International Protection Mechanism of Indigenous Peoples

Anatoly Kovler*

1. Introduction

The international legal protection of indigenous peoples is a result of a recognition *de facto* or *de jure* of a legal capacity of all nations and peoples regardless the fact that this obvious issue is sometimes disputed by "state souverenists". This protection has become “an integral part of the international protection of human rights and, as such, falls within the scope of international cooperation”.1 The Universal Declaration of Human Rights (1948) proclaimed in its Preamble “a common standard” of achievement of rights and freedoms “for all peoples and all nations” and bound the States “to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction”. Concerning the latter issue, it is also useful to recall that Chapter XI of the United Nations Charter (“Declaration regarding non-self-governing territories”) engages member States not only to ensure the political, economic, social and educational advancement of these peoples, but also “to develop self-government” (Article 73).

Unfortunately, in spite of an impressive number of international declarations and conventions that concern the legal protection of indigenous peoples, their implementation in practice is far from being really satisfactory because of a number of natural or artificial obstacles.

* Judge of the European Court of Human Rights (Email: anatoly.kovler@echr.coe.int).

2. Terminological Discipline: “Indigenous People” or “National Minority”?

The first serious obstacle to an effective implementation of international standards for the protection of the collective rights of indigenous peoples is the terminological qualification of the subjects and objects of the regulation. The problem is not at all an academic or theoretical one. A convincing example of a practical importance of this issue is given by the UN Human Rights Committee’s decision in the case of Angela Poma Poma v. Peru (27 March 2009). In this decision for the first time the HRC expressly confirmed the principle of a free, prior and informed consent of a local population in cases where their rights are affected by the resource exploitation. But at the same time the HRC adhered to its classification of indigenous peoples as “minorities” pursuant to Article 27 of the International Covenant on Civil and Political Rights (ICCPR) instead of treating them as “peoples” pursuant to Article 2 of the ICCPR, thus “making indigenous peoples suffer a setback of their long-standing struggle for the protection and promotion of their right to self-determination”. As to the practical consequences of this approach the HRC recognised Ms. Poma Poma's rights as an individual, representative of a “minority”, and not the Aymara people's collective rights. Another significant aspect is that the case was decided by the UN body after the adoption by the General Assembly of the UN Declaration on the Rights of Indigenous Peoples on 13 September 2007!

Timo Koivurova from University of Lapland (Finland) rightly observes: “It is important to distinguish evolving indigenous peoples’ law from minority protection. Even if there are commonalities between indigenous peoples and minorities, it is the former that have a deeply rooted historical connection to their traditional territories. Consequently, the rapidly evolving specific standards for indigenous peoples are built mostly on collective human rights (such as land rights) – rights that in international law can be upheld only by the community. These collective human rights can be contracted with minority rights, which can be described aptly as individual human rights even though most of them can be exercised only in community with other minority members”. It is obvious that this issue of notions deserves more accurate definitions. Relevant attempts were made for the purpose of regional studies or for a development of wider con-

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