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PEOPLE'S DIPLOMACY: A LOOK AT INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF INDIGENOUS COMMUNITIES IN ECUADOR. YASUNÍ ITT CASE

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DEDICATORY

To my people of the Republic of Ecuador, rebellious
by nature, for becoming international revolutionaries
by their own means.

ACKNOWLEDGMENT

To my parents for shaping my life, from my mother's poetic nature to my father's authenticity, to my little sisters, whose unfounded admiration for me obliges me never to let them down, to Lorena, Paula and Analiz, the family that chose me and I will always choose, to God for the light, and to Carlos, for the love.

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RESUMEN:

La diplomacia de los pueblos, como todo proceso antihegemónico revolucionario, surge de la lucha por eto recognizes derechos. A lo largo de un recorrido histórico, desde la superación del monismo al pluralismo jurídico; pasando por la resistencia durante la colonización del Abya Yala; los enfrentamientos contemporáneos de los pueblos contra sus gobiernos; apoyándose en instrumentos internacionales como refugio, este trabajo muestra la presencia intrínseca de una diplomacia diferenciada: la de los pueblos indígenas. Mostrando una nueva cara del derecho internacional, que, si bien un día fue cómplice del abuso de poder, hoy se alinea con la búsqueda de una personalidad jurídica para los pueblos en la comunidad internacional.

Palabras clave: diplomacia, pueblos indígenas, instrumentos internacionales, derecho internacional, derechos humanos.

ABSTRACT:

The diplomacy of peoples, like any anti-hegemonic revolutionary process, arises from the struggle for the recognition of their rights. Over a historical journey, from overcoming monism to legal pluralism; through resistance during the colonization of Abya Yala; the contemporary confrontations of peoples against their governments; relying on international instruments as refuge, this work shows the intrinsic presence of a differentiated diplomacy: that of indigenous peoples. Showing a new face of international law, which, although one day was an accomplice to the abuse of power, today aligns itself with the search for legal personality for people in the international community.

Keywords: diplomacy, indigenous peoples, international instruments, international law, human rights.

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INTRODUCTION

The issue of legal pluralism and the recognition of indigenous normative systems have been of great relevance in Latin America, particularly in countries with a significant presence of indigenous peoples. While the monist current of law—heritage of colonization—attempted to impose a centralized and exclusionary legal order, disregarding the rights of indigenous communities and trying to homogenize cultures, indigenous peoples, such as the Kichwa of Sarayaku in Ecuador, resisted and preserved their customs and legal traditions, which constitute a source of positive law.

This resistance and the struggles of indigenous movements have led to a gradual recognition of their collective rights, cultural identity, and own institutions in various international instruments and, consequently, in many Latin American constitutions. In the case of Ecuador, the 2008 Constitution broadly enshrines the rights of nationalities and indigenous peoples, recognizing their jurisdiction, traditional authorities, and own law within their ancestral territories, representing a significant step towards a plurinational and intercultural State.

Parallel to this legal recognition—and amidst the conflicts between the state and indigenous peoples in scenarios of resource extraction in their territories—indigenous peoples have developed their own diplomacy, based on their worldviews and ancestral practices, adapted to contemporary challenges. This diplomacy, grounded in ethnic identity and the pursuit of harmony with the natural environment, has transcended national borders, becoming a crucial tool for the defense of their rights and self-determination in international arenas.

THE PEOPLE'S DIPLOMACY: A LOOK AT INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF INDIGENOUS COMMUNITIES IN ECUADOR

CHAPTER 1

1. THE PEOPLE'S DIPLOMACY, INDIGENOUS JURISDICTION, AND ITS CONSTITUTIONAL RECOGNITION

1.1 From legal monism to legal pluralism: Indigenous law

The monist legal current, or statalist theory, emerges in Latin America as a consequence of the conquest, colonization and ongoing subjugation of native peoples. This is particularly evident through the eradication of legal systems deemed 'inferior' within the framework of a "modern state" defined by its centralized coercive authority (Bobbio, 1958). In other words, through a hegemonic process that legitimized –and legalized—a political order of an exclusionary and imposed nature, discarding any law "foreign" to the state.

Although colonial rule –in the strict sense—ended with the independentist political rebellions at the hands of the Spanish Creoles, this was not synonymous with social revolution for the native peoples (Perez, 2006). Since freedom was taken by the social groups that did not experience deprivation of it; resulting in a change in the dynamics of power, but not inequality. And so, a Nation-State emerges with inherited political and economic models, composed of "integrationist" policies that seek to homogenize society under a single national identity, without considering the cultural diversity of those who compose it (Dávalos, 2005).

And so, the implementation of liberal policies over the years has only contributed to further complicating the situation of people in Latin America. This old ideology continues to support an elitist liberal state model, where –although integrationist policies are recognized— these only result in strategies that continue to feed public policies, without noticing the incompatibility of the liberal concepts of individual equality with respect for the cultural difference of peoples (Garcia, 2009).

The concept of the state, as understood here, implies a structure in which citizens are pressured to adopt a single language, adhere to a specific cultural manifestation,

embrace particular religions, and follow specific family models. This imposition of uniformity not only limits diversity and individual expressions but also exerts a profound influence on people's daily lives, shaping their beliefs, values, and social practices.

In addition, the State assumes a central role in the creation and enforcement of laws, thus monopolizing legal production and exercising significant control over society (Llasag, 2002). This State dominance over the legal sphere, combined with the legitimate use of violence, creates an environment in which dissent is repressed, and divergent voices are silenced. Consequently, a dynamic is generated in which freedom of thought and action is restricted, and the ability of individuals to fully participate in the formation of their own identity and in shaping the community in which they live is limited (Llasag, 2002).

And yet, the people found a way to resist and avoid extinction in the face of forces aiming to 'civilize' them, establishing customs. Initially, through their continually repeated acts, conducted with a conviction of legal necessity, they considered these acts not only good but also essential for forming a common set of norms for future events (Galarza, 2002). Thus, customs ensured continuity in society, and consequently, in the legal system, founded upon a communal moral sentiment.

Implicitly, indigenous law is conceived within positive law, as an inherent source of the birth of law, consubstantial with the origin of civilization itself (Gregor, 2007). That is why it should not be considered a new law for a moment, much less a concession of benevolence from the liberal state; on the contrary, indigenous peoples are the direct descendants of the original peoples, whose particular social, economic and cultural customs and traditions constitute the origin of the current state; therefore all their practices are a source of law (Martinez, 1986).

Nevertheless, it is not until 168 years after the creation of the State that Ecuador incorporates a chapter on collective rights through the Constituent Assembly of 1998, specifically Article 97, numeral 20, with indigenous law: Ama Quilla, Ama Llulla, Ama Shua, the basis for community cohesion. As well as its Article 191, which guaranteed the authorities of indigenous peoples the exercise of their functions of justice through procedures and norms proper to their people, as long as they were not contrary to the constitution (Ecuadorian Constitution, 1998).

Legal pluralism refers to the simultaneous existence of diverse legal systems within the same social context, challenging the Eurocentric view of Western law (Cruz, 2008). A fundamental concept for both anthropology and the sociology of law, as it

challenges the sole and legitimate validity of positive state law. Where legal sciences require the assistance of other disciplines to achieve effective and inclusive administration of justice; a reality that becomes even more essential when it comes to identifying and determining ethnic factors (Masapanta, 2009). Therefore, if a state is made up of different peoples, a state must guarantee their participation.

On the path towards the construction of a true democracy, the recognition by the Ecuadorian State of its intercultural and plurinational character represents a great advance in the constitutional consolidation of the rights of the historically marginalized and excluded peoples of Ecuador (Masapanta, 2009). The implementation of this recognition reveals the state's commitment to overcoming the profound and deep-rooted vices of the past, such as exclusion and racism, which for so long have oppressed these communities. Fully assuming the plurinational and intercultural character implies undertaking a genuine process of understanding, knowledge and respect for the other cultures and peoples whose contributions, traditions, customs and conceptions have been systematically rendered invisible and undervalued throughout history.

When indigenous peoples or nationalities are recognized as subjects of law, their status transcends their merely factual and legal condition, to acquire the status of subjects holding fundamental rights. Where, as Raul Llasag (2002) tells us, the opportunity arises to exercise other rights, such as the power to maintain and reproduce their own social structure and authority; recognition of their territory; participation in the management, use, enjoyment and preservation of renewable natural resources present in their territory; the right to be consulted on projects and activities for the exploration and exploitation of non-renewable resources, as well as to benefit from them; participation through representatives in state institutions; safeguarding and protecting traditional practices; and the power to legislate and administer justice. This recognition implies a significant change in the perception and treatment of these groups within the legal and social framework. By being considered subjects of rights, they are granted a position of dignity and respect that allows them to claim and exercise their fundamental rights fully and effectively. Moreover, this recognition implies a commitment by the State and society in general to guarantee and protect the rights of these groups, as well as to promote their participation in decision-making that affects their lives and communities.

With this clarification, we can begin to define Indigenous law, for which we will use the concept given by the Confederation of Nationalities of Ecuador, made official through the information bulletin of May 2001, where:

For us Indians, Indigenous law is a living, dynamic, unwritten law, which through a set of norms, regulates the most diverse aspects and behaviors of community living. Unlike what happens with official legislation, Indigenous legislation is known by all the people; that is, there is a socialization in the knowledge of the legal system, a direct participation in the administration of justice, as well as in the rehabilitation systems that guarantee living in harmony.

Thus, through a long process, stemming from the antecedent of conquest, colonization and neo-colonization, that legitimized the abuse of law; setting aside the homogenizing monist current of thought, which sought to impose an inherited system from the oppressor; moving away from the reductionist thesis of indigenous law as mere habits, today the direct descendants of our native peoples have completely debunked those erroneous and derogatory ideas of indigenous law as synonymous with savagery or disorder. On the contrary, today they are subjects of historical law, to whose customs we owe ourselves as a society, which today, constitutes a source and branch of positive law. Leaving us a message: that the debt is irreparable, makes pluralism obligatory.

1.2 A recognition of Indigenous jurisdiction based on the Ecuadorian Constitution of 2008

Currently, we have set aside that monocultural Western-centric constitutionalism, to change it for a pluricultural, plurinational and intercultural constitutionalism; that is, of a shared culture (Masapanta, 2009). Historical struggles of indigenous movements have achieved the recognition of their collective rights, their cultural identity and their own institutions in constitutions; thanks to international instruments that we will analyze later.

In this analysis, the focus will be on the Ecuadorian legal system, where the Constitution of the Republic of Ecuador (2008) stands as the normative instrument that enshrines and guarantees the collective rights of the indigenous nationalities and peoples of the country, doing so more broadly and comprehensively than in the past (Baltazar, 2009).

Starting from Article 1 of the Constitution of the Republic of Ecuador (2008), (CR, 2008 henceforth), the fundamental principles of the Ecuadorian State are established, defining it as a constitutional state of rights and justice, committed to respect for human rights and the rule of law. The unitary and intercultural character of the country reflects territorial unity and respect for ethnic and cultural diversity. Plurinationality

recognizes the coexistence of diverse nations and peoples within the Ecuadorian territory, as well as its republican organization, decentralized system and sovereignty.

Interculturality is the dialogue between epistemic differences that, with the existence of hegemonic positions, are cognitive struggles that have to do with the way different peoples make use of diverse ways of producing and applying knowledge, to relate to each other, with others, with nature, with the territory, with wealth (Guardiola-Rivera, 2008).

It is understood that considering and accepting these proposals will not result in the formation of new autonomous states or political entities within Ecuador's territory, a misinterpretation initially connected to the first initiatives presented by the different indigenous nationalities and peoples of the country (Baltazar, 2009). Hence, these proposals do not aim to undermine the territorial integrity of the Ecuadorian State. Instead, they seek to enhance the collective rights and representation of these communities within the current constitutional and legal framework.

Within this same line, the fundamental charter contemplates the national symbols of Ecuador such as the flag, the coat of arms and the national anthem, establishing Spanish as the official language of the country, while also establishing Kichwa and Shuar as official languages for intercultural relations. As well as other ancestral languages as an official for Indigenous peoples in the areas where they live states Article 2 (CR, 2008).

From this perspective, the use of the languages of the nationalities and peoples in all their activities is recognized and ensured, thus preventing any form of contempt or ridicule by certain groups, which used to express disdain by demanding that they "speak Christian" (Baltazar, 2009).

It is necessary to highlight within the framework of this normativity, that for the respect and full exercise of cultural diversity, the State recognizes all the rights that are recognized for other citizens to members of indigenous peoples, prohibiting all forms of discrimination against them (Art. 11.2), but furthermore, in order to materialize that cultural diversity, it recognizes specific rights relative to indigenous peoples and nationalities as collective subjects of rights (Art. 10) (Masapanta, 2009).

Another fundamental article for the rights of indigenous peoples in Ecuador is Article 57. Where a series of collective rights for indigenous communes, communities, peoples and nationalities is recognized and guaranteed, by the Constitution and international human rights instruments. This enshrines a broad catalogue of collective rights for Indigenous peoples and nationalities, recognizing their ethnic and cultural

diversity. It guarantees their right to their own identity, traditions, social organization and non-discrimination, with reparation for racism. It recognizes the inalienable ownership of community lands and ancestral territories, as well as rights over renewable natural resources and prior consultation in the case of exploitation of non-renewables. It grants authority in the management of biodiversity, the natural environment and ancestral forms of coexistence and self-government. It prohibits their territorial displacement and protects their traditional knowledge and wisdom. In short, it comprehensively safeguards the worldview, culture and age-old ways of life of native peoples (CR, 2008).

Following, Article 60 (CR, 2008) specifically recognizes the right of ancestral, indigenous, Afro-Ecuadorian and Montubio peoples to constitute specific territorial circumscriptions for the preservation of their culture. This implies the possibility of establishing territorial divisions with a certain degree of autonomy and self-government, to safeguard and promote their traditions and ways of life. However, the law regulates the requirements and mechanisms for the formation of these circumscriptions.

In addition, this same article (CR, 2008) recognizes the communes with collective ownership of the land as an ancestral form of territorial organization. This means that the customary right of these communities to maintain communal ownership of their lands is respected and protected, as part of their historical traditions and social structures.

On the other hand, Article 171 (CR, 2008), which is part of Chapter 4, Second Section, entitled "Indigenous Justice", provides for the recognition of Indigenous jurisdiction and its exercise by the authorities of Indigenous communities, peoples and nationalities, based on their ancestral traditions and their own law within their territorial sphere; guaranteeing the participation and decision-making of all in the exercise of this age-old, collective, permanent, dynamic, fair, oral and free jurisdiction (Baltazar, 2009).

In this sense, the Indigenous authorities will apply their own norms and procedures for the resolution of internal conflicts; while the State undertakes to ensure that the decisions of the Indigenous jurisdiction are respected by public institutions and authorities, through mechanisms of coordination and cooperation between the indigenous jurisdiction and the ordinary jurisdiction of the State, in order to harmonize both legal systems.

Finally, Article 242 (CR, 2008) provides for the territorial organization into the Ecuadorian State in regions, provinces, cantons and rural parishes. However, it also contemplates the possibility of constituting special regimes for reasons of environmental conservation, ethnocultural, or population. Specifically, it establishes that the

autonomous metropolitan districts, the province of Galapagos and the indigenous and pluricultural territorial circumscriptions will be considered special regimes. This implies that these territorial entities will have a particular status and possibly higher levels of autonomy and competencies, in recognition of their unique characteristics and the need to protect their environment or cultural diversity.

1.3 The diplomacy of peoples within the framework of Indigenous justice

Like Indigenous law, the origin of Indigenous diplomacy dates back to colonial times, even much earlier. "Indigenous diplomacy is an old phenomenon that predates the conquest of America-Abya Yala" (Arévalo, 2017). Contrary to what one might think, throughout history, indigenous communities have maintained relationships through ancient diplomatic methods, establishing formal and informal connections across community borders, linguistic differences, social norms, and cultural customs, giving rise to lasting systems of communication and diplomatic exchange.

In the words of Jeff Corntassel (2007), indigenous peoples practiced diplomacy long before their first contact with colonial powers, sending delegations to global destinations in order to foster new alliances and friendships.

This occurred in the Americas, East Indies, Asia, and Africa. Unlike other diplomacies such as public or citizen diplomacy, Indigenous diplomacy is based on the political category of indigenous peoples, resulting from those processes of colonization and marginalization of other nations, civilizations, and states with their own economic, social, political, cultural, and religious formations (Torres, 2013).

According to Gabriel Arévalo (2017), some notable historical events include the Treaty of Waitangi of 1840 in New Zealand, where the British government recognized certain rights and autonomy to the Maori. In North America, between 1533 and 1789, the British colonial authorities also granted similar sovereignties to various Indian tribes. Additionally, the Iroquois Confederacy established alliances with Germans, English, and French before and during colonization. This confederation of six indigenous nations promoted the "Pax Iroquesa," a high-level diplomacy that facilitated agreements between ancestral peoples. During colonization, it played a crucial role as a mediator between Indigenous leaders and English settlers, signing hundreds of treaties with the Netherlands, France, England, and later with the United States, Canada, and other indigenous nations. Iroquois diplomatic influence was even reflected in the US Constitution.

Gustavo Torres (2013), on the other hand, argues that Indigenous representatives and certain UN documents agree in highlighting that the history of Indigenous diplomacy in the Organization began with the great Cayuga chief Deskaheh; who in 1923 presented himself before the League of Nations as a representative of the Six Nations of the Iroquois, carrying an Iroquois passport and a letter addressed to the Secretary-General to request justice. His goal was for his federation to be admitted as a member of the League and for a treaty signed in 1784 and ratified by King George III of England to be fulfilled. A year later, the Maori leader T.W. Ratana traveled to London to protest the non-compliance with the Treaty of Waitangi (1840) regarding Maori land ownership.

Over the years and as nation-states consolidated, indigenous diplomacy underwent a fundamental change. The ancient methods of interaction were challenged by state legal grammar, diluting indigenous territories into the national structure. With independence, diplomacy between states emerged as the norm (Arévalo, 2017). This change not only posed a challenge for indigenous communities but also offered an opportunity to adapt and find new ways to preserve their identity and autonomy in a changing and increasingly globalized world.

Faced with this new reality, indigenous peoples were forced to adapt, developing negotiation strategies with the nation-state to ensure their survival and autonomy. The 1970s and 1980s marked a turning point in this process, with Indigenous diplomacy beginning to transcend national borders and claim its rights to self-determination and autonomy in international arenas. This period of transition represented both a challenge and an opportunity for indigenous communities, who sought to find their place in a constantly changing world.

This change was framed by the critique of state indigenism and the national development model, giving rise to a resurgence of Indigenous identity and its defense. The failure of agrarian reforms also played a crucial role in raising awareness among indigenous leaders about the importance of preserving their social systems and ecosystems. The indigenous struggle increasingly focused on the recognition of their ethnic difference and the pursuit of autonomy, challenging traditional notions of the nation-state, sovereignty, and territory.

Collaboration between indigenous organizations and non-governmental organizations strengthened the internationalization of the indigenous cause and transnational activism. Advocacy networks were organized in different regions of the world, mobilizing diplomatic efforts to influence international and national politics.

Notable was the creation of the International Indian Treaty Council, which obtained consultative status with the United Nations and was recognized for its long history in representing indigenous peoples at the international level (Arévalo, 2017). Representatives of various indigenous peoples and their organizations actively participate in meetings of the United Nations and other regional bodies, with the support of numerous human rights and environmental NGOs. Although there is ethnic, regional, and historical diversity, the issues, demands, and interests of Indigenous peoples are presented similarly in international forums (Torres, 2013).

The diplomatic encounters of Indigenous diplomacy are crucial for conveying political messages embodied in summit declarations, establishing a political horizon and seeking global support for indigenous causes. These encounters not only address political demands but also reflect the self-understanding of the time and space of indigenous peoples, in addition to evoking spiritual aspects (Cruz and Arévalo, 2020).

In the 1990s, these encounters evolved from simple meetings to summits, granting indigenous peoples an international status comparable to interstate relations. This adaptation sought to consolidate political objectives, action strategies, and unity around the continental indigenous political project, in a context of seeking self-determination and autonomy (Cruz and Arévalo, 2020). These events not only legitimize the indigenous past but also evoke their times and spaces, using a diplomatic grammar that highlights the sacredness of place and the ontological conceptions of each person. From the heart of the world to the feet of ceremonial centers, these declarations reflect the connection with other worlds and the importance of natural balance according to the original laws of each community (Cruz and Arévalo, 2020).

As Gabriel Arévalo (2017) tells us, it is customary to relate the history of diplomacy with embassies and the profession, technique, and protocol of Western states. This connection has been established mainly through the theoretical production of international relations and diplomacy, dominated by scholars from North America and Europe; focused on issues that affect them as hegemonic actors in the global economy. Leaving aside historical cross-border phenomena involving peripheral actors, interactions, and meanings that have been excluded from the diplomatic historical narrative but played a decisive role in the formation and development of the world system.

Indigenous diplomacy summons all cosmic relations in its diplomatic practice and is concerned with recreating all relationships, interconnections, and interdependencies as harmonious and balanced; the ultimate goal is not the interests of a nation or people, but

the sustenance of harmonious relationships that include the survival and well-being of these peoples, their ecosystems, and their sustainable interaction. Western diplomacy understands nature and its resources as an advantage or disadvantage in the negotiation of interests, while indigenous diplomacy understands it as an immanent being in its relationships, which, by being alive and co-participating in the diplomatic act, animates the ethical duty to respect, sustain, and defend it for the sustenance of life itself. Western diplomatic protocols emanate from human rationality inspired by the subject-object relationship: salute to the flag, national anthems and military parades. Indigenous diplomatic protocols emanate from the culture of relationality, where humans – but also fire, sky, water, and celestial movements – are co-participants in the diplomatic encounter; therefore, their rituals and ceremonies include them as active and decisive participants: cleansing and harmonization ritual, fire ceremony (Arévalo, 2017).

According to Martin Cox (2008), indigenous diplomacy is the best means to achieve the objectives of Native peoples, as opposed to other approaches. State programs focused on subsistence agriculture and international cooperation, although common, do not offer secure long-term solutions for overcoming underdevelopment. Additionally, he points to the exploitation of valuable natural resources in indigenous territories as an underexplored but potentially effective way to improve their situation.

The notion of diplomacy should not be limited to a state activity but understood as a human and trans-historical practice of otherness, which occurs when different entities meet and seek to manage that difference through norms and procedures, whether constant or ad hoc. From this perspective, the study of "indigenous diplomacy" is not intended to be a mere descriptive approach to new diplomatic phenomena, but rather a contribution to the processes of resistance "from below" (Arévalo, 2017).

Although the term "diplomacy" is an epistemic-disciplinary construction within a hegemonic narrative, it is creatively appropriated as a "homeomorphic equivalent" (Panikkar, 1994), that is, as a tool of correspondences between phenomena that occur in different cultures and space-times, without making a purely analogical use nor adapting the multiple expressions of diplomacy to the contents and forms of state diplomacy, recognizing the specificities of each one. Indigenous diplomacy does not seek to improve the understanding of the official diplomatic system, but to subvert, transform it, and turn it into the constituent possibility of a planetary project beyond Western civilization (Arévalo, 2017).

Based on this broad notion, we can assert that Indigenous diplomacy is both a semantic field of discussion about diplomatic understanding and a practice of mediating differences based on ethnic identity. In every time and place, individuals, leaders, and representatives have engaged in immediate dealings or stable relationships with social and political entities to address various issues within a framework of rules, norms, and procedures that, despite problems, tensions, and conflicts, have enabled dialogue and communication. Our purpose is to provide the main features of this indigenous diplomacy in historical terms and to present the characteristics of its emerging expression in the last decades of the 20th century and the beginning of the 21st (Arévalo, 2017).

CHAPTER 2

2. INTERNATIONAL INSTRUMENTS FOR THE PROTECTION OF INDIGENOUS COMMUNITIES IN ECUADOR

2.1 Signing, approval, and ratification of international instruments and their legal implications for states

An international instrument is a formal written agreement between sovereign states or subjects of international law, to establish mutual obligations and rights governed by International Law (Vienna Convention on the Law of Treaties, 1969). According to Antonio Remiro Brotóns (1997), in his work "Public International Law", international instruments are "the most characteristic manifestation of conventional technique in the international order, insofar as they define binding commitments between the subjects of the Law of Nations".

The idea of developing and codifying International Law through the formulation of conventional norms is not recent. As Remiro (1997) points out, in the last quarter of the 18th century, Jeremy Bentham proposed a codification of the whole of International Law with a utopian spirit. Since then, many individuals, scientific societies and governments have made numerous codification proposals. In line with this, to promote the progressive development of International Law and its codification, the United Nations General Assembly created the International Law Commission (ILC) in 1947 (Remiro, 1997).

The ILC selected as a priority the study and codification of the Law of Treaties, devoting special attention to this topic in several of its sessions between 1950 and 1966 (Remiro, 1997). The ILC's effort culminated in the Vienna Convention on the Law of Treaties, approved in 1969 after an international conference with the participation of 103 States. As highlighted in its preamble, the drafters left a record of the importance of International Treaties, not only as a source of law but also to foster peaceful cooperation between nations and the peaceful settlement of disputes, thus contributing to the fulfillment of the purposes and principles of the United Nations Charter (Vienna Convention on the Law of Treaties, 1969).

The Vienna Convention establishes a detailed normative framework for the conclusion of treaties, from the appointment of representatives with full powers to the entry into force of the instrument. In this sense, Article 2 defines the concept of a "treaty" as "an international agreement concluded in written form between States and governed

by international law, whether embodied in a single instrument or in two or more related instruments, and regardless of its specific designation" (Vienna Convention on the Law of Treaties, 1969).

The process of concluding a treaty involves various phases, such as the adoption and authentication of the text, the expression of the State's consent through signature, ratification, acceptance, approval or accession, and finally, entry into force. As Remiro Brotóns explains (1997), "ratification is the most common method of giving consent".

Once ratified, the international instrument must be incorporated into the State's domestic legal system. Here, authors such as Luis Pásara (2003) highlight the distinction between countries of monist tradition, where treaties are automatically integrated into domestic law, and countries of dualist tradition, where an additional legislative act is required.

In addition to binding treaties, there are other sources of International Human Rights Law, such as declarations issued by representative bodies such as the United Nations or the Organization of American States. Although these declarations are not legally binding, they have an extremely important guiding value in determining the meaning and interpretation of human rights.

Declarations develop more fully the criteria for applying the norms contained in conventions and covenants, as explained by Mónica Pinto (2004), author of "International Law: Validity and Challenges in a Transforming World". Although not binding, declarations have indirect legal effects by serving as auxiliary sources for the effective implementation of human rights instruments.

At the national level, the enforceability of treaties ratified by a State is subject to the constitutional rules provided. For example, Article 418 of the Constitution of Ecuador (2008) establishes that it is the responsibility of the President of the Republic to sign or ratify Treaties and other international instruments, which must be immediately notified to the National Assembly for subsequent ratification.

Once incorporated into domestic law, a treaty can be invoked and applied directly by national courts if it meets the requirement of being "self-executing". That is, as explained by Alejandro Rodríguez Carrión (2003) in his work "Lessons in Public International Law", the treaty must establish a right in a clear and specific manner, containing the necessary elements for a judge to apply it to the specific case without the need for a secondary or complementary regulatory norm.

Likewise, the conclusion of a new treaty may affect the validity and application of previous instruments, as the general principles of law lex posterior derogat priori (the later law repeals the earlier one) and lex specialis derogat legi generali (the special law repeals the general one) apply. However, these principles will only have full application when the parties to the treaties are the same and the subject is identical. Certain provisions of a previous treaty can continue to exist if the subsequent one does not include them (Remiro, 1997).

In summary, the process of signing, approving, and ratifying international instruments implies a series of steps and formalities that determine the legal implications for States. From the negotiation and adoption, of the text to its entry into force and subsequent incorporation into domestic law, treaties, and other international agreements establish binding obligations governed by International Law. Although declarations are not legally binding, they have an essential guiding value as auxiliary sources for the interpretation and effective application of human rights. Ultimately, compliance with these instruments by States is a fundamental principle of International Law, enshrined in the Vienna Convention and the workof prominent jurists and academics in this field.

2.2 Adoption, incorporation and inescapable obligation to adapt domestic law

Human rights are inherent to the dignity of every human being and, therefore, must be recognized, respected and guaranteed by States. In this sense, international human rights instruments play a fundamental role in establishing standards and obligations that States must comply with to protect and promote these rights. One of the fundamental principles in this area is the obligation of States to adapt their domestic law to the provisions of the human rights treaties they have ratified.

This obligation derives from a customary norm of international law, widely accepted and supported by international jurisprudence. As stated by the Inter-American Court of Human Rights:

"In the law of nations, a customary norm prescribes that a State that has ratified a human rights treaty must introduce into its domestic law the necessary modifications to ensure the faithful fulfillment of the obligations assumed. This norm is universally accepted, with jurisprudential support" (Inter-American Court of Human Rights, 2003).

The American Convention on Human Rights, in its Article 2, clearly establishes this obligation by providing that the States Parties "undertake to adopt, by their constitutional procedures and the provisions of this Convention, such legislative or other

measures as may be necessary to give effect to those rights and freedoms" (American Convention on Human Rights, 1969).

This obligation is based on the principle of "effet utile", which implies that domestic law measures must be effective in order to comply with what is established in human rights treaties. As expressed by the Inter-American Court of Human Rights, "the State must adopt all measures so that the provisions of the Convention are effectively complied with in its domestic legal order, as required by Article 2 of the Convention" (Inter-American Court of Human Rights, 2003).

It is also important to note that the norms contained in human rights treaties are generally self-executing. That is, "they do not require the adoption of additional domestic legislation to have full force" (Nash, 2003). This implies that, once a human rights treaty is ratified, its norms must be directly applied by States, without the need to wait for an express reform of domestic legislation. In the case of Ecuador, as a State that has adopted the model of Contemporary Constitutionalism, the direct justiciability of human rights has been established, recognizing the inherence of these rights to the condition and dignity of the person (Macías, 2023).

However, self-execution alone is not sufficient to guarantee the full validity and protection of human rights. The Ecuadorian State must ratify and formally commit itself to international human rights instruments, adopting the necessary legislative, administrative and judicial measures for their effective compliance. The ratification of these international instruments implies a formal commitment by the State to comply with the obligations and principles established in them, which entails the adoption of effective measures to guarantee the full validity and protection of the rights recognized in those treaties (Macías, 2023).

In addition, the ratification of these international instruments is consistent with the principle of human dignity, which constitutes the foundation of human rights and is essential to address the challenges posed by globalization and the growing international normativity, since "a common doctrine on the concept of human dignity is required to enable the effective compliance and judicial application of these instruments, for the benefit of individuals and by the legal conscience that supports them" (Aguilar, 2011).

In the specific case of Ecuador, the current constitutional system has expressly and forcefully enshrined the obligation to apply these international instruments to human rights. Article 426 of the Constitution of the Republic establishes an unequivocal mandate for judges, administrative authorities and public officials, in the exercise of their

competencies, to directly apply the norms and principles enshrined in human rights treaties and instruments, even when these norms exceed in their protective scope what is established in the national Constitution itself (CR, 2008).

This constitutional provision emphasizes that such direct application of international human rights instruments must be carried out even when the parties involved in a judicial or administrative proceeding have not expressly invoked their application. This constitutes a forceful recognition of the binding and obligatory nature of these international norms, whose compliance must be guaranteed ex officio by the competent authorities.

Article 426 underscores that the rights enshrined in both the Ecuadorian Constitution and international human rights instruments are of immediate compliance and obligation, which implies that their application cannot be postponed or conditioned, but must be effective and without unjustified delays, establishing a clear priority in the protection and safeguarding of human rights, requiring government authorities to apply the most favorable and guaranteeing norms for such fundamental rights, regardless of whether they are enshrined in the Constitution itself or international legal instruments, and regardless of whether the parties have expressly requested their application or not (CR, 2008).

In this line of thought, we deduce that international human rights instruments not only constitute a comparative reference or an interpretative parameter in the Ecuadorian legal system but are an integral and binding part of it, by being incorporated into the so-called constitutional block. Consequently, these international norms are not mere recommendations or declarations of good intentions, but authentic legal norms fully applicable and enforceable within the national legal system (Añazco et al., 2022).

This conception of the role and scope of international human rights instruments in Ecuador responds to a guaranteeing and protectionist vision of fundamental rights, which seeks to maximize their effectiveness and validity through the application of the highest and most favorable standards, regardless of their national or international source or origin.

2.3 Main International Instruments that protect the rights of Indigenous peoples in the global community ratified by the Ecuadorian state

2.3.1 ILO Convention 169

If we have to talk about a pioneering instrument in the protection of indigenous rights at the international level, we must refer to Convention 169 of the International

Labor Organization (ILO) on Indigenous and Tribal Peoples. Adopted on June 27, 1989, during the 76th International Labor Conference in Geneva, Switzerland; 12 months later, it entered into force on September 5, 1991, and has been ratified by 23 countries since then.

Ratified by Ecuador on May 15, 1998, and entering into force on May 15, 1999; its two basic postulates – as Elizabeth Tinoco points out in the presentation of the convention – comprise the right of Indigenous peoples to maintain and strengthen their cultures, ways of life, and their own institutions, as well as their right to effective participation in decisions that affect them (ILO Convention No. 169, 1989).

Called the most comprehensive instrument in formulating the rights of peoples, due to the fact of recognizing them as populations – peoples – distinct from other populations; not as a disadvantage, but as a valuable difference for the recognition of their collective rights (Gaete Uribe, 2012). This recognition constitutes a disruptive innovation in international human rights law, which until that date only recognized individual rights, calling into question some of the basic principles of state sovereignty, facing us with an individual/state dichotomy (Anaya, 2009).

It should be clarified that an attempt had already been made to establish a codification of states' international obligations with their peoples 32 years earlier, with a previous convention: Convention 107 of 1957. However, this instrument was still perceived as a temporary society, destined to disappear in modernization, rather than validating their permanence and autonomy (Gaete Uribe, 2012). And although it recognized the collective right of property, it still did not manage to move beyond the rights of indigenous people as individuals. Likewise, the lack of direct and active participation of people in the negotiation of Convention 107 led to the "complete rejection" of this instrument (Mereminskaya, 2011). That is why - adopted tripartitely - in June 1989 Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries was born.

It is important to highlight that the mere existence of this convention, as well as that of the International Labor Organization itself, denotes the first apex of the existence of indigenous peoples as diplomatic actors. Since the ILO was established in 1919 under a tripartite format that not only involves sovereign States, who are the main actors of international law, but also includes representatives of workers and employers, recognized with a status equivalent to that of full subjects of international law; where, through the representatives of workers, indigenous peoples had a first space to engage in discussions

in the international community (Gaete Uribe, 2012). For the first time in their history, the Indigenous movement managed - through their own means - to declare their position before the international community (Durand Alcántara, 1993).

In this context, the diplomatic dialogue between peoples and states begins with the drafting of the title of the instrument in question, which was highly controversial due to the use of the term "peoples" instead of "populations". This is because the former - although it implies a broader recognition of collective identity and community attributes - is associated with the concept of self-determination or free determination, a principle that at that time was linked to the right to form an independent state (Gaete Uribe, 2012). The complexity of the problem is intensified, especially when considering the undeniable perception of Indigenous Peoples of identifying themselves as distinct and autonomous peoples (Human Rights Commission, 2006).

However, it was precisely the people themselves who - through a process that can only be described as diplomatic - concluded that this was the term that best reflected their own vision (International Labor Organization, 2007). Additionally, in 1960 the UN General Assembly embraced - through Resolution 1541 - the "blue water" doctrine which clarifies that a process of "decolonization" can only be pursued by separate territories from the country that administers them.

Likewise, various controversies arose around other terms, such as "territory" and "seek the consent of the peoples". However, thanks to these same dialogues, the former was modified by "lands and territories", and the latter by "consultation with the peoples" (Mereminskaya, 2011).

It is thus that the ILO (1989), highlighting the particular contribution of indigenous and tribal peoples to the cultural diversity, social harmony, and ecological balance of humanity; as well as international cooperation and understanding of indigenous and tribal peoples, recognizes in its 10 parts of the convention (I. General Policy; II. Lands; III. Hiring and Conditions of Employment; IV. Vocational Training, Crafts and Rural Industries; V. Social Security and Health; VI. Education and Media; VII. Cross-Border Contacts and Cooperation; VIII. Administration; IX. General Provisions; X. Final Provisions), through 44 articles, 7 essential points for the protection of Indigenous communities:

The "General Policy" first defines who these peoples are and what they represent (art. 1), as well as the obligation of governments - from now on in every aspect of the convention - to take actions to guarantee their integrity (art. 2), adopting measures to

safeguard their institutions, assets, work, culture and environment (art. 4). And that any decision involving legislative or administrative measures in any of these aspects be subject to mandatory consultation with the peoples by the government (art. 6); with special emphasis on cooperation to protect the environment (art. 7) (ILO Convention No. 169, 1989).

Likewise, in the criminal sphere, Article 9 establishes that the government, authorities and courts must recognize the traditional methods of repressing crimes committed by members of the people, as long as they are compatible with the national legal system and human rights; alluding to their customs (ILO Convention No. 169, 1989).

In the "Lands" part, the specific provisions related to the lands and territories of indigenous and tribal peoples are established, recognizing their right to own and possess them (art. 14), and the power to use, administer and conserve the existing natural resources on them (art. 15). And if the state owns the property of minerals or resources from the subsoil in these lands, it must establish prior consultation procedures before undertaking any program of prospecting or exploitation of resources; and, if it takes place, guarantee the participation of the peoples in the benefits or compensate them for the damages caused (art. 15).

It also stipulates that the peoples should not be displaced from the lands they occupy; but if, exceptionally, their transfer is considered necessary, it can only be carried out with their free and informed consent, until there is a possibility of returning to their lands; otherwise, they must be compensated with lands whose quality and legal status match the previous ones, or they must be compensated with appropriate guarantees (art. 16) (ILO Convention No. 169, 1989).

The State must also ensure the "Hiring and Working Conditions" of workers belonging to Indigenous and tribal peoples, condemning discrimination, ensuring access to employment, equal remuneration, social security, the right to association, enjoyment of labor legislation protection and the prohibition of coercive hiring systems and debt servitude (art 20) (ILO Convention No. 169, 1989).

This last part is directly related to the promotion of voluntary participation of members of Indigenous peoples in programs of "Vocational Training, Crafts and Rural Industries", hand in hand with special training programs and means provided by the State, in line with the economic environment, social and cultural needs of the peoples (art. 22). Recognizing the importance of crafts, rural and community industries, and the traditional

and subsistence activities of the peoples, such as hunting, fishing, trapping and gathering, for the maintenance of their culture and economic development; providing them with technical and financial assistance for this purpose (art. 23) (ILO Convention No. 169, 1989).

In "Security and Health", the provision of adequate health services for the peoples by the State is established; otherwise, the optimal means must be guaranteed so that these services are under their own responsibility and control, to ensure that they enjoy the highest level of physical and mental health; aligned with other social, economic and cultural measures in the country (article 25) (ILO Convention No. 169, 1989).

The State must also safeguard access to "Education and Media" at all levels, on equal terms (art. 26), in permanent cooperation with Indigenous peoples, in order to respond to their particular needs, by their history, knowledge, techniques, value systems and other social, economic and cultural aspirations; until this responsibility can be transferred to the peoples themselves, provided that their own institutions meet minimum standards (art. 27). With special emphasis on the perpetuation of their language or the most commonly spoken in a group, in duality with the mastery of the national language (art. 28).

The state must guarantee the publicity of the labor, economic, and social obligations and rights of Indigenous peoples - such as those outlined in the convention analyzed - in harmony with their own culture, traditions and common language (art. 30). Finally, harmonize the educational material of the entire national community, to offer an equitable, accurate and instructive description of the societies and cultures of the peoples (art. 31).

The following part makes a small reference in a single article (art. 32) to "Cross-Border Contacts and Cooperation", which adheres governments to take measures through international agreements and to facilitate contacts and cooperation between Indigenous and tribal peoples in economic, social, cultural, spiritual and environmental matters (ILO Convention No. 169, 1989).

This is aimed at breaking down the national borders imposed on indigenous peoples such as in Guatemala and Mexico with the Maya; Peru and Bolivia with the Quechua people; and entire tribal peoples in Africa. Requiring states to address this problem and the conflicts it generates; as well as promoting international solidarity with their peoples (ILO, 2007).

Finally, it urges the government authority to create appropriate institutions or other mechanisms for the "Administration" of programs that affect the people and have the necessary means for the proper performance of their functions; including planning, coordination, execution, and evaluation of cooperation programs between peoples, proposing legislative measures and controlling the application of the measures adopted (art. 33) (ILO Convention No. 169, 1989).

It is extremely important to re-emphasize that all these measures are no longer simple flexible clauses, understandable as suggestions or vain recommendations to be followed by States, since - as has already been highlighted in previous sections - the ratification of a convention of this nature involves rights recognized in absolute terms (Mereminskaya, 2011). Therefore, they are subject to control by the ILO.

Which supervises compliance with the conventions by member States through government reports, requests for information and pronouncements; and, although it does not constitute a jurisdictional forum, nor does it issue enforceable judgments against States; it does contemplate a system of individual claims against States for alleged non-compliance with commitments by employers' or workers' organizations, and a complaint procedure that can be initiated by the member States themselves, delegates or the Governing Body against members of the ILO (Mereminskaya, 2011).

Of everything mentioned above, citing the ideas of Carlos Humberto Durand (1993), we must emphasize that the limitations of Convention 169 and the ILO do not lie so much in their form, objectives and intentions, but rather in the framework of compliance by the States, who play a crucial role in the implementation of this ethnic project. Highlighting that - even if states adopted any regulations - no legislation, no matter how advanced, has the intrinsic power to generate tangible transformations. Therefore, progress in the field of International Law related to indigenous peoples depends on the positions adopted and the dynamics of forces that arise from both the indigenous movement and its allies.

Likewise, it is important to emphasize that this convention is not simply the result of a concession by traditional states in the international sphere, but rather reflects the correlation of forces within it, with the indigenous movement acting as a direct agent in the formulation and application of the instrument (Mereminskaya, 2011). For the first time in history, as a subject of collective rights at the international level; one could even say, as an expression of customary international law (Anaya, 2009).

As Christian Courtis (2009) points out, this is reflected in the impact that this instrument has had at the international level, especially before the Inter-American Court of Human Rights; being invoked by the indigenous communities and peoples themselves, in favor of their rights and interests. With a wide range of legal actions in which its use is recorded; such as unconstitutionality actions, in amparo or constitutional protection actions, disputes between powers, political-electoral actions, nullity actions in contentious-administrative matters, claims for collective ownership of the ancestral lands of Indigenous peoples and communities, prior consultation, positive obligations of the State in the face of extreme poverty, and even in criminal matters.

2.3.2 The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on September 13, 2007, and entered into force on December 20, 2007, after being approved by an overwhelming majority of countries (United Nations Declaration on the Rights of Indigenous Peoples, 2007). Within this period of time, it was ratified by Ecuador on November 28, 2007.

Although the adoption and ratification of Convention 169 - replacing Convention 107 - constituted a milestone in the recognition of the collective rights of indigenous peoples in positive international law, it is incomparable with the imposing symbolic act represented by the United Nations Declaration on the Rights of Indigenous Peoples.

, Despite not having binding legal effect, many authors such as Felipe Gómez Isa (2011) argue that the Declaration itself constitutes an attempt to repair the historical wrongs suffered by peoples, and reflects one of the deepest aspirations of contemporary indigenous peoples: a differentiated status under International Law (García-Alix, 2003).

From this search for a differentiated status and the will to compensate peoples - as a consequence of the negative aspects of the two Conventions analyzed in the previous paragraph, including the little direct participation of the peoples, and especially due to the lack of ratification bymany States of the international community due to the binding nature of these two Conventions - the idea of drafting a text that contemplates a general and complete study of the problem of discrimination against indigenous populations was born within the Sub-Commission on Prevention of Discrimination and Protection of Minorities (SPDPM), in the hands of the Ecuadorian José Martínez Cobo, special rapporteur of the SPDPM (Gómez Isa, 2019).

Whose conclusions - which include an internationally accepted concept of indigenous peoples, the basic principles of their rights, diagnoses and proposals regarding their living conditions, among other controversial concepts of access to land and recognition of collective rights - led the Sub-Commission on Human Rights (SDH) to create the Working Group on Indigenous Populations in 1982, to whom the first draft of what would be the Universal Declaration on the Rights of Indigenous Peoples (UNDRIP hereinafter) was entrusted (Gómez Isa, 2019).

It would not be until 13 years later that a final text would be approved by the SDH and submitted to the Human Rights Commission (HRC). To be subsequently approved by the General Assembly in a framework of open dialogue with indigenous peoples in the International Decade of the World's Indigenous People, between 1995 and 2004 (Human Rights Commission, 2006).

If there is something to highlight about the very existence of UNDRIP, it is the permanent and systematic participation that indigenous peoples had in it (Human Rights Commission, 2006). Who, despite the supremacist tendency that states sought to promote in terms of substantial modifications to the text originally presented by the SPDPM, remained firm in their conviction to advance the recognition of their rights; and with this, helped the General Assembly to fulfill an evolutionary purpose of international law itself., as specified in the Charter of the United Nations (Charter of the United Nations, 1945), in its article 13 "The General Assembly shall initiate studies and make recommendations to promote international cooperation in the political, economic, social sphere, cultural, educational, and health, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

Making International Law and indigenous peoples strategic allies in the search for the evolution of the Law itself (Gómez Isa, 2019). Radically changing pre-existing power roles, and endowing peoples with a new bargaining power, backed by the United Nations Organization.

Thus, unlike the still hegemonic influence that could be reflected in the drafting of Convention 169, the adoption of UNDRIP was characterized by an effective, open and democratic debate, with broad participation of Indigenous Peoples and their organizations, through annual sessions facilitated by the Working Group on Indigenous Populations (Human Rights Commission, 2006).

According to the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean, through the Human Rights Commission (2006), the standards

gathered in UNDRIP have influenced both the domestic legal level of the countries that make up the entire United Nations bloc, as well as international organizations such as the World Bank, the Inter-American Development Bank, UNESCO, UNDP and the World Health Organization. Irreversibly evolving the legal thinking of the rights of peoples and their substantive aspects.

The rights contemplated in UNDRIP (2007) are very similar to Convention 169; therefore - in order not to repeat content from the previous paragraph - we can say that the Declaration essentially reaffirms the existence of collective rights and their full enjoyment by peoples, such as special representation rights, self-government rights and multi-ethnic and cultural rights (Human Rights Commission, 2006).

The special participation rights arise from the idea of the State's inability to guarantee adequate representation of minorities; therefore, it must create or facilitate the means for representatives of indigenous peoples to participate in decisions that affect them (Human Rights Commission, 2006). Including the maintenance and development of their own institutions (art. 18); which should carry out consultations in good faith together with the State, for the adoption of legislative or administrative measures that affect them (art. 19), in order for peoples to be able to determine priorities regarding their comprehensive development, both at the national and international levels (art. 36) (United Nations Declaration on the Rights of Indigenous Peoples, 2007).

The rights to self-government are much more emphatic, insofar as they are subdivided into the right to self-determination, self-affirmation, self-definition, autonomy and self-delimitation (Human Rights Commission, 2006). In total harmony with the special participation rights, the right to self-determination grants peoples the faculty to freely define their political status and economic, social and cultural development (art. 3), through their own institutions at both the local and international levels (art. 5). Following their priorities and strategies for the free development or use of their lands, territories and resources (art. 32), especially about natural resources ready for state exploitation. In this case, article 32 of UNDRIP is very incisive in specifying that the State must always obtain free and informed consent before carrying out extractive activities or that affect the lands of peoples in any way (United Nations Declaration on the Rights of Indigenous Peoples, 2007).

The latter leads us to the analysis of the most debated right within the international community: the recognition of the collective rights of self-delimitation. Which recognizes the right of Indigenous peoples to possess the lands, territories and resources that they

have traditionally occupied, urging States to ensure the legal security of such property (art. 26), within a transparent and equitable process through their representatives (art. 27). In order to maintain and strengthen the spiritual relationship that peoples have with their lands (art. 25), within the framework of environmental conservation and protection (art. 29). Urging to prohibit any type of storage of hazardous or polluting materials in their territories (art. 29) and to carry out military activities without justification or prior consultation with indigenous peoples (art. 30) (United Nations Declaration on the Rights of Indigenous Peoples, 2007).

UNDRIP places special emphasis on the recognition of multi-ethnic and cultural collective rights (Human Rights Commission, 2006). Which essentially defends the right of peoples not to suffer forced assimilation, nor destruction of their culture (art. 8); since they are recognized the full right to freely manifest, practice, develop and teach their traditions, customs, religion, health practices, etc. (art. 12 and art. 24). As well as to revitalize, use and transmit their history, languages, oral traditions, philosophies, writing systems, etc. (art. 13); through their own educational system, in their own language (art. 14); in parallel with a recognition of their culture, traditions and histories, reflected in national public education (art.15).

Finally, hand in hand with all the rights mentioned above, UNDRIP urges the State to guarantee peoples the right to compensation. providing effective redress to Indigenous peoples, through mechanisms established jointly with them, for the cultural, intellectual, religious and spiritual property of which they have been deprived without their consent or in violation of their laws and traditions (art. 11). Similarly if peoples are dispossessed of their means of subsistence, their lands, territories and resources (art. 20 and art. 28). Additionally, peoples have the right to receive financial and technical assistance from the state and through international cooperation, for the enjoyment of the rights outlined in this declaration (art. 39) (United Nations Declaration on the Rights of Indigenous Peoples, 2007).

2.3.3 The Escazú Agreement

In the particular case of Latin America and the Caribbean (LAC), the intensification of conflicts between indigenous peoples and their rulers is closely linked to extractive activities of natural resources such as oil, mining, gas, energy, agriculture and fishing, in favor of state development (Barragán, 2020).

In this scenario, the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean - adopted in the city of Escazú, Costa Rica on March 4, 2018 - arises in response to growing democratic fragility and weak environmental governance in LAC; not only in the inability to exercise state functions in environmental matters but also in the discrimination towards indigenous peoples who have historically defended their lands from plundering and destruction (Arreguín Prado, 2021).

The main causes of this conflict include pressure to export natural resources, increased extractive processes, metropolitan expansion, and the presence of organized crime and paramilitary groups; generating tensions that specifically focus on access, use and control of essential resources such as water, land, minerals and biodiversity (Arreguín Prado, 2021). As well as how all of the above affects the effective enjoyment of the right to life, health, water, food and self-determination (Orellana, 2020).

For this reason, the UN promoted the second World Environmental Conference to analyze the relationship between environment and development; which would result in the Rio Declaration on Environment and Development in 1992, whose Principle 10 would establish the 3 fundamental pillars of the - binding - Escazú Agreement (Echeverría, 2019). These would be public participation, access to public information and access to justice.

In terms of public participation, this was reflected from the gestation to the negotiation of the agreement, through an intense dialogue between states and indigenous peoples (Orellana, 2020). Having the opportunity to speak on equal terms with the delegates of the signatory countries; under which, most of the clauses that would integrate the Agreement focus on guaranteeing, facilitating and promoting the access rights of people "in a situation of vulnerability", that is, indigenous peoples.

Likewise - referring now to the contents of the Agreement - Article 7 commits States to implement open and inclusive participation from the initial stages of any act - project, activity, authorization, policy, plan, norm, or regulation - with possible significant environmental impact; with reasonable deadlines and facilitating intervention by written, electronic or oral means (Escazú Agreement, 2018). Before this, the public may submit observations and will be notified on time of the final decision, its reasons and how their comments were considered, including environmental impact assessments (Escazú Agreement, 2018).

Article 5 of the Escazú Agreement, in line with ECLAC guidelines (2018), establishes a robust framework for the right to "access to environmental information". Recognizing the importance of the principle of maximum publicity, allowing any person to request and receive information from the competent authorities without having to justify their interest. In addition, it guarantees that the competent authority will promptly inform about the availability of the requested information and the right of the applicant to challenge any refusal to deliver it; except in cases where the disclosure of information could endanger national security, environmental protection or law enforcement. It also promotes the creation of independent bodies to ensure transparent access to environmental information and to monitor compliance with regulations.

Regarding "access to justice", article 8 guarantees the right to access justice in environmental matters through effective, timely, public, transparent, impartial and affordable procedures before competent state bodies (Escazú Agreement, 2018). It allows for challenging decisions, actions or omissions related to access to information and public environmental participation, or that affect the environment, establishing broad active legitimacy, precautionary and provisional measures, facilitating evidence, mechanisms for enforcing decisions and reparation for damages (Escazú Agreement, 2018).

Additionally, another very important aspect is the recognition of the rights of environmental defenders, which constitute a key aspect between human rights and the environment. As Marcos Orellana (2020) points out, "Escazú is an invitation to imagine and question what legal possibilities countries can establish in their domestic systems to make effective the rights of people of future generations".

This incorporation and recognition of environmental rights and their defenders is closely related to the provisions contained in both Convention 169 and UNDRIP. Regarding Convention 169, articles 4, 7 and 32 establish the state's obligation to adopt measures for the protection of the environment - the cultural heritage of indigenous peoples - and in particular with article 14, which specifically addresses the prior consultation procedures that must apply for the exploitation of existing resources on lands belonging to peoples (ILO Convention No. 169, 1989). It is even - more closely related - to UNDRIP, which relates environmental care to the intrinsic spiritual relationship that peoples have with their traditionally possessed lands, territories, waters, seas and resources (art. 25 of the United Nations Declaration on the Rights of Indigenous Peoples, 2007).

2.4 Diplomacy and instruments in light of a positive case: Sarayaku vs. Ecuador

"On the path of our resistance we have incorporated ancient and new elements. Voices from here and there" (Sarayaku, 2014)

In the words of Mario Melo (2019), it would be accurate to say that the conflicts that peoples experience in relation to their rights and territories are part of an indomitable web of transnational interests; so that actions to confront them will require new strategies beyond local resistance, they will require actions that allow this abuse of power to become: international discussion.

The living proof of what has been said is the case of the Kichwa Indigenous People of Sarayaku, self-proclaimed as the People of Midday - prophecy of the guide of the indigenous struggle - an original people located in the north-central Ecuadorian Amazon, one of the most biodiverse regions on the planet; which, despite being considered a small and relatively isolated community with limited access both by river and air, has managed to stand out in the national and international sphere (Martínez Suárez & Agra Romero, 2019).

The history of Sarayaku as a self-created people that has gained visibility at the state level due to the pressure of oil companies on their territories (Martínez Suárez & Agra Romero, 2019); begins in 1992, when the Ecuadorian State - through the Ecuadorian Institute of Agrarian Reform and Colonization (IERAC) - awarded an undivided area of 222,094 hectares to the Sarayaku people, of which approximately 135,000 hectares correspond to communal territory (López Andrade, 2019). Complying with the principle of land possession promulgated by the - by then ratified - Convention 169 in its article 14.

However, such recognition, in 1996, the Ecuadorian government granted a 2,500 km² concession, called "Block 23", to the Argentine consortium of the Compañía General de Combustibles (CGC hereinafter) for oil exploration (Sirén, 2004). Without respecting the guarantees of participation through prior, free and informed consultation and consent - included in article 7 of Convention 169 - taking into account that around 75% of the hectares granted to the oil company correspond to the territory of the Kichwa indigenous people of Sarayaku (Veintimilla Quezada & Chacón Coronado, 2023).

Although the resistance of the local populations caused - momentarily - the prospecting activities to be interrupted between April 1999 and September 2002, during this time the company tried by various means - extortion, threat and even torture - to

obtain Sarayaku's consent (López, 2019). As in May 2000, when a CGC representative proposed the signing of a contract that would imply that Sarayaku gave its consent for oil exploration and 20 years of exploitation, in exchange for "community support" worth $60,000 annually during the exploration phase and a total of $80,000 during the 20 years of production (Siren, 2004). The CGC representative argued that signing the contract was Sarayaku's last opportunity to get out of poverty (Sirén, 2004).

It is indescribable to express the assault that this latest event meant for the Sarayaku people; this condemnable act violated a series of rights recognized in Convention 169 (1989), such as the right to fair and equitable compensation (Art. 28), respect for the integrity of their practices (Art. 6), and above all, the right to non-discrimination (Art. 2).

As a result, at the end of 2002, the Sarayaku people first turned to the Ombudsman's Office and then to the courts by filing an injunction before the First Civil Judge in Pastaza (López Andrade, 2019). Meanwhile, the CGC company, with the support of the armed forces and private security, entered the concession area against the will of the Sarayaku people, deforesting and opening roads to plant around one and a half tons of explosives in the forest. This destroyed culturally and ancestrally significant spaces and led to severe clashes (Veintimilla y Chacón, 2023). Although CGC halted its activities the following year, the explosives were not removed (López Andrade, 2019).

The definitive climax of the conflict arose on December 1, 2003, when the Sarayaku Kichwa Association invited members of Canelos to participate in a "march for peace and life" to protest against the possible militarization of Block 23. In response, the Kichwa Indigenous Association of Canelos "Palati Churicuna" – previously bribed by CGC – issued a circular the next day, announcing their decision not to participate in the march and warning that the circulation of those opposed to the oil issue was "suspended" at the provincial level. Subsequently, on December 4, 2003, about 120 members of the Sarayaku people were attacked with machetes, sticks, stones, and firearms by members of the Canelos people (Sirén, 2004).

With no other recourse, the Sarayaku people turned to international justice. The president of Sarayaku met with the Inter-American Commission on Human Rights in Washington, D.C., to report and initiate proceedings against the Ecuadorian government (Siren, 2004). With technical assistance from the Quito-based Center for Economic and Social Rights (CDES) and the Washington-based Center for Justice and International Law (CEJIL) (Sirén, 2004).

Thus, on December 19, 2003, the Sarayaku indigenous people – in association with CDES and CEJIL – submitted an initial petition to the Inter-American Commission on Human Rights (Pueblo Indígena Kichwa de Sarayaku vs. Ecuador, 2012). It was attended to and later presented to the Inter-American Court of Human Rights on April 26, 2010, under Articles 51 and 61 of the American Convention on Human Rights (Pueblo Indígena Kichwa de Sarayaku vs. Ecuador, 2012).

In this lawsuit, the Commission demanded that the Ecuadorian State be held internationally responsible for (a) the violation of the right to private property; (b) the violation of the right to life, judicial guarantees, and judicial protection; (c) the violation of the right to freedom of movement and residence; (d) the violation of the right to personal integrity, to the detriment of twenty members of the Sarayaku Kichwa people; and (e) the violation of the duty to adopt provisions of domestic law (Pueblo Indígena Kichwa de Sarayaku vs. Ecuador, 2012).

Finally –after a long and exhausting process– in September 2012, the IACHR ruled in favor of Sarayaku, declaring the Ecuadorian State responsible for violating the rights to consultation, communal indigenous property, and cultural identity; for seriously endangering the rights to life and personal integrity; and for violating the rights to judicial guarantees and judicial protection (Pueblo Indígena Kichwa de Sarayaku vs. Ecuador, 2012).

It is essential to highlight that during these years of international litigation, the Sarayaku people and their representatives played a crucial role in developing the rights of nature, creating jurisprudence based on their concepts of "living forest," as an essential element in their –as expressed by Sabino Galindo, Yachak of Sarayaku– "potential and vital energy to survive and live." (Pueblo Indígena Kichwa de Sarayaku vs. Ecuador, 2012). Leaving in foreign courts, the essence of their entire worldview, almost poetically, we can highlight the testimony of Patricia Gualinga on the rights of nature: It is an intimate relationship, it is a harmonious coexistence, Kawsak Sacha for us is the forest that is alive, with all that it implies, with all its beings, with all its worldview, with all its culture in which we are immersed. [...] These beings are very important. They provide us with vital energy, help maintain balance and abundance, sustain the entire cosmos, and are interconnected. These beings are indispensable not only for Sarayaku but for the Amazonian balance. This interconnectedness is why Sarayaku defends its living space so arduously (Pueblo Indígena Kichwa de Sarayaku vs. Ecuador, 2012).

Thus, nature emerges as a new subject that cannot be separated from its context of emergence or its articulation with Sumak Kawsay, and plurinationality, and interculturality. In other words, it cannot be separated from the complex political, social, and cultural processes from which it arises and which it generates (Martínez Suárez & Agra Romero, 2019).

With this, Sarayaku participates in and leads a series of 'democratic iterations,' acting in all areas of the public sphere (Martínez Suárez & Agra Romero, 2019). In the 'strong publics,' with actions that can lead to a 'jurisgenerative politics,' a first step towards inclusion in the Constitution, advancing the rights of Nature and the recognition of territoriality, and urging the national and international community to reform international law regarding the conservation of natural protected area systems and to accept and recognize the Living Forest (Martínez Suárez & Agra Romero, 2019).

When the collective and individual integrity of the Sarayaku Kichwa people was publicly violated, they exhausted internal judicial instances in Ecuador, seeking coherence between what was regulated and the interpretation of public servants in charge of administering justice. However, it was not until about ten years later that, through an iconic ruling for the Inter-American Human Rights System, the collective right to free, prior, and informed consultation was recognized, laying the foundations for state responsibility to regulate business (oil) activity and its consequences (Veintimilla Quezada & Chacón Coronado, 2023).

The Inter-American Court of Human Rights ruling marked the beginning of the Sarayaku people as a diplomatic collective. Since 2012, the Sarayaku people, "heirs of a historical memory of resistance and struggle," have become a "symbol of resistance for Indigenous peoples and the world," taking on the "great responsibility of raising global awareness" (Martínez Suárez & Agra Romero, 2019). The alliance with other indigenous peoples was established as a guarantor and watchdog of this process, forming the International Alliance Network among Indigenous Peoples and Nations of the World. In 2018, this network, composed of indigenous leaders from the Philippines, Bolivia, Paraguay, Colombia, Venezuela, Peru, and Ecuador, signed a categorical and unconditional support for the Kawsak Sacha declaration, which began to extend to other indigenous peoples, starting with Pastaza (Martínez Suárez & Agra Romero, 2019).

Additionally, in 2015 several "ambassadors" from the Sarayaku people attended the COP21 Climate Change Summit in Paris, presenting their reflections and visions on the Sarayaku conflict in various events before university, associative, and political

audiences (Martínez Suárez & Agra Romero, 2019). Later, the "ambassadors of Pachamama," as they called themselves, followed a three-week agenda in Europe in November 2017, coinciding with Sarayaku's participation in the COP23 Climate Change Summit in Bonn (Germany), where four Sarayaku leaders gave talks and participated in debates on their people's situation, their fight against extractivism, and their defense of nature (Martínez Suárez & Agra Romero, 2019).

In line with this, a reflection on a concept of diplomacy of the peoples – by the instruments and grounded in the Sarayaku case – entails a systematic practice of collective and organized efforts by indigenous peoples to manage their relations with both national governments and international entities through negotiations and dialogues. This differentiated form of diplomacy is characterized by resistance and the pursuit of recognition, as well as the ability to forge strategic alliances with other peoples and organizations; through the adoption of international instruments for the protection of their rights, litigation in instances such as the Inter-American Court of Human Rights, and the creation of global collaboration networks, where indigenous peoples have influenced jurisprudence and public policies, always seeking the defense of their lands and harmony with the living, with the vital.

3. FINAL REFLECTIONS

After the review and analysis conducted in this work, it becomes clear that the transition from legal monism to dualism within the Ecuadorian legal system marked a crucial first step that empowered indigenous peoples, driving the pursuit of their –now ongoing– revolution. Indigenous peoples began to impose their worldview silently, eventually leading to legal pluralism. Over more than 168 years since the creation of the Ecuadorian State, this process finally granted them the recognition of their own concept of justice.

Simultaneously, in perfect alignment with international instruments, a framework of rights for indigenous peoples was recognized in the 2008 Ecuadorian Constitution. This included the recognition of a pluralistic state, which implies specific rights, indigenous justice as recognition of their own systems of organization, and nature as a subject of rights.

This advancement marked a significant step towards contemporary indigenous identity, which today represents the resistance of peoples and the evolution towards a differentiated, collective, and living concept of diplomacy. Although not a new concept, as many forms of indigenous diplomacy have been evident at various levels, it now emerges as a method to ensure the survival of their cultural wealth in the modern world. This cause has shaken the global sphere, creating alliances between indigenous peoples and non-governmental organizations, and gradually granting them international status.

This process has led to the signing, approval, and ratification of international instruments for the protection of indigenous communities, such as the International Labour Organization's Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples, and the Escazú Agreement. These transformative instruments have resulted in unprecedented recognition of the rights of Indigenous peoples, whose active participation in their negotiation has further highlighted and made visible their role as diplomatic subjects within the international community, on par with states, contributing to the creation of international law and offering the necessary tools for respecting their autonomy.

When analyzing international instruments chronologically, we can observe the increasing level of indigenous peoples' participation over time. Starting with indirect participation in ILO Convention 169, which, although not direct, was present, then becoming active actors within the United Nations Declaration on the Rights of Indigenous

Peoples, and finally, being fully organized as signatory parties in the Escazú Agreement. This progress evidences an evolution towards greater inclusion and recognition of the rights and participation of indigenous peoples at the international level, marking a significant milestone in their struggle for equality and justice.

This progress was reflected in the case of Ecuador's Sarayaku indigenous people. Through a lawsuit brought before the Inter-American Court of Human Rights, the Sarayaku people recognized the "incorporation of ancient and new elements" as a method of struggle and resistance against the contemporary Latin American problem of natural resource exploitation to escape underdevelopment. Indigenous peoples demonstrated the importance of the living forest as their source of vitality, crucial for both them and the entire world.

The recognition of the existence of indigenous peoples at the international level does not imply merely a discriminatory distinction that separates them from traditional international actors. Rather, it reflects a profound understanding that it is precisely in the diversity of their ways where the vitality and continuity of their cultures and traditions lie. This recognition does not consign them to disappear in the whirlwind of modernity, nor does it subject them to forced assimilation; on the contrary, this recognition validates them as communities that have deserved and continue to deserve their own space in the international community throughout history.

"If our struggle for life is part of the world's struggle for its survival, then the world's struggle belongs to us as well" (Sarayaku, 2014).

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