General Assembly 3

Research Report

The Question of:

The recognition of indigenous land ownership in Latin America

Introduction

What does your land mean to you? Indigenous peoples would answer this question a big deal different than Western people would. To them, their land is their sacred place. It is the place where their fathers, grandfathers and all their ancestors lived, it is the core that keeps their tribes together and connects them to the earth, the cornerstone of their religion. On the other hand, from a Western point of view, a lot is solely the place where you live. The bond that indigenous peoples feel with the land is in the Western world sought indirect relations, with family for example. And those two views clash, and have clashed throughout our history.

With the arrival of Columbus in America in 1492, a new era took place. One where the Spanish, but also other seafaring nations saw business opportunities in Latin America, whilst the indigenous peoples were frightened that they would lose their lands. However, it was not a real fair fight. The European invaders were immune to illnesses like the flue, but the natives were not. When the Conquistadores arrived, carrying all types of viruses, the inhabitants died one by one. All that remained standing were not enough to effectively counter the presented attack. The result of this course of actions was the trade of land that the victors set up afterwards, and thereby the loss of that very land for the indigenous peoples.

The question which part of society the indigenous peoples fulfil now remains to be seen. However, it is an issue that more than one Latin American president has been impeached for. These have to balance between their own citizens, who are largely indigenous, and the years of Western cooperation and involvement in the region, which also generates numerous merits to the society in their countries. This balance, which involves dealing with all the involved players and beneficiaries, while at the same time keeping the connection to Western trades and keeping the natives content is the heart of this issue.

The Committee

The General Assembly 3 (GA3) is one of the three GAs of LEMUN 2018. All three of them have the same rights. The GA3 talks about Social, Cultural and Humanitarian issues. This means we will talk about issues in the world from those three perspectives: bearing in mind relations, traditions and human rights. As in the United Nations the bigger part of the power lays with the Security Council, the General Assembly is only allowed to *recommend* actions and not permitted to force member states to do something. What it can do, is use less strong Operative Clauses which could have a negative fallout in the news, such as 'Draws the attention to', and it has the executive power to make new committees, groups or to send funds. This GA will be a normal committee. This means that all delegates will have to prepare resolutions, which we will entertain as a whole at once. In order to put your own resolution on the agenda, you have to reach the number of eight co-submitters, who also want it to be talked about, but are not necessarily in favour of it. These will all have to sign a form, which can be handed in at the chair's desk. If the chairs have received this form, they will send the resolution to the Approval Panel, and if it approves the resolution is likely to be debated upon if time allows us.

All three GAs will be reunited in the plenary session on Sunday. Every committee will pass forward one of the resolutions it has passed, and they will be debated and voted upon once more. Amendments are not anymore permitted though, but one can speak in favour of or against the resolution as a whole, and the main submitter gets the floor with the starting and ending of the debate. During the main part of the conference however, we will be debating in our own committee room.

Key Terms

Indigenous:
This term can be used to refer to aboriginal, native or first people. This means that the first inhabitants of a country, through the process of evolution, are indigenous of that place. When the term indigenous is used lots of people immediately think of the old Indian habitants of America, but that is not necessarily the case. Every country has its own indigenous citizens.

The International Labor Organization (ILO):
The ILO is a UN organization that stands up for labour rights across the globe. They argue that the root of most of the UN issues is unemployment and they try to focus on that element by creating social equality and work for as many people as possible. It has 187 members of member states and is controlled not only by the countries, but also by its own workers and businessmen and -women. The relation to the issue lies in the ILO Convention 169, where rights of indigenous peoples are described and granted. It has been ratified by 22 countries, making it one of the bigger binding conventions on the topic.

Indigenous lands:
Following ILO Convention 169 "indigenous lands" are defined as *the total environment of the areas that indigenous peoples occupy and use*. The question is of course, where to draw the line. If the native inhabitants use an area as a playing ground, does it count as an indigenous land? And if so, should that piece of land be just as easily granted to them as their farming grounds?

Land rights:
The situation right now is that in the division of lands and build places, the indigenous peoples are often bypassed. And after the land is divided reality is that most tribes must move somewhere else. This would be acceptable, but annoying in the more Western culture, but it deteriorates the tribe culture from the inside, as it detaches it from its religion. Legally, the cities and towns have all the right to do what they do on the other hand. The question now is whether we should grant them land rights, that means that they will get a say and a good vote in deciding with what happens on indigenous lands and will get the right to have a guaranteed piece of land as a tribe.

United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP):
This declaration has been passed in 2007 by the General Assembly of the United Nations with 144 votes in favour, 4 against and 11 abstentions. In it, a lot of rights for the indigenous peoples are described, such as the right to protect their culture, the right of health, the right of self-governance and the *rights of land ownership*. Due to the entire 'resolution' being immensely pro-indigenous the victory of the land ownership issue was indeed granted to the native inhabitants. This kind of declaration however, is not binding for all the countries. That means that the real effect of this passing is merely a statement and does not cause any direct actions or improvements.

General Overview

As yet stated, the indigenous land ownership issue is a true culture issue. The indigenous peoples have lived on those ground for ages, but have never legally owned it. That clashes with the Western believes of ownership, which has grown from a more materialistic point of view. In this part, the origin of the cultures and the development of the clash will be discussed, as well as the issue as it stands in society right now.

The cultures:
First things first, what does the indigenous culture in Latin America exactly look like? The majority of it is built on the believing of Gods who provide resources for them through planet Earth. That means that every fish they catch in the rivers is caught in their beliefs by the grace of the Gods. Emphasis on the '-s', as the religion is not a monotheistic one, but rather a polytheistic one. As the area of Latin America is widespread, lots of religions are to be found in the indigenous cultures, but they all rest on the same cornerstones: the Gods and the Earth. Due to the Gods themselves naturally being sacred, the Earth is deemed sacred too. Actually, the indigenous culture and religion is filled with traditions, duties and high social norms and has social bindings rather than legal bindings which has caused many problems up to this day.

Then, to the Western culture. In this culture, one generally does not yield the same extent of emotional value to one's lands. They are usually just a trading good. Therefore, the indigenous point of view is quite difficult to comprehend for most of the Western countries. On the other hand, the areas they are trying to claim have been in 'western' hands, or at least been traded in a western style, for centuries. Therefore, maybe the lands are sometimes more Western than indigenous, if analyzed objectively. Also, from the legislative side: it is inevitable that the land ownership rules from the ancient indigenous culture must be poured into the international judicial format, instead of the norms and socially binding agreements. Besides, it has proven quite difficult to determine the definition of indigenous lands. In the ILO definition, every piece of land the indigenous people use is counted amongst the indigenous lands, also when hunters use up thousands of acres of land. However, the issue itself revolves around the essential lands for the indigenous peoples, instead of all the lands. These are all points that will have to be reviewed in order to truly instate the international law system in the Latin-American areas.

The roots of the issue:
The clash started in 1492, with the arrival of the Spanish Christoffel Columbus in America. He soon discovered that the local inhabitants were not that difficult to conquer, partly because of their lack of immunity to illnesses that the Europeans brought with them. The few that did survive for example the flue were soon defeated by the Spanish Conquistadores. Where Spain went, Portugal followed, and after the Portuguese followed many other seafaring European nations. Most of them were impressed by the big lands they found, and started to build their own colonies. These were not solely meant for living purposes, but they also built plantations for sugar and coffee. As a result, most of the lands soon became part of the Western living in the area, whilst the indigenous people lost their grounds. The problem was that the native inhabitants did not have a legal owning of the lands, but

rather a common practice of using them for centuries. That also was the reason that after the times of a real oppression the lands were not instantly returned to the native peoples.

In the centuries that followed, the position of the natives remained quite stagnant. Up until the 20th century there was not paid much attention to them anyways, but in more recent years the attention granted usually revolves around a casus. If some of the natives are to be mistreated immensely there will often be a short period of media attention, but the final word always lays with the governments themselves who will have to find the solution.

At the beginning of this issue, the indigenous peoples did not plea for a full governing and ownership of the lands, to the contrary they just wanted to use them. That usage is vital to their way of life, because only that way they can properly fish, hunt, farm, et cetera. When they felt like that usage was threatened by the fact that they were not the owners of the lands, which legally gave the actual owner the right to do anything they want with the area, they started pleading for a full ownership of it in the media. That in its turn threw even more gasoline on the fire, and the Western peoples saw in their eyes as indigenous greed. De facto the entirety of the issue is rooted in that very usage of lands.

The appearances nowadays:

There are a lot of demonstrations to create better legally binding situations for the indigenous inhabitants. An example is a demonstration in Brazil on the 23rd of April 2018. More than 2.000 of the native inhabitants of Brazil gathered and demonstrated for better rights and lands after new legislature from the president that weakens their position. This is a pattern that can be seen often nowadays: the presidents of the Latin American countries have to prioritize between the indigenous part of their citizens and the more western part, while at the same time keeping global trade in mind. This balancing act has caused quite some presidents to fall, because when the support of the indigenous peoples is lost and they are mistreated, a media circus often starts immediately thereafter in which is often sympathized with the native inhabitants.

On the other hand, there is argued that the indigenous culture as we know it is merely a thing of the past. Consequently, the materialistic point of view, or at least way of life, should be adopted as soon as possible by all of the troublemakers. In that line of thoughts, giving the natives the lands would be too big a gift and unfair to all the others who have trouble housing themselves. These kinds of reactions are always to be found in the multicultural and diverse world we live in nowadays. Following the indigenous line of arguments, their legal system before Western interference existed entirely of norms and agreements. That means that from a democratic point of view, it would be fair if the nation recognized those norms as a legislative branch. The same thing has been done in other cases like this, only the law systems were usually more alike than now.

Maybe the issue does not always have to be as huge as described. Most countries have parts of their constitution written especially for the indigenous peoples and their rights. In lands like Mexico that job was fairly easy, as their natives lived in villages or at least in quite permanent areas. Other countries, like Brazil and Paraguay, have natives who travel all the time to hunt. This of course raises the question which lands can be counted amongst the indigenous lands. These two countries have come up with a solution, where they acknowledge in their constitution the right of the indigenous peoples to develop their ethnic and cultural identity within their respective habitats. The destination of these lands is up to the discretion of the government, and if they would not go to the natives they would become national territory rather than local one, to protect the lands and the usage of it by some of the natives.

Conclusion

What is more important, the acknowledgement of cultures or the integration of international law and trade system? That is the core question in this issue. If one deems it the acknowledgement of cultures the most important, the indigenous culture from before the Conquistadores could be seen as a judicial branch and therefore be acknowledged nowadays as proper ownership. This emphasizes the *recognition* part of indigenous land ownership in Latin America. But if you lean more to the other side you could argue that the indigenous peoples should just integrate and not be granted this special position. Furthermore, losing those lands would result in the loss of quite some business. The goal of this issue is to try and tackle this issue and these contradictions on an international level, leaving room for all the governments to instate their own systems in cooperation with the native inhabitants.

Major Parties Involved

On this issue, there are quite some major parties involved. In order to keep this section organized, all the Latin American countries are divided into three groups. The other countries and/or groups involved will be discussed separately.

The indigenous peoples:

The opinion of this group speaks pretty much for itself and has already been broadly discussed. Yet, we'll do a short recap. Their lifestyle is often one of hunting, and in order to do so they need to have access to hunting grounds. They also feel their connection to the Gods through the gifts they receive from those grounds, and that connects the groups themselves too. The problem that poses is that they are not the legal owners of the lands they have used for ages, because they have always had a culture that rested on norms rather than materialistic laws. That means that lots of them were lost and used for building industries and cities. In the first instance they did not claim ownership of the lands, they just wanted permission to use them. It was not until they saw that usage threatened when they started claiming ownership of the lands. Global indigenous peoples support this movement in Latin America too of course.

Latin American countries finished legal framework:

These countries, Bolivia, Brazil, Colombia, Costa Rica, Chile, Panama, Paraguay, and Peru, have shown a lot of commitment to improve the situation of the indigenous peoples' rights by rewriting parts of their constitution and/or signing international agreements. They also persevered in creating a regulatory framework and concrete actions to protect these rights, including land rights.

Latin American countries legal framework in progress:

These countries, Argentina, Cuba, The Dominican Republic, Mexico, Guatemala, Honduras, Nicaragua and Venezuela, have shown their wishes in improving the rights of indigenous peoples through their constitution or international agreements, but have yet to follow through with concrete actions and the regulatory framework to improve the indigenous peoples' situation immediately.

Latin American countries without legal framework:
These countries, El Salvador, Guyana, Suriname, and Uruguay, have not reacted with action on the indigenous peoples' situations. This means they did not engage in international agreements and/or amended their constitution to capture the rights of native inhabitants in them. The reasoning of, for example, El Salvador is that all the indigenous peoples that once existed before the current population are extinct right now. That means that granting privileges of land ownership to the current indigenous population in El Salvador would be unfair and unequal to all the other citizens of the country.

Countries with a large population of indigenous peoples:
These are the countries Bolivia, Ecuador, Mexico, Guatemala and Peru. As a result of varying sources and a tough definition of *indigenous* peoples, and the problems in keeping track of the populations, the exact numbers have not been determined. What is clear is that Mexico has the largest population of natives from these five, which fits with its image of progressing on their rights issues. These are also the countries where the top-notch Indian civilization flourished when the Conquistadores arrived.

Timeline of Events

1492: Christopher Columbus arrives in America
1494: Pope Alexander VI brokered with Spain and Portugal on how to divide the Americas ("Treaty of Tordesillas")
1494: Colombo has captured 1,500 slaves on Hispaniola
1500: the Portuguese explorer Alvares Cabral arrived at the coast of Brazil
1500: About 65 million Native Americans reside in Central and Latin America, of them 25 million do soin Mexico
1501: The Spanish colonists of Hispaniola start the importing of African slaves
1521: The first sugar was planted in Brazil
1580: British pirate Francis Drake ends the second circumnavigation of the Earth
1580: Spain prohibits the conferring of any public office to mestizos (mixed-blood people) in the American colonies
1600: Only one million Native Americans remain in Mexico after all the wars
1616: Dutch explorer Willem Corneliszoon Schouten discovers the route around Cape Horn, which is a faster way to reach the Western coast of South America and gave the Dutch an edge
1623: Bahia is seized by the Dutch from Portuguese Brazil with help from the Portuguese Jews and expand in the Northeast
1703: Spain allows the colonies to confer public office to mestizos
1730: a Mestizo-led rising was executed at Cochabamba.
1765: Cuba commences an export boom of sugar
1800: The population of Chile consists largely of mestizos (300,000 out of 500,000 people)
1813: Argentina extends the right to vote to mestizos and indios, and outlaws torture, slavery and the Inquisition
Feb 1821: The creole Augustin de Iturbide and the mestizo Vicente Guerrero declare the independence of Nueva Espana, and with it a Mexican Empire (Mexico, California, Texas, Central America) that has six million people

1826: Ten independent countries have formed in Latin America: Mexico, Central America, Colombia, Peru, Bolivia, Chile, Haiti, Paraguay, La Plata, Brazil, and the population of Latin America is about 20 million

1845: Ramon Castilla, a mestizo, is instated as dictator of Peru

1923-25: First International Involvement

1932: Uruguay grants women the right to vote

1932: Female suffrage in Brazil

1952: The poor of Bolivia take over power with a coupe ("Movimiento Nacionalista Revolucionario") after a victory over the army, and Victor Paz Estenssoro forms a government, closing more than a century of coups (a total of 179, including six presidents assassinated)

1950-onwards: Increasing media attention to the indigenous peoples' situation

1981: Martínez Cobo Study

1982: Working Group on Indigenous Populations (WGIP)

1989: International Labor Organisation Convention 169

1993: International Year of the World's Indigenous People

1994: International Decade of the World's Indigenous Peoples

2000: Permanent Forum on Indigenous Issues

2001: Special Rapporteur on the Rights of Indigenous Peoples

2005: Second International Decade of the World's Indigenous Peoples

Jan 2006: Leftist candidate Evo Morales wins the elections in Bolivia and takes his place in history as the first indigenous president of a South American nation, and the fifth Bolivian president in four years; Morales assumes the presidency

2007: Expert Mechanism on the Rights of Indigenous Peoples (EMRIP)

2007: UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

2014: World Conference on Indigenous Peoples (WCIP)

Previous attempts to solve the issue

The two big previous attempts to solve this issue on an international level have already been discussed, those are the ILO Convention 169 from 1989 and the United Nations Declaration on the Rights of Indigenous Peoples from 2007. There have been numerous national conflicts, which consist in their turn of tons of demonstrations and media attention. This has caused many governments to try and broker a deal not only on a national level but also on an international level. And that, in its turn, has caused these two big steps. But more UN actions have been undertaken: in 2000 a permanent forum was created that keeps an eye out for indigenous peoples worldwide, in 2001 a Special Rapporteur was instated, in 2007 the EMRIP was created and in 2014 the worlds first WCIP was held. Apart from these actions, indigenous emancipation has also been on the UN agenda for quite some time and has also led to quite some actions, such as the International Year of the Worlds' Indigenous People in 1993.

The Future

In the future, things seem to be following the indigenous path. In this era of emancipation, the indigenous peoples' issue fits right in. However, the binding action has to be undertaken by either the Security Council, which is unlikely, or the national governments of the countries themselves. Lots of them are also progressing on the issue, but there are also those who are content with the current situation and also clearly make their case. There is of course the option that even those will be bullied into forming a new constitution or ratifying ILO Convention 169, but it seems unlikely as the emancipation for the indigenous peoples has been going on for some time and still has not caused those kinds of actions.

Furthermore, it could be that the fire of emancipation breaks down in the following years. It will still exist, but the passion leaves. This could of course weaken the situation of the indigenous peoples quite a bit, as their entire course of action has been empowered by this emancipation. Also, nothing is set in stone. If the natives get the lands right now but the constitution is amended a couple of years later, chances are they will have to return them. That's the problem with receiving these kinds of matters from the government, due to the fact that you got them your position as an owner is very weak.

In matters of international opinion, the indigenous people would quickly 'win' the issue right now. The problem lies, as so often, in the real concrete action that would have to be undertaken. Most nations do not like to be forced by the UN to enact or implement legislature like this, and that

probably will not happen. Nor are the nations forced, nor do the unwilling ones push forward indigenous emancipation any more today. What will happen there remains to be seen. Anyways, the stakes are high.

Important Decisions a Resolution Must Take

On this issue, there are quite some vague boundaries that will have to be defined. Amongst those can be counted the following:

- What are indigenous peoples? If a normal citizen has indigenous ancestors and 3% indigenous blood, would he or she be counted amongst them?
- What are indigenous lands? There are cases where the natives are true hunters, travelling each and every day. Which lands should be counted with the indigenous lands? Just their normal living grounds or every piece of dirt they use?
- What kind of ownership are we talking about? Legal ownership, cultural ownership, ownership through toleration?
- Will the ancient culture of all the natives and indigenous peoples be accepted as legislature from their society? This question is of big importance as if it is answered with yes, the position of the indigenous peoples is strengthened significantly.
- How will the situation for the indigenous peoples improve in nations who do not wish to cooperate, if at all? In the resolution there must be thought of those countries.

These are all the kinds of questions this resolution should answer in order for it to be concise and clear. Please be noted that the issue itself is your guide for writing a resolution, and these questions are not. Never limit your resolution to just answering these questions, but address the issue as a whole.

Further Reading

- The UN itself:
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7. Journal site Reuters: https://www.reuters.com/article/us-chile-mapuche/chiles-president-asks-forgiveness-from-indigenous-mapuche-idUSKBN19E279
8. The UN itself:
    a. https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html
    b. https://www.un.org/development/desa/indigenouspeoples/
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10. The Scaruffi site: https://www.scaruffi.com/politics/latin.html
11. The International Work Group for Indigenous Affairs: https://www.iwgia.org/en/focus/land-rights/2482-indigenous-peoples-in-latin-america-claim-territor