the SPANISH YEARBOOK of INTERNATIONAL LAW

Secession of States and Self-determination in contemporary International Law

Doctrinal Reflections on the Concept of People in International Law

Álvaro JARILLO ALDEANUEVA*

Abstract: The concept of people has been subject of a broad doctrinal debate on its elements during the last decades. Its links to the decolonization process and the evolution of the internal dimension of the principle of self-determination have reinforced the importance of the academic discussion. There is not a univocal meaning of the term people and the old question of "what is a people" is still very controversial for the International Law. This article examines most relevant doctrinal reflections on the elements and characteristics of the concept. The doctrinal analysis must be conceived as a preliminary task of great relevance for the later examination of the principle of self-determination.

Keywords: People – Self-determination – Decolonization – Identity – People's rights

The concept of people has been very controversial in International Law during the last decades. This paper focuses on that doctrinal debate about the concept of people, aside from the international practice and the comparative constitutional law. The progressive enlargement of the right of self-determination, in particular through the internal dimension, compels to update the original debate on the elements of this concept. It must be analysed in connection with other notions, like the right of self-determination and the concept of popular sovereignty.

In a historical perspective, the genesis of the concept can be traced back to the first emancipation movements of the European colonies. Some authors have emphasized the historical importance that the School of Salamanca had with respect to the indigenous populations of America.[1] The preamble to the Charter of the United Nations begins with the

* Associate Professor of Public International Law, UNED.

1 See N. Lerner, *Groups Rights and Discrimination in International Law* (Kluwer International Law, The Hague, 2003), at 7; J. Summers, *Peoples and International law*, (Martinus Nijhoff, Leiden, 2007), at 14; W. M. Reisman, 'Sovereignty and human rights in contemporary international law', in Gregory H. Fox and Brad R. Roth (eds), *Democratic Governance and International Law* (Cambridge University Press, Cambridge, 2000), at 240; and A. Mangas Martín *et al.*, *La Escuela de Salamanca y el derecho internacional en América. Del pasado al futuro* (Asociación Española de Profesores de Derecho Internacional y Relaciones Internacionales, Salamanca, 1993).

 DOI: 10.17103/sybil.22.18

historic quote "we the peoples of the United Nations".[2] This mention must be studied jointly with Articles 3 and 4 that maintain the exclusive role of the states to be members of the Organization together with the affirmation of the principle of non-intervention (recognized in Article 2(4)). With respect to self-determination of peoples, Article 1(2) comprises among the purposes of the Organization "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples". This represented a first step in the course towards the self-determination of peoples carried out by the Organization to this day.

The development of the process of decolonization promoted by some great powers (such as the United States and the former Soviet Union) and by the General Assembly through successive milestones such as Resolutions 1514 (XV), 1541 (XV) and 2625 (XXV) is well known.[3] However, the concept of people is relevant in both the internal and the external dimension of the process. Indeed, in the analysis of the right of self-determination of peoples subject to foreign colonial domination (external dimension of self-determination) it is crucial to determine the elements of the colonial territories. Likewise, before any debate about the scope and limits of any eventual identity claim of a certain intra-state community, it is essential to set the preconditions or minimum identity requirements of that community.

(A) A CHAMELEONIC CONCEPT

To fulfil the purposes of Article 1(2), Chapter XII (International Trusteeship System) and Chapter XIII (The Trusteeship Council) of the Charter[4] designed an entire administration system controlled by the United Nations under three types of territories: the territories under mandate, the territories segregated of the countries defeated in the Second World War and those who voluntarily wanted to be administered (trust territories). Despite the establishment of this administration system, some authors such as Pérez González, criticized

[2] See R. Wolfrum, 'Preamble', in Bruno Simma and Daniel-Erasmus, *The Charter of the United Nations, A commentary*, Vol.I (Oxford University Press, New York, 2002), at 34: "The first seven words of the Preamble caused considerable debate at the San Francisco Conference. These words indicate that the Charter is an agreement among the peoples of the United Nations, a formulation analogous to the Preamble of the United States Constitution"; and J.-P. Cot and A. Pellet (eds), *La Charte de Nations Unies. Commentaire article par article* (Economica, Bruylant, Paris, 2005), at 306.

[3] About the decolonization process, see P. Andrés Sáenz de Santa María, 'La libre determinación de los pueblos en la nueva sociedad internacional', I *Cursos Euromediterráneos Bancaja de Derecho Internacional* (1997), at 113-204; and J. Soroeta Liceras, 'El derecho a la libre determinación de los pueblos en el siglo XXI: entre la realidad y el deseo', Nº1 *Cursos de derecho internacional y relaciones internacionales de Vitoria-Gasteiz* (2011) at 451-502.

[4] Once this body successfully completed its mandate, the General Assembly agreed in 2005 to remove the chapters of the Charter that referred to its activities. See GA Res. 60/1, 2005 World Summit Outcome, 24 October 2005, par. 176: "Considering that the Trusteeship Council no longer meets and has no remaining functions, we should delete Chapter XIII of the Charter and references to the Council in Chapter XII."

the incomplete development of the principle of self-determination in the Charter itself, "due, no doubt, to political reasons, among them the resistance of some victorious powers of war, with the United Kingdom at the head with vast colonial possessions in whose conservation they were interested".[5]

In addition, the Declaration on Non-Self-Governing Territories was included in Chapter XI of the Charter of the United Nations. The first part of this Declaration remarks the commitment of the Members of the United Nations to "promote to the utmost [...] the well-being of the inhabitants of these territories" as well as "to develop self-government". The mention made in the same article to "assist them in the progressive development of their free political institutions" referred implicitly to the impulse in favour of the self-determination of the Non-Self-Governing Territories. The fiduciary administration system, together with the equal sovereignty of the states, conformed the legal framework that allowed the development of the principle of self-determination.

The Universal Declaration of Human Rights, concurrently, does not mention in its articles the rights of peoples, since most of its clauses begin with the references to "everyone"; with some exceptions such as Article 21(3) referred to "the will of the people" and other precepts of the declaration, such as Article 27(1) mentioning the" cultural life of the community "or Article 29 on the "duties to the community".[6] Therefore, the starting point of our reasoning is that the international legal order does not assume a fully accepted and clearly defined concept of the notion people. Hence, the concept itself has not clearly defined limits nor a unanimous meaning and scope. This lack of a consistent and universal definition has led some authors to describe the concept of people as "chameleonic".[7]

A first approach to the concept could lead us to compare it with the traditional conception of the state as a subject of the international legal order with the elements that we usually identify in the field of International Law. For some authors, this would be the *Kelsenian* approach to the concept *matching* the peoples with the states[8] but that perception does not

---

[5] M. Pérez González, "La subjetividad internacional (II): la personalidad internacional de otros sujetos", in M. Diez de Velasco *et al.*, *Instituciones de Derecho Internacional Público* (Tecnos, Madrid, 2013), at 299 (we translate).

[6] Van Boven justified this lack in the fear of many States to include references to the concept of the people that could recall the totalitarian practices of Nazism. See T. Van Boven, 'Human Rights and Rights of Peoples', 6 *European Journal of International Law* (1995), 1-476, at 10. [doi: 10.1093/ejil/6.1.461]

[7] See A. Michalska, 'Rights of peoples to Self-determination in International Law', in William L. Twining (ed), *Issues of Self-determination* (Aberdeen University Press, Aberdeen, 1991), at 73: "The notion 'people' has been used in international instruments in many contexts. Yet, at the same time, no definition of that notion is provided by international law. Jouve is right in saying that 'people, c'est en quelque sorte, un mot camaleon'."

[8] Abi-Saab commented on this position in his Course of the Hague Academy: "Kelsen réduit la référence au principe dans l'article 1, paragraphe 2, à une autre formulation, plus idéologique ou politique, du principe de l'égalité souveraine des Etats, le vidant ainsi de toute substance et de 'valeur ajoutée' normative. Cette

correspond to the true spirit of the San Francisco Charter.[9] A careful reading of Article 1(2) of the Charter denotes the discrepancy between both concepts, since the paragraph distinguishes between "nations" and "peoples". In addition, it must be underlined the prevailing doctrine that influenced the Chapter II which preserved the exclusive competence of the states to become members of the Organization. This distinction between the rights of peoples and the obligations assumed by states is also observed in the articles of the New York Pacts, whose first article recognizes, at the same time, the right of peoples to self-determination and the obligation of states to promote its exercise.[10]

(B) A COMPLEX CONCEPT

The particular questions to answer are: What is a people? What are the elements of the people? From a theoretical perspective, the answers could be considered as legal prerequisites to determine when (a certain community) is conforming *or not* a people in the sense *accepted* by the International Law. But, the international society and the principle of effectiveness have confirmed that the international subjectivity is not always in line with the legal presumptions. In particular, the internal dimension of the right of self-determination has encouraged the debate about the components, requisites and characteristics of the peoples.

In this regard, there is prolific literature on the meaning of the notion people[11] and we align ourselves with the doctrine presented by the authors Ruiloba[12] and Pastor.[13] They

interprétation caricaturale ne cadre cependant ni avec le texte clair, ni avec les travaux préparatoires, ni avec le contexte de la Charte." (G. Abi-Saab, 'Cours général de droit international public', 207 *Collected Courses of the Hague Academy of International Law*, 1987, at 394).

[9] See T. Musgrave, *Self Determination and national minorities* (Clarendon Press, Oxford, 1997), at 149.

[10] See GA Res. 2200A (XXI), 16 December 1966, International Covenant on Civil and Political Rights, (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Art.1: "All peoples have the right of self-determination [...] The States Parties to the present Covenant [...] shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations."

[11] See Churchill, W., *The People's Rights* (Jonathan Cape, Londres, 1970); P. Alston, *Peoples' Rights* (Oxford University Press, Oxford, 2001); J. Crawford (ed)., *The Rights of peoples* (Clarendon Press, Oxford, 1988); A. Cassese, *Pour un Droit des Peuples. Essais sur la Déclaration d'Alger* (Berger Levraut, Paris, 1978); T. Frank, 'Clan and Superclan: Loyalty, Identity and Community in Law and Practice', 90(3) *The American Journal of International Law* (1996), at 359-383 [doi:10.2307/2204063]; A. Rosas, 'So-Called Rights of the Third Generation', in Asbjørn Eide, Catarina Krause, and Allan Rosas (eds), *Economic, Social and Cultural Rights: A Textbook* (Martinus Nijhoff, Dordrecht, 1995), at 243-246; B. Kingsbury, 'Claims by Non-State Groups in International Law', 25(3) *Cornell International Law Journal* (1992), at 481-513; M. Koskenniemi, 'National Self-Determination Today: Problems of Legal Theory and Practice', 43(2) *The International and Comparative Law Quarterly* (1994), at 241-269.

[12] E. Ruiloba Santana, 'Una nueva categoría en el panorama de la subjetividad internacional: el concepto de pueblo', M. Diez de Velasco *et al.*, *Estudios de Derecho Internacional. Homenaje al profesor Miaja de la Muela*, Vol.I, (Tecnos, Madrid, 1979) at 303-336.

adopted an adequate approach to the factual reality of the international society and to the constraints of the International Law. The doctrine of these authors can be summarized in the following notes.

(1) Similarities and differences

There are certain similarities and differences between the traditional concept of nation and the notion of people. Under this framework, the doctrines developed in the first part of the twentieth century regarding nationalities and minorities are noteworthy. The work of professor Ruiloba summarized and synthesized properly the similarities and differences between the two concepts and examined the link amid the principle of nationalities and the self-determination of peoples.[14]

(2) Eclectic approach

Faced to the two traditional conceptions of the German (objective theory) and the French (subjective theory) schools,[15] it is convenient to adopt an eclectic (or synthetic) position. Professor Ruiloba explained this eclectic opinion in the following lines:

> "The collective will to live as an independent nation, or the conscience of constituting a differentiated nation or people, is, therefore, a *necessary* element to the concept of people or nation. It is not, however, *enough*. An objective basis is required. [...] There is not an essential or defining element that, when concurring, whatever the intensity of its presence, indicates qualitatively when a human group is an authentic people [...] A people, like a nation, it is therefore a human group socially and historically differentiated by a complex of factors, some objectives and others subjective, whose relative presence is different from some cases to others, and that, together, can lead to a greater or less differentiation also *according to the cases*."[16]

(3) Political factors

To assess the different circumstances (objective and subjective elements) and, above all, to qualify and characterize a community as a people, it will be necessary to consider the political factors influencing the existence of every community. As an echo of this influence, the positions of the General Assembly in each case have been considered almost determinant. Regarding this qualification and the evaluation of the different elements at stake, professor Ruiloba understood that, in addition to the collective will of the community, it is necessary a certain measure of material or objective differentiation. He considered that, in practice, it is the historical and, above all, the political circumstances, which moved the organized

---

[13] J.A. Pastor Ridruejo, 'Le Droit international à la veille du vingt et unième siècle: normes, faits et valeurs', 274 *Collected Courses of the Hague Academy of International Law*, 1998, at 21-305.

[14] See Ruiloba, *supra* n.11, at 2-3.

[15] Pastor comments on these doctrinal discrepancies in: Pastor, *supra* n. 12, at 141.

[16] Own translation (emphasis added). Ruiloba, *supra* n.11, 315-316

 DOI: 10.17103/sybil.22.18

international community (or its members individually considered) to appreciate if a certain community is "sufficiently differentiated to be considered as a people entitled to self-determination".[17] In a similar sense, Pastor also coincides in highlighting the importance of political circumstances in the process of awarding the "people category".[18]

By aligning ourselves with the thesis of both authors, we reaffirm that the will of the population is a necessary element to constitute a community as such. But this popular will is not enough by itself since it needs the concurrence of other objective elements. The set of these objective elements, such as language, religion, history, territory, culture and other domestic elements will be assessed from the international arena to determine the degree of legitimacy of the people to claim their right of self-determination.[19] These elements must be understood with an interdependent and complementary approach to determine (through their simultaneous concurrence) the identity of the people in question. Conversely, if we analyse them separately, we will find a lot of gaps and incongruences. As an example, the language is not a determining factor to assert the existence of a people.[20] In the same way, the territory has an eminently functional character[21] and the history is always subject to a complex and contextual interpretation.[22] None of the elements, considered in isolation, has an essential or imperative significance to attribute the category of people to a certain human community.

(C) A POLYSOMIC CONCEPT

The lack of uniform and universal criteria regarding the concept of people requires assessing the circumstances in a case-by-case basis. This compels to take into consideration the set of objective and subjective elements of every community that seeks to become a people for the International Law. Likewise, in the evaluation of the singular elements of every people, the political issues and the international relevance of the entity (state or international

[17] Own translation. Ruiloba, *supra* n.11at 315.

[18] See Pastor, *supra* n.12, at 141.

[19] See Summers, *supra* n.1, at 46.

[20] *Ibid.*, at 63: "Different nations can speak the same language, as with Spanish in Latin American countries, or English in the case of the United States and Canada. Alternatively, the one nation could speak different languages. English and Gaelic are used in both Scotland and Ireland without been seen as a national difference. Different nations can also speak very similar languages [...] Indeed such differences can blur to the point of insignificance."

[21] *Ibid.*, at 71: "Territory can have an important functional role in defining nations, providing a population with its resources and shaping their lifestyle and culture. However, its role in uniting and dividing people is more difficult. Geographical features do not necessarily form barriers between people."

[22] *Ibid.*, at 81: "[...] Historical ties, then play a complex role. They are important for adding depth to national ideas and weight to legal principles. However, this very importance may mean that they are interpreted according to the needs of a self-determination claim, rather than their actual functional role in shaping nations."

organization) that make the assessment are crucial to the success of the process.[23] In this field, the international legal doctrine and the jurisprudence regarding the recognition of states can be useful when there are similarities or analogies.[24] Indeed, despite the differences, many of the classic parameters of International Law around the principle of effectiveness are also applicable in the field of peoples. In practice, the General Assembly assumed, with respect to the peoples, part of the work done in the past by the states regarding recognition.[25]

At this point, it is worth to underline that, despite the ambiguity of the concept, through the acceptance of the objective and subjective elements, the identity of many peoples from all continents have been recognized and they have become right-holders under the particular "rights of the peoples" regime.[26] However, although progress has been made in determining those characteristic elements of the peoples, this does not imply that the international legal order has forged neither a univocal meaning of the term nor a set of common characteristics inherent to any people. On the contrary, we can affirm that the progressive expansion of the original concept (basically applicable to peoples subject to colonial domination) has led to the gradual recognition of new rights that go beyond self-determination, like the rights recognized to other communities sharing other characteristics different from the original ones of the colonies.

Faced to this ambiguity, authors such as Wright encouraged the political bodies of the United Nations to qualify every sovereignty request.[27] Others, like Abi-Saab affirmed that the notion of the people would depend on the context in which it arises. He suggests a "contextual" and "dynamic" interpretation that implies that the rights recognized to those peoples may vary according to the context or depending on the scope and the particular content.[28] Thus, it would be different to refer to the right of the peoples to their own existence —which entails

---

[23] See Q. Wright, 'The strengthening of international law', 98 *Collected Courses of the Hague Academy of International Law*, 1959, at 185: "The General Assembly has, however, taken the position that it is 'competent' to decide 'what territories come under Article 73'. Can this position be justified? I think it can, on the theory that a resolution of the General Assembly may constitute 'collective recognition' of a status.".

[24] See, among others, H. Blix, 'Contemporary Aspects of Recognition', 130 *Collected Courses of the Hague Academy of International Law*, 1970, at 587-704: L. García Arias, 'La desaparición de la doctrina Betancourt sobre no reconocimiento de gobiernos *de facto*', 22(1) *Revista Española de Derecho Internacional*, (1969), at 104-106; J. Crawford, *The creation of States in International Law* (Oxford University Press, Nueva York, 1979); J. Dugard, *Recognition and the United Nations* (Cambridge University Press, Cambridge, 1987); H. Lauterpacht, *Recognition in International Law* (Cambridge University Press, Cambridge, 2012); and J. A. Carillo Salcedo, *Soberanía de los Estados y Derechos Humanos en Derecho Internacional* (Tecnos, Madrid, 2001).

[25] Wright discussed deeply this topic in Chapter X (Self-determination and recognition) of his Hague Academy Course. See Wright, *supra* n.171, and Q. Wright, 'Some thoughts about recognition', 44(3) *The American Journal of International Law* (1950), at 548-559 [doi: 10.2307/2194030].

[26] See Ruiloba, *supra* n.11, at 335.

[27] See Wright, *supra* n.22, at 490.

[28] See Abi-Saab, *supra* n.8, at 404.

the prohibition of being subjected to genocide— than to the right of self-determination. Likewise, Crawford goes a step further and links the concept of people with the rights-holders, affirming that the rights of the people conform a category, not a definition.[29]

We consider that it is feasible to affirm that the notion people does not have a univocal meaning in International Law; thus, its meaning can vary according to the type of community to which we are referring and their rights will also differ according to the legal field.[30] Ruiloba, studying the concepts of people and nation, stressed the need to interpret the term "according to the context".[31] This multi-layered conception of the notion people must be considered as a valid categorization to emphasize the difficulty of finding a univocal meaning of the concept. Brownlie insists on the difficulty of defining the term, although he affirms that the concept has a "core of reasonable certainty" which stems from the right of the communities to have its particular characters reflected in the governmental institution of the community.[32]

In this context, we must underline that peoples, as understood, are different entities of what we recognize as minorities,[33] which are recipients of Article 27 of the International Covenant on Civil and Political Rights.[34] It is evident that both concepts are very similar and they both contributed to the enlargement of the right of self-determination. But this type of intrastate communities are holders of other rights recognized by the international legal order and are addressees of many other studies by the doctrine.[35] Summers rightly emphasizes that,

[29] See Crawford (ed), *supra* n.10, at 169-170.

[30] Many authors have been favourable to this diversity. See, among others, Crawford (ed), *supra* n.10 at 170 and Michalska, *supra* n. 7 at 74.

[31] See Ruiloba, *supra* n.11, at 311.

[32] In this sense, Brownlie continues his argument by unravelling the elements that have traditionally shaped the different character of each people and links it to the principle of self-determination. See Brownlie, I, 'Rights of Peoples in International Law', in Crawford (ed), *supra* n.10, at 5.

[33] See F. Mariño Menéndez, 'Naciones Unidas y el derecho de autodeterminación', in F. Mariño Menéndez (coord.), *Balance y perspectivas de Naciones Unidas en el cincuentenario de su creación* (Boletín Oficial del Estado, Madrid, 1996) at 89.

[34] See International Covenant on Civil and Political Rights, *supra* n.10, Art. 27: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

[35] With regard to minorities, specialized bibliography can be can consulted: Y. Ben Achour, 'Souveraineté étatique et protection internationale de minorities', 245 *Collected Courses of the Hague Academy of International Law*, 1994, at 361-462; C. Brölmann, R. Lefeber and M. Zieck (eds), *Peoples and Minorities in International Law*, (Martinus Nijhoff, London, 1993); P. Thornberry, *International Law and the Rights of Minorities* (Clarendon Press, Oxford, 1991); T. D. Musgrave, *Self Determination and national minorities* (Oxford University Press, Oxford, 2000); W. Kymlicka, *The Rights of Minority Cultures* (Oxford University Press, Oxford, 1995); J. M. Contreras Mazarío, *Las Naciones Unidas y la protección de las minorías religiosas* (Tirant, Valencia, 2004) and T. Makkonen, *Identity, Difference and Otherness. The Concepts of 'People', 'Indigenous People' and 'Minority' in International Law* (The Eric Castrén Institute of International Law and Human Rights, Helsinki, 2000).

although there is no clear differentiation between minorities and peoples, the most decisive nuance is that they are not holders of the right of self-determination understood in its entirety but of other rights such as those related to their language, their religion or their own culture.[36] In this field, one of the most notorious cases took place on the occasion of the peace conference convened after the dismemberment of the former Yugoslavia, which agreed to the creation of an arbitration committee known as the Badinter Committee.[37] The Final Opinions of the Committee affirm, among other arguments, the existing compatibility between the rights of intrastate minorities and the maintenance of the territorial limits of the new states that emerged after the war.[38] The set of these opinions confirms the implementation force of the *uti possidetis iuris* principle,[39] without undermining the rights of those groups living within the state and the possibility of neighbouring states to modify their territorial limits as long as do it by agreement.[40] Likewise, the category of indigenous peoples is currently the

[36] See Summers, *supra* n.1, at 4: "While it is not clear whether minorities could also be peoples, they do not, in themselves, have a right of self-determination in international law. Instead, persons belonging to such minorities (note the focus on individual members rather than a group) are considered to have certain minority rights, such as the right to use their own language, practice their own religion or enjoy their own culture."

[37] The name of the Committee corresponded to its president, Robert Badinter, former president of the French Constitutional Council.

[38] See *Opinions of the Arbitration Committee*, Opinion Nº2: "[...] 1. The Committee considers that, whatever the circumstances, the right to self-determination must not involve changes to existing frontiers at the time of independence (*uti possidetis juris*) except where the states concerned agree otherwise [...] The principle of the right to self-determination serves to safeguard human rights. By virtue of that right every individual may choose to belong to whatever ethnic, religious or language community he or she wishes." The text of the Final Opinions of the Committee can be found as an annexed document in: A. Pellet, "The Opinions of the Badinter Arbitration Comité. A Second Breath for the Self-Determination of Peoples", 3(1) *European Journal of International Law* (1992), at 182-185 [doi: 10.1093/oxfordjournals.ejil.a035802]

[39] See L. I. Sánchez Rodríguez, 'Uti possidetis: la reactualización jurisprudencial de un viejo principio', 40(2) *Revista Española de Derecho Internacional* (1988), at 121-152.

[40] Pellet, *supra* n.37, at.180: "The Arbitration Committee laid great emphasis upon the fundamental importance which it attached to the principle of respect for frontiers existing at the moment of independence (*uti possidetis juris*)."

 DOI: 10.17103/sybil.22.18

recipient of a large list of legal norms[41] to the point that they could constitute a particular branch of the International Law of Human Rights.[42]

(D) A LEGAL CONCEPT

One of the most relevant elements in the legal recognition of the identity of every people is the subjective element of the freely expressed will of the people.[43] The common and necessary element in the syllogism *people – self-determination – political participation of the citizens* is the genuine expression of the popular will. Indeed, that expression of the will of the people must be a free and genuine expression of the will common to the group of inhabitants of the community. It has been a crucial (although not the only) element that must concur during the process of self-determination, either in the external and in the internal dimension.[44] Moreover, in order to grant some right of political participation to the members of that community, it will be necessary to offer them the possibility of expressing their political preferences in a system of political pluralism (respectful with the constitutional norms in the case of the internal dimension).

In brief, the concept of the people refers to a human community endowed with some form of political organization whose understanding and assessment is characterized by being dynamic and contextual (characters that are also inherent to the self-determination right). Despite the conceptual ambiguity of the notion people, it is shrouded with a certain international subjectivity and with the set of rights that each people can exercise. It must be determined in a case-by-case basis and it must bear in mind the political-legal circumstances

---

[41] See F. Mariño Menéndez, 'Naciones Unidas y el derecho de autodeterminación', in F. Mariño Menéndez (coord), *Balance y perspectivas de Naciones Unidas en el cincuentenario de su creación* (Boletín Oficial del Estado, Madrid, 1996) at 94. With regard to indigenous peoples, specialized bibliography can be consulted in: F. Mariño Menéndez and J. D. Oliva Martínez (coords.), *Avances en la protección de los derechos de los pueblos indígenas* (Dykinson, Madrid, 2004); S. Pritchard (ed.), *Indigenous Peoples, the United Nations and Human Rights* (Zed Books, London, 1998); S. Torrecuadra García-Lozano, *Los pueblos indígenas en el orden internacional* (Dykinson, Madrid, 2001); M. P. Andrés Sáenz de Santa María, 'El estatuto internacional de los poderes indígenas locales', en M. Pérez González *et al.*, *Hacia un Nuevo Orden Internacional y Europeo: estudios Homenaje al Profesor Don Manuel Díez de Velasco* (Tecnos, Madrid, 1993) at 67-78 and C. P. Cohen, *The Human Rights of Indigenous Peoples* (Ardsley, Nueva York, 1998); and

[42] See Commission on Human Rights, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Conclusions and recommendations of the expert seminar on indigenous peoples and the administration of justice, E/CN.4/2004/80/Add.4, 27 January 2004.

[43] See Summers, *supra* n.1, at 40: "The essential conceit in self-determination is that a 'self', a nation or people actually determines something. The right suggest that the will of a nation or a people is self-evident and is simply there to be acted upon [...] It assumes not only that the basic unit for political life is a nation or people, but that the individuals primarily identify with the nation, and that the will of the people will be based on national rather than individual concerns."

[44] *Ibid.*, at 40: "[...] In practical terms the will of the people in self-determination is not self-evident."

of each community. In this sense, Ruiloba distinguished very adequately between the legal capacity and the right (or capacity) to act of the people, assimilating the different legal capabilities of the individuals with the different actions that can be carried out by the peoples in the international arena.[45] This dynamic approach to the concept of people has provided solutions to the claims of colonial peoples through the exercise of the external dimension of the right of self-determination. Similarly, in the internal dimension, the concept itself is flexible enough as to allow a full degree of self-determination inside the states and to assuage the identity claims of the intra-state entities respectfully with the territorial integrity and with the sovereignty of the states.

[45] See Ruiloba, *supra* n.11, at 335-336.

 DOI: 10.17103/sybil.22.18