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Direitos negados, patrimônios roubados: desafios para a proteção dos conhecimentos tradicionais, recursos genéticos e das expressões culturais tradicionais dos povos indígenas no cenário internacional

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SUMMARY

This PhD thesis DIREITOS NEGADOS, PATRIMÔNIOS ROUBADOS: Desafios para a proteção dos conhecimentos tradicionais, recursos genéticos e expressões culturais tradicionais dos povos indígenas no cenário internacional ("DENIED RIGHTS, STOLEN HERITAGE: Challenges for the protection of traditional knowledge, genetic resources and traditional cultural expressions of the Indigenous Peoples on the international stage") aims to study the rights of Indigenous Peoples, especially those living in Brazil, over their cultural heritage, especially their intellectual property rights over their traditional knowledge, genetic resources and traditional cultural expressions, as defined in the context of the United Nations Organization.

The analysis of the topic is based on the perspectives of Indigenous Peoples, as authors, inventors and cultivators, with the capacity for creation and innovation using continuously improved technologies in a collective and communal context.

The approach taken starts from the historical premise of the (colonial) denial of rights to Indigenous Peoples to legally justify the expropriation of either territories in the past, or of traditional knowledge, genetic resources and traditional cultural expressions in the present. The analysis of the evolution of the legal treatment given to Indigenous Peoples throughout history shows, on the one hand, the protagonism of Indigenous Peoples in asserting their status as subjects of international rights and, on the other hand, the role of academia, especially in disciplines such as archaeology, anthropology and law to support or condone colonialist practices of denial and misappropriation of cultural heritage perpetrated against Indigenous Peoples. The role of the academy, in its different areas of knowledge, expresses itself through the creation of concepts, ideologies and laws aimed at legitimizing and legalizing the dispossession of colonized peoples, which the thesis seeks to question and deconstruct.

The thesis examines contemporary challenges in balancing Indigenous Peoples' rights and the large commercial interests involved in granting exclusive intellectual property rights. In this context, the ongoing discussions in the Intergovernmental Committee on Intellectual Property and Traditional Knowledge, Genetic Resources and Folklore in the World Intellectual Property Organization are the main object of research. This study reiterates the assertion of the rights of Indigenous Peoples over their cultural heritage and their position concerning the nature of one or more (future) international instruments for the protection of traditional knowledge, genetic resources and traditional cultural expressions, with the central question being: who would benefit from this protection, the duration of the protection, the formalities, possible illegal uses, and the effectiveness of defensive protection measures, such as databases.

The thesis also examines, from the contexts of different Indigenous Peoples, the adequacy of existing tools in the intellectual property system to prevent the erroneous granting of intellectual property rights and to prevent the misappropriation of elements that are part of the cultural heritage of Indigenous Peoples.

The actions of Indigenous Peoples' representatives within the scope of the United Nations have emphasized the need for broad, full and effective participation by these Peoples, as a condition for legitimacy to decide on the future of their cultural heritage in the realm of intellectual property.