

Indigenous Intercultural Negotiation Model

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Abstract

This is a specific study about the creation of a business model based on the Harvard model negotiation between indigenous villages and the state. It is based in a field work realized by various public media, institutions such as interior ministry, ministry of culture, the ONIC (Organization National of Colombian Indigenous Peoples), as well as, Colombian jurisprudence, which involves the analysis and distinctions of agreements, more exactly the MINGA case where the position of indigenous negotiators and the position and recognition of the State are directly involved. The information was classified into two general topics, established as links that lead to the proposal of an integrative model: (1) Appreciation of the concept of cultural value as an indispensable resource of the negotiation method. (2) Recognition of negotiation processes of indigenous peoples as actors with participation within democracy and its cohesion, between the results of a negotiation and its creation of perceptible value in the impact on society

Key Words

Culture, indigenous, globalization, state, constitution, value, models, negotiation, principles, MINGA, acknowledgement, politics, identity, interculturality.

Introduction

"Culture is the collective programming of the mind distinguishing the members of one group or category of people from others." - Geert Hofstede

Intercultural negotiation arises from a continuous and ever more globalized market, where frontiers are becoming more blurred and idealized as time passes. This is due to the implementation of generic strategies to facilitate communication between cultures and the interest to understand the current divergence. Some models and negotiation processes have been proposed in order to evaluate the cultural rank of a particular society such as the behavioral process during a negotiation, forming part of not only just an economic study, but a social one as well. Highlighting the cultural dimensions proposed by Hofstede as well as the negotiation process postulated by Manuela Wilbao; which measure the concept of culture through a generic evaluation of countries. Equally, the applications that give a descriptive step by step of a negotiation, proposed in the book *How do Colombians Negotiate?* by Enrique Oligastri.

The cultural divergence of each society acts like in a *funnel effect*, which act as filters for different social groups from the majorities to the minorities. This is a scale that reflects nationalities, regions, cities, towns, urban tribes, among other groups, so that it is necessary to present a cultural guide of the groups located in the narrowest filter of the funnel, with the objective of demonstrating the applicability proposed by the researchers previously mentioned. This way, the present study about the intercultural negotiations between Colombian indigenous tribes and the Government of Colombia in the process of Minga case takes place, deepening the cultural baggage that provides the flow of global markets.

The development of the study took as its reference two key investigations (1) Supplied values for the Indigenous School of Diplomacy and (2) The Harvard Negotiation Method, proposed by the investigators

Roger Fisher and William Ury. Evaluating through each of the steps the position taken by each party – Indigenous tribes and Government – during the negotiation of the Minga Case, with the objective of concluding the relationship between common Colombian culture versus the culture of their internal social groups, succeeding in determining the coherence of the funnel effect it provides.

State of the Art

Latin America is populated by 522 indigenous tribes, according to a census by UNICEF during 2008-2009, representing 6.09% of the total population of Latin America (Unicef, 2009,) ¹. According to official Colombian sources, the indigenous population at the beginning of the 21st century numbered 1,378,884, around 3.4% of the population that inhabits Colombian territory (DANE, 2007) ². That 3.4% is represented by 102 indigenous groups of which, according to government data, 36 groups are disappearing, but in accordance to Silsa Arias, communications director for ONIC (National Organization of Indigenous Colombians) this number could go up to 80 (RCN RADIO, 2015) ³, something very worrying for several organizations.

This ethnic minority has faced a process of acknowledgement as participants and actors at a social, cultural and political level, beginning with convention C107 (ACNUR, 1957) ⁴ and convention C169 (ORGANIZACION INTERNACIONAL DEL TRABAJO, 1989) ⁵, which are focused on the prevention of discrimination of indigenous tribes in an international framework. At the national level, since the beginning of the century, there has been Law 89 of 1890 “through which is determined the manner in which these savages should be governed in order to turn them towards civilized life” (Senate of the Republic of Colombia, 1890), an abstract form in which ethnic communities that have attempted to integrate themselves into society at large have been recognized.

After this initial application in Colombia, in the last constitutional convention in 1991, the international context of Agreement 169 was merged with Law 21 of 1991. Consequently there have been new laws and decrees ratified for indigenous communities such as Law 115 of 1994 (Comprehensive Education Law); Law 387 of 1997 (Prevention of Forced Displacement); Law 649 of 2001 (Special National Constituency), Law 1381 of 2010 (Language Laws); Decree 1088 of 1993 (Creation of Associations, Councils and/or Indigenous Traditional Authorities); Decree 1397 of 1996 (Through which was created the National Commission of Indigenous Territories and a Permanent Table for Reconciliation with Indigenous Peoples and Organizations) or Decree 1320 of 1998 (Universidad del Rosario).

¹ Unicef, “Los pueblos indígenas en América Latina” (2009), https://www.unicef.org/lac/pueblos_indigenas.pdf (consultado el 2 de noviembre de 2017).

² DANE (2007) “La población étnica y el Censo General 2005”; Colombia: una nación multicultural. Su diversidad étnica, p.35.

³ RCN RADIO, “Esta es la situación de las comunidades indígenas en Colombia”, (2015), <http://www.rcnradio.com/nacional/esta-es-la-situacion-de-las-comunidades-indigenas-en-colombia/>.(consultado el 28 de octubre de 2017).

⁴ Acnur, “C107 - Convenio sobre poblaciones indígenas y tribales, 1957, <http://www.acnur.org/fileadmin/scripts/doc.php?file=fileadmin/Documentos/BDL/2007/5550>. (consultado el 13 de octubre de 2017).

⁵ Organización Internacional del Trabajo, “C169 - Convenio sobre pueblos indígenas y tribales”, 1989 (núm. 169). http://www.ilo.org/dyn/normlex/es/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169,(consultado el 25 de octubre de 2017).

Through these means the government has tried to be more inclusive over time with indigenous communities and the rest of the minority communities. The last regulatory frameworks have been a constant process of agreement with negotiations between indigenous communities and the State. Nonetheless, in reality, this legislation concerning indigenous peoples has not been totally effective due to the fact that according to the Minister of the Interior, Andrea Coronel, "In many instances, negotiations have not been adequate and the agreements have not been followed up on" (Coronel, 2017). Another factor that prevents proper implementation of the accords which were negotiated and that protect indigenous communities are the economic interests of companies with great influence that on many occasions cheat vulnerable indigenous communities; that is how Luis Alfredo Carreño, indigenous representative from the Orinoquia region, describes it: "Multinationals arrive in our communities claiming that they want to have a consultation. They bring food, fill assistance forms, take pictures, but later on they take for granted what was agreed in the previously mentioned consultations." (NoticiasRCN.com, 2013) ⁶The above mentioned makes it seem as if previous consultation is useless, and that is the premise: "Have we really negotiated and applied what was negotiated properly, taking into account the real interests of indigenous communities?"

Objectives

General Objective

Establish a connection regarding generic negotiation trends in Colombian culture versus indigenous peoples negotiation style and state through a factual and empiric analysis of the Minga Case developed along the lines of the Harvard Negotiation Method and three important cultural values of the indigenous peoples.

Specific Objectives

- Ratify if cultural negotiations with indigenous peoples generates value and/or receives value.
- Determine the efficiency and application of the Harvard Negotiation Method within social groups classified as minorities.
- Linking the development of positions taken by the different parties involved in the Minga Case with the seven steps proposed by the Harvard Negotiation Method.

Methodology

The current investigation develops a narrative methodology made through linking Harvard Negotiation Method and the process of negotiation of the Minga Case managing to punctuate the parallels between the two sources of research. In this way, what follows can be a factual and empiric technique of negotiation, supported in writing by the Colombian Constitution concerning cases involving Colombian indigenous peoples and the Government, along with the role of the media, personal interviews with

⁶ Noticias rcn.com, (2013), "Indígenas denuncian engaños de multinacionales", <http://www.noticiasrcn.com/nacional-regiones-oriente/indigenas-denuncian-enganos-multinacionales>(consultado el 10 de octubre de 2017).

anthropologists and the director of previous consultations belonging to the Minister of the Interior, and ONIC members.

Secondary sources were relevant for this research, such as the Indigenous Diplomacy book published by the School of Indigenous Diplomacy (EDI) of the Universidad del Rosario of Colombia and Harvard Negotiation Method studies. Hofstede's five cultural dimensions and lenses of cultural values were part of the foundations for this study. The Colombian Constitution is used as the focal point for the acknowledgement of the ethnic identity of Indigenous societies as well as several conventions on human rights of the social groups mentioned above.

It must be clarified that the specific theme of Indigenous Negotiation remains unclear, finding superficial academic studies regarding this topic as well as outdated experiential trials that do not have a place as main references for the study. Nevertheless, with the final purpose of contextualizing the reader in that area, a synthesized study is presented about the history and acknowledgement of indigenous societies in Colombia.

MINGA CASE STUDY

The investigation is developed

Indigenous Values

The main axis of the negotiation model is based on three fundamental values of indigenous culture taken through an Aristotelian approach that defines a group of people, establishing a characteristic that differentiates them from the larger society but at the same time that is common among its members. Then based on a research done as field work and postulations for researchers set down by Ángela Santamaría and Pedro Rojas Oliveros, participants in EDI (School of Indigenous Diplomacy) at the Universidad del Rosario, the values to be taken into account are:

- A. **Race:** Defined as blood and/or descendants of indigenous societies used as an identifying feature based on two perspectives: biology and belonging. The format for biological definition employs as a classification method the physical characteristics prevalent among members of a group, granting an important degree to genetics such as genotypic appearance. Nevertheless, this definition does not grant a place to cultural similarities as it can be limiting when defining a person by physical aspects such as biological origin or descendant of colonists; so, belonging is taken into account which encompasses the "*the feeling of belonging*" of an individual to his or her group generating a contract of acceptance of culture and traditions in one's conduct, respecting these behaviors and having them as part of one's self, demonstrating to the larger society one's mark of belonging.
- B. **Culture:** Defined as the lifestyle of indigenous tribes and based on the particular beliefs of each community. Acknowledging practices of each group in relation to their descendants and granted to family members linking it with the importance of race. Nevertheless, the epicenter of this value is based on the cultural variations among diverse indigenous tribes such that it is not possible to generalize the interests of indigenous populations. This is due to their diverse histories in regards to colonization. "It would be illusionary to think that the category of 'indigenous' can be used to

group people solely on their mutual affinities from a cultural point of view” (Santamaria & Rojas Olivares, 2015). Aspects like location have made a change of image given by the tribes since there are now urban indigenous tribes and rural indigenous tribes.

- C. **History:** makes reference to the experience lived by each indigenous tribe during colonization, taking into account the different aspects of each story as such as the time of colonization, the location and its various consequences, so that history determines as a key concept the domination by the colonials as context referring to territory and the image shown to society.

MINGA Case: "The social conflicts in rural Colombia, the ghost that will never disappear"

Context and precedents:

An analysis for the different issues or evidence to be discussed in negotiation, gathering basic information, key to diverse sources which will allow for the development of a broad concept regarding different topics pertinent to the investigation.

MINGA Case:

The word "Minga" has many definitions, or rather a standard definition with multiple interpretations. It means, more or less, a gathering between a group of people in order to achieve a common good. Upon achieving said goal, the benefits are shared equally among the different members.

Juliana Otero, investigative expert on culture, described Minga as "a tradition of totally American origins, which demonstrates that the way of life on our continent was absolutely communal contrary to the individualism of the Spanish conquistadors that arrived here that 12 October 1492 (Kienyke, 2017). This form of communal or collective work has as its goal mutual aid for one or more people." The word "Minga" has Quechua origins and can be understood to mean "to ask for help promising something in return."

MINGA, pertaining to Colombia, is the case whereby the indigenous people "walk by the word" in order to make their rights known. In this process within which essential aspects were requested which are demands for security and the protection of human rights, a rejection of the exploitation of natural resources and a rejection of free trade agreements, and a request for effectiveness because of the vulnerability of their rights and of all points in the accords, previously signed (ONIC, 2017). The first case began in 2008 with the first Communal Minga and Social Resistance. There have been excesses on both sides sowing confrontation between indigenous communities and national authorities. The ensuing violence, which blurs the ancestral spirit of the Minga, has been a focal point of much attention pushing aside very demands of indigenous people.

Implementation of what has passed:

This generation is the shared labor of all the negotiators. It is important since it specifies with reasons if any for the range of completely elaborated solutions that have generated its inefficiency. It is of great importance that the negotiators should possess the capacity and intellectual clarity to tackle those aspects which have stunted the progress of negotiations.

MINGA Case:

Since 1996, a total of 1,392 accords and compromises have been signed by both the Government and indigenous communities. Of that number, 63% were set out as legislation, administrative acts, and public

policy which all together have a rate of compliance of 3%. Likewise, the remaining 37% remain as session briefs which have an implementation of rate of 30% (ONIC, 2017).

Accordingly, there have been the following signed accords: Decree Law of Victims 4633 of 2011; the Minga Accords of 2013; the Rural Minga Accords; the Indigenous and Popular Accords of 2015 and 2016 within the framework of the Agrarian, Rural, and Popular Summit; the accords reached at the National Plan for Development of 2014-2018; the Permanent Table for the Reconciliation of Indigenous Peoples; and that which was agree upon at the Ethnic Commission for Peace and the Defense of Territorial Rights; as well as all accords realized by the different regional entities (ONIC, 2017).

The Information System ISAA of the Permanent Table on Reconciliation reports regarding the unfulfilled accords that since 1996 to July of 201 (?) there were a total of 1392 agreements, of which 63% corresponded to legislation, administrative acts, and public policy with an average 3% of those in compliance; in addition, the remaining 37% correspond to acts in session of the Permanent Table of Reconciliation of which the compliance average does not exceed 30%. The majority of the agreements complied with are those which do not imply substantial or structural changes.

The majority of the agreements complied with are those which do not imply substantial or structural changes. This is where the Minga tries to reach greater efficiency. The Minga (Centro de memoria histórica del gobierno)⁷ is a practice passed down through generations. With it indigenous peoples make a collective effort to achieve a common goal; maintaining their values through the fundamental premise of agreements arrived at through dialogue; they recognize the other and his or her truth, always looking to "walk by word" which is "to break the fear, the terror, the silence, and the desperation" felt.

Setting and Actions:

Observation of the factors that lead to the negotiation table, defined also as the trigger or the measure that leads to an obligatory negotiation.

Minga Case:

The national indigenous minga has in the last year mobilized diverse communities from around 24 regions throughout the country. The most important conglomeration has been seen in the Cauca region which is the region with the largest indigenous population and the region where the ancestral indigenous communities hold most sway. The problem has its origins in the past. For a long time the indigenous populations have been promised a series of concessions and handouts, promises which remain unfulfilled. For this reason at the end of October 2017, indigenous Colombians protested and paralyzed major traffic arteries throughout the country including the Pan-American Highway. According to the United Nations, many indigenous Colombian communities have been made vulnerable in these ways:

- Murdered, displaced, and besieged in their own towns and villages by paramilitary and guerilla groups; the Emberas, Kankuamos, Arhuacos, Paeces, and many more other tribes have paid a high price in the Colombian armed conflict
- The Sierra Nevada of Santa Marta has been the epicenter of a war whose main victims have been the four ethnic groups that inhabit the area: the Arhuacos, Kankuamos, Koguis, and Wiwas. There is nothing more urgent than to heed their pleas for protection.
- The greatest price has been paid by the Kankuamos of the Atanques area in the fight between "paras" and guerilla groups. There have been 53 murders reported and more than 150 families have been displaced from their ancestral homes.

⁷ Centro de memoria histórica del gobierno, <http://www.centrodememoriahistorica.gov.co>

- In another part of the country, in the Bajo Atrato, there has been a wave of suicides, many of them children, within the Embera indigenous community, because of the terrible situation that they live through presently along the main Choco River, an area under dispute by various rebel factions.
- "This is another extraneous war in which the Chamies, Tules, Waunanas, Katios, Emberas, and Afro-Colombian communities have been made to offer their dead and their suffering to such extreme ends as to cause an upheaval of their world and led many to suicide. (ONIC, 2017)"

The Comptroller General of the Republic (CGR) has also informed over the possibility of the Government's incomppliance with many of the agreements made with indigenous peoples in the previous session of the National Plan for Development 2014-2018 (PND) (El Espectador, 2016). According to the GCR, "not only has there been incomppliance in regards to the annual inversion levels promised to indigenous peoples and communities but also in regards to the tangible enforcement of the 169 agreements logged and included in the PND."

As mentioned earlier, the hostilities that the indigenous people have suffered have not been reported and have been relegated and hidden from public view due to the national government's policy of peace.

Dilemmas in conflict:

Negotiations can end with or without an agreement or an agreement can be reached if one side pressures the other with the ultimatum "Take it or leave it." Each side must be prepared if they "leave it." What are my alternatives? What are theirs?

Minga Case:

It is important to maintain a negotiation based on principles with indigenous communities in order to preserve their own values; to separate the people from the problem; to concentrate on their interests, not their positions; to create diverse options for mutual benefit; to use objective criteria. From these points arises the elements of true negotiation.

According to data from the social movement the Agrarian, Rural and Popular Summit⁸, from November 2016 to July 2017 there have been reported: 30 community leaders assassinated, 6 missing, 115 threatened, 3490 people displaced, 9 in forced hiding, as well as many other incidents, arriving to the total number of 4508 cases of human rights violations and infractions to international humanitarian law all occurring in indigenous territory.

The regions with the highest number of incidents and highest number of possible incidents are: Cauca, Tolima, Antioquia, Cesar, Choco, Nariño, Quindío, Valle del Cauca, Meta, Guajira, Risaralda, and Amazonas; and the communities most affected have been: Wounaan, Eperara Siapidara, Nasa, Pijao, Embera Chami, Awa, Embera Katio, Zenu, Jiw, Wayuu, Wiwa, and Makuna.

In October alone the situation has grown more severe. In the Tumaco Massacre 2 indigenous people from the Awa people were murdered and more than 50 injured; also, Efigenia Vasquez Astudillo, an indigenous leader of the Kokocuno people, was killed due to the actions of the Mobile Anti-Disturbance Squadron (ESMAD); 2 members of the indigenous Embera Dovidá community were killed in the Choco; 2 indigenous

⁸ Cumbre Agraria Campesina y Popular, es un escenario de coordinación de diversas expresiones del Movimiento social de Colombia, que tiene un escenario de Negociación con el Gobierno Nacional denominado la Mesa Única Nacional reconocida través del decreto 870-2014.

Sikuanis were killed in Meta and Vichada; 2 leaders of the Pueblo Nasa were killed in Cauca as well as another Pijao indigenous leader.

Indigenous communities have set out 5 themes overall to take into account during negotiations:

- Guarantees and human rights: To the formation and arrangement of special programs for individual and collective protection according to ethnic, cultural, and geographic diversity; as well as ancestral forms of social and territorial control; and of physical and spiritual protection for the political and intangible good of indigenous peoples.
- Territory and Environment: To establish and recognize the power of local indigenous authorities regarding the administration, protection, and preservation of natural resources and the environment.
- Peace through Social Justice: To invest in and set in motion the workings of a special authority to follow up on and verify the final accord relating to ethnicity, as well as recognizing indigenous peoples and communities as victims and offering them protection.
- Unfulfilled Agreements: To revisit all previous agreements and to fulfill the various themes therein relating to culture, health, education, etc.
- To offer budgetary guarantees for the compliance of all agreed in negotiations.

Connection:

The most important negotiations are with those people or institutions with which one has negotiated before and will negotiate again. In order to arrive at good relations, one does not need to mix the problems of personal connection with the essential problems of the negotiation.

Minga Case:

According to Andrea Coronel, a member of the Permanent Table for Reconciliation with the Indigenous Peoples, the Government and the indigenous communities have always had a good relationship, one open to dialogue and the securing of agreements. Nevertheless, the breaches of the agreements by the Government have led the indigenous communities to take hostile attitudes. This has unleashed a wave of strikes and violence by the State, represented by security forces, and Indigenous peoples. The previously mentioned mitigating factors are taken to their limit and this allows for a new foundation for dialogue. As Andrea expresses, the indigenous communities do not possess ill will, always forgive, and are willing to give their best in order to reach beneficial agreements that will better their conditions.

Commitments:

Commitments are verbal or written propositions that specify what one side will or will not do. One could call them the draft of the contract. They can be made throughout the course of negotiations. In general, an agreement will be better as long as those promises have a blueprint to follow and have been designed in a manner in which they can become long-lasting agreements, easily understood and verifiable.

Minga Case:

After the strike, it was agreed that there should be recognition for the free education of all indigenous children in all educational institutions as well as the recognition of the Intercultural Indigenous Autonomous University in order to strengthen their self-education programs. It was also agreed to better the economic situations of many indigenous people by managing their payment of debt. But overall, many indigenous communities and peoples decided to just return to their territories. From there they will be on alert and to be in permanent assembly, in order to work towards compliance of the agreements (El

Espectador, 2016). In these, the topics of health, education, agricultural development, as well as others would be discussed.

Another point which was decided on and which helped end the strike and the roadblocks was the dropping of charges for those indigenous people arrested and who were hurt in the scope of the Minga which made progress since last Monday.

It was also decided that an integrated interdisciplinary committee should be created formed by the Ministries of the Government and representatives of indigenous communities throughout the various regions of the country. In it the 5 themes of the petition from the Minga of 2017 would be taken in account and considered: guarantees and human rights, territory and environment, peace through social justice, the unfulfilled agreements, and budgetary guarantees for the compliance of the agreements.

Following the agreements, monitoring:

This component of the model traces a new window for negotiations based on the necessity of all that has happened up to this point. Many of the agreements reached have still not been fulfilled; on the contrary, greater disputes have occurred between the Government and the Indigenous communities in order to recognize that which was agreed. Therefore, a blueprint is needed where an effective execution of the accords is measured for the according to the themes of what has been agreed, so that if needed a renegotiation can begin immediately and implement the accords.

Conclusion:

There exist some legal rights for indigenous people which reference important themes such as cultural preservation, but the reality is that their application and consistency with that clearly stated in the Political Constitution of Colombia is greatly limited. Indigenous communities face a variety of problems from material ones regarding their territories to intangible ones regarding tranquility, peace, and survival. Perhaps the Government has failed to take into account something so precious to indigenous communities, their values, which govern their lives and their way of thinking different from society as a whole.

The many promises obtained during negotiations have not achieved what the indigenous communities have hoped to achieve. Instead they have been marginalized, and the coverage they have to basic necessities such as health, education, food, and shelter have been whittled away by their non-inclusion in the development plans for these communities.

Methodological alternatives have been set out in order to form agreements better suited to the reality of their lives; better suited to their values with many alternatives for the cohesion of these indigenous communities with the Government. Agreements built upon an analysis on the Minga cases in order to develop a reconstruction better suited to their cultures and realities whether they be about the environment or society, but suited to the way they think. The result is a path of tactics better adjusted to the realities lived by indigenous communities based on an approach of the idiosyncrasies of indigenous thought.

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