the Ecuadorean national territory⁷¹ and hosts 4.5% of the total population of the country. In the last decades, the massive arrival of settlers has outnumbered the original predominance of the remaining indigenous peoples dwelling in the Ecuadorean Amazon. The current indigenous population includes the Quichua (48.000 individuals), the Shuar (42.000), the Achuar (2.400), the Huaorani (1.791), the Siona-Secoya (600), the Cofan (500) and the Zaparos (50).⁷² Indigenous peoples in isolation, the Tagaeri and Taromenane, belonging to the Huaorani ethnic group, are considered to be around 300. There may be also a third group in isolation, of Huaorani ethnic origin, with less than one hundred individuals.⁷³

The current situation in the Ecuadorean Amazon is due to three major historic events: the decimation of indigenous populations, resettlement of survivors and colonization of the forest by national society. Decimation of forest peoples by western diseases occurred after the Spanish conquest and Rubber Fever, as mentioned above, and forced survivors to hide deep in the jungles. The mestizo⁷⁴ majority occupied fertile and well communicated areas by the rivers and maintained contact with national society. In the enormous and scarcely inhabited forests, conflicts for resources between mestizo and isolated indigenous were scarce. But this situation changed when oil was found in 1949, leading to the colonization of the forest. The seismic prospecting phase includes intense movements of workers through a large part of the territory, which eventually leads to sighting or encountering with peoples in isolation. The subsequent oil exploitation, without state restrictive measures, produces toxic waste dangerous both for the environment and for human health. However, the major impact on isolated peoples is due to the massive arrival of landless peasants seeking logging jobs, who settle along new roads opened in the forests.

⁷¹ Ecuador is divided into three natural regions: the Coastline, the Andean mountains and the Amazon. The Amazon covers 45.1% of the national territory, divided into six provinces. The total population of Ecuador is 13 million.

⁷² Mikel Berraondo. *Pueblos indígenas no contactados ante los derechos humanos*. pp 59-103, at 98. Supra note 63.

⁷³ Figures on indigenous peoples in isolation, according to M.A Cabodevilla, *Introducción general*. pp 15-24, at 23. Supra note 63.

⁷⁴ Mestizo individuals, in Latin American societies, are the racial mixture between original inhabitants and colonizers.

The Ecuadorean state, traditionally considered the owner of the forests, has not promoted any effective protective measures for isolated indigenous peoples. Instead, Ecuadorean governments have made attempts to broaden the Amazon's colonised and extractive frontier⁷⁵ that, through the oil production, allows payment of external debt. The lack of protection encouraged indigenous peoples, from the 1970s onwards, to establish their own indigenous organisations. CONFENIAE and CONAIE⁷⁶ have achieved a key status within the national political landscape and have succeeded in demanding the recognition of their traditional territories, although there is a long way yet to run.

However, still under pressure from the colonization of the forests, some indigenous groups have invaded the territories of the isolated indigenous peoples. Invasions have caused conflicts and killings that mainly benefit the companies operating in the forests, because invading indigenous groups are used as conquerors of lands that remained untouched. This is the case of the Huaorani.

2.1.3 Huaorani's conflicts with groups in isolation: The Tagaeri and the Taromenane

The Huaorani's first friendly contact with national society occurred in 1958 but it was only after 1968, when oil was found in their territory, that missionaries of SIL⁷⁷ established a reservation supported by the State and hydrocarbon industries. Most huaos, around 400 individuals, were resettled to a smaller territory of just 160.000 has, from their traditional territory of 2 million has. While Huaorani in the SIL reduction became sedentary, about 100 individuals opted out and have lived in isolation since then. The oil industry did not take into consideration their territorial rights and the state indifference has led to a lack of protection, resulting in a slow but steady genocide.

⁷⁵ M.ACabodevilla. Supra note 63 at 17.

⁷⁶ CONFENIAE (Confederación de Nacionalidades Indígenas de la Amazonía Ecuatoriana – Ecuadorean Amazon Confederation of Indigenous Nationalities) is integrated in the wider CONAIE (Confederación de Nacionalidades Indígenas del Ecuador – Ecuadorean Confederation of Indigenous Nationalities)

⁷⁷ The Summer Institute of Linguistics (SIL) was an evangelical mission from the US that settled in several Amazonian countries, along with the oil industry.

The Tagaeri briefly appeared in the international spotlight in 1987, when the speared bodies of a catholic bishop and a nun were found by their hut.⁷⁸ The Tagaeri are⁷⁹ a part of the Huaorani indigenous population who chose isolation in the 1960s. The initial group, composed of about twenty individuals and led by Tagae, would have grown. Through the years, they were constantly pushed to move their territorial borders by the progress of oil working.⁸⁰ These erratic movements in the forest occasionally led them to invade territories of stronger contacted indigenous groups, causing violent conflicts that would end in the death of the weaker group.

The Taromenane are also believed to be a Huaorani ethnic group⁸¹. Their existence, considered a myth, was only confirmed due to the 2003 massacre. Today, the Taromenane are probably gathered in two separated clans and their total number is estimated at 100 individuals.

In the 2003 slaughter, up to thirty Taromenane were killed by a party of nine Huaos from the Babeiri community, in Tiguino. Claiming revenge against the Tagaeri for an assassination⁸² that occurred ten years before, the nine huaorani set out from their community and, after walking for seven days in the pathless jungles, they found the isolated Taromenane. The Taromenane were settled in a hut belonging to the Tagaeri. Although the Taromenane was not the community that the Huaos were looking for, Huaorani warriors surrounded the hut, killed the dwellers and burned it all.

⁷⁸ Spanish bishop Alejandro Labaka, a Capuchin missionary, and Colombian sister Ines Arango had reached the isolated Tagaeri by helicopter and intended to contact them for ensuring them protection from the neighbouring oil industry. Labaka was himself an scholar, speaking the Huao language, who had broadly researched about the Huaos.

⁷⁹ We have preferred here the Present Tense ("Are") to ease the reading. But main reference by the Capuchin missionary and anthropologist M.A Cabodevilla points that the Tagaeri would already be extinguished (April 2005)

⁸⁰ Encounters with oil workers ended in several deaths from both sides (M.A Cabodevilla, supra note 63, at.22)

⁸¹ They are considered to be Huaos, although there is no direct testimony from any Taromenane individual.

⁸² In 1993, members of the Babeiri community of Tiguino kidnapped a Tagaeri young girl, Omatuki, and took her to Cabodevilla. Omatuki's direct testimony reflects a diminishing group's erratic movements in the forests and the permanent threats they face. She also offered the only present day account about the bishop's death. When Babe, the community leader, ordered Omatuki's kidnapping, a violent incident occurred between the Huaos and the Tagaeri, resulting in the death of Carlos Omene, a Huao whose death was later revenged through the 2003 killing.

The missing Tagaeri would have probably been victims of a tribal conflict late in the 1990s and some remaining individuals would have integrated within the Taromenane group, later attacked by the Huaos.⁸³

After this killing, the approximate number of indigenous peoples in isolation in the Ecuadorean Amazon is considered to be between two and three hundred⁸⁴. Due to the deaths during the missionary resettlements, the violent encounters with workers or other indigenous and the deaths caused by diseases⁸⁵, the end of these indigenous peoples seems to be getting closer. Killings in the forest usually remain unacknowledged. The indifference of both state and national society is a major contribution towards the final day for indigenous peoples in isolation.

2.2 Failing actors, who leave unprotected to the uncontacted

2.2.1 The main risk: The absent state

From the Ecuadorean state point of view, oil extraction has been considered a strategic priority since the 1970s. In order to achieve a rapid and obstacle-free extraction, the state has retired from forests to ease the work of the hydrocarbon industry. This absence of the state from the Amazon implies the lack of control in the building of new roads, the arrival of poor settlers in large numbers, illegal trade of timber often with support of indigenous peoples, the lack of state commitment with its duties and other uncontrolled threats.

Two roads cross Huaorani lands, one of them invading the territory of peoples in isolation. There is also a project to build a highway to Block 31 and Block ITT⁸⁶, that later would be used as part of the Interoceanic corridor. This road is being strongly

⁸³ M.A Cabodevilla. Supra note 63 at.22.

⁸⁴ Apart from the Tagaeri and Taromenane, there is some evidence of the existence of another Huaorani groups in isolation. This group may be settled by the Peruvian border, a border that they obviously unacknowledged. There may also be other survivors from several ethnic origins, such as Zaparos. M.A Cabodevilla. Supra note 63 at 24.

⁸⁵ A whole Taromenane clan would have died of western diseases, according to several testimonies gathered by M.A Cabodevilla.

⁸⁶ According to exploration, Block ITT would be the biggest well in Latin America and the carbon extracted would rise up to 40% of annual Ecuadorean oil production. Thus, the interest in opening a way to access this well is very high.



opposed by Huaorani peoples, even lobbying before international organizations⁸⁷. The Ecuadorean state lacks the legal tools to protect peoples whose territories are divided by roads.

The logging industry, once it has exhausted timber resources from the Amazon, is illegally entering protected areas, where indigenous peoples in isolation constitute a bothering presence for their activities. Logging industries establish alliances with contacted indigenous groups, who receive some payment if they allow illegal logging. Sometimes, loggers provide indigenous peoples with fire guns that they use in their encounters with peoples in isolation. Some sources⁸⁸ have pointed out that the Taromenane were first shot by Huaos and then, speared. The loggers' indirect involvement in the 2003 killing is said to have been proved.⁸⁹ Meanwhile, and although the environment ministry is aware of illegal logging, authorities have repeatedly declared its incapability to control it.

Equally, institutions such as the Judiciary⁹⁰ have taken no action. The state did not certify the deaths or grant the survivors citizenship. No authority, neither national, regional nor indigenous, has prosecuted the perpetrators. Apparently, the assassination of individuals without identity and without territory is not a crime. This impunity may lead to new killings.

There are other risks for isolated indigenous peoples that remain without control. Firstly, military border patrols have shot indigenous peoples from helicopters.⁹¹ Secondly, the activity of tourists, often flying over the area, who try to establish contact with the isolated. Finally, transmission of western diseases. Objects found in the Taromenane house in 2003 show that they had received presents from the air and had also stolen items from oil campsites.

⁸⁷ Huaorani representatives, with the support of North American NGOs, have raised their voices before the PFII. Moi Enomenga, a former representative of OHNAE, and Alicia Cahuiya, the president of AMWAE, hold a meeting with a congresswoman to raise awareness on the building of a road affecting their communities.

⁸⁸ M. Berraondo. Supranote 63 at 70.

⁸⁹ M.A Cabodevilla, *Los últimos pasos del genocidio ecuatoriano*. pp. 145-157, at 153. Supra note 63.

⁹⁰ The public prosecutor in Pastaza, the administrative region of Tiguino, stated the impossibility of conducting an investigation, as killed individuals did not possess an identity card, thus, they were not citizens.

⁹¹ Testimony by Omatuki (M.ACabodevilla. Supra note 63 at 157)

In sum, all threats that risk the existence of indigenous groups in isolation as individuals, cultures and peoples derive from the lack of state acceptance of its duties. The state has allowed forest colonization without developing a legal corpus. Only in recent years, due to the pressure of indigenous organizations, have some areas received legal protection, although specific protective measures have yet to be implemented.

2.2.1.1 The Ecuadorean state territorial policies in the Amazon

The Ecuadorean state's traditional uncommitted policy in the Amazon has been slowed down by organised indigenous activism since the 1980s. Together with national and international environmental associations, indigenous confederations have pressurised governments into granting indigenous people the property of their ancestral lands. The establishment of the Huaorani territory, the Yasuní National Park and the Intangible Zone have constituted major indigenous successes.

The original Huaorani territory, in 1950s, spread over 2 million has. After the dissolution of the missionary resettlement in the 1980s, the state granted the Huaorani the enjoyment of 809.000 has but this territory partially overlaps with the Yasuní and the Intangible Zone (IZ). The State has also retained the property of subsoil resources and left the Huaorani without protection in the face of oil companies that are now operating in one third (200.000 has) of the total surface of the territory.

The Yasuní National Park, established in 1979, was declared a Biosphere Reserve by UNESCO in 1989. No matter national and international law, the state allowed oil exploitation within its boundaries. Wide scale protests about this abuse led to the creation of the Intangible Zone in 1999, through a presidential decree⁹². IZ, an area within the Yasuní where oil and logging activities are totally banned, comprises 700.000 has and is meant to protect natural diversity and to ensure free movements of isolated peoples. It is the only official document where the existence of the Tagaeri and the Taromenane is recognized. However the state did not make any previous research

⁹² This presidential decree (D.E 552, de 2 de febrero de 1999), lacking the force of law, may be derogated by a subsequent president. Ecuador has had four different presidents since 1999.

about their number or ethnic origin⁹³. Although the IZ is a positive step in the protection of indigenous peoples in isolation, it has to be added that the IZ has not yet been demarcated⁹⁴ and illegal loggers are already working inside, very close to the remaining Taromenane settlements. Extinction is imminent for the last Ecuadorean indigenous peoples in isolation, unless the state clearly demarcates the IZ and forces its protection.

2.2.2 The Failure of Ecuadorean Law in the 2003 Killing

2.2.1.1 The 1998 Ecuadorean plurinational constitution

The Ecuadorean constitution, while proclaiming state indivisibility, declares that Ecuador is a plurinational state, constituted of several indigenous peoples or indigenous nationalities⁹⁵. This constitution, passed in 1998, was drafted by a constitutional assembly in which indigenous delegates from the Pachacutik political party⁹⁶ also participated. By declaring Ecuador a plurinational state, the constitution not only recognizes civil, political, economic and social rights of indigenous peoples, but also their collective rights such as the right to their own language, identity and traditions.⁹⁷ The constitution, that drew several articles directly from the ILO Convention 169⁹⁸, establishes indigenous peoples as legal subjects and allows indigenous participation in all aspects affecting them.⁹⁹ One of these aspects consists of the implementation of customary law.

Chthonic¹⁰⁰ traditions and chthonic law have been widely recognized in Latin American constitutions during the 1990s.¹⁰¹ But *de facto* legal pluralism had occurred in the Americas since the Spanish invasion. In spite of the independence processes, which established the state-dominated legal order in the first half of the 19th century,

⁹³ As mention above, Cabodevilla considers that the Tagaeri had already been exterminated by late 1990s. (M.A Cabodevilla, p.146)

⁹⁴ Demarcation works are in progress in spring 2005, although they are being conducted in secrecy and without consultation among indigenous. Gina Chávez & Mario Melo. *Pueblos en aislamiento del Ecuador: Los Tagaeri-Taromenani*, pp. 105-143, at 134. Supra note 63.

⁹⁵ Ecuadorean constitution, Art.1: Ecuador is a social state of law, sovereign, unitary, independent, democratic, pluricultural and multiethnic.

⁹⁶ Pachacutik is the political party created out of the indigenous national organization CONAIE.

⁹⁷ FLACSO. *Cuaderno de Derecho Indígena*. Flacso-Ecuador. Quito, 2005. p.11

⁹⁸ ILO Convention 169 was ratified by Ecuador in 1998.

⁹⁹ Theodore MacDonald. *Ecuador past offers direction for the future*. In "Cultural Survival Quarterly". Fall 2004. pp. 39-42, at 41.

¹⁰⁰ Chthonic stands for "aboriginal", "native" or "indigenous".

¹⁰¹ Latin American countries with plurinational constitutions: Colombia (1991), Peru (1993), Bolivia (1994), Ecuador (1998) and Mexico (2001)

indigenous communities managed to maintain their own, and useful, conflict resolution system. Customary law had a "primary goal of reconciliation rather than adjudication"¹⁰² and their consensual resolutions were immediately applicable. Overlapping legal spheres addressed different needs and diverse audiences, such as the colonial elite, the mestizo majority and the indigenous peoples. These original inhabitants, who live "ecological lives (...) in close harmony with the earth"¹⁰³, have traditionally adhered "to chthonic tradition and chthonic law because (they) believe the world, which is (their) world, depends on it"¹⁰⁴. In sum, plurinational constitutions recognize *de iure* the relevance of indigenous customary law as a core element of indigenous tradition.

The 1998 Ecuadorean constitution concedes that, through local indigenous authorities, customary law can be applied to internal conflicts as long as traditional procedures used are not contrary to the constitution and national laws.¹⁰⁵ Internal conflicts comprise of issues related to family, such as marriage, divorce or adoption; property, such as ownership of lands or robbery of animals; and other conflicts including gossips, quarrels, lack of communal work or not taking into consideration women's opinions during community assemblies. Finally, suicide or assassination within the community are also considered as internal conflict.¹⁰⁶ The constitution adds that the law shall make such customary law functions compatible with the national judicial system.

However, no law has been passed to develop this constitutional principle, with the consequence that there is no coordination between the judiciary and customary law. This is a common deficit in all Latin American plurinational constitutions. Similarly, no mechanisms have been established to resolve incompatibilities that may emerge between customary law and human rights¹⁰⁷. Originally meant to be "strong" legal

¹⁰² H.Patrick Glenn, *Chthonic legal tradition: To recycle the world*. In H.Patrick Glenn, *Legal traditions of the world. Sustainable diversity in law*. Oxford University Press, 2000. pp. 56-85, at 61

¹⁰³ According to Edward Goldsmith, chthonic people are those who "live ecological lives (...) in close harmony with the earth". Quoted by H.Patrick Glenn. *Ibidem*, at 57.

¹⁰⁴ *Ibidem*, at 70.

¹⁰⁵ Ecuadorean constitution. Art. 191 (4)

¹⁰⁶ *Cuaderno de Derecho Indígena*, at 21.

¹⁰⁷ Raquel Irigoyen Fajardo, *The constitutional recognition of indigenous peoples law in Andean countries*. In Willem Assies, Gemma van der Haar & André J.Hoekema (ed) *The challenge of diversity: Indigenous peoples and reform of the State in Latin America*. Thela Thesis. Amsterdam, 2000. pp.197-222, at 214.

pluralist systems, these constitutions have resulted in being rather weak given the lack of a formal model for the structure of the legal order.¹⁰⁸

The fragility of constitutions has historical roots. The *coloniality of the power*¹⁰⁹ deeply impacts legal developments in Latin America and, sometimes, distorts them. For the indigenous movement, plurinational constitutions represent a major achievement. Indigenous organizations struggled for decades within the national framework to have their rights granted. Finally, a wave of recognition occurred in the 1990s when five states modified their constitutions to make space for other nationalities. This wave coincided with major world events such as the fall of communism and the subsequent spread of neoliberalism. The collapse of the Soviet block led to the third phase of *decolonization* and new states were established out of the former soviet republics. Simultaneously, globalization, that challenges traditional statehood, seems to be a more suitable framework for acceptance of new actors, such as indigenous peoples. All these global events may have contributed to the drafting of plurinational constitutions. But, a decade later, legal developments have not materialised to ensure new constitutional principles. This may be a consequence of traditional Latin American disregard to the content of constitutions when they are opposed to other interests, mainly to the creole elites' business, including establishment of multinational companies, developmental programmes or US geopolitical strategies. In sum, although the recognition of the plurinational character of the state stands as a major achievement, the struggle for implementation still has to face the resistance and opposition from historical colonial powers.

Failure to establish mechanisms to coordinate the overlapping legal systems and the lack of constitutional development lead to impunity for the 2003 massacre perpetrators. Both the state law and the customary law systems declined to take proper measures in their respective areas of competence.

¹⁰⁸ Lauren Benton, *Legal regimes and colonial cultures*. In Lauren Benton, *Law and colonial cultures. Legal regimes in world history: 1400-1900*. Cambridge University Press, 2002. pp 1-30, at 11.

¹⁰⁹ *Coloniality of power* is a concept used by Asier Martínez de Bringas. The Spanish conqueror of the American territories, through imposing his Eurocentric ideology and life-styling has removed the original inhabitants from the public space. Nullification has endured up to today. The coloniality of power still prevails within Latin American social relations, between the ruling elites and the rest of the mestizo and indigenous population. Asier Martínez de Bringas, *Los pueblos indígenas y el discurso de derechos*. Cuaderno Deusto nº 24. Bilbao, 2003

2.2.2.2. *The state's active and passive lack of commitment*

The Ecuadorean state has clearly violated its own constitution. Firstly, indigenous customary law is only applicable in conflict resolution of minor crimes. And, although assassination is included among its competences, it can only be applicable when the murder is committed within the community. The 2003 incident did not occur within the Tigüino community and would not constitute a single assassination as the number of victims raised over twelve. The massacre was committed by a group of individuals against a different community. Thus, the basic aim of customary law to re-establish harmony within the community can not be achieved here. And the crime, rather than the assassination of a single individual, would more likely be considered as a genocide, because its purpose was to exterminate a whole human group. Genocide, which constitutes *ius cogens*, thus a peremptory norm, is a crime against humanity and it is contained as a fundamental right in every single constitution. The Ecuadorean plurinational constitution does not comprise genocide among the competences of customary indigenous law. Thus, the adjudication of this case to an indigenous local authority clearly exceeds the customary law mandate and stands as an anti (non)constitutional measure.

Secondly, the public prosecutor of Pastaza¹¹⁰ stated the impossibility of conducting an investigation, as killed Taromenane individuals "did not possess an identity card"¹¹¹. The judiciary did not certify the deaths. And, what is more, the state did not grant citizenship to the survivors. Indigenous peoples in isolation, having ancestors and their place of birth and residence within the boundaries of a national state, are not considered citizens of this state, therefore are not entitled to the protection that the state is meant to provide. As the Ecuadorean constitution does not contain any reference to uncontacted peoples, they are completely rightless. Human beings deprived of the most basic quality: existence. How can a state protect the right to life if the individual does not exist?

¹¹⁰ Pastaza, the administrative region where Tigüino is located.

¹¹¹ Testimony from video report: Ana Echandi & Aritz Parra. *Hidden peoples in danger: History of death in the Ecuadorean Amazon*. Cicame, 2003.

Therefore the Ecuadorean state, which calls itself a plurinational state and flaunts a constitution conceding legal pluralism, has failed in a prior step: spreading and granting citizenship to all its citizens.

2.2.2.3 *The misuse of indigenous customary law*

Once the state and the national indigenous organizations decided that the massacre should be dealt with before the Huaorani Council of Elders, this indigenous authority acted against the spirit of customary law. Chthonic tradition basically considers that indigenous individuals live in close contact with nature and chthonic law aims to restore equilibrium within the community in order to secure its endurance. Both requisites have been disregarded in this case.

Firstly, perpetrators of the massacre were said to be guided or, at least, instigated by Babe, who is receiving payment to permit loggers access to protected Huaorani territory and the Intangible Zone. Ergo, as perpetrators had been encouraged by the loggers to eliminate Taromenane who constitute an obstacle to their illegal work in the forest, it could be considered that perpetrators have committed a crime against nature. Secondly, neither is the purpose of re-establishing order in the community achieved. We do not know with certainty if the Taromenane belong to the Huaorani ethnic group. Thus, the fact that the Huaorani Council of Elders is judging the perpetrators may imply that the Council is biased in favour of the individuals from their own group. This bias is even more likely if we consider that Huaorani tradition qualifies "the others" as enemies to be destroyed. The hypothetical equilibrium can not be achieved either by *sentencing to forgiveness* to individuals who have committed a massacre.

Cultural relativism may play a role here. In Huaorani tradition, an assassination has to be revenged, which usually leads to cycles of violence, as the orphans are meant to take vengeance. The perpetrators claimed that they were acting in response to the Carlos Omene killing in 1993. And some organizations considered the slaughter with spears as "justice among indigenous". But, killing with spears stands as a means to establish boundaries, not as conflict resolution¹¹². And, I argue, the pursued equilibrium is

¹¹² Gina Chávez. Supra note 63 at 117.

irreperably broken as this massacre is not proportional with the assassination of a single person.

Therefore, even taking into consideration the Huaorani's traditions concerning violent conflicts, the Council of Elders' decision of forgiving the assassins was a total perversion of customary law. The Babeiri group, used to impunity, is pushing the limits even further. For them, who acknowledge Penal Code penalties, the emergence of customary law represents an open door for illegal business and crime. Chthonic law is being misused.

Sometimes, indigenous customary law has been idealistically depicted as a system with an immediate application, free from corruption and generative of consensus.¹¹³ However, this case proves that there is still a lot of work to do before customary law would be properly implemented.

In conclusion, we can state that the existence of constitutional and customary legal instruments is a major advancement for the protection of indigenous peoples in isolation and stands as the most important achievement of indigenous organizations in Ecuador and other Latin American states. However, the legal mechanisms need to be improved by developing the appropriate tools to grant the effective implementation of these rights. Equally, coordination instruments between national provisions and the human rights system have to be established to prevent the misuse of traditional customary law for particular interests. This is a state responsibility that successive Ecuadorean governments have neglected. Therefore, a formula to encourage application has to be found, as the national and indigenous authorities have neglected their responsibility.

2.2.3 The failure of indigenous organizations

We have seen how the state has singularly failed to protect the IPs on its territory, but Indigenous organizations have also failed to protect groups in isolation. After the 2003 killing, national organizations considered the case as "indigenous justice" and proposed that the perpetrators be held accountable only before indigenous

¹¹³ H.Patrick Glenn, *Legal Traditions of the World. Sustainable diversity in Law*. Oxford University Press, 2000. pp.56-85, at 61.

customary law. The nine Huaos were forgiven. In August 2004, a settler was speared within Babeiri territory. The Babeiri group continues to act with impunity, given the lack of pressure from indigenous organizations.

Indigenous organised activism has undergone a deep division in the last two years after the failure of the government coalition with CONAIE, the national umbrella organisation.¹¹⁴ None of the indigenous confederations, namely, the Ecuadorean Amazon CONFENAIE or the Amazon regional COICA¹¹⁵ have shown an active interest in protecting isolated indigenous. ONHAE¹¹⁶, the Huaorani confederation, is a small and unorganised association that has no control over the Babeiri. ONHAE has recently abandoned CONAIE and integrates now a pro-governmental confederation¹¹⁷.

In view of the indifference of indigenous organizations and state institutions, the invasion in progress of oil and logging industries, the criminal practices of some contacted indigenous... Are there other no-institutional actors who may play a protective role? Would the media be a tool to raise awareness within the national society on the indigenous peoples in isolation?

2.2.4 The role of media and the Huaorani's voices

The coverage of the Taromenane massacre by Ecuadorean media perfectly reflects the mainstream society attitude towards developments in the remote Amazon. Ignorance and indifference can only be shaken by spectacular, bloody images and that is what Ecuadorean television networks and tabloids eagerly sought to offer their audiences. Neither did the more committed print papers succeed in providing accurate information, due to contradictory information from their sources, the difficult access to the area and the absence of an analytical background on Amazonian issues. The

¹¹⁴ General elections in January 2003 strongly backed up Pachacutik, the indigenous political party created from CONAIE. Pachacutik decided to accept the invitation to form a government coalition with the most voted party, led by Colonel Lucio Gutiérrez. As president Gutiérrez did not fulfil Pachacutik's claims, the indigenous abandoned the ruling coalition six months later. Since then, Gutiérrez has pursued the erosion of indigenous unity and many local federations have abandoned CONAIE. A popular upheaval removed president Gutiérrez from office last April 2005.

¹¹⁵ COICA (Coordinadora de Organizaciones Indígenas de la Cuenca Amazónica – Indigenous Organisations of the Amazon Basin)

¹¹⁶ ONHAE (Organización Nacional Huaorani de la Amazonía Ecuatoriana – Huaorani National Organization of the Ecuadorean Amazon)

¹¹⁷ Information offered in *¿Hacia una CONAIE paralela?* Diario Hoy, 7 March 2005.

supposed impartial and accurate role of the media, aiming to raise awareness and attract government attention towards problems that need solving, dramatically turns into a harmful tool to foster stereotypes among the audience and to reinforce lack of governmental commitment.

“Confusing” would be the word to define the media coverage of the killing. Conflicting interests were at stake but all sources had in common the lack of interest on a fair solution. Therefore, attempts by some professional journalists to provide accurate information proved futile. The primary source of information was the Huaorani. Its organization, the ONHAE, sent a press release giving notice of the killing of thirty individuals. The organization blamed the logging companies and asked outside society to stay away from the forest. The Huaorani themselves, one month later, made public the Council of Elders’ decision to forgive the perpetrators. Indigenous national and regional organizations also blamed logging companies, trying to obtain political benefits from the killing. The perpetrators, however, gave a complete account of the events to the Capuchin missionaries and declared their intent on revenge for the death of Carlos Omene. The state, as usual, remained passive and only decided to take repressive measures during the troubles that followed the sentence of the Council of Elders. A number of journalists also made strong self-criticism of their own coverage of the massacre.¹¹⁸

Coverage in television networks Ecuavisa, Telerama, Gamavisión and Canal Uno, as well as in the tabloid *Extra* produced headlines such as “Tagaeri fury”, “horrendous genocide” or “disgraceful Colombian loggers pay ingenuous indigenous persons to commit an atrocious assault”¹¹⁹. Television images depicted a rolling decapitated head (Gamavisión), burned bodies (Ecuavisa) or speared bodies (Canal Uno). Other print papers, although more professional and accurate in their comments, offered the

¹¹⁸ César Ricaurte, *El discurso de los medios*. El Comercio, 3 June 2003; *Los reporteros editorialistas*. El Comercio, 4 June 2003; *La matanza en el Tigüino no pudo ser descifrada por la televisión*. El Comercio 9 June 2003. Available at www.elcomercio.com.

¹¹⁹ Milagros Aguirre. *El asalto huao desde la prensa*. pp.15-20, at 16. The article title’s double sided is meant to underline how the press took advantage of the Huaorani to offer full of blood reports and how the Huaorani made use of the press to transmit their own messages. Available at www.flacso.org.ec/docs/i17_aguirre.pdf

following headlines: "The Indians who revenged the Good bishop"¹²⁰ or "the Tagaeri died defending their trees"¹²¹.

It is remarkable how stereotypes work when information, even for journalists, is insufficient and the news programmes or the newspapers pages need to be rapidly filled. The noble and the ignoble primitive stereotypes are reflected in both their 16th century and modern approaches, as the savage, the naïve or the ecological Indian. The use of these stereotypes, as an automatic response by journalists in national mainstream media, reinforces the need for integrating them, in the best of the cases, or for leaving them alone with their inter-ethnic conflicts until they exterminate each other, which is the strategy that colonialist societies usually adopt when indigenous peoples represent an obstacle for their economical activities. Regarding the information abroad, the headline deployed by Spanish newspaper clearly reflects the idealised vision of Western societies. In sum, the use of stereotypes by mainstream media in a entertainment environment works to reinforce the majority society "self" and sets obstacles for indigenous peoples to represent themselves as peoples with distinct cultures, own voices, living in precarious conditions and, as every human being, showing both talents and debilities.

However, the Huaorani had a chance for self-representation in the chaotic scenario that followed the killing. The tabloid *Extra* invited the Huaorani to Guayaquil, the Ecuadorean main city, to explain the events. One of Babe's sons and two other young huaos travelled to Guayaquil to underline the revenge purpose of the killing, thus contradicting their own organization's version. Although they chose Western clothes¹²² for their presentation before mestizo society, the tabloid paid the three huaos to pose naked on the beach, wearing only the traditional gumi¹²³, and in the chronicle, they were identified as the warriors that perpetrated the killing. When both ONHAE and other media criticized *Extra* for manipulating the huaos, the young men stated: "We travelled to Guayaquil funded by *Extra*. We accepted, freely, its invitation to present our version to clarify the regrettable event between our ethnic group and the Taromenane. We deeply regret that incident, that will not happen again. Apart from that, it was the

¹²⁰ El Mundo (Spanish newspaper), 10 June 2003.

¹²¹ El Comercio, 7 June 2003.

¹²² Milagros Aguirre. Supra note 119 at 18.

¹²³ Gumi, a string that Huaorani males use to protect the penis during hunting.

suitable moment to present our culture, to raise awareness of our customs, stories and traditions”¹²⁴.

The whole situation is more than “confusing”, as stated before, and its complexity may escape Western categorizing. Indigenous self-representation requires, firstly, legitimate representatives and, secondly, a culture to represent. In this case, the young huaos were not representatives of their culture and this massacre event was not the most appropriate framework for presenting their traditions before national society, although the killing with spears constitutes one of their old customs. Most probably being a case of adventurous young men in the city and media manipulation, this incident reflects how some huaos have uncritically adopted the self-representation rhetoric. And how this discourse is perceived by mainstream national society. Evidently, if we match an essentialized representation of culture with an unpunished massacre, we obtain a total opposition to indigenous self-determination, indigenous customary law or indigenous collective rights. And this is the vision that mainstream media, through the use of stereotypes, is inserting in majority society.

For committed journalists, appropriate coverage of indigenous issues requires a major effort in providing precise facts embedded in wider background information, as the cultural difference will not probably be overcome. Even offering accurate information, *El Universal* headlines on the Council of Elders’ decision stated: “Indigenous persons threaten to spear those who try to capture perpetrators”. This quotation, that every reader would obviously take to be a threat, only constitutes the warriors’ rhetoric. The effectiveness of this rhetoric is sustained by cases such as the 2003 killing, but “implementation” (when the Huaorani carry their threats out) is rare and, as defended in this dissertation, is strongly influenced by external actors pressurising the Huaorani territory and cultural survival¹²⁵.

In sum, the role of media in the protection of the Amazonian indigenous peoples has also been a failure. Even when the mainstream media tries to provide accurate

¹²⁴ Supra note 119, at 18.

¹²⁵ During my participation in the Permanent Forum on Indigenous Issues, I was invited to take part in the attack on the labourers working on the building of the road to the Block 31, that was supposed to take place during the month of June. Up to date (July, 10th), no attack has been launched and this threat stands as a rhetorical menace from a traditional warrior society.

information, this is culturally biased and cannot match indigenous and non-indigenous imagery. Informed background knowledge is substituted with stereotyping. Indigenous peoples' access to the public sphere is therefore not achievable through mainstream media.

Although it is clear that use of the media could be a valuable tool of self-promotion and self-representation for indigenous groups throughout the world, the Huaorani case shows that media usage is not a black and white issue. Conflicts of interest, lack of basic background knowledge, the inescapable stereotyping and a lack of impartiality makes the quest for increased media coverage one of limited use. While indigenous peoples do in some cases manage to convey part of their culture to the rest of society through media channels, what is the use if media manipulates the information into a 'society-friendly' format which only serves to reinforce the existing, factually incorrect stereotypes that indigenous communities are seeking to replace? We come therefore to the sad conclusion that indigenous peoples will find little satisfaction or success in attempting to join the world's current mediascape until mainstream society is ready, willing and open to the idea of replacing its long established vision of indigenous peoples. Would other 500 years be necessary?



2.3 The International Indigenous Movement: Proposals from a Human Rights point of view

Given the failure of all the actors involved so far, what are the instruments that can protect indigenous peoples in isolation in the Ecuadorean Amazon? Would the international community assume the role of pushing the actors to grant efficient protection to uncontacted indigenous peoples? Which would be the proper measures to take? And, finally, would initiatives be effective and arrive on time to preserve the last isolated cultures in the forest?

The international human rights law and the indigenous movement dealing with it seem to be the only door yet to be knocked on. Otherwise, indigenous peoples in isolation would have to choose, even without being aware of it, between physical extermination

or survival through integration, thus losing their culture. But also within the international human rights indigenous movement is it necessary to raise attention about the situation of the peoples in isolation, that still remains unvoiced.

2.3.1 Universality of Human rights, even for indigenous peoples in isolation. Legal instruments

The international community should, firstly, assume the existence of uncontacted indigenous peoples, who are not even mentioned in any existing instrument. Secondly, the protection of instruments already available to indigenous peoples should be spread to these threatened populations. And, finally, the necessary mechanisms should be provided to respect their decision of remaining isolated.¹²⁶

Before analysing the specific instruments and rights to be implemented, there are two general and related issues: the universality of human rights and the question of representation. Human rights, as stated in the 1948 Universal Declaration of Human Rights and later reinforced in the 1993 Vienna Declaration, have a universalist vocation. Human rights emanate from the dignity of the person and affect all aspects of law, including new legal developments emerging from historical evolvement. Consequently, we can assume that human rights also protect indigenous peoples in isolation, although they ignore it. Secondly, the uniqueness of peoples in isolation affects the issue of representation. These populations must be represented by some organization with an active presence in the international sphere although, obviously, the organization can not ask for the isolated indigenous' consent.

There are two kind of legal instruments for the international community to apply in this case. First, the whole body of covenants and protection mechanisms granting individual rights. But we are dealing here with specific instruments for indigenous peoples, consistent with their demands for both individual and group-differentiated rights. Among the latter, we can list the ILO Convention 169, the Draft Declaration on the Rights of Indigenous Peoples and the Proposed American Declaration on the Rights of Indigenous Peoples. Today, international institutions show a special sensitivity about

¹²⁶ Mikel Berraondo, *Pueblos indígenas no contactados ante los derechos humanos*. Supra note 63, pp. 59-103.

indigenous peoples and are engaged in developing protection mechanisms that states seem reluctant to accept.

Among them, however, the ILO Convention 169 is a rather "successful" treaty, ratified by 17 states¹²⁷. Some national constitutions, such as that of Ecuador, have incorporated ILO principles into their plurinational constitutions. The 169 Covenant establishes the responsibility of the states and their duty of setting special systems to protect indigenous peoples' human rights. Its due implementation would also engage the Ecuadorean state with the recognition of traditional values, environmental rights, property of the land and management of natural resources. The vague terms included in ILO 169 have, however, been widely developed through communiques issued by the Expert Committee, usually aligned with the indigenous peoples' interests.

The Draft Declaration on the Rights of Indigenous Peoples, as a tool to protect isolated indigenous peoples, offers some deficits but many opportunities. Firstly, a declaration is not enforceable. Secondly, this declaration is yet to be adopted. Thirdly, there is some controversy about who is the subject of the rights. The Draft Declaration uses the criteria of self identification, which states strongly oppose. In the Tagaeri-Taromenane case, this criteria would, again, have to be interpreted by supportive organizations due to the isolation of the indigenous peoples. Regarding the possibilities, as mentioned in the previous chapter, some of its principles are slowly becoming a part of international customary law. Similarly to the ILO Convention, the Draft Declaration recognises the full enjoyment of human rights, the principles of equality and freedom, and rejects any kind of discrimination. It would also grant the right to culture and insist that every indigenous individual has the right to a nationality¹²⁸. The declaration rules against ethnocide and cultural genocide¹²⁹ and recognises the collective and individual right to

¹²⁷ States that have ratified the ILO 169 Covenant are Argentina, Bolivia, Brazil, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, The Netherlands, Norway, Paraguay, Peru and Venezuela.

¹²⁸ Article 5.

¹²⁹ Article 7: Indigenous peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for: (a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities. (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources; (...) (d) Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures.

maintain and develop their distinct identities¹³⁰. In all, the Draft Declaration insists both on individual and group differentiated rights and constitutes an appropriate standard to measure against the Taromenane case.

Finally, since 1997, the Inter American System of Human Rights is working on the travaux préparatoires of the Proposed American Declaration on the Rights of Indigenous Peoples. The declaration states the apolitical character of the term "peoples" and accepts the criteria of self identification, as well as most of the principles of the other declarations. The Inter American system is the most favourable institution in the world to promote indigenous peoples' human rights. Both the Commission and the Court have recognised indigenous peoples' rights in their reports and sentences.

In sum, once the specific instruments granting human rights to indigenous peoples in America have been discussed, we see how the ILO Convention is the only working instrument up to date. As Ecuador is one of the signatory states, it is bound to comply with its principles and it can be held accountable. As such, the ILO Convention should be used to much greater effect in order to encourage the Ecuadorean state to fulfil its commitments.

2.3.2 Specific rights to be applied

Indigenous peoples, including indigenous peoples in isolation, enjoy specific rights due to their special needs. Rights to self determination, territory and culture, as well as the principle of prior, free and informed consent, are aimed at ensuring indigenous peoples' equal participation in national and international spheres, after centuries of discrimination and marginalization.

The right to self-determination would be mainly realised by respecting the decision of indigenous peoples to remain isolated. In this case, the application of the right to self-determination would consist of the complete exercise of this right, as the state should protect the existence of political systems with territorial control on a part of the national

¹³⁰ Article 8. Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.

territory. Self-determination might prevent external forces, such as the transnational companies, to violate these peoples' rights. Self-determination, as well as the establishment of proper coordination mechanisms to hold accountable to indigenous themselves, would ensure indigenous control over indigenous territories, resources, institutions, social orders and cultures

For indigenous peoples, the right to environment is strongly linked to the right to life, meaning both the origin of life and the social, economical and spiritual wrapping of life. Traditional forms of living cannot be developed without environment. In the case of indigenous peoples in isolation, their symbiosis with nature is complete and survival depends entirely upon it. Any slight change in the environment impacts their lives, making the need to protect their traditional territories absolutely vital. Most of the violence that they have suffered has been caused by environmental threats, due to the exploitation of natural resources and environmental knowledge.

The right to culture includes the rights to language, to religious and cultural practices, to education and traditional knowledge¹³¹. To grant indigenous peoples in isolation the right to culture is necessary, first, to ensure the survival of their culture. These groups, composed of a few individuals, are highly vulnerable as are their cultures. The culture, being a collective identity, also constitutes a right to be protected from genocide. Prohibition of genocide, as explained before, is considered a *ius cogens* principle. It is included in the Draft Declaration on the Rights of Indigenous Peoples¹³². Consequently, by applying the terms of genocide crime, the international system should be involved in the prosecution of such crimes.

The right to exist is a right of *ius cogens*. States have to protect the existence of the isolated, and prevent and punish genocide. The Convention against genocide obliges all states to adopt the necessary measures to prevent and prosecute incidents considered to be genocide. Actions against the isolated that threaten their right to exist could therefore perhaps be considered genocide,

¹³¹ The right to protect traditional knowledge is a controversial right, related to the right to intellectual property and involves, basically, the pharmaceutical industry. There is a debate between the capitalist notion of development and the special protection needed by indigenous peoples to preserve their culture and survival. It remains under discussion if the protection of traditional knowledge would belong to the human rights field or the private legal sphere.

¹³² Article 7.

Prior, free and informed consent stands as a basic principle in all relations between indigenous peoples and other actors, such as states or transnational corporations. Globalization processes have led to the exploitation, pollution and abuse of traditional territories. The principle of consent aims to stop abuses and implies agreement before starting the extractive activities as well as the subsequent profit sharing. The 1993 Vienna Conference¹³³ set the scene for this principle and pointed out that the implementation of development projects was not a justification for limiting human rights. Several international institutions, such as the Economical, Social and Cultural Rights Committee and the World Bank Group have encouraged the application of this principle. In the case of indigenous peoples in isolation, who have freely decided to remain hidden, it seems unnecessary to ask for their consent as they have repeatedly stated their rejection to oil and logging intruding companies. In addition to that, any intended contact would produce a cultural genocide, might also cause a physical genocide by the spreading of western diseases and would constitute a violation of the right to self-determination.

We have seen how the international indigenous human rights movement have some legal mechanisms and has developed a specific corpus of rights for indigenous peoples. All these instruments, both the ratified as well as the declarations yet to pass, are a first step to tackle the situation of indigenous peoples in isolation. As a quick reaction, the Special Rapporteur has showed his interest on this relevant and urgent case and a country visit to Ecuador is under consideration. By pressurizing the government, some measure could be taken to protect the Intangible Zone and, therefore, to the Tagaeri and the Taromenane that still survive in that territory.

¹³³ Viena declaration and plan of action (1993) First part, paragraph 10. UN Doc. A/CONF.157/23, July 12th 1993.

CONCLUSIONS

Indigenous peoples in isolation, living beyond the last frontier of colonization, have rights. These rights cannot be enjoyed, however, because the mere existence of such indigenous peoples represents a nuisance for actors with conflicting interests in the use and abuse of the world's rainforests. National and international protection systems offer the necessary mechanisms for them to enjoy their right to self-determination. But these tools are not being implemented because the presence of isolated indigenous peoples disturbs everybody and the effective recognition and protection of their rights would stand as an obstacle for obtaining gross economic profits. Facing loss of income and claiming the need for development, mainstream society dismisses isolated groups by categorizing them as stereotypes, depicted through mass media. Provided that isolated peoples have freely renounced the struggle for their rights by exerting self-representation, someone else has to raise their flag, establish it in the proper environment and wave it vigorously until protective measures are implemented. This suitable environment, to the only hope left, is the indigenous international human rights movement and its hosting United Nations agencies.

Today, the nation-state is the framework where rights are granted, implemented, and protected. In the case of indigenous peoples' rights, the Ecuadorean state is the framework where the rights are granted but barely implemented and never protected. However, the simple fact of conceding rights, although insufficient, constitutes a major achievement of the indigenous organizations. This success has only been possible due to the organised indigenous movement on the national, regional and international stages. The movement, struggling since the 1970s, benefited from international developments following the collapse of communism. The spreading of globalization has produced the blurring of national boundaries and the acceptance of new international actors such as the indigenous peoples. Globalisation has also induced neoliberal governments to recognize the plurinational character of their states. In this context, the adoption of plurinational constitutions stands as the most important attainment of indigenous peoples' historical struggle. However, globalization is a double-edged sword and, while rewarding identity politics, it also opens national frontiers for unaccountable Western transnationals to exploit natural resources and populations through the world. Globalisation has put the Amazon basin at risk and, therefore, threatens the original

dwellers. Would the rights extracted from the state thanks to globalization constitute a useful mechanism to protect Amazonian contacted and isolated indigenous peoples from globalization?

Historically, constitutions have played a limited role in Latin American democracies, as the *coloniality of power* has ensured the enjoyment of liberal rights to the national elites, while indigenous peoples remained outsiders to the public sphere and were even dispossessed of citizenship. Thus, the adoption of a plurinational constitution, representing a significant step, also has to be regarded as a limited accomplishment. Once rights are granted, it is necessary to develop legal norms, implement the precepts and enforce their compliance. The Ecuadorean state, so far, has neglected these responsibilities.

However, the 1998 Ecuadorean constitution does recognize the diversity of nations within the national boundaries, thus granting collective rights, and entitles indigenous peoples to exercise the "self" policy: Self-determination, self-identity and self-representation. The right to self-determination is understood as the exercise of autonomy, rather than secession. Thus, the constitutional recognition of indigenous authority as well as indigenous customary law allows the practice of this right. Self-determined indigenous peoples are entitled to enjoy and promote self-identity when their collective rights are granted. By free deployment of their culture, use of their language or practice of their traditional beliefs, the endurance of their cultural distinctiveness as peoples is ensured. Finally, indigenous peoples are increasingly able to participate in the processes affecting their lives by using their own voices in the public sphere, both at the institutional level and in the media environment, so that the right to self-representation closes and tightens the circle of the "self" policy.

The granting of the "self" trio remains controversial and its improper implementation has produced precisely the effects that it was trying to avoid. This is the case of the Taromenane killing in 2003. Advocating for self-determination and collective rights when the appliance of indigenous customary law has led to the release, unpunished, of a group of indigenous assassins, does not seem an easy task.

I have showed that collective rights aim to redress indigenous peoples' historical discrimination and level them with the mainstream society. Given that individual rights have not been useful for indigenous advancement, the fostering of group-differentiated rights stands as a necessary measure to ensure the survival of indigenous culture. Group-differentiated rights do not oppose individual rights and every plurinational constitution contemplates the establishment of mechanisms to make them compatible. The 1998 Ecuadorean constitution also announces the creation of coordinating bodies between the national legislation, the international human rights norms and indigenous customary law. However, seven years later, these mechanisms remain to be developed. Equally, there is a major error in the adjudication of the Ecuadorean case. This massacre stands as a genocide as the purpose of the perpetrators consisted of eliminating an ethnic group. This crime should therefore not be included within the competences of the indigenous customary law, which is only competent for conflict resolution within the communities. Consequently, I argue, the state is responsible through omission and lack of commitment in fulfilling its duties.

Once the case, albeit unconstitutionally, was adjudicated to the indigenous Council of Elders, they also perverted the purpose of customary law due to numerous inconsistencies in the appliance of the norms. For future developments, it could be interesting to consider the accountability of indigenous authorities before their own community and the national legal corpus. In sum, there is a major failure of the law, both national and customary. The inappropriate implementation of what was primarily aimed to promote fairness between groups lead to the annihilation of divergent voices.

Confusion is a distinctive characteristic of the Taromenane case, at least when depicted in the media. And media is a prime source for obtaining information. Even the report presented before the Permanent Forum on Indigenous Issues to raise awareness of isolated groups in the Ecuadorean Amazon is, at some stages, a contradictory document. Confusion and misunderstanding surround mainstream society interpretation of the physically and culturally remote indigenous groups in the Amazon. Sadly, the lack of information and understanding makes the use of stereotypes inevitable for dealing with this case. Isolated or recently contacted indigenous peoples, in the imagery of mainstream society and the western audience, move from stereotype to stereotype, from the noble and ecological primitive to the savage Indian. Equally, the use of stereotypes

reinforces national society's imagery. Majority society builds the "self" in opposition to the "others" and these stereotypes are difficult to eliminate. At the most, they slowly evolve to adjust to new reality. Recently, the debate about stereotypes has arisen when indigenous peoples have taken advantage of outsiders' stereotypes to present an essentialised vision of their culture that allows them some political or economic advancement. These cultural representations are usually successful before international audiences but national publics remain sceptical. What may seem "authentic" for unaware foreigners is subject to controversy within national societies, which are biased by racist and stereotyped approaches to indigenouness.

The prevalence of stereotypes in national society perverts indigenous self-representation before mass media. Today, information and communication technologies allow the natives to establish international alliances through partnership and reach international audiences with their artistic products, such as music or cinema. However, self-representation in the public sphere requires flexibility to meet mainstream expectations, without betraying grassroots demands. Indigenous representatives have learnt to move in different scenarios, targeting diverse audiences, by using specific rhetoric that they previously had to learn to be able to navigate the stereotypes. However, when the situation depicted in the media is not strategically prepared, as in the 2003 killing, a proper coverage of the event is unattainable. The media, in this case, plays a harmful role that does not contribute to the protection of endangered isolated peoples.

Given that all actors involved in the Taromenane case have failed, the human rights international movement stands as the last opportunity of survival for the indigenous in isolation in the Ecuadorean Amazon. But this case also represents a challenge for them. It requires imaginative and unconventional initiatives that may challenge human rights working procedures: Who speaks in the name of those who have chosen to be hidden and voiceless? Do they want to be represented by somebody they do not know? What instruments can be used? And, if they ever decide to leave isolation, would they agree with having been represented?

During the last few decades, the United Nations framework has developed instruments and institutions to deal with indigenous peoples' demands. Starting in a human rights framework, within the Working Group on Indigenous Populations, indigenous activists

have managed to open the scope of the topics under review and create the Permanent Forum on Indigenous Issues at a high rank within the UN system. Although the UN developments only meet results in the long term, this environment stands as the only remaining possibility for indigenous survival.

Proposals for granting protection to the indigenous peoples in isolation in the Ecuadorean Amazon, given that any specific mechanism mentions the existence of these peoples, would include the spread of human rights universality also to the indigenous peoples in isolation, assuming their representation, given that it is impossible to obtain their consent. The most useful instruments would be the ILO Convention 169, the Draft Declaration on the Rights of Indigenous Peoples or the Proposed American Declaration. And the rights to be applied: the right to self-determination, the right to environment, the right to culture and the right to prior, free and informed consent. Apart from these urgent measures, it is necessary to advance towards the building of a protection system that ensures the specific application of human rights adapted to their cultural and social reality.

Imminent dangers require immediate answers. And, given that UN developments are generally slow, pressurizing the Ecuadorean government through the Special Rapporteur would lead to the demarcation and effective protection of the Intangible Zone. This measure would stand as a temporary solution while other mechanisms are established to meet the threats caused by oil and logging workers, the peasant settlers and the interethnic conflicts.

By bringing this case to the UN, I argue, the authors of the report¹³⁴ have tried to shake the consciences of indigenous representatives. Although the primary purpose consists of raising awareness within the human rights community in order to take action and prevent a final genocide, there is a secondary objective. It consists of a challenge and a novelty within the international indigenous movement to invite their representatives to exert self-criticism, to tackle internal contradictions and redress the wrongs.

¹³⁴ M.A Cabodevilla & Mikel Berraondo (ed.) *Pueblos no contactados ante el reto de los derechos humanos: Un camino de esperanza para los Tagaeri y los Taromenane*. CDES-CICAME. Quito, 2005.

Today, indigenous peoples in isolation are suffering the same threats that decimated indigenous peoples in the 16th century, during the Spanish invasion and conquest. How can such colonization be accepted within a so-called civilized world that has developed national legal systems and even universal human rights instruments, if it leads to the extermination of the original inhabitants of the territory?

No matter the existence of legal mechanisms in the national level, the silent indigenous peoples in isolation have been abandoned by all actors involved. Remoteness implies a cultural distance and the indigenous and non-indigenous worlds are too far away from each other to find a meeting point in the public sphere and the media environment. Before the silent become ghosts, the international human rights mechanisms must make an last effort at protection. In the hope that, once again, the global will help the local through the shaping of the national level. The ultimate attempt to preserve the right to silence has started.

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