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### THE RIGHT TO FOOD SOVEREIGNTY IN INTERNATIONAL LAW

SUMMARY: 1. Introduction. – 2. History and Definitions of Food Sovereignty. – 3. UNDROP: Food Sovereignty Enters International Law. – 4. Food Sovereignty: Between the Right to Self-Determination and the Right to Development. – 4.1. Food Sovereignty in UNDROP. – 4.2. Permanent Sovereignty Over Natural Resources and Self-Determination. – 4.2.1. Internal Self-Determination. – 4.2.2. The Right to (Internal) Development. – 5. Food Sovereignty in National Legal Systems. – 6. A New Space for the Right to Food in International Law. – 7. Conclusions.

#### 1. *Introduction*

On the 17 December 2018, the UN General Assembly adopted the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) with 121 votes in favor, 54 abstentions and 8 votes against. This was the first time the concept of food sovereignty appeared in international law. This document deserves special attention because it constitutes a novelty for international law, starting with the terminology used and the new rights which were included. Above all, its relevance is given by the fact that until 2018 the concept of food sovereignty, an icon of peasant struggles, had been widely discussed in the literature of socio-political sciences<sup>1</sup>, whilst it had rarely been described within the context of legal scholarship. Until then, food sovereignty had been included in some national constitutions and legislations<sup>2</sup>.

Prior to this event, some authors compared the concept of food sovereignty to other concepts such as permanent sovereignty over natural resources, self-determination and the right to development. Hence the aim of this article is to establish, if and how the right to food sovereignty, as included in the UNDROP, is classifiable within the existing international law norms and principles as theorized by other authors as well as taking into consideration

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<sup>1</sup> W. SCHANBACHER, *The Politics of Food: The Global Conflict Between Food Security and Food Sovereignty*, Santa Barbara, 2010; A. WITTMAN, *Food Sovereignty A New Rights Framework for Food and Nature*, in *Env. Soc.*, 2011, pp. 87–105.

<sup>2</sup> Ecuador, Nicaragua, Bolivia, Venezuela, Senegal, Mali, Nepal, the Dominican Republic, Paraguay and Argentina have included food sovereignty in their national legal systems.

the relevant international instruments, the practice of these categories before international bodies and in the context of national legislations.

This paper begins the analysis with a multidisciplinary approach, featuring a description of the historical and sociological context which saw the birth of the concept of food sovereignty. It then proceeds to deal with the legal definitions. In particular, the article compares the concept of food sovereignty stated in the UNDROP with the right to internal self-determination, the right to internal development, the right to food sovereignty as stated in domestic legal systems and finally with the right to adequate food.

## 2. History and Definitions of Food Sovereignty

The concept of food sovereignty started to make its way into the international public debate at the end of the 1990s on the spur of small-medium scale farmer organizations. Authors diverge over the event that saw the term in use for the very first time<sup>3</sup>. Edelman reports its appearance in a 1983 food programme by the Mexican Government<sup>4</sup>. Other authors link its birth to other periods: the rise of globalization in the 1970s, the quick accumulation of propriety of seed patents into the hands of a small number of multinationals since 1980s, the Uruguay Round within the World Trade Organization (WTO) from 1986 to 1994 and the World Food Summit (WFS) of 1996<sup>5</sup>.

All the events mentioned above, in truth, played a relevant role in the history of peasant movements, on their approach towards political institutions, and on the content that characterizes their requests when they affirm the intention to obtain food sovereignty.

The main proponent of food sovereignty was a network of organizations named La Via Campesina (LVC), formally constituted in Belgium in 1993. Its foundations had however already been laid with the Declaration of Managua of April 1992. With that declaration, eight peasant organizations headquartered in Latin America, the Caribbean, Europe, Canada and the United States that were invited to the congress of the Nicaraguan peasant movement (UNAC) issued an appeal to all peasants around the world to work together and make their voices heard against those that will «usurp our right to cultivate the land and to ensure the dignity of our families»<sup>6</sup>. La Via Campesina had its roots in the cooperation work carried out by peasant organizations in Latin America during 1980s, since the conference of Managua in 1981. The 1980s are called “the lost decade”; in fact, Latin American countries had to address issues such as the debt crisis and the subsequent reduction of welfare expenditure. Because of this situation, governments were perceived as distant from rural areas. As a consequence,

<sup>3</sup> M. EDELMAN et al., *Introduction: critical perspectives on food sovereignty*, in *Jour. Pea. Stud.*, 2014, p. 913.

<sup>4</sup> J. HEATH, *El Programa Nacional de Alimentación y la crisis de alimentos*, in *Rev. Mex. Soc.*, 1983, p. 115.

<sup>5</sup> B. AGARWAL, *Food sovereignty, food security and democratic choice: critical contradictions, difficult conciliations*, in *Jour. Pea. Stud.*, 2014, p. 1247; H. BERNSTEIN, *Food sovereignty via the ‘peasant way’: a sceptical view*, in *Jour. Pea. Stud.*, p. 1033; K. BURNETT, S. MURPHY, *What place for international trade in food sovereignty?* in *Jour. Pea. Stud.*, 2014, p. 1065; J. KLOPPENBURG, *Re-purposing the master’s tools: the open source seed initiative and the struggle for seed sovereignty*, in *Jour. Pea. Stud.*, 2014, pp. 1228-1229.

<sup>6</sup> A. DESMARAIS, *Peasants Speak - The Via Campesina: Consolidating an International Peasant and Farm Movement*, in *Jour. Pea. Stud.*, 2002, p. 93.

peasant organizations emerged in response to the neoliberal policies that were applied in those countries<sup>7</sup>.

Later, the network of small producers that support food sovereignty widened and evolved; the International Planning Committee for Food Sovereignty was born in 2003. It connects over six thousand organizations of different sectors for a total of over three hundred million small and medium producers, such as: La Via Campesina (LVC), World Forum of Fishers People (WFFP), World Forum of Fish Harvesters & Fish Workers (WFF), World Alliance Mobile Indigenous People (WAMIP) and others<sup>8</sup>.

The concept of food sovereignty is strictly linked to the peasant movements' aversion to the globalization of agricultural policies caused by the neoliberal rules set in the context of WTO<sup>9</sup>. It was presented at the World Food Summit organized by Food and Agriculture Organization (FAO) in 1996. At that time, it was affirmed that «Food security cannot be achieved without taking full account of those who produce food. Any discussion that ignores our contribution will fail to eradicate poverty and hunger. Food is a basic human right. This right can only be realized in a system where food sovereignty is guaranteed. Food sovereignty is the right of each nation to maintain and develop its own capacity to produce its basic foods respecting cultural and productive diversity. We have the right to produce our own food in our own territory. Food sovereignty is a precondition to genuine food security»<sup>10</sup>.

The International Planning Committee for Food Sovereignty (IPC) gave the same definition of food sovereignty at the World Food Summit in 2002, but substituted the word “nation” with the words “peoples, communities and countries”<sup>11</sup>.

Eventually, in 2007, at the Nyéléni conference in Mali, attended by over five hundred organizations representing small and medium scale producers from over eighty countries, it was stated that «Food sovereignty is the right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems»<sup>12</sup>.

The concept appeared for the first time in an intergovernmental document in 2008, in the context of the International Assessment of Agricultural Knowledge, Science and Technology for Development (IAASTD), a project of the World Bank. More specifically, in the final report, the contraposition between food security and food sovereignty was highlighted. Food security, in fact, would exist, according to the WFS definition of 1996, when «all people of a given spatial unit, at all times, have physical and economic access to safe and nutritious food that is sufficient to meet their dietary needs and food preferences for an active and healthy life, and is obtained in a socially acceptable and ecologically

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<sup>7</sup> E. SEVILLA GUZMAN AND J. MARTINEZ ALIER, *New rural social movements and Agroecology* in P. CLOKE, T. MARSDEN, P. MOONEY (eds.), *Handbook of Rural Studies*, London, 2006, p. 472; M. MARTINEZ-TORRES AND P. ROSSET, *La Via Campesina: the birth and evolution of a transnational social movement*, in *Jour. Pea. Stud.*, 2010, p. 154, J. BOYER, *Food security, food sovereignty, and local challenges for transnational agrarian movements: the Honduras case*, in *Jour. Pea. Stud.*, 2010, p. 325.

<sup>8</sup> International Planning Committee for Food Sovereignty (IPC), available at <https://www.foodsovereignty.org>.

<sup>9</sup> G. CHOPLIN, *The founding of La Via Campesina in Relation to Agricultural Globalisation*, 2013, available at <https://www.eurovia.org/wp-content/uploads/2016/08/launching-of-via-campesina-gerardEN-14.pdf>.

<sup>10</sup> M. EDELMAN, *Food sovereignty: forgotten genealogies and future regulatory challenges*, *Jour. Pea. Stud.*, 2014, p. 967.

<sup>11</sup> *Ivi*, p. 967.

<sup>12</sup> Declaration of the Forum for Food Sovereignty, Nyéléni, 27 February 2007, available at <https://nyeleni.org/spip.php?Article290>.

sustainable manner», while «Food sovereignty is defined as the right of peoples and sovereign states to democratically determine their own agricultural and food policies»<sup>13</sup>.

Eventually, in June 2008, LVC adopted its own declaration entitled Declaration of the Rights of Peasants – Men and Women<sup>14</sup>; presented in 2009 to the United Nations Human Rights Council (HRC) as a response to the food crisis that took place between 2007 and 2008. In the fifth paragraph of the preamble of the Declaration, LVC affirmed that its objective was to obtain an international convention on the rights of peasants because the existing international law instruments were not sufficient to protect peasants' rights.

### 3. UNDROP: Food Sovereignty Enters International Law

The concept of food sovereignty was affirmed recently in the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP). The Declaration was approved on the 17 December 2018 with 121 votes in favor, 54 abstentions and 8 votes against it by the UN General Assembly<sup>15</sup>.

The gestation of the UNDROP was a long one, considering that in October 2012 with the 21/19 resolution, based on other resolutions adopted by the HRC following the food crisis of 2007/2008<sup>16</sup>, the HRC had already instituted an intergovernmental working group aiming to elaborate a draft.

The discussions within the working group started with the analysis of the final study on the rights of peasants elaborated by the HRC Advisory Committee in accordance with the 16/27 resolution. The final study, inspired by the declaration approved by LVC in 2008, suggested adopting a new instrument to protect the rights of peasants that should reaffirm the rights that were already contained in the current international law instruments and to recognize new rights, specifically the right to land, the right to seeds and the right to means of production<sup>17</sup>.

Article 2 paragraph 5 of the first draft elaborated by the Advisory Committee, states that the right to food sovereignty was intended both as the right to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, as well as the peasants' right to define their own food and agricultural systems. Furthermore, Article 8

<sup>13</sup> IAASTD, Global Report, 2008, p. 10, available at <https://www.weltagrabericht.de/fileadmin/files/weltagrabericht/IAASTDBerichte/GlobalReport.pdf>.

<sup>14</sup> LVC, Declaration of Rights of Peasants - Women and Men, 2009, available at <https://viacampesina.org/en/wp-content/uploads/sites/2/2011/03/Declaration-of-rights-of-peasants-2009.pdf>.

<sup>15</sup> UNGA, Res. 73/165, *United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas*, UN Doc. A/RES/73/165, 17 December 2018 (adopted by 121 votes to 8; 54 abstentions).

<sup>16</sup> You can see: HRC, Res. 13/4, *The right to food*, UN Doc. A/HRC/RES/13/4, 24 March 2010; HRC, Res. 16/27, *The right to food*, UN Doc. A/HRC/RES/16/27, 25 March 2011; HRC, Res. 19/7, *The right to food*, UN Doc. A/HRC/RES/19/L.21, 22 March 2012. Res. 13/4, more specifically, recalled the Report of De Schutter dated 28 December 2009 which aimed to establish some minimum human rights principles to address the land grabbing phenomenon which affects developing countries. Within the report, the author also argued that the right to food is violated when persons that are dependent on land for their livelihood are denied to access lands without providing them adequate alternatives.

<sup>17</sup> HRC, *Final study of the Human Rights Council Advisory Committee on the advancement of the rights of peasants and other people working in rural areas*, UN Doc. A/HRC/19/75, 24 February 2012, para. 74 lett. f.

paragraph 7 established that, in order to guarantee food sovereignty, the peasants should have the right to develop trade systems based on community<sup>18</sup>.

The concept of right to food sovereignty was opposed by some States since the first session of the working group. Some delegations in fact deemed that the right to food sovereignty should have been substituted with the right to an adequate food or with the concept of food security<sup>19</sup>. Other delegations stated instead that using the concept of food sovereignty was necessary because it would have reinforced existing standards, pointing out that its definition was rather similar to how FAO and the United Nations Research Institute for Social Development (UNRISD) defined food security<sup>20</sup>.

During the third session, the concept was merged by the Chairperson-Rapporteur, who, inspired by paragraph three of the Nyéléni Declaration<sup>21</sup>, formulated Article 5 entitled “Rights to sovereignty over natural resources, development and food sovereignty”<sup>22</sup>. At that point, some States requested further clarifications over the concept of food sovereignty as they still deemed it to be undefined at an international level. In that occasion some NGOs underlined that food sovereignty and sovereignty over natural resources were two different matters and therefore suggested a clear separation of the two concepts<sup>23</sup>.

In order to reach a compromise, the right to food sovereignty was incorporated into the Article dedicated to the right to adequate food during the fourth session. This choice persisted throughout the fifth and last session although the reference to the peoples as holders of the right was deleted<sup>24</sup>. This was a consequence of the fourth session debate on the creation of new rights as well as on the collective rights included in the draft. Specifically, the United Kingdom affirmed to be contrary to every collective right in international law

<sup>18</sup> HRC, *Draft Declaration on the rights of peasants and other people working in rural areas*, UN Doc. A/HRC/WG.15/1/2, 20 June 2013.

<sup>19</sup> OHCHR, *Fact Sheet No. 34, The Right to Adequate Food*, April 2010, p. 4. Here the difference between the concepts of food security, food sovereignty and the right to food is explained. Food security is defined as «a precondition for the full enjoyment of the right to food. However, the concept of food security itself is not a legal concept per se and does not impose obligations on stakeholders nor does it provide entitlements to them». The right to food, instead «is a human right recognized under international law that provides entitlements to individuals to access to adequate food and to the resources that are necessary for the sustainable enjoyment of food security». In relation to the concept of food sovereignty, the document reports that there is no international consensus over it, but it «is an emerging concept according to which peoples define their own food and own model of food production (such as agriculture and fisheries), determine the extent to which they want to be self-reliant and protect domestic food production and regulate trade in order to achieve sustainable development objectives».

<sup>20</sup> HRC, *Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas*, UN Doc. A/HRC/26/48, 11 March 2014, para. 40.

<sup>21</sup> *Draft Declaration presented by the Chair-Rapporteur, with footnotes*, third session of the open-ended intergovernmental working group on a United Nations declaration on the rights of peasants and other people working in rural areas, 27 January 2015, text available at [https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPeasants/Session3/FinalDeclarationbyChairpersonwithfootnotes\\_6February2015.doc](https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPeasants/Session3/FinalDeclarationbyChairpersonwithfootnotes_6February2015.doc).

<sup>22</sup> HRC, *Draft declaration on the rights of peasants and other people working in rural areas presented by the Chair-Rapporteur of the working group*, UN Doc. A/HRC/WG.15/3/2, 8 March 2016; HRC, *Report of the open-ended intergovernmental working group on the draft United Nations declaration on the rights of peasants and other people working in rural areas*, UN Doc. A/HRC/30/55, 22 July 2017.

<sup>23</sup> HRC, *Report of the open-ended intergovernmental working group on the draft United Nations declaration on the rights of peasants and other people working in rural areas*, UN Doc. A/HRC/30/55, 22 July 2015, para. 42, 44.

<sup>24</sup> HRC, *Study on the normative sources and rationale underlying the draft Declaration*, UN Doc. A/HRC/WG.15/4/3, 4 May 2017, the intention to retain holders of the right to food sovereignty the entire society and not just the peasants is evident by paragraph 202 of the explanatory notes of the Special-Rapporteur.

with the exception of the right to self-determination of peoples<sup>25</sup>. Furthermore, European countries affirmed to be against to the creation of a new instrument that would establish new rights just for peasants as it would have undermined the universality of human rights<sup>26</sup>.

Overall, the preliminary works saw the contraposition between the most developed countries and developing countries. The former had critical positions while the latter – albeit with some exceptions<sup>27</sup> – demonstrated to be more invested in the drafting of the UNDROP as small scale and subsistence agriculture represented a vital part of their economy<sup>28</sup>.

The UNDROP in its final version was approved by the UN General Assembly on December 2018 including the right to food sovereignty in Article 15 paragraphs 4 and 5.

#### 4. *Food Sovereignty: Between the Right to Self-Determination and the Right to Development*

Some authors – prior to the appearance of food sovereignty in an international soft-law norm through the adoption of the UNDROP – tried to frame the concept of food sovereignty as defined by the informal declarations issued by peasant organizations. Someone said that «Tactically, the food sovereignty movement reasserts the formal (Westphalian) concept of sovereignty against corporate globalization, and yet at the same time advocates, strategically, a substantive reformulation of sovereignty»<sup>29</sup>.

Other authors compared food sovereignty simultaneously to the right to development, the right to self-determination and to the right to permanent sovereignty over natural resources, considering the existence of an internal and an external dimension of the concept<sup>30</sup>.

<sup>25</sup> HRC, *Report of the open-ended intergovernmental working group on a draft United Nations declaration on the rights of peasants and other people working in rural areas*, UN Doc. A/HRC/33/59, 20 July 2016, para. 74.

<sup>26</sup> European Union, *General Statement*, fourth session of the open-ended intergovernmental working group on United Nations declaration on the rights of peasants and other people working in rural areas, 18-19 May 2017, text available at [https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPeasants/Session4/EU\\_General\\_Statement.docx](https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPeasants/Session4/EU_General_Statement.docx).

<sup>27</sup> See the positions of Chile, Guatemala, Paraguay, Uruguay, who, during the fifth session of the working group, gave a negative opinion about the use of the concept.

<sup>28</sup> FAO, *The State of Food and Agriculture*, 2014, p. 10, available at <http://www.fao.org/3/i4040e/i4040e.pdf>.

<sup>29</sup> P. MCMICHAEL, *Global citizenship and multiple sovereignties: reconstituting modernity* in Y. ATASOY (eds) *Hegemonic Transitions, the State and Crisis in Neoliberal Capitalism*, 2009, Abingdon, p. 34; See also B. MCKAY, R. NEHRING AND M. WALSH-DILLEY, *The 'state' of food sovereignty in Latin America: political projects and alternative pathways in Venezuela, Ecuador and Bolivia*, in *Jour. Pea. Stud.*, 2014, p. 1179.

<sup>30</sup> C. GOLAY, *The Rights to Food Sovereignty and to Free, Prior and Informed Consent (Research Brief)*, 2018, available at <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20Rights%20to%20Food%20Sovereignty%20and%20to%20Free,%20Prior%20and%20Informed%20Consent.pdf>; P. CLAEYS, *The Creation of New Rights by the Food Sovereignty Movement: The Challenge of Institutionalizing Subversion*, in *Soc.*, 2012, p. 849; P. CLAEYS, *Food Sovereignty and the Recognition of New Rights for Peasants at the UN: A Critical Overview of La Via Campesina's Rights Claims over the Last 20 Years*, in *Glob.*, 2012, p. 455; with regard to self-determination as it was stated in ICCPR see W. SCHANBACHER, *Conceptualizing the Human Right to Food in the Food Sovereignty Framework*, Food Sovereignty: A Critical Dialogue, International Conference, Yale University, 14-15 September 2013, p. 10, available at [https://www.tni.org/files/download/53\\_schanbacher\\_2013\\_0.pdf](https://www.tni.org/files/download/53_schanbacher_2013_0.pdf).

#### 4.1. *Food Sovereignty in UNDROP*

The UNDROP preamble makes reference to principles contained in several international law instruments. Specifically, the right to development is cited twice with very similar formulations. The most elaborated definition states that: «Reaffirming the Declaration on the Right to Development, and that the right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized».

Moreover, the preamble mentions «the right of peoples to exercise, subject to the relevant provisions of both International Covenants on Human Rights, full and complete sovereignty over all their natural wealth and resources» and the right to food sovereignty, stating that «Recognizing that the concept of food sovereignty has been used in many States and regions to designate the right to define their food and agriculture systems and the right to healthy and culturally appropriate food produced through ecologically sound and sustainable methods that respect human rights».

What may we say about the formulation of the right to food sovereignty in the declaration? Here, the right to food sovereignty appears in the last two paragraphs of Article 15 on the right to adequate food. Article 15 is structured, just like other Articles, in such a way that the paragraph describing the right of peasants is followed by the paragraph listing the duties of the State to implement such right.

Article 15 paragraph 1 affirms the right of peasants and other persons working in rural areas to adequate food and to be free from hunger. The next two paragraphs affirm respectively the States' duty to ensure economic access to food and to guarantee at all times «sufficient and adequate food that is produced and consumed sustainably and equitably, respecting their cultures, preserving access to food for future generations... as well as the duty to combat malnutrition in rural children...» and «...ensure that all segments of society, in particular parents and children, are informed, have access to nutritional education...».

Finally, paragraph 4 affirms the right to food sovereignty with these words: «Peasants and other people working in rural areas have the right to determine their own food and agriculture systems, recognized by many States and regions as the right to food sovereignty. This includes the right to participate in decision-making processes on food and agriculture policy and the right to healthy and adequate food produced through ecologically sound and sustainable methods that respect their cultures».

The following duty corresponds to the right mentioned above: «States shall formulate, in partnership with peasants and other people working in rural areas, public policies at the local, national, regional and international levels to advance and protect the right to adequate food, food security and food sovereignty and sustainable and equitable food systems that promote and protect the rights contained in the present Declaration. States shall establish mechanisms to ensure the coherence of their agricultural, economic, social, cultural and development policies with the realization of the rights contained in the present Declaration».

The right to food sovereignty as included in the UNDROP consists of a duty for States to develop their food and agriculture policies in collaboration with peasants and other people working in rural areas, providing participative mechanisms for their inclusion in the decision-making processes. Furthermore, the formulation seems to allow for discretion with

regards to the methods to be used to implement such mechanisms. From this point of view the declaration formulated the right to food sovereignty as an internal dimension that places the State in the position of duty bearer whilst peasants are the right holders. According to these paragraphs the concept of food sovereignty is a means to realize a conception of right to adequate food that encompasses the respect of other peasants' rights whilst pursuing food security.

I believe that these two paragraphs could have been formulated better. In fact, the choice of using such an all-encompassing language puts the usefulness of the legal provisions at risk. Article 15 paragraph 4 clearly states that food sovereignty is the peasants' right to take part to the decision making processes concerning food and agriculture policies. Moreover, paragraph 5 states how the right to adequate food and food security are the aim that food sovereignty pursues. However, Article 15 paragraph 5 describes food sovereignty not just as a means but also as an objective, creating a de-facto redundant definition that leads to confusion. The intention behind such formulation may have been to reaffirm that even the mechanisms to realize participation of peasants should be protected by domestic law or constructed through the consultation of peasants. Such use of the term "food sovereignty" may also be an echo of the sociological definition of food sovereignty which differs from the legal definition as enshrined in Article 15 paragraph 4. Other concepts expressed in these paragraphs such as "sustainable and equitable food systems" and the "ecologically sound and sustainable methods that respect their cultures", as we shall see, are aspects that can be usually included in the right to adequate food. These considerations are supported by the fact that Article 15 is dedicated to the right to adequate food.

#### 4.2. *Permanent Sovereignty Over Natural Resources and Self-Determination*

When scholars speak of sovereignty in international law, the traditional approach considers the State as a government, with its internal structures, exercising power over a defined territory and its population. This theory adopts a bottom-down approach, in fact the government is the active element and conversely the individuals are the passive element and considered mere objects at the mercy of the government that exercises control over them; this condition was well represented by the use in international legal scholarship of the term "subject"<sup>31</sup>, other than "citizen" or "individual".

The right to permanent sovereignty was the first international norm to introduce a concept of sovereignty belonging to the people other than just to states<sup>32</sup>. This concept arose in the years after World War II during which the least developed countries required access to raw materials to achieve true political independence<sup>33</sup>; in the debate preceding its international establishment, however, developed countries, the United States in particular, feared that it would legitimize expropriations without compensation<sup>34</sup>. The debate encouraged the institution of a commission whose work would eventually lead to the famous 1962 resolution no. 1803 on permanent sovereignty over natural resources<sup>35</sup>. The resolution adopted in order

<sup>31</sup> B. CONFORTI, *Diritto internazionale*, IX ed., Napoli, 2013, p. 13.

<sup>32</sup> UNGA, Res. 626 (VII), *Right to exploit freely natural wealth and resources*, UN Doc. A/RES/626 (VII), 21 December 1960.

<sup>33</sup> V. ZAMBRANO, *Il principio di sovranità permanente sulle risorse naturali tra vecchie e nuove violazioni*, Milano, 2009, p. 2.

<sup>34</sup> J. N. HYDE, *Permanent Sovereignty over Natural Wealth and Resources*, in *Am. Jour. Int. Law*, 1956, p. 854.

<sup>35</sup> UNGA, Res. 1803 (XVII), *Permanent sovereignty over natural resources*, UN Doc. A/RES/1803 (XVII), 14 December 1962.



to establish the working commission, stated that permanent sovereignty over natural wealth and resources was a “basic constituent of the right to self-determination”<sup>36</sup>. Therefore, we can consider it included in the normative content of the right to self-determination. In fact, when we speak about permanent sovereignty we are therefore referring to self-determination at least with regards to the economic realm. The resolution no. 1803 contained the conditions to exercise it, and it also affirmed that the right of peoples and nations to permanent sovereignty over their natural wealth and resources «must be exercised in the interest of their national development and of the well-being of the people of the State concerned». This way the resolution affirms that States must also keep into account the necessities of their population.

Article 1 of both Covenants of 1966 describe the right to self-determination in paragraph 1 as being held by peoples. Scholarship has varied positions on the matter. Some authors affirm that States are the holders of the right to self-determination<sup>37</sup>, others say the peoples are<sup>38</sup>, others claim that such right belongs to both<sup>39</sup>. During the writing of the drafts of the Covenants, Western States, in particular the United States and the United Kingdom argued that the right of peoples meant the right of States<sup>40</sup> whilst a different interpretation was given by the Chairman of the working party, Miguel Rafael Urquia of El Salvador<sup>41</sup>. The clash during the debate was a clear representation of the divide between the developed and the developing world with regards to the language to be used in the Covenants<sup>42</sup>.

If we refer to the interpretation set by Article 31 of the Vienna Convention on the Law of Treaties, where objective criteria was defined, one could say that the international legal documents mentioned above (more specifically, the resolution on permanent sovereignty over natural resources) set the words “nations” and “peoples” apart, or, in the case of the two Covenants, only the word “peoples” is used. A literal interpretation of such documents, according to Article 31 of the Vienna Convention, would imply that States and peoples are both right holders, separately.

What does having a right to self-determination mean? The normative content of the concept is quite clear with regards to the context of decolonization. Advisory opinions by the International Court of Justice (ICJ) ascribe the self-determination principle to all non-self-governing territories<sup>43</sup>. The ICJ expressed its position on the basis of the UN General Assembly resolution no. 1514, known as the Declaration on the Granting of Independence to Colonial Countries and Peoples, according to which there are different choices for a non-self-governing territory. Among them: a) to become independent, b) free association with

<sup>36</sup> UNGA, Res. 1314 (XIII), *Recommendations concerning international respect for the right of peoples and nations to self-determination*, UN Doc. A/RES/1314(XIII), 12 December 1958.

<sup>37</sup> S. M. SCHWEBEL, *The Story of the U.N.'s Declaration on Permanent Sovereignty over Natural Resources*, 1963, in *Am. Bar Ass. Jour.*, pp. 463-464. USA and United Kingdom, during the preparation of the Declaration on permanent sovereignty over natural resources stated expressly that the word “peoples” was intended to be “states”.

<sup>38</sup> J. CRAWFORD, *The Rights of Peoples: “Peoples” or “Governments”?* in *AUSocLegPhilB*, 1985, pp. 138-139; R. DUFRESNE, *The Opacity of Oil: Oil Corporations, Internal Violence, and International Law*, in *NY. Univ. Jour. Int. Law*, 2004, p. 356.

<sup>39</sup> N. SCHRIJVER, *Sovereignty Over Natural Resources: Balancing Rights and Duties*, Cambridge, 1997, p. 311; A. CASSESE, *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge, 1995, pp. 143-144.

<sup>40</sup> J. N. HYDE, *Permanent Sovereignty over Natural Wealth and Resources*, cit., p. 858.

<sup>41</sup> *Ivi*, p. 859.

<sup>42</sup> *Ivi*, p. 860.

<sup>43</sup> ICJ, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (Advisory Opinion)*, 1971, para. 52.

another independent State c) integration with an independent State. Association and integration with an independent State should be a result of a choice expressed by the people inhabiting such territories through open and democratic processes<sup>44</sup>. The resolution did not express a position on who held the right and the neutral word “territory” was used instead. However, the concept of territory and of its population cannot be separated from the concept of sovereignty. Considering that, in order to organize a democratic consultation, there has to be at least some form of State organization in place, one can affirm that the resolution contained an obligation to realize an internal self-determination.

Whilst legal scholars generally consider this to be the state of the art, after the ICJ issued its advisory opinions, other authors issued further theory constructions on the normative status of self-determination.

Some theories made reference to permanent sovereignty over natural resources, whilst other theory constructions of self-determination are based on human rights<sup>45</sup>, especially considering the aspect of participation<sup>46</sup>. In my opinion there is not a clear-cut distinction<sup>47</sup>. In fact, in the case of theories based on human rights, the scope for the exercise of such rights would end up influencing the efficacy of the governmental power over the territory (which is the core content of permanent sovereignty over natural resources). The difference between the two types of theory construction is the specific content of the concept and both can coexist as a principle can have more norms that form it. However the human rights treaties, by giving a framework to the concept to self-determination, helped it to evolve at least from a theoretical point of view.

The right to food sovereignty included in Article 15 of the UNDROP seems, *prima facie*, constructed like a norm that would allow popular participation in the decision-making processes, hence in principle it could be framed within this theoretical construction. I shall therefore proceed to analyze the main theories of self-determination that are based on a human rights approach as well as the right to development that is strictly linked to self-determination.

#### 4.2.1. Internal Self-Determination

Many authors, when they discuss the principle or the right to self-determination, say that it is not exclusively applicable to the context of decolonization. The International Law Commission holds the same opinion, affirming that it applies universally, whilst it has not clarified its scope yet, and, specifically, did not find a clear consensus on what the *quid pluris* to the colonial context was<sup>48</sup>.

Among those who analyzed the question using a human rights approach, Cassese affirmed that the right to self-determination is not limited to the achievement of a status of

<sup>44</sup> ICJ, *Western Sahara (Advisory Opinion)*, 1975, para. 57-58.

<sup>45</sup> M. SAUL, *The Normative Status of Self-Determination in International Law: A Formula for Uncertainty in the Scope and Content of the Right?* in *Hum. Rights Law Rev.*, 2012, pp. 626-628.

<sup>46</sup> R. WILDE, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away*, Oxford, 2008, p. 161.

<sup>47</sup> ICJ, *Separate Opinion Of Judge Dillard*, p. 122. Also the Judge Dillard in its separate opinion in *Western Sahara* case affirmed that ‘It is for the people to determine the destiny of the territory and not the territory the destiny of the people’, available at <https://www.icj-cij.org/public/files/case-related/61/061-19751016-ADV-01-07-EN.pdf>.

<sup>48</sup> ILC, *Report of the International Law Commission on the Work of its 40<sup>th</sup> Session, Supplement No. 10, Doc A/43/10, 9 May-29 July 1988*, in *Yearbook of the International Law Commission*, 1988, para. 266, 267.

independence from colonial countries<sup>49</sup>. He argues that the right to internal self-determination for the entire population of a sovereign State exists under Article 1 of the 1966 Covenants<sup>50</sup>, however, in his opinion, practice shows that a customary set of rules has crystallized just for racial groups. In his view, the body of rules on self-determination has the goal to grant the representatives of these groups the participation in the decision-making processes<sup>51</sup>. Finally, describing his view on the matter, Cassese points out that self-determination does not just belong to States, but also to peoples. It has an external dimension and an internal one. The latter is implemented, under the ICCPR, by safeguarding the freedoms granted in the Covenant such as freedom of thought (Articles 18 and 19), freedom of peaceful assembly (Article 21), freedom of association (Article 22) and the right to take part in the conduct of public affairs (Article 25) as well as the prohibition of discrimination (Article 26). This is because the violation of these basic rights implies the impossibility to freely determine the internal political status of peoples<sup>52</sup>.

McCorquodale is another author who studied self-determination. He also ascribes self-determination to the context of the International Covenant on Civil and Political Rights (ICCPR) and of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both covenants included the right to self-determination in Article 1. McCorquodale affirmed that the scope of the right to self-determination is to protect groups from oppression. Individual rights such as the freedom of religion and the freedom of association or assembly that are exercised by individuals share the same scope. Together with other liberties such as freedom from discrimination, these rights represent the conditions for the formation of groups<sup>53</sup>. In the McCorquodale vision, however, the right to self-determination, as such, is not an absolute right. In fact, if one considers Article 5 ICCPR, it must be balanced with other individual or group rights<sup>54</sup>. Therefore, it is possible to say that the right to self-determination, deemed as the right to secede, can be limited if the rights of the group are respected<sup>55</sup>.

Franck, instead, affirms that self-determination is the first block required for democracy, as the rights to political expression and to fair elections may only be achieved once self-determination is in place. The three groups of norms support one another creating a “coherent normative edifice” that allows the author to say that the right to a democratic governance is emerging<sup>56</sup>. In Franck’s opinion in order to identify who holds the right to self-determination, one should refer to the UN resolution no. 1541 of 1960 which established the principles to determine the obligation that States exercising the trusteeship have to inform the UN General Secretary. Specifically, principles IV and V established the criteria to identify the status of subordination of a territory<sup>57</sup>. The second block, dedicated to the

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<sup>49</sup> A. CASSESE, *Self-Determination of Peoples: A Legal Reappraisal*, cit., pp. 55, 101.

<sup>50</sup> *Ivi*, p. 102.

<sup>51</sup> *Ivi*, p. 131.

<sup>52</sup> *Ivi*, pp. 143-146.

<sup>53</sup> R. MCCORQUODALE, *Self-Determination: A Human Rights Approach*, in *Int. Comp. Law Quart.*, 1994, pp. 871-872.

<sup>54</sup> *Ivi*, p. 875.

<sup>55</sup> *Ivi*, p. 883.

<sup>56</sup> M. FRANCK, *The Emerging Right to Democratic Governance*, in *Am. Jour. Int. Law*, 1992, p. 53.

<sup>57</sup> According to principle IV of the resolution, first of all it was necessary that the territory be geographically, culturally or ethnically separate from those who administer it. If this condition was met then principle V applies. It stated that if there were other elements of a legal, administrative, political, economic or historical nature that placed the territory in a state of subordination, Art. 73 of the Charter would apply, which provided for the

freedom of expression, could be referred to Articles 18, 19 and 22 ICCPR; these Articles covered the freedom of thought and religion, the freedom of opinion and the freedom of association. Finally, the third block described electoral rights such as those included in Article 25 ICCPR<sup>58</sup>. Furthermore, the democratic entitlement would be strengthened by the various international and regional human right treaties that incorporate an array of rights to free and equal participation to governance<sup>59</sup>; however, the international legal norms do not provide an obligation for States, at least those that are independent, to submit to international monitoring of their electoral processes<sup>60</sup>.

To sum up, these human rights approaches appear to deem self-determination a collective right which requires – especially in Cassese’s and McCorquodale’s views – the respect of some individual human rights in order to operationalize it and to enable the expression of a collective will effectively.

#### 4.2.2. *The Right to (Internal) Development*

The right to development was proclaimed by the United Nations Declaration on the Right to Development (UNDRTD). It was approved with 146 votes in favor, 1 against and 8 abstentions by the UN General Assembly on 4 December 1986<sup>61</sup>. Article 1 paragraph 1 states that «The right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized». More specifically, Article 1 paragraph 2 states that «The human right to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both International Covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources».

The formulation of the right to development that was adopted diverges from the first affirmations of the 1960s, which considered the right to be held by peoples<sup>62</sup>. The UNDRTD, in fact, considers it to be an individual right as well as a collective one<sup>63</sup>.

This definition of the right was reaffirmed in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights on 25 June 1993<sup>64</sup>. Moreover, the general secretary of the conference, in the conclusive report, stated that «The World Conference welcomed the appointment by the Commission on Human Rights of a thematic Working Group on the right to development with the urgent task to look into measures to

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obligation to communicate statistical and other information of a technical nature to the United Nations Secretary-General.

<sup>58</sup> M. FRANCK, *The Emerging Right to Democratic Governance*, cit., p. 64.

<sup>59</sup> *Ivi*, p. 79.

<sup>60</sup> This possibility is opposed by the principle of non-interference in the internal affairs of States, see: UNGA, Res. 45/151, *Respect for the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes*, UN Doc. A/RES/45/151, 18 December 1990. States fear unilateral armed actions if the monitoring process is unsuccessful.

<sup>61</sup> UNGA, Res. 41/128, *Declaration on the Right to Development*, UN Doc. A/RES/41/128, 4 December 1986 (adopted by 146 votes to 1; 8 abstentions).

<sup>62</sup> N. G. VILLAROMAN, *The Right to Development: Exploring the Legal Basis of a Supernorm*, in *Flor. Jour. Int. Law*, 2010, p. 300; *First Ministerial Meeting Of The Group Of 77: Charter of Algiers*, 10–25 October 1967, section III.

<sup>63</sup> N. G. VILLAROMAN, *The Right to Development: Exploring the Legal Basis of a Supernorm*, cit., p. 305.

<sup>64</sup> WORLD CONFERENCE ON HUMAN RIGHTS, *Vienna Declaration and Programme of Action*, UN Doc. A/CONF.157/24, 25 June 1993, para. 10.

eliminate obstacles to the Declaration on the right to development, and recommended that the possibility of elaborating an optional protocol to the Covenant on Economic, Social and Cultural Rights should be given further consideration by the Commission on Human Rights»<sup>65</sup>. Subsequently, several organisms were created, including: the Intergovernmental Working Groups on the Right to Development (1993), a UN Independent Expert on the Right to Development (1999–2004), and a High-level Task Force on the Implementation of the Right to Development with the goal of interpreting and analyzing the right to development. In 2016, a Special Rapporteur on the right to development was instituted<sup>66</sup>. Several soft-law and hard law instruments varying from international environmental law to disaster risk reduction have since recalled the right to development in their texts<sup>67</sup>.

Today the meaning of right to development is still not clear to legal scholars.

This paper focuses on right to development from an internal dimension, hence the aspects that rely on duty of cooperation and dealing with the question of a New International Economic Order are not considered<sup>68</sup>.

In UNDRTD the relationship between popular participation and the implementation of the right to development is evident. Article 2 paragraph 1 states that «The human person is the central subject of development and should be the active participant and beneficiary of the right to development». Article 8 paragraph 2 affirms that «States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights». Therefore, any attempt to fulfil the right to development should enact these principles. However, traditionally the right to development in its internal dimension has always been considered ambiguous due to its all-encompassing formulation<sup>69</sup>. Its recalling in a number of heterogeneous international legal documents only added to the vagueness of its definition.

Moreover, the preamble of the UNDRTD affirmed the general meaning of the term by stating that «Recognizing that development is a comprehensive economic, social, cultural

<sup>65</sup> *Closing Statement by the Secretary-General of the World Conference on Human Rights*, 25 June 1993.

<sup>66</sup> K. ARTS, A. TAMO, *The Right to Development in International Law: New Momentum Thirty Years Down the Line?*, in *Neth. Int. Law Rev.*, 2016, p. 227.

<sup>67</sup> Some of the legal instruments recalling the right to development are: Rio Declaration on Environment and Development, the Vienna Declaration and Programme of Action, the 2030 Agenda and Sustainable Development Goals, the Sendai Framework for Disaster Risk Reduction 2015-2030, the Addis Ababa Action Agenda of the Third International Conference on Financing for Development, the Paris Agreement on climate change.

Among these it is useful to mention Res. 70/1, entitled “Transforming our world: the 2030 Agenda for Sustainable Development”, adopted by the General Assembly on 25 September 2015 which recalls the right to development in its paragraphs 10 and 35. The resolution includes 17 goals. The most important, in relation to peasants’ right to adequate food are goal no. 2 which is entitled “End hunger, achieve food security and improved nutrition and promote sustainable agriculture” as well as goal no. 15 entitled “Protect, restore and promote sustainable use of terrestrial ecosystems, sustainably manage forests, combat desertification, and halt and reverse land degradation and halt biodiversity loss” and goal no. 16 entitled “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. In particular, the right to food sovereignty meant as a right to participation to decision-making processes can be a way to implement goal no. 16 which at its paragraph 7 require States to «Ensure responsive, inclusive, participatory and representative decision making at all levels».

<sup>68</sup> P. DE WAART, *Permanent Sovereignty Over Natural Resources as a Corner-stone for International Economic Rights and Duties*, in *Neth. Int. Law Rev.*, 1977, p. 305; N. G. VILLAROMAN, *The Right to Development: Exploring the Legal Basis of a Supernorm*, cit., p. 319.

<sup>69</sup> A. SEN, *Human Rights and Development* in B. ANDREASSEN, S. MARKS (eds), *Development As A Human Right: Legal, Political And Economic Dimensions*, Cambridge, 2006, p. 5.

and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom» highlighting the participative aspect as well as the economic and social sphere of the right. In any case, that definition affirms clearly that the scope is to achieve economic and social rights as it establishes the purpose of improving welfare and attaining the fair distribution of benefits. That is more than understandable because developing countries, after gaining independence, sought economic development.

The same considerations can be made with regards to Article 22 of the Banjul Charter which gives the right a collective dimension and states, in its first paragraph, that «All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind.». Furthermore, paragraph 2 states that «States shall have the duty, individually or collectively, to ensure the exercise of the right to development».

In the (scarce) jurisprudence of the African Commission on Human and Peoples' Rights, the right to development was interpreted as a right of the people, deemed as a State, not to be deprived of their natural resources<sup>70</sup>, as well as the right of an indigenous people, the Enderois people, specifically, to choose where to live<sup>71</sup>. The African Commission clarified that the right to development has a substantial dimension and a procedural one; both dimensions must be respected. In fact, in its words «the right to development is a two-pronged test, that it is both constitutive and instrumental, or useful as both a means and an end. A violation of either the procedural or substantive element constitutes a violation of the right to development. Fulfilling only one of the two prongs will not satisfy the right to development» and it must respect five criteria: it should be «equitable, non-discriminatory, participatory, accountable, and transparent»<sup>72</sup>.

Therefore, according to what we observed, the right to development is strictly linked to the implementation of economic, social and cultural rights, and the participative element is crucial. From this point of view, a link between the right to development and the right to food sovereignty as established by the UNDROP can be made. In fact, the right to food sovereignty, in the way as the procedural dimension of the right to development, seems to represent the procedural dimension to attain the substantial one which is represented by the right to adequate food that respects the characteristics of the peasants' cultures and of small and medium-scale production. This way, through the right to food sovereignty, a new type of right to adequate food is created.

##### 5. *Food Sovereignty in National Legal Systems*

Today the concept of food sovereignty appears within some national legal systems.

<sup>70</sup> African Commission on Human and Peoples' Rights, *Democratic Republic of the Congo v Burundi, Rwanda and Uganda*, Communication No. 227/99, 29 May 2003, para. 95.

<sup>71</sup> African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of the Endorois Welfare Council v The Republic of Kenya*, Communication No. 276/2003, 25 November 2009, para. 279.

<sup>72</sup> *Ivi*, para. 277-278.

It was added to Ecuador's constitution in 2008<sup>73</sup>. It is present in Article 13 paragraph 2 stating that Ecuador promotes food sovereignty. Article 281 defines it as an obligation of the State to ensure that persons, peoples, community and nations have self-sufficiency with regards to healthy and culturally-appropriate food on a permanent basis; the Article then lists fourteen actions that the State is committed to in order to enforce such right<sup>74</sup>. The Article does not mention a participative dimension. However, the Organic Law of Food Sovereignty Regime states at Article 31 that «The elaboration of laws and the formulation and implementation of public policies for food sovereignty will have the widest social participation, through public deliberation processes promoted by the State and civil society, articulated by the Food and Nutrition Sovereignty System (SISAN), at the different levels of government». SISAN requires the participation of ministerial representatives and of the members of the Pluri-National and Intercultural Conference on Food Sovereignty. The latter includes representatives from nine sectors (from universities to producers). The proposals drawn up by the conference must then be forwarded to the relevant ministry, who shall consider them in the drafting of laws<sup>75</sup>.

Another State that introduced food sovereignty in its legal system is Nicaragua. The relevant Articles are Article 110 and Article 111 of its Constitution<sup>76</sup>. Article 110 states that «The State will promote the voluntary incorporation of small and medium agricultural producers in associative and individual forms into the country's economic and social development plans», whilst Article 111 states that «Farmers and other productive sectors have the right to participate in the definition of agrarian transformation policies, through their own organizations». In Law no. 693, food sovereignty was defined in Article 1 as «...the right of peoples to define their own sustainable policies and strategies for the production, distribution and consumption of food, guaranteeing the right to food for the entire population, based on small and medium-sized productions, respecting their own cultures and diversities...». However, Article 9 defines food sovereignty as «a right of the State to define its own policies...with preference for the enhancement and the consumption of national products...». With the aim to implement food sovereignty, Nicaragua instituted a multilevel structure named Sistema Nacional para la Soberanía y Seguridad Alimentaria y Nutricional (SINASSAN), headed by an executive commission known as Comisión Nacional de Soberanía y Seguridad Alimentaria y Nutricional (CONASSAN). CONASSAN is the National Commission for the Food and Nutritional Sovereignty and Security. It includes members of the government as well as representatives of relevant Nicaraguan NGOs and other representatives of relevant categories. Its function is to analyze and propose a draft of the National Policy for Food Sovereignty and Security and Nutrition, as well as other related projects and programs, for approval to the President of the Republic<sup>77</sup>.

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<sup>73</sup> I. GIUNTA, *Food sovereignty in Ecuador: peasant struggles and the challenge of institutionalization*, in *Jour. Pea. Stud.*, 2014, p. 1201.

<sup>74</sup> Constitución de la República del Ecuador, available at [https://www.asambleanacional.gob.ec/sites/default/files/documents/old/constitucion\\_de\\_bolsillo.pdf](https://www.asambleanacional.gob.ec/sites/default/files/documents/old/constitucion_de_bolsillo.pdf)

<sup>75</sup> Ley orgánica del régimen de la soberanía alimentaria, available at <http://www.soberaniaalimentaria.gob.ec/pacha/wp-content/uploads/2011/04/LORSA.pdf>.

<sup>76</sup> Constitución Política de la República de Nicaragua, available at [https://www.poderjudicial.gob.ni/pjupload/archivos/documentos/LA\\_CONSTITUCION\\_POLITICA\\_Y\\_SUS\\_REFORMAS\(3\).pdf](https://www.poderjudicial.gob.ni/pjupload/archivos/documentos/LA_CONSTITUCION_POLITICA_Y_SUS_REFORMAS(3).pdf).

<sup>77</sup> Ley No. 693 Ley De Soberanía y Seguridad Alimentaria y Nutricional (Publicada en La Gaceta, Diario Oficial No. 133 del 16 de Julio de 2009), available at <https://base.socioeco.org/docs/ley-ssan.pdf>.

Food sovereignty was also incorporated within the Bolivian Constitution<sup>78</sup>. Article 255 paragraph 8 cites food sovereignty in relation to the negotiation, signing and ratification of international treaties; these acts must take into account food sovereignty and food security for the entire population and the prohibition of importation, production and trade of Genetically-Modified Organisms (GMOs) as well as toxic substances that are harmful to health and to the environment. Food sovereignty is also defined as an objective of State-owned companies in Article 309 paragraph 4. The most relevant Articles to the understanding of the practical meaning of food sovereignty in the Bolivian constitution are Article 405 that identifies five objectives for its implementation and Article 407 that identifies the objectives to prioritize the consumption of food products originating from the Bolivian territory and to set protection mechanisms for Bolivian agricultural production. Furthermore, the right to food sovereignty is mentioned in Law 3525 on the Regulation and Promotion of Ecological Agricultural and Non-timber Forest Production<sup>79</sup>. Law no. 144 issued in 2011 is crucial with regards to participation<sup>80</sup>; In Articles 9, 10 and 11, it grants the peasant indigenous autochthone communities and to the intercultural Afro-Bolivian communities a set of participative rights and the control on agricultural policies and on public companies that work in that sector with respect to their rules and procedures.

Among the other Latin American States, Venezuela does not explicitly cite food sovereignty in its Constitution. An echo of the idea of food sovereignty is, however, contained in Article 305. The preamble of Decree Law no. 6071 of 2008 in fact recalls Article 305 of the Constitution. It affirms that food sovereignty is encompassed within the concept of «development and preference of internal agricultural production of national interest and fundamental for the economic and social development of the Nation». Specifically, Article 43 and the following Articles indicate that the agrarian assemblies are spaces for the planning, trade and distribution of agri-food products on three levels. These levels have the function to coordinate alongside the government the planning of the production and can formulate proposals to modify State policies<sup>81</sup>.

Food sovereignty also appears in the legal system of other States such as Senegal, Mali, Nepal and the Dominican Republic<sup>82</sup>.

In 2004, Senegal, in its Agro-Sylvo-Pastoral Orientation Law<sup>83</sup>, established that development programs are agreed upon with local collectivities and the whole of economic and social actors as described in Article 4. At the same time Article 11 asserts that consultation mechanisms of professional organizations would be established by each sector of the State involved in the implementation of such policies. The preamble of the law affirmed the necessity to promote internal agriculture in order to reduce the deficit of the trade balance.

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<sup>78</sup> Constitución Política del Estado Plurinacional de Bolivia, available at [https://www.mindef.gob.bo/mindef/sites/default/files/Consitucion\\_2009\\_Orig.pdf](https://www.mindef.gob.bo/mindef/sites/default/files/Consitucion_2009_Orig.pdf).

<sup>79</sup> J. COCKBURN, *Bolivia's Food Sovereignty & Agrobiodiversity: Undermining the Local to Strengthen the State?* Food Sovereignty: A Critical Dialogue, International Conference, Yale University, 14-15 September 2013, p. 4, available at [https://www.tni.org/files/download/59\\_cockburn\\_2013\\_0.pdf](https://www.tni.org/files/download/59_cockburn_2013_0.pdf).

<sup>80</sup> G. GORDILLO, O. JERÓNIMO, *Food Security and Sovereignty*, FAO 2013, p. 21.

<sup>81</sup> Decreto Ley N° 6.071/08 - Ley Orgánica de Seguridad y Soberanía Agroalimentaria, available at <http://www.informea.org/es/node/109550>.

<sup>82</sup> C. GOLAY, *The Rights to Food Sovereignty and to Free, Prior and Informed Consent (Research Brief)*, cit., p. 3.

<sup>83</sup> Loi d'orientation agro-sylvo-pastorale, available at <http://www.extwprlegs1.fao.org/docs/pdf/sen44795.pdf>.



The Agricultural Orientation Law issued in 2006 in Mali<sup>84</sup>, affirms in its preamble that food sovereignty is intended as an autonomous agricultural and food policy that guarantees durable agriculture based on local production and on the responsibility of producers. Producers should have access to appropriate means of production, specifically land, water, credit and markets. Article 5 of the law establishes the inclusion of associations and NGOs in defining policies. Article 29 states that professional agricultural organizations take part in the elaboration, implementation and evaluation of public policies and therefore they have representation in commissions and in working groups at the local, regional and national level. Finally, Article 51 and following Articles stress the importance of the inclusion of local entities in relation to food sovereignty, and refer to food sovereignty as a guiding principle for Mali's agricultural development policy.

Nepal introduced the right to food sovereignty to its Constitution<sup>85</sup>. Article 36 paragraph 3 states that «Every citizen shall have the right to food sovereignty in accordance with law». In 2018, Nepal approved the Right to Food and Food Sovereignty Act, which established a system of coordination among local, provincial and central levels of government in order to ensure the implementation of a set of rights linked to food. Specifically, Article 12 links food sovereignty to the implementation of several rights<sup>86</sup>. Article 21 establishes that the government formulates a national plan on food with the necessary consultation of governmental, non-governmental and private stakeholders.

The Dominican Republic in 2016 adopted the Law for Food and Nutrition Security and Sovereignty that coordinates three levels of government and provides participative mechanisms<sup>87</sup>.

Finally, regulations approved by Paraguay<sup>88</sup> and Argentina<sup>89</sup> make reference to food sovereignty. In Switzerland a popular referendum took place in 2018 to modify Article 104 of the Constitution in order to add ten paragraphs related to food sovereignty<sup>90</sup>; however, the referendum had a negative outcome and food sovereignty did not enter the Federal Swiss Constitution<sup>91</sup>.

In conclusion, the common denominator shared by these domestic principles and norms included in national legal systems is generally the development of local food production, intended as small and medium-scale sustainable agriculture. Sometimes, these

<sup>84</sup> Loi n° 06-045 portant Loi d'orientation agricole (LOA), available at <http://www.hubrural.org/Mali-Loi-no06-045-portant-Loi-d.html>.

<sup>85</sup> Constitution of Nepal, available at <http://www.lawcommission.gov.np/en/archives/981>.

<sup>86</sup> The Right to Food and Food Sovereignty Act, 2075 (2018), available at <http://www.lawcommission.gov.np/en/wp-content/uploads/2019/07/The-Right-to-Food-and-Food-Sovereignty-Act-2075-2018.pdf>.

<sup>87</sup> FAO, *Study on the promotion of legislative initiatives for the right to adequate food and nutrition by Parliamentary fronts against hunger in Latin America and the Caribbean*, 2017.

<sup>88</sup> Plan Nacional de Soberanía y Seguridad Alimentaria y Nutricional, available at <https://plataformacelac.org/en/politica/57>.

<sup>89</sup> O GORDILLO, O JERÓNIMO, *Food Security and Sovereignty*, cit., p. 17, Law no. 26631 of 2010 on cooperation between Argentina and Venezuela for the purpose of pursuing food security meant to create an institutional framework to ensure food sovereignty.

<sup>90</sup> Decreto federale concernente l'iniziativa popolare «Per la sovranità alimentare. L'agricoltura riguarda noi tutti», available at <http://www.admin.ch/opc/it/federal-gazette/2018/1217.pdf>.

<sup>91</sup> A Mombelli, La «sovranità alimentare» non sarà iscritta nella Costituzione federale, 23 settembre 2018, available at [https://www.tvsvizzera.it/tvs/votazione-del-23-settembre-2018\\_la--sovranita%C3%A0-alimentare--non-sar%C3%A0-iscritta-nella-costituzione-federale/44419630](https://www.tvsvizzera.it/tvs/votazione-del-23-settembre-2018_la--sovranita%C3%A0-alimentare--non-sar%C3%A0-iscritta-nella-costituzione-federale/44419630).

regulations have the scope to seek domestic self-sufficiency. In other instances, the scope cited for the norms is the adjustment of the trade balance.

In all the cases examined above, mechanisms that were established allow for the consultation of producers and of other stakeholders, besides peasants. The final approval of food and agricultural policies is, however, set at government level. Affirming that the right to food sovereignty was implemented in domestic laws in a consultive and procedural context is hence possible. It entails the cooperation with relevant associations; in any case, each State displays its own normative peculiarities; however, the inclusion of too many stakeholders, put at risk the effective protection of peasant's rights and interests.

## 6. *A New Space for the Right to Food in International Law*

The right to food is affirmed at a universal level in various international instruments; we find it in Article 25 of the Universal Declaration of Human Rights, in Article 27 of the Convention on the Rights of the Child, in Article 28 paragraph 1 of the Convention on the Rights of Persons with Disabilities, in Article 12 paragraph 2 of the Convention on the Elimination of All Forms of Discrimination against Women and, above all, in Article 11 ICESCR. The right to food is also affirmed in various instruments at a regional level such as Article 12 of the San Salvador Protocol to the American Convention on Human Rights and Article 15 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. In Europe it is not expressly mentioned, yet some authors consider the right to be included in Article 34 of the Charter of Fundamental Rights of the European Union<sup>92</sup> and in the European Social Charter<sup>93</sup>.

In the ICESCR, the most relevant international binding instrument at a universal level, economic, social and cultural rights are considered to have progressive realization, in consideration to the amount of available resources of each State, as established by Article 2 paragraph 1. Furthermore, Article 11 affirms the right to adequate food in paragraph 1, whilst in paragraph 2 it recognizes the fundamental right to be free from hunger, affirming that States shall take, individually and through international cooperation, the measures «(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need».

Article 11 therefore sets freedom from hunger as the minimum goal, whilst the right to adequate food is the final objective. The article's formulation has an approach that considers individuals to be passive actors. In freedom from hunger the individual exercises its freedom and the State shall not interfere with it. When necessary, the State shall take measures to guarantee a freedom that already exists. The right to adequate food represents

<sup>92</sup> S. SÖLLNER, *The "Breakthrough" of the Right to Food: The Meaning of General Comment No. 12 and the Voluntary Guidelines for the Interpretation of the Human Right to Food*, in A. VON BOGDANDY, R. WOLFRUM, AND C. E. PHILIPP (eds.) *Max Planck Yearbook of United Nations Law*, 2007, p. 395.

<sup>93</sup> C. GOLAY, *The Right to Food and Access to Justice: Examples at national, regional, international levels* (FAO 2009), p. 40.

an additional step forwards, it is an objective to aim for. Its key elements, as stated in the Committee on Economic Social and Cultural Rights (CESCR) General Comment no. 12, are availability, accessibility and acceptability<sup>94</sup>. All three elements here included in the concept of the right to adequate food are, in principle, contained in the objectives that food sovereignty aims to realize through a set of other rights. “Availability” concerns the possibility that peasants should have to feed themselves using land and natural resources directly at their disposal<sup>95</sup>. “Accessibility” brings into play the concept of sustainability; in fact, in order to ensure that small to medium-scale farmers have long-term access to the resources requires that in order to produce food, there should not be an overexploitation of such natural resources. Finally, the concept of “acceptability” includes the fact that the right to adequate food must keep into account cultural values linked to food<sup>96</sup>, therefore all cultural values belonging to the peasants that are involved in the production and consumption of food.

Paragraph 21 of the General Comment leaves room for discretion on how the right should be implemented. However, paragraph 22 states that «The formulation and implementation of national strategies for the right to food require full compliance with the principles of accountability, transparency, people’s participation, decentralization, legislative capacity and the independence of the judiciary». That provision, albeit rather generalist, sheds the light on the fact that taking into consideration a set of democratic principles to realize the right to food effectively is necessary. Nevertheless, the Committee on Economic, Social and Cultural Rights did not state the need to constitute institutional participative mechanisms.

Instead, the right to food sovereignty as stated in Article 15 UNDROP overturns the neutral conception of the right to adequate food and lays another brick in the democratization of the international legal system. It requires the active participation of the individual and that States adopt mechanisms to guarantee such inclusion. Above all, the right to food sovereignty requires that the will expressed by peasants is taken into account in the definition of food and agricultural systems. It is not simply freedom from hunger but a right to food that has to be accomplished in a certain way: by giving peasants the freedom to choose how to produce food. The purpose of their participation is to conceive the right to food in harmony with cultural differences among peasants. In the context of the right to adequate food, which is a right subjected to progressive realization according to Article 2 paragraph 1 ICESCR, the provision of participative mechanisms for peasants could be considered the first step as well as the minimum core obligation of the right, in order to realize the peasants’ right to adequate food<sup>97</sup>. That peasants’ conception of the right to

<sup>94</sup> Committee on Economic, Social and Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 12 (12 May 1999)*, UN Doc. E/C.12/1999/5, 1999, para. 8-11.

<sup>95</sup> *Ivi*, para. 12.

<sup>96</sup> *Ivi*, para. 11.

<sup>97</sup> Committee on Economic, Social and Cultural Rights, *Comment No. 3, The Nature of States Parties’ Obligations (Art. 2, Para. 1, of the Covenant)*, UN Doc. E/1991/23, 1990, para. 10; citing the words of the Committee: «a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights is incumbent upon every State party... If the Covenant were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its *raison d’être*...». To sum up, the peasants’ right to adequate food, without, at least, the participation of peasants in decision-making processes, cannot really be realized. See also: P. ALSTON, G. QUINN, *The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights*, in *Hum. Rights Quart.*, 1987, pp. 165-166. Here they affirmed that «...the undertaking of take steps is of immediate application. Thus, at least in this respect, the Covenant imposes an *immediate* and *readily identifiable* obligation upon states parties...».

adequate food in a systematic approach is achieved through the respect of the other rights contained in the UNDROP. These rights are a precondition to attain their economic, social and cultural development.

Based on this analysis, the relationship between the right to food sovereignty and the right to adequate food as described in UNDROP is close to definition of the right to development as given by the African Commission of Human and Peoples' Rights. Here, the right to development is based on two components: the procedural element and the substantial goal. According to this definition, the right to development may be considered a dynamic and continuous process, like a never-ending spiral<sup>98</sup>. Similarly, the UNDROP sets a procedural aspect for the right to adequate food: the peasants' participation in the decision-making processes that have an impact on food and agricultural policies. The substantial aspect consists of the attainment, through these participative mechanisms, of a set of rights that are the essential prerequisite to achieve the right to adequate food: the right to land, the right to seeds, the right to biodiversity, the right to the use of relevant traditional knowledge, the right to the means of production, the right to access to credit, etc.

## 7. Conclusions

The affirmation of the right to food sovereignty at the international level is the outcome of a long struggle by developing countries and peasant organizations to assert a new set of values in international law. The right to food sovereignty is the latest in chronological order, appearing after the affirmation of the right to self-determination and the right to development. Through the UNDROP, developing countries try once again to stir the debate in the direction of rewriting international law to add more weight to their point of view as compared to the perspective expressed by developed countries. Specifically, developing countries try to change, at least in part, the international law structures that they deem to have disregarded their necessities. They aim to change the economic liberalization models that have been promoted by international economic institutions. In their view, such models promoting the opening up of markets, lead to large-scale land acquisitions in the global south by foreign investors such as multinational corporations and States from the global north<sup>99</sup> as well as increased poverty<sup>100</sup>. The right to food sovereignty has the objective to ensure that the way in which governments use their power is subjected to more checks and balances; the role of the right to food sovereignty aims to curb the economic model previously mentioned, enabling peasants to make decisions with regards to agricultural development programs including the norms regulating the allocation of land. In the same way, some rights contained in the UNDROP could lead to the modification of some international trade rules; for

<sup>98</sup> T. ANSBACH, *Peoples and individuals as subjects of the right development* in S. R. CHOWDHURY E. DENTERS, P. DE WAART (eds), *The right to development in international law*, Dordrecht, 1992, p. 161.

<sup>99</sup> J. VON BERNSTORFF, *The Global Land-Grab, Sovereignty and Human Rights*, in *ESIL Reflections*, 2013, pp. 1-6, available at [https://esil-sedi.eu/post\\_name-410/](https://esil-sedi.eu/post_name-410/).

<sup>100</sup> M. TILZEY, *Political Ecology, Food Regimes, and Food Sovereignty*, Cham, 2018, p. 205.

instance, in order for the right to seeds to be effective<sup>101</sup>, some WTO agreements on intellectual propriety should be amended as they are incompatible with such right<sup>102</sup>.

What may we say about the classification of the right to food sovereignty within existing international law categories? With regards to the normative content of the right to self-determination, with the exception of the meaning attributed to the term by the ICJ, giving a precise definition is difficult because there is no uniform practice. I can say that there is a certain coincidence of food sovereignty with Cassese's and McCorquodale's argumentations on self-determination<sup>103</sup>. In fact, in order to achieve the effective participation of peasants in defining policies, a set of rights such as freedom of association, freedom of assembly and the right to non-discrimination must be granted. These rights allow peasants and their communities to exist and to not be oppressed as well as to protect their right to adequate food.

The UNDROP declares, *prima facie*, that such rights are individual. This may lead us to argue against their similarity with the right to self-determination as self-determination refers to peoples. However, albeit peasants do not always live in communities, in order to express their collective will, they need to have representatives or collective deliberations. The UNDROP at Article 1 tried to find a compromise through a polyvalent definition of peasant, stating that a peasant is «any person who engages or who seeks to engage alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market...». UNDROP applies such definition not only to those who practice agriculture but also to people who do other similar activities, as well as indigenous peoples, local communities and other communities. In any case, the setting of the rights included in the document is that of individual rights that can be exercised collectively. One clear example of this double dimension is enshrined in UNDROP in Article 17, paragraph 1, stating that «Peasants and other people living in rural areas have the right to land, individually and/or collectively...». From this point of view, similarly to human rights approaches to self-determination, the individual human rights mentioned before are fundamental in order for peasants to express their will and to realize their right to adequate food.

When we (also) speak of individual rights, however, there is a higher degree of similarity with the right to development as described by Article 1 of UNDRTD in collective as well as individual terms. The UNDROP in fact recalls such definition in its preamble, as well as in Article 3 paragraph 2, stating that «Peasants and other people working in rural areas have the right to determine and develop priorities and strategies to exercise their right to development». As we observed the right to adequate food contained in Article 15 UNDROP has a procedural dimension, given by the right to define their food and agricultural systems, as well as a substantial dimension, given by the realization of a set of rights that provide a new definition of the right to adequate food. This view of the right to adequate food, among other things, is consistent with the definition of the right to development given by the African

<sup>101</sup> See on international rules on patent rights: O. DE SCHUTTER, *Seed policies and the right to food: Enhancing agrobiodiversity, encouraging innovation*, UN. Doc. A/64/170, 2009.

<sup>102</sup> C. GOLAY, *Legal Analysis on the Rights of Peasants and Other People Working in Rural Areas: The Right to Seeds and Intellectual Property Rights*, Geneva Academy of International Humanitarian Law and Human Rights, 2016, p. 21, text available at: [https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPleasants/Session3/StatementsPresentations/Cristophe\\_Golay\\_GENEVA\\_ACADEMY.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGPleasants/Session3/StatementsPresentations/Cristophe_Golay_GENEVA_ACADEMY.pdf).

<sup>103</sup> A. CASSESE, *Self-Determination of Peoples*, cit., pp. 143-146; R. MCCORQUODALE, *Self-Determination*, cit., pp. 871-872.

Commission on Human and Peoples' Rights in the Enderois case. When we adopt a literal interpretation, the UNDROP refers to the category of "peasants and other persons working in rural areas", therefore it is concerned with a category of workers, other than to a people. One has to admit, however, that the right shall be exercised collectively in order to express effectively the will of the aforementioned category and that in many cases the peasants can coincide with groups such as indigenous peoples as previously said.

In the UNDRTD, the right to development marked a shift from the right to self-determination (although it presupposes its realization); we moved from a context focused on peoples to a context in which there is a focus on individuals as well as peoples, maintaining the participative aspect of self-determination whilst leaving behind every spectre of secession. The attention was moved to the result that participation aims to achieve: the development of economic, social and cultural rights.

On the basis of what was here observed, we may affirm that "umbrella norms"<sup>104</sup>, such as self-determination and the right to development, can bring to life other more detailed norms that have normative autonomy and a more defined content. As an example, claims based on self-determination lead to the creation of a norm on "free, prior and informed consent" of indigenous peoples<sup>105</sup>. With regards to the right to development, an example can be given with the right to food sovereignty as examined in this article. Therefore, these umbrella norms have indirect normativity, in fact they share the aim to give an answer to claims for freedom from forms of political, economic, social and cultural oppression by creating new rights that include modalities of democratic participation to governance.

In conclusion, the configuration of the right to food sovereignty as a new norm that is part of the right to adequate food could have positive implications; through its inclusion in a normative concept that is well known, has a long theoretical pedigree and an extensive body of reviews, it could obtain concrete results before international bodies. For instance, if in future the concept of food sovereignty were to become more widely accepted at the international level, the CESCR might condemn the behavior of States that do not provide domestic instruments to include peasants in decision-making processes according to Article 11 ICESCR. The CESCR, at the moment, has still not reviewed its General Comment no. 12 on the right to adequate food, however in the General Comment no. 25 it recognized the right to food sovereignty in association with the right to participate in and to enjoy the benefits of scientific progress and its applications<sup>106</sup>. Also the Committee on the Elimination of Discrimination against Women recognized it in its General Recommendation No. 34 on the rights of rural women<sup>107</sup>. Peasants could also appeal to national courts in order to complain that a State does not implement mechanisms that guarantee an effective participation in the definition of food and agricultural policies. As everyone knows, UNDROP is not a binding instrument for States, therefore the right to food sovereignty does not have a binding nature and its violation does not determine an international responsibility. However, the right to food sovereignty, the right to adequate food and the

<sup>104</sup> G. ALFREDSSON, *Different Forms of and Claims to the Right of Self-Determination*, in D. CLARK, R. WILLIAMSON (eds) *Self-Determination*, Basingstoke, 1996, p. 58.

<sup>105</sup> P. HANNA, F. VANCLAY, *Human rights, Indigenous peoples and the concept of Free, Prior and Informed Consent*, in *Imp. Ass. Pro. App. Jour.*, 2013, p. 150.

<sup>106</sup> Committee on Economic, Social and Cultural Rights, *General comment No. 25 (2020) on science and economic, social and cultural rights (article 15 (1) (b), (2), (3) and (4) of the International Covenant on Economic, Social and Cultural Rights*, UN Doc. E/C.12/GC/25, 2020, para. 64.

<sup>107</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No. 34 on the rights of rural women*, UN Doc. CEDAW/C/GC/34, 2016, para. 64.

other rights that UNDROF aims to protect could be claimed before national courts by relying on existing human rights; in fact, the reference to soft-law instruments can be a valid way to obtain the progressive development of rights and the domestic courts could be useful to develop a new interpretation of the right to adequate food. As an example, the Supreme Court of Belize in 2007 deemed that the government had violated some constitutional norms on propriety towards some Mayan communities. In that judgement, the court not only kept into account domestic norms, but it also referred to the existence of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and to the fact that Belize voted in favor to UNDRIP<sup>108</sup>.

To conclude, the inclusion of the right to food sovereignty within the paradigm of peasants' right to adequate food offers also some reflections on the progressive development of human rights law. In fact, traditionally, human rights have been divided into, at least, three generations. The first generation includes civil and political rights, the second generation covers social rights and the third generation concerns the rights of solidarity<sup>109</sup>. Moreover, Bobbio reported the emergence of a fourth generation of human rights related to new technologies<sup>110</sup>. One may ask whether the right to food sovereignty or, to be more precise, the new conception of the right to adequate food that it tries to implement, could be placed within the third generation rights<sup>111</sup> (due to its similarity to the right to development) or whether it could be placed in a new category. The latter should be an option to consider. In fact, it is an hybrid between a civil and a social right; it gives to peasants the right to participate in the definition of agricultural and food systems, whilst it also aims to realize (a new conception of) the right to adequate food.

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<sup>108</sup> M. BARELLI, *The Role of Soft-law in the International Legal System: the case of the United Nations Declaration on the Rights of Indigenous Peoples*, in *ICLQ*, 2009, p. 982.

<sup>109</sup> K. VASAK, A 30-year struggle; the sustained efforts to give force of law to the Universal Declaration of Human Rights, in *The UNESCO Courier: a window open on the world*, 1977, p. 29, available at <https://unesdoc.unesco.org/ark:/48223/pf0000048063>.

<sup>110</sup> N. BOBBIO, *L'età dei diritti*, Torino, 1990, p. XIV.

<sup>111</sup> J. RIVERO, *Sobre la evolución contemporánea de la teoría de los derechos del hombre*, in *Corr. Probl. Fil. Der.*, 1985, p. 193. He included the following rights in the third generation: the right to development, the right to international peace, the right to a safe environment, the common heritage of mankind and the right of communication.