1. Indigenous peoples as emerging subjects of international law

During the past two decades, increasing international attention has been drawn towards the development of an operational legal regime covering the rights of indigenous peoples. The post-war decolonization process has gradually brought about independence and international sovereignty to most overseas colonies, but a large number of indigenous peoples in autonomous regions, territories, or archipelagos have been left behind in this development. In the decolonization era, autonomy for these peoples was considered as a matter of purely national domestic concern and thus not subject to international legal regulation.

This general attitude is, however, not softening under the influence of emerging human rights. The so-called "first generation" of human rights was quite obviously targeted towards recognition of individual rights, but later generations of human rights have focused on collective rights, including the right to political and economic self-determination for indigenous peoples.

Viewed in a historical perspective, the constitutional position of indigenous peoples has alternated according to the variations in ideological perceptions of the relation between man and society. In the inter-war period of this century, the status of the state and the importance of statehood gained tremendous momentum after the emergence of the new democratic states in Europe and the rearrangement of European state boundaries after World War I. Legal protection of human rights and national minorities was now introduced and largely recognized in the international arena as a natural task incumbent on every modern state. Thus, the prevailing view in this period was that indigenous peoples should be protected in their own culture and life-style and supplied with roughly sufficient political and economic means to maintain their traditional forms of government. This view expressed the liberal trends in our new rational concepts of mankind in the early 20th century and led to the enactment of a number of self-government arrangements for indigenous peoples in the "fourth world". One could argue that this view tended to expose indigenous peoples as "noble savages" and anthropologically attractive samples of the dark past of human evolution, and that it reflected an indulgent, yet still racist and imperialistic, attitude towards aboriginal peoples. Nevertheless, indigenous peoples were in fact recognized at the time as collective subjects of national law with inherent rights to protection and self-government.

However, the post-war international attention to decolonization radically altered this affirmative approach, almost reversing it and calling for the assimilation of minorities and indigenous peoples into the patterns of modern industrial society. In this period, consequently, aboriginal rights were generally abolished and replaced by highly ambitious programmes of integration of all nationals.

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- regardless of language and culture - into the new industrialized world with its modern (western) values. This reverse development was the structural response by the metropolitan colonial powers to the disintegration of the former colonial territories. For this reason, the principle of "self-determination" was now conceived as applying only to former (overseas) colonial countries, thereby excluding indigenous peoples from this context.

And now, in the present and past decade, demands for "revitalized" indigenous autonomy have been voiced by the so-called "4th world" - also on the international level. This may be seen not only as a reaction against the previous national policies of integration and assimilation, but also as an expression of new emerging perceptions of indigenous peoples' legal status in the human rights perspective. It is maintained, for instance, that at least a significant level of political autonomy for indigenous peoples will be required for full and final completion of the post-war decolonization process.

However, the case for the overseas colonies in gaining their independence forty years ago seems less complicated than the case for most indigenous peoples today. Extensive autonomy for indigenous peoples in remote territories is largely felt as a threat to the integrity of the states to which these territories belong. Many countries today include a number of more or less integrated ethnic minorities, and some younger states are even historically composed of an ethnically hybrid population. In most of these countries, any attempt among their aboriginal or indigenous peoples to achieve particular arrangements of political autonomy is most often rejected or opposed because of the possible disintegrational effects this may have on society if invoked by other ethnic groups. Therefore, endeavors have been made to define the substance and in particular the beneficiaries of the right to self-determination, so as to distinguish these from other groups or minorities who are obviously not considered to be entitled to anything resembling self-determination in the international legal sense of this principle. As a result of this, definitions have been attempted for indigenous peoples as opposed to minorities, but no final formula has yet reached overall consensus in this respect.

2 The international approach

In 1971, ECOSOC authorized the Sub-Commission on Prevention of Discrimination and Protection of Minorities to conduct a comprehensive study of the problem of discrimination against indigenous peoples, and the Sub-Commission subsequently appointed Equadorian Jose Martinez Cobo to carry out this study. After 14 years of work, in May 1985, Mr. Cobo submitted his final report to the Sub-Commission. This study is still today considered to be one of the most elaborate and comprehensive examinations of the problems facing indigenous peoples, and will undoubtedly be given much international attention in the years to come.

In 1977, the First International Non-Governmental Organizations Conference on Discrimination against Indigenous Peoples of the Americas was held in Geneva. The following year, the World Conference to Combat Racism elaborated further on the rights of indigenous peoples, and in 1981 the Second NGO Conference was held, also in Geneva, calling for the establishment of a special UN Working Group on Indigenous Peoples, which was created in 1982.