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## **STRENGTHENING OF INTERNATIONAL COOPERATION FOR THE PROTECTION AND EMPOWERMENT OF INDIGENOUS COMMUNITIES**

### **Abstract**

The status of indigenous peoples and their rights has been one of the most studied topics of international law in recent years. Especially since the end of the 20th century, treaties and international documents approved by many states regarding the rights of these communities have been adopted within the framework of various international organizations. These communities, which could not gain a place in classical international law because they are not subjects of international law, were able to benefit from the protection of human rights with the development of modern international law. Now, in addition to individual rights, they also have collective rights, such as the right to own traditional lands, the right to establish their own representative institutions as a group, and the right to protect their customs and traditions and institutions.

In addition, the United Nations Declaration on the Rights of Indigenous Peoples, for the first time in history, granted a subnational group the right to self-determination, which means the right to freely choose a form of government and permanent sovereignty. Natural Resources. Today, the Declaration is mainly claimed by doctrine to be part of customary international law and therefore binding on all states.

**Keywords:** *indigenous peoples, collective rights, international cooperation, defense, UN*

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## **Yerli icmaların müdafiəsi və qüvvətləndirilməsi üçün beynəlxalq əməkdaşlığın güclənməsi**

### **Xülasə**

Yerli xalqların statusu və onlara verilən hüquqlar son illərdə beynəlxalq hüququn ən çox araşdırılan mövzularından biri olmuşdur. Xüsusilə 20-ci əsrin sonlarından etibarən bu icmaların hüquqları ilə bağlı müqavilələr və bir çox dövlətlər tərəfindən təsdiq edilmiş beynəlxalq sənədlər müxtəlif beynəlxalq təşkilatlar çərçivəsində qəbul edilmişdir. Beynəlxalq hüququn subyektivi olmadığı üçün klassik beynəlxalq hüquqda yer qazana bilməyən bu icmalar müasir beynəlxalq hüququn inkişafı ilə insan hüquqlarının qorunmasından yararlanmağa başlamışlar. İndi onlar fərdi hüquqlardan başqa, ənənəvi torpaqlar üzərində mülkiyyət hüququ, qrup şəklində öz nümayəndəlik institutlarını yaratmaq hüququ, öz adət və ənənələrini və institutlarını qorumaq hüququ kimi kollektiv hüquqlara da malikdirlər.

Bundan əlavə, Birləşmiş Millətlər Təşkilatının Yerli Xalqların Hüquqları Bəyannaməsi ilə tarixdə ilk dəfə olaraq submilli qrupa öz müqəddəratını təyinetmə hüququ verildi ki, bu da hakimiyyət formasını sərbəst seçmək və daimi suverenlik hüququ deməkdir. təbii sərvətlər. Bu gün Bəyannamə əsasən doktrina tərəfindən adi beynəlxalq hüququn bir hissəsi olduğu iddia edilir və buna görə də bütün dövlətlər üçün məcburi sayılır.

**Açar sözlər:** *yerli xalqlar, kollektiv hüquqlar, beynəlxalq əməkdaşlıq, müdafiə, BMT*

## Introduction

In 70 different countries around the world; Indigenous peoples, known by names such as aborigines, first people, hunter-gatherers, have been one of the most studied subjects of international law in recent times. Especially since the late 20th century, agreements regarding the rights of these communities and international documents approved by many states have been accepted within various international organizations. But the efforts of indigenous peoples to protect their rights date back much further. Indigenous peoples have tried to preserve their unique social, political, economic and cultural characteristics since the beginning of colonialism in the 15th century.

Essentially, it would not be wrong to say that the process of recognition of the rights of indigenous peoples parallels the development of international law. 19th century, when the positivist approach prevailed. In the past, these communities, which were not subjects of international law, could not gain a place for themselves in the international arena. Within the tutelage doctrine that emerged later, they were accepted as secondary, sub-groups and subjected to assimilation. The development of human rights law and the holding of states responsible for their actions against their citizens has been a turning point for indigenous peoples, as well as for all humanity. However, this time, problems have arisen such as the limits of existing human rights and whether these rights are compatible with the rights and interests of indigenous peoples, how collective rights will be granted to indigenous peoples, and how the developments in self-determination can be related to the current structure of rights.

*Development of the issue of indigenous peoples in international law.* There is no accepted definition of the concept of "indigenous peoples" in international law. The main reason for this is that narrow and broad definitions do not cover all societies under the umbrella of indigenous people.<sup>7</sup> Therefore, an official definition that includes the common characteristics of all indigenous peoples and determines who will be called "indigenous" has not yet been made. The disagreement on definition is not limited to this alone. It is also a matter of debate whether the terms "people" or "population" should be used and whether it is even necessary to define the concept of "indigenous peoples". Essentially, the lack of a general and comprehensive definition means that there are some groups that need similar protection in international standards. It is thought to prevent groups from being excluded from the scope. Therefore, the prevailing view today is that it is neither necessary nor desirable to make an official and universal definition of the term "indigenous people" (Rombouts, 2017: 171-172).

Indigenous peoples essentially; Communities with different cultures or ethnic origins are descendants of communities that were already settled in a country or geographical region where they later settled. These newly arrived communities later became the dominant segment of society through conquest, occupation, settlement or other means. Indigenous rights; They have very different and unique characteristics from this dominant segment of society in terms of social, cultural, economic and political aspects. For example; They have their own unique language, information systems, beliefs and valuable knowledge about the sustainable management of natural resources. There is also a special relationship between indigenous peoples and their traditional lands. Their ancestral lands are of fundamental importance for the continuation of their collective physical and cultural existence as a society (Bkz. Young, 1995)

The preservation of the identity and culture of many indigenous peoples is at risk, and indigenous peoples all over the world must struggle to survive physically and culturally. Indigenous people often have the lowest rates of income, education, health and life expectancy in society, as well as the highest rates of infant mortality, alcoholism and crime. For this reason, they have been referred to as the "Fourth World" or the "Third World in the First World".

Indigenous peoples have much in common with other neglected segments of society. For example, lack of political representation and inability to participate in politics, economic marginalization and poverty, inability to access social services and discrimination are among the main problems that indigenous peoples have to struggle with. Despite cultural differences, indigenous peoples have common problems. All indigenous peoples; They strive for recognition of

their identities, ways of life and rights over their traditionally owned lands, territories and natural resources. It is estimated that there are more than 370 million indigenous people spread across 70 countries around the world. The most well-known of these are; Lakota in the United States living in the Americas, Mayans in Guatemala or Aymara in Bolivia, Eskimos and Aleuts in the circumpolar region, Sami (Lappians) in Northern Europe, Aboriginals and Torres Strait Islanders in Australia, and Maori in New Zealand (Berkut, 2019: 2).

What unites these people, who are found in almost every geographical region of the world, is that they have a common socio-cultural structure and colonial experience. Since the beginning of colonialism, indigenous peoples have sought to preserve their unique cultural identities and rich sociopolitical and historical experiences.

Due to the diversity of indigenous peoples, within the United Nations system, instead of making an official definition, what should be understood from the term "indigenous peoples" was determined based on some characteristics of the communities. These features are:

- 1) Individuals who identify themselves as indigenous people are accepted by the community as members of themselves,
- 2) Historical continuity with pre-colonial and/or pre-immigration societies,
- 3) Strict attachment to the land and the surrounding natural resources,
- 4) Separate social, economic or political systems,
- 5) Separate languages, cultures and beliefs,
- 6) Forming a non-dominant segment of society,
- 7) As unique peoples and societies, their determination to maintain and recreate the environment and systems inherited from their ancestors (UNCHR, 1986: 379).

Based on these characteristics, the unofficial and most accepted definition of "indigenous peoples" was made by Martinez Cobo, Special Rapporteur of the UN Sub-Commission on the Prevention of Discrimination against and Protection of Minorities. Study on the Problem of Discrimination Against Indigenous Peoples prepared by Cobo According to the Problem of Discrimination against Indigenous Populations report, indigenous communities; They are peoples and nations that are in historical continuity with pre-immigration and pre-colonial societies, and who see themselves as different from the dominant segments of the region in which they live. Indigenous peoples constitute a non-dominant segment of society in their region, and they aim to protect and develop their ancestral lands, ethnic identities, cultural models, social institutions and legal systems and to pass them on to future generations. Another point that should be emphasized here is that in determining who is an indigenous people. In other words, the person must define himself as "native" and the community must accept him as a member of themselves. In this way, it is aimed to prevent the denial of indigenous status by other actors (Anaya, Stephen, 2000: 9-13).

***Development of the issue of indigenous peoples in international law.*** Within the framework of natural law theory, it has been accepted that indigenous peoples have some rights such as the right to self-determination and the right to own their own lands, but apart from this, no detailed explanation has been made on the subject. By the end of the 19th century and the beginning of the 20th century, Authors in international law have begun to strongly defend the positivist approach. Accordingly, international law is the law between nations. Therefore, indigenous peoples have no rights or status under international law other than those granted by the colonial state or arising from their citizenship.

In addition, agreements between indigenous peoples and colonial powers have no legal value. According to the positivist perspective, since indigenous peoples are not states, they are subject to the local law of the state they are in. For this reason, there is no harm in the colonial state seizing the lands of the indigenous people and denying them their rights (Pazarci, 2005: 7).

The first attempt to internationalize the obligations of states towards indigenous peoples was the tutelage doctrine. According to this doctrine, which was created within the framework of the UN Charter after the Second World War; Former mandates during the League of Nations period, regions taken from enemy states after the Second World War, and regions abandoned to this regime by the states responsible for their administration are regions under tutelage. The administration of

these regions was given to other independent states by the UN until they established independent states (Anaya, 43).

The tutelage doctrine recognized the indigenous peoples, but saw them as communities that were underdeveloped and in need of civilisation. In this respect, the essence of the tutelage doctrine is the idea that indigenous peoples are secondary due to both their racial characteristics and political structures. However, the fact that the tutelary states are obliged to "protect" the territories under their tutelage has made the indigenous peoples a "limited subject of international law", even though they are not technically subjects of international law (Barsh, Russel, 1986: 373).

With the increase in human rights awareness and anti-colonial tendencies within the UN system, the issue of indigenous peoples has entered a new turn. However, it was not possible for indigenous peoples to gain independence by taking advantage of the decolonization process. Because the right to establish an independent state through self-determination is granted only to colonial societies as a whole. However, this condition is not valid for every colonial society. According to the doctrine referred to as "salt water" or "blue water"; Salt water should separate the colonial state, which claims self-determination within the framework of the UN Charter, and the colonial state. Therefore, neither indigenous peoples nor other groups living within the borders of the nation state will be able to gain independence by benefiting from the right to self-determination. As a matter of fact, Belgium points out the underdeveloped ethnic groups in the American continent, Africa and Asia, and states that the right to self-determination should be granted to indigenous peoples. The offer was not accepted. For this reason, as will be seen below, indigenous peoples continued their struggle for self-determination within the framework determined by the UN. The status of the colonies within the same borders as the colonial state began to be reviewed on the basis of indigenous peoples (Torres, 1991: 149).

*International texts that directly regulate the rights of indigenous peoples.* With the development of human rights law and states being held responsible for their actions against their citizens, the opportunity has arisen for indigenous peoples to find a place within the framework of these rights. The absence of an international norm regarding indigenous peoples has brought this issue to the agenda to be addressed within the scope of other rights. In this regard, the UN 's human rights system has been a starting point for the rights of indigenous peoples. Today, the UN Human Rights Committee, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights continue to make decisions on this issue (Anaya, Stephen, 2013: 1004).

Over time, it has been shown that general human rights regulations are inadequate to solve the unique problems faced by indigenous peoples. Thus, regulations have been made on specific issues related to indigenous peoples, especially within the International Labor Organization (ILO) and the UN system. With the creation and partial implementation of key legal texts and institutions specifically recognizing the rights of indigenous peoples by international organizations, indigenous peoples' The idea that it is a subject of international law has begun to be widely accepted.

The ILO was the first international organization to raise the issue of indigenous peoples. Initially, the Organization was concerned with the issue of exploitation of indigenous peoples as a pool of workers in colonial industries; He tried to establish fair treatment towards indigenous peoples. Traces of the tutelage doctrine were seen in the activities of the organization during this period. In fact, in the Convention No. 107 dated 1957, which emerged within the Organization, the principles of integration and assimilation of indigenous peoples into the dominant culture were taken as basis.

Convention No. 107 is a different branch of international law that specifically addresses the situation of indigenous and tribal peoples; It was important in establishing and normalizing the idea that individual human rights could be expressed separately from the dominant frameworks of decolonization and minority rights law, which were very limited at the time. However, these principles were highly criticized by indigenous rights advocates for being at odds with the sensitivities of indigenous peoples. Thus, the assimilation policy was abandoned in the second agreement signed within the Organization, Convention No. 169 dated 1989. Instead, a policy of protecting the cultural identities of indigenous peoples was preferred. In addition, member states are

obliged to protect the rights of indigenous peoples. Thus, the ILO has gone beyond its initial aim of preventing the exploitation of indigenous labor and pioneered institutional and international legal initiatives regarding almost every area of the indigenous peoples issue (Xanthaki, Alexandra, 2009: 29-30).

Convention No. 169 generally; It includes the cultural integrity of indigenous peoples, their rights over land and natural resources, and non-discrimination in areas related to social welfare. In addition, states were asked to respect the wishes of indigenous peoples in matters concerning them. Convention No. 169, beyond recognizing the rights of only indigenous individuals, also granted collective rights to indigenous "peoples". Although it is not as comprehensive as the UN Declaration on the Rights of Indigenous Peoples, the Convention includes; rights such as the right to property on traditional lands, the right to establish their own representative institutions as a group, and the right to preserve their own customs, traditions and institutions. Despite all these collective rights, it appears that the right to self-determination is not included in Convention No. 169. The reason for this is that in 1989, when the Convention was adopted, the debates on whether indigenous peoples had the right to self-determination had not yet been resolved (ESC Res., 1971: 16).

***United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples.*** For the first time, the issue of indigenous peoples was raised together with the issue of racial discrimination within the framework of the UN system. In this regard, the UN Economic and Social Council tasked the Sub-Commission on the Prevention of Discrimination and Protection of Minorities to carry out the "Study on the Problem of Discrimination against Indigenous Societies". 1982. In 2015, the UN Working Group on Indigenous Peoples was established by the UN Human Rights Commission and the Economic and Social Council (ESC Res., 1982).

The UN Working Group on Indigenous Peoples has been assigned two main tasks. These are:

- 1) To examine developments aimed at protecting and improving the human rights and fundamental freedoms of indigenous peoples,
- 2) To determine international standards on the rights of indigenous peoples.

However, the Working Group's powers were later expanded to include examining treaties between indigenous peoples and states and the scope of cultural and intellectual property of indigenous peoples. Within the framework of its standard-setting mandate, the UN Working Group on Indigenous Peoples, in 1993, was a turning point for indigenous peoples. The UN created the Draft Declaration on the Rights of Indigenous Peoples. In 2007, the Draft was accepted by 144 UN member states at the UN General Assembly.

The UN Declaration on the Rights of Indigenous Peoples largely met the demands of indigenous peoples. Declaration; It addressed specific issues related to the integrity and security of indigenous life, including genocide, militarization of indigenous land, and the use of indigenous children as soldiers. Although it also includes individual rights, it mainly focuses on collective rights; Indigenous peoples are granted the right to self-determination, to decide on membership, to establish their own separate systems and institutions, and to participate in matters affecting them. The Declaration also included a wide range of land rights, including rights to manage and develop traditional activities and natural resources and indigenous lands. In addition, intellectual property rights over oral literature and compensation for past injustices are among the issues covered by the Declaration (Xanthaki, Alexandra, 2009: 29-30).

Recognizing the rights of indigenous peoples to use, develop, control and own natural resources has been one of the groundbreaking issues in international law. Because until the Declaration, it was accepted that the rights to own and use natural resources were the sole monopoly of the state. In this form, the Declaration goes beyond Convention No. 169. In addition, the inclusion of strong land rights in the Declaration is an extremely positive development in terms of both indigenous rights and international law. Because here; The rights of indigenous peoples over all lands they have traditionally owned, occupied or otherwise acquired or used have been recognized. It has even been stated that indigenous peoples have rights over previously taken lands as well as existing ones.

Perhaps the most important feature of the Declaration in terms of international law is; Article 3 recognizes indigenous peoples' full and unconditional right to self-determination. Thus, for the first time in history, a subnational group was granted the unconditional right to self-determination.

As it is known, the principle/right of self-determination, also called "the right of peoples to determine their own future", entered the applied international law with the UN Charter. Articles 1/2, 55, 76 of the UN Charter clearly stated this principle.

Again, common articles 1 of the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights include this principle. In general in all three texts; It is stipulated that all "peoples" have the right to freely determine their political status, to freely pursue their economic, social and cultural development, and to freely dispose of their natural wealth and resources.

The issue of who the "peoples" are, which are emphasized as the subjects of the right to self-determination in all three texts and many international documents, is controversial in international law. For example, it has been accepted that minorities are not a people with the right to self-determination within the scope of common Article 1 of the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. Because Article 27 of the Covenant on Civil and Political Rights, which regulates minority rights, is considered. Considering this, it has been accepted that the culture, religion, worship and language rights granted to minority members are individual. In other words, the owner of the rights here is not the group itself, but the individuals. The principle of self-determination regulated in Article 1 is a collective right granted to the people (Taşdemir, Fatma/Albayrak, 2012: 248.)

Although many attempts have been made by the United Nations and specialized organizations to make a precise and comprehensive definition, there is no single definition for minorities, as for indigenous peoples, on which all doctrines and international organizations agree. Therefore, the differences between the two communities do not apply to them under international law. It can be revealed by examining the rights granted. The acceptance that minority rights are individual rights, not collective ones, is essentially a concern that these groups may demand more rights over time and may want to leave the state they live in based on the right to self-determination over time. Indigenous peoples were seen as less dangerous in this regard. Because their main purpose is to protect the land, traditions and heritage inherited from their ancestors. Indigenous peoples themselves tend to emphasize that they are not minorities, especially because they claim that they have stronger rights than minorities, especially regarding the right to self-determination and their ancestral lands. What the two communities have in common is that they attach great importance to their ethnic, religious and/or linguistic identities. In this respect, indigenous peoples will be able to benefit from both minority rights and indigenous peoples' rights to the extent that they fulfill minority characteristics (Mihandoost, Fatemah/Babajanian, 2016: 15).

As can be seen, the concept of "people" in the common article 1 has a different meaning from concepts such as nation or ethnic group, and it is not clear who it will consist of. It has even been claimed by some states that "peoples" means groups that have the right to self-determination because only a "people" can have this right.

When the content of the self-determination principle is examined, it is seen that the principle has two aspects. According to this; The right of the people to freely choose the form of government they wish constitutes the first aspect of the principle and is called internal self-determination. The form of political administration and

The determination of government forms is evaluated in this context. However, in recent times, it has been accepted that the right to freely choose the form of government has increasingly gained an economic content, and therefore the right to permanent sovereignty over natural resources is also a part of the right to internal self-determination. The second aspect of the principle, called external self-determination, includes the right of the people to choose to establish an independent state or to be affiliated with another state (Quane, Helen, 2005: 657).

As mentioned before, the right to external self-determination, which includes secession, was granted only to overseas colonial states. For this reason, indigenous peoples only have the right to

internal self-determination, which includes the right to freely choose the form of government. As a matter of fact, the emphasis on the right to self-government and autonomy in Article 4 of the Declaration also supports this. Another supporting provision is; Article 46 states that nothing in the Declaration shall be interpreted as authorizing or encouraging any action which would disintegrate or disrupt, in whole or in part, the territorial integrity or political unity of sovereign and independent States.

The American Declaration on the Rights of Indigenous Peoples was adopted by the Organization of American States on June 15, 2016, after years of efforts and negotiations. Since the Organization of American States is a regional international organization, the Declaration is valid only for member states in the Americas, but is not binding. Nevertheless, it provides guidance for states' laws, policies and practices regarding indigenous peoples.

The rights recognized in the American Declaration on the Rights of Indigenous Peoples are in great parallel with the UN Declaration on the Rights of Indigenous Peoples, although they recognize new rights on some issues and fall behind them on some issues. However, what is common to both texts is; The provision "Nothing in this Declaration shall be interpreted as reducing or eliminating the rights that indigenous peoples currently have or may acquire in the future". To further express its importance; In the UN Declaration on the Rights of Indigenous Peoples, Article 4, which regulates the right to self-government and autonomy in relation to the exercise of the right to self-determination, and Article 46, which protects the territorial integrity and political unity of sovereign and independent states, are preserved exactly in the American Declaration on the Rights of Indigenous Peoples. In other words, within the scope of this text, the right to self-determination granted to indigenous peoples is limited to the right to internal self-determination.

### Conclusion

Indigenous peoples, who have different economic, social, cultural and political characteristics from the society they live in, have, as a result of long-term efforts, moved away from state-centered guidance and gained the protection of their unique rights. In fact, these rights are stated in international documents; It is regulated in a wide range and comprehensive manner, such as the prohibition of genocide, prevention of discrimination, rights over land and natural resources, intellectual property rights, the right to create one's own social and cultural institutions, and autonomy.

In international law, where states and individuals are of primary importance, the granting of these rights to indigenous peoples, especially collective rights, is an extremely important development. Because in Western thought, rights have often been seen as individuals' demands for freedom, equality, physical and economic security against the state. However, recent developments show that, in addition to statism and individualism, human rights discourses also include the cultural and institutional characteristics of people.

It is a fact that international law has made great progress regarding the rights of indigenous peoples. However, what is important is whether the developments in international law can be adequately implemented at the national level and whether they will lead to a significant change in the status of indigenous peoples. As is known, the Declaration of the Rights of Indigenous Peoples is a UN General Assembly decision and is not binding on states. Therefore, in order for the standards in the Declaration to be binding at the national level, these rules must become a treaty or customary law.

Some authors argue that the Declaration can be considered, to a certain extent, customary law or a general principle of law. The Declaration represents the widespread consensus on the rights of indigenous peoples and the expectation that these rights will be respected. In particular, the claims regarding the formation of customary law were strengthened when Australia, Canada, New Zealand and the United States, which voted negatively during the voting of the Declaration in the General Assembly, declared their support for the Declaration as of 2010.

### References

1. Rombouts, B. (2017). "The Evolution of Indigenous Peoples" C. 53, S. 2, pp.171-172.
2. Bkz. Young (1995). Third World in the First: Development and Indigenous.
3. Berkut, N. (2019). The Status of Indigenous Peoples in International Law, NEU Journal of Social Sciences, 2 p.
4. UNCHR. (1986). UN Doc E/CN.4/ Sub.2/1986/7/Add.4, 379 p.
5. Anaya, S.J. (2000). Indigenous Peoples in International Law, pp.9-13.
6. Pazarıcı, H. (2005). International Law Lessons, Ankara, 7 p.
7. Anaya, Indigenous Peoples International Law, 43 p.
8. Barsh, R.L. (1986). Indigenous Peoples, The American Journal of International Law, 373 p.
9. Torres, R. (1991). The Rights Indigenous Populations, 149 p.
10. Anaya, S.J. (2013). The Human Rights of Indigenous Peoples, 1004 p.
11. Xanthaki, A. (2009). Indigenous Rights in International Law, 29 p.
12. ESC Res. (1971). 1589(L), UN ESCOR, UN Doc. E/5044 16.
13. ESC Res. (1982). 982/34, UN ESCOR, UN Doc. E/1982/82.3
14. Taşdemir, F.G. (2012). Kosovonun Müstəqillik Bəyannaməsi. Ankara, 248 s.
15. Mihandoost, B. (2016). The Rights of Minorities in International Law, 15 p.
16. Quane, H. (2005). The Rights of Indigenous Peoples, Human Rights Quarterly, 657 p.

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