

Summary

Slavomir Rudenko: Protection of Indigenous Peoples' Rights under Contemporary International Law (Dissertation Thesis). Law Faculty of Charles University, Prague, 2012

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Key words: indigenous peoples; minorities; colonialism; native; international customary law; protection of human rights; collective rights; right to self-determination; non-discrimination; cultural integrity; right to lands and natural resources; right to participation; free, prior and informed consent; monitoring mechanisms, international complaint procedures; implementation of obligations; national jurisdiction; pluriculturalism

The dissertation thesis addresses the issues of the status of indigenous peoples as reflected by contemporary international law. In this scope, it aspires to present the characteristic features of the respective international order, to draw an analysis of both its universal and regional instruments and identify the subject matter in the light of the ongoing academic debate and the most current practice of international law. Against the background of historical processes of degradation, suppression, denial of human rights and discrimination of indigenous peoples it is the author's aim to highlight the rising interest of the international community, taking shape over the recent decades, to address the needs and the protection of indigenous peoples. Stemming from this qualitatively new approach of the international law the development has given rise to the creation of a specialised subsystem within the international human rights protection, established through application and creative expansion of the general system of human rights protection. The common goal was to address a distinct category of the population of states linked together by a common set of characteristic features.

Populations, referred to as indigenous, native or aboriginal to their ancestral lands and traditional territories have become the focus of international law at a point where instruments, rendered by individual states were barely to be considered sufficient for the preservation of the physical existence, the social characteristics and the distinctive features of the ways of life of communities of indigenous origin. Quite to the contrary, the response

of the international community comes in consequence of the assimilation policies applied by states in the course of many centuries. The actions emerging from the system of international law have had the crucial aim to preserve the ethnic and the cultural diversity of the mankind.

By no means does the thesis aspire to offer a final position to the researched topic. This is particularly due to the wide extent of interrelated aspects and many possible ways of approaching the same questions. On the basis of his research the author has, therefore, chosen to approach the matter by dedicating his main view to the general system of indigenous peoples' protection, created by international law. On this very fundament the emphasis is being placed on the explanation of the position of the respective issues in the contemporary system of international law, whereas the attention is drawn to possible tendencies in the further development of issues relating to the position of indigenous peoples under international law. Another important aspect is to be seen in regard to a thorough analysis of the activity of various decision making bodies of both the universal and the regional system of international law. There is also a number of leading cases which can be seen as important examples of applying international law in the national jurisdictions showing the possible ways of a successful implementation of obligations arising from international law within the national sphere.

Since further development of international law with regard to indigenous peoples' rights is essentially dependent on the willingness and the readiness of states to accept and further strengthen the international system currently in place, the thesis accentuates the progressive approach of numerous states to a positive expression of international obligations in their national laws. At the same time, it examines the substance as well as the various forms of implementation of these obligations through the practice of judicial and non-judicial bodies on the national level where a number of groundbreaking cases have been decided. The comparative approach to the actions of the states appears as an essential aspect when researching the rights of indigenous peoples in the global context.

Undoubtedly, the aim of the author is to point out the many persisting problems and burdensome situations, which indigenous peoples still continue to face in many parts of the world despite the existence of a progressive normative framework created by the international law. The author considers the consistent application of international standards

of dealing with indigenous issues as a vital challenge for the future. For this reason it is found to be extremely important to bring the issues pertaining to indigenous peoples also within the context of central Europe where this topic has not been dealt with to this extent mainly due to the non-existence of indigenous populations. Consequently, the author not only presents but in regard to the doctrine of international law on the territory of former Czechoslovakia also creates new terminology, approaches and comparative analyses as an outcome of both the theoretical and practical approaches of contemporary international law.

In its structure the dissertation thesis consists of 6 chapters, whilst the introduction (the first chapter) and the conclusion (the final chapter) represent two separate chapters. The four substantial chapters concentrate on covering the normative system of universal international protection of indigenous peoples (the second chapter), a detailed analysis of the substantive law relating to indigenous issues and its individual components (the third chapter), the identification of the procedural aspects of the system comprising the actions of international human rights bodies dedicated to indigenous issues (the fourth chapter) and finally the reflection of a range of regional approaches to the protection of rights of indigenous peoples as applied on the American and African continent as well as within the cross-border context of cooperation of northern European states (the fifth chapter).

The author's effort to present an up-to-date picture of the researched area may be illustrated on the wide range of literature employed in the course of research of the subject and the compilation of the thesis. Through utilising a broader range of latest publications accompanied by many authentic materials exploring the international resonance of addressing indigenous issues in the work of international organisations and other international bodies the author strives to offer the most comprehensive and actual view of the researched topic. By doing so, the ambition of the author to unfold a rather rare topic to the reader in the context of central Europe is aimed to be demonstrated.