United Nations Institutional Mechanisms on Indigenous Peoples: Examining the Role of State and Non-State Actors

Thesis submitted to Jawaharlal Nehru University

for award of the Degree of

DOCTOR OF PHILOSOPHY

SMRITI SABBARWAL

International Organization

Centre for International Politics, Organization and Disarmament

School of International Studies

JAWAHARLAL NEHRU UNIVERSITY

New Delhi 110067

2017

Centre for International Politics, Organization and Disarmament
School of International Studies
JAWAHARLAL NEHRU UNIVERSITY
New Delhi - 110067, India

Date: 26 July 2017

DECLARATION

I declare that the thesis entitled **"United Nations Institutional Mechanisms on Indigenous Peoples: Examining the Role of State and Non-State Actors"** submitted by me for the award of the degree of **Doctor of Philosophy** of Jawaharlal Nehru University is my own work. The thesis has not been submitted for any other degree of this University or any other university.

Smriti.

SMRITI SABBARWAL

CERTIFICATE

We recommend that this thesis be placed before the examiners for evaluation.

PROF. C.S.R. MURTHY

Chairperson, CIPOD

Chairperson
Centre for International Politics,
Organization and Disarmament
School of International Studies
Jawaharlal Nehru University
New Delhi-110067

PROF. YESHI CHOEDON

Supervisor

Centre for International Politics,
Organization and Disarmament
School of International Studies
Jawaharlal Nehru University
New Delhi-110067

Tel: (011) 26704349 Email: chair_cipod@mail.jnu.ac.in website: jnu.ac.in/sis/cipod

ACKNOWLEDGEMENT

I express my heartfelt gratitude to my esteemed supervisor, Prof. Yeshi Choedon for her unconditional support and guidance on this thesis. It is because of her that I have been able to write this thesis and complete it in time. I thank her for the encouragement and motivation that she provided to me at times when I felt lost. She has been a constant source of inspiration and a support system without whom this research was not possible.

I thank Prof. C.S.R. Murthy, Dr. Archna Negi and Dr. Moushumi Basu for their useful inputs given on the several drafts of this thesis during presentations. It is due to their beneficial observations and insights that important points were incorporated in the study. I also thank the other faculty of the Centre for providing important insights during Centre Committee meetings.

I sincerely thank our Office staff- Mr. Ajay Mishra, and Ms. Roshni Rawat Negi for their continuous support. They are the backbones of the Centre, always ready to help the students in any manner possible. I also thank our Librarian, Dr. Ramesh C Gaur and other library staff for their help. I would also like to thank the staff of Indian Council of Social Science Research and Indian Council of World Affairs for allowing me to consult their resources which were quite helpful in carrying out this research.

A token of appreciation would also be extended to Mr. Sanjay (our photocopier) for his timely help and support. He has been most helpful throughout the period of this research.

Personally, I thank my sister Aditi Sabbarwal for being a constant motivation factor in my life. Her faith in me has been an important reason for my professional achievements. Also, the support I got from my parents (Mr. Rajeev Sabbarwal and Mrs. Sukirti Sabbarwal) throughout the period of this research is commendable and I thank them for that. It has been due to their encouragement that I could pursue higher education in the first place.

I would also like to show appreciation to my JNU friends- Vishal Sagar, Anupama Tiwari and Shilpa Asopa for all kinds of inputs they gave on my research and otherwise. Communication with these few people made it easier in writing chapters.

Lastly, I thank my dear friends- Vidhu Sharma, Fazil Khan, Farhan Mughees, Nivedita Tiwari and Ashish Johri for believing in me and bearing with me for the last couple of years.

SMRITI SABBARWAL

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LIST OF ABBREVIATIONS

ACIA	Arctic Climate Impact Assessment
AFN	Assembly of First Nations
AHRC	Australian Human Rights Commission
AI	Amnesty International
AITPN	Asian Indigenous and Tribal Peoples Network
ANGOC	Asian NGO Coalition
APRODEH	Association for Human Rights, Peru
CANZUS	Canada, New Zealand, Australia
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CAT	Committee against Torture
CBD	Convention on Biological Diversity
CIDOB-CONAMAQ	Confederacion de los Pueblos Indigenas de Bolivia
CED	Committee on Enforced Disappearances
CEDAW	Committee on Elimination of Discrimination against Women
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CHR	Commission on Human Rights
CISA	Consejo Indio de Sud America
CMW	Committee on Migrant Workers
COHRE	Centre on Housing Rights and Evictions
COICA	Coordinating Body of Indigenous Organisations of the Amazon Basin
COMANGO	Coalition of Malaysian NGOs
CONADI	National Corporation for Indigenous Development
CONAIE	Confederation of Indigenous Nations of Ecuador
CORIDUP	Coordinadora en Defensa del Rio Desaguadero y los Lagos Uru Uru y Poopo, Bolivia

CPED	International Convention for the Protection of All Persons from Enforced Disappearance
CRC	Convention on the Rights of the Child
CRC	Committee on the Rights of the Child
CRIC	Council of the Cauca
CRPD	Convention on the Rights of Persons with Disabilities
CRPD	Committee on the Rights of Persons with Disabilities
CS	Cultural Survival
DPI	Department of Public Information
ECOSOC	Economic and Social Council
EMRIP	Expert Mechanism on the Rights of Indigenous Peoples
FAFIA	Feminist Alliance for International Action, Canada
FAO	Food and Agriculture Organisation
FDAPYD	Foyer de Developpement pour I'Autopromotion des Pygmees et Indigenes Defavorises, Congo
FIDH	International Human Rights Federation
FNS	First Nations Summit, Canada
FPIC	Free, Prior and Informed Consent
GATT	General Agreement on Trade and Tariff
HRC	Human Rights Council
HRC	Human Rights Committee
HRW	Human Rights Watch
IACHR	Inter-American Commission on Human Rights
IASG	Inter-Agency Support Group
ICC	Inuit Circumpolar Council
ICCPR	International Covenant on Civil and Political Rights
ICECSR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention to Eliminate All Forms of Racial Discrimination

ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
ICRC	International Committee of the Red Cross
IGO	Inter-Governmental Organisation
IHRC	International Human Rights Clinic of the University of Oklahoma
IITC	International Indian Treaty Council
ILO	International Labour Organization
ILRC	Indian Law Resource Centre
IMF	International Monetary Fund
INDH	National Human Rights Institute, Chile
INGO	International Non-Governmental Organisation
IPACC	Indigenous Peoples of Africa Co-ordinating Committee
IPO	Indigenous Peoples Organisation
IPR	Intellectual Property Rights
IPRA	Indigenous People's Rights Act
IR	International Relations
IUCN	International Union for Conservation of Nature
IWGIA	International Work Group for Indigenous Affairs
JOAS	Jaringan Orang Asal SeMalaysia
KAMP	Kalipunan ng mga Katutubong Mamamayan ng Pilipinas
MHF-NZ	Mental Health Foundation of New Zealand
MNC	Multinational Corporation
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
NIB	National Indian Brotherhood, Canada
NWAC	Native Women's Association of Canada
OECD	Organisation for Economic Co-operation and Development
OHCHR	Office for the High Commissioner of Human Rights
OP 4.10	Operational Policy 4.10 for Indigenous Peoples

RAIPON	Russian Association of Indigenous Peoples of the North, Siberia and Far East
SRIP	Special Rapporteur on the Rights of Indigenous Peoples
STP	Society for Threatened Peoples
SUHAKAM	Human Rights Commission of Malaysia
SuR	State under Review
TK	Traditional Knowledge
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCT	United Nations Country Team
UNDG	United Nations Development Group
UNDP	United Nations Development Program
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNFF	United Nations Forum on Forests
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNI	Union of Indian Nations, Brazil
UNICEF	United Nations Children's Fund
UNITAR	United Nations Institute for Training and Research
UNPFII	United Nations Permanent Forum on Indigenous Issues
UNPO	Unrepresented Nations and Peoples Organization
UN-REDD	United Nations Programme on Reducing Emissions from Deforestation and Forest Degradation
UPR	Universal Periodic Review
VV	Voices-Voix, Canada
WCIP	World Council of Indigenous Peoples
WGDD	Working Group on Draft Declaration
WGIP	Working Group on Indigenous Populations

WIPO	World Intellectual Property Organization
WTO	World Trade Organization
WWF	World Wide Fund for Nature

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Chapter I

Introduction

The purpose of this study is to examine the interaction among United Nations, its member states and non-state actors, particularly non-governmental organisations (NGOs), in the working of few select UN mechanisms for indigenous peoples. The mechanisms selected for the study are Working Group on Indigenous Populations, Permanent Forum on Indigenous Issues, Special Rapporteur on the Rights of Indigenous Peoples and Universal Periodic Review (UPR) of the Human Rights Council. These mechanisms are selected as there are more intense interactions among the actors and they have contributed substantially in protecting and promoting the interests of the indigenous peoples.

Background

It is estimated that there are more than 370 million indigenous peoples spread across ninety countries worldwide (UNPFII 2006). They are known by different names, for example, Lakotas in the Great Plains of North America, Inuits in Canada, Yanomamis in Brazil, Mayas in Guatemala, Aymaras in Bolivia, Inuit and Aleutians of the Circumpolar region, Sami of Northern Europe, Adivasis in India, Maasai in Kenya and Tanzania, Bushmen in Botswana, Orang Asli in Malaysia, Ogoni in Nigeria, Aborigines and Torres Strait Islanders of Australia and Maori of New Zealand. Indigenous peoples are the original inhabitants of lands who are also referred to as the 'Natives' or 'First Peoples' by the Europeans who colonised most of these indigenous peoples. The European invasion brought them into contact with the outside world for the first time. The situation of indigenous peoples has been very grave and critical in almost all parts of the world. They are excluded from political and economic power, they are dispossessed of their ancestral lands, and they are displaced by wars and environmental disasters. In the modern times, their marginalisation from the rest of the society and their deplorable conditions are mainly due to the neglect of their states in which they inhabit (Anaya 1997).

Through the efforts of indigenous peoples' movements in various parts of the world such as Indigenous Peoples Movement for Self-Determination and Liberation, Movement for the Survival of the Ogoni People, Indigenous Peoples Network on

Extractive Industries and Energy, and indigenous peoples NGOs such as International Indian Treaty Council (IITC), Saami Council, World Council of Indigenous Peoples (WCIP), indigenous peoples' concerns became an international issue. This effort to internationalise the cause of indigenous peoples was also supported by many advocacy think-tanks such as International Work Group for Indigenous Affairs (IWGIA) and International NGOs such as Survival International, Amnesty International, Rainforest Foundation and International Union for Conservation of Nature (IUCN). The United Nations is one of the prominent international organisations which facilitated the indigenous peoples' cause by not only providing an international platform but also devising various norms and mechanisms to address the concerns of indigenous peoples (Morgan 2004: 485). This internationalisation of the issue of indigenous peoples is one example of the transformation of the international relations which for a very long time had been state-centric and preoccupied with the concern for territorial security of states. In fact, it was this territorial security which led to the establishment of international organisations such as the League of Nations and later the United Nations. States delegated critical tasks to these organisations which had expertise in 'providing public goods, collecting information, monitoring agreements and helping states in enhancing collective welfare' (Barnett and Sikkink 2008: 71).

In this state-centric system, non-governmental organisations and other non-state actors received minimal consideration. They were not very active at the initial stage but still were playing some role in the international affairs. Had it not been the efforts of Western NGOs, who insisted on being a part of the UN Charter negotiating process, the national leaders would have completely negated any role for non-governmental organisations in the United Nations (Willetts 1996: 34). The efforts of these Western-dominated NGOs bore fruit when the United Nations recognised and formalised the role of NGOs in Article 71 of the UN Charter. This Charter provision states "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence". Even though this article talked about mere 'consultation' as a primary means of engagement with NGOs, it was considered a landmark achievement as henceforth started a new chapter on 'NGO participation in international

policymaking'. NGOs got a license to engage in the future activities of United Nations (Charnovitz 1997: 258).

The emergence and subsequent rise of issue-oriented NGOs took place in the nineteenth century to tackle issues such as slavery, labour rights, promotion of free trade and rights of women (Yamin 2001: 150). This marked the beginnings of NGO presence at the international stage. The NGOs were very active in the formative years of the United Nations. However, their activities and issue-areas remained limited primarily due to the heightened Cold War politics. The domains in which NGOs still continued to be dynamic were human rights and refugee rights. They even acquired an advisory role in some of the United Nations specialised agencies such as UNESCO (Charnovitz 1997: 258-260).

Since the 1990s, a number of other non-state actors also became dominant at the international stage. Primary among them were the epistemic communities or the experts who were dominant in the field of environment and climate change. Indigenous peoples' issues were neglected by the state. State's refusal to deal with the concerns of the indigenous peoples was due to the 'collective nature of rights they demanded, the most important the right to self-determination' (Pitty 2001: 45). Because indigenous peoples were neglected by their states and states had refused to address their concerns, indigenous peoples took recourse to the international level. It was the NGOs and other non-state actors which played a dynamic role in internationalising their issues and make the international community address their concerns.

Indigenous peoples' issues were first taken up at the international level by their own NGOs such as National Indian Brotherhood (NIB), World Council of Indigenous Peoples (WCIP) and Inuit Circumpolar Council (ICC). However, their issues would not have gained entry into the United Nations without the help of the 'sympathetic bureaucrats' who helped the indigenous cause to become truly international (Peterson 2010: 198). These 'sympathisers' "not only maintained but also expanded institutional momentum by favouring indigenous activists' positions" by way of encouraging discussions on indigenous concerns and by treating indigenous issues separate from issues of racial discrimination and minority issues (Sanders 1989: 403). The United Nations has flexible criteria for indigenous peoples'

organisations, in the sense; even those organisations which are not accredited with ECOSOC have been allowed to participate at the United Nations. As of 2009, 43 indigenous peoples' NGOs formally participated in the United Nations under the 'Special' category, and 11 NGOs participated under the 'Roster' category (Morgan 2011: 74). NGOs under the 'Special' category include indigenous peoples' organisations such as American Indian Law Alliance, Asian Indigenous and Tribal Peoples Network, Assembly of First Nations, National Indian Brotherhood, and Russian Association of Indigenous Peoples of the North, Siberia and Far East (RAIPON) to name a few. Indian Law Resource Centre, Indigenous Tourism Rights International and Saami Council are to name a few indigenous peoples' NGOs under the 'Roster' category of United Nations.

The first international organisation that addressed the indigenous peoples' concern was International Labour Organization and it adopted in 1957 Convention No 107 which was revised, in the light of suggestions given by indigenous peoples and their organisations, as Convention No 169 in 1989. In the 1980s, World Bank also came up with its own study on tribal and indigenous peoples which set a benchmark for the international financial institution to engage in tribal-dominated areas. Other international organisations also started attempts to address indigenous peoples' concerns. Among all the international organisations, United Nations is the organisation that has done the maximum in terms of setting up not only norms and standards but also various mechanisms to address concerns of indigenous peoples in which both states and non-state actors have played an important role. This research focuses on how the states and non-state actors interacted in some select mechanisms for indigenous peoples.

Review of Literature

The literature related to the topic is categorised and reviewed under the themes such as- Emerging Discourse on Indigenous Peoples, United Nations and Non-State Actors, United Nations and Non-State Actors on Indigenous Peoples, United Nations Mechanisms for Indigenous Peoples and Global North-South Interface in the working of mechanisms.

Emerging Discourse on Indigenous Peoples and Non-State Actors

Some scholars discuss the meagre conditions in which indigenous peoples live in contemporary times and that the reason for their deplorable condition is the antagonism which these indigenous communities have with their states. Scholars such as Anaya (1996), Marks (1990-91), Oguamanam (2004-2005) and Coates (2004) have discussed the various pretexts that were used by the early European colonisers to annexe indigenous territories. The most common of these was the theory of terra nullius and the doctrine of discovery which were used as justifications by white settlers in order to take control of indigenous lands.

The internationalisation of the indigenous peoples' movement which began from the 1960s onwards is captured in the academic works of Washinawatok (1998), Jull (1999), Morgan (2011), Minde (2007), Wilmer (1993), Lawlor (2003), Muehlbach (2003), Swepston (2011), and Pitty & Smith (2011). These scholars emphasise the fact that indigenous peoples' movement started as domestic uprisings in various parts of the world. Their movements were later supported by national as well as international NGOs, and sympathetic advocacy groups. These actors mobilised indigenous peoples by organising conferences at local as well as international level. Once the indigenous peoples' movement reached the international level, a number of studies were initiated to heighten the awareness of the international community.

Anaya (2000, 2009), Behrendt (2001), Bosselmann (1997), Pitty (2001), Charters (2010), Cirkovic (2006-07), Kuokkanen (2012), Cowan (2013), Daes (2008) are some of the scholars who have worked on the issue of self-determination in relation to indigenous peoples. These scholars believe that the right to self-determination demanded by indigenous peoples all over the world does not include the right to secession, as feared by most states. Therefore, the antagonism between indigenous peoples and states on the issue of self-determination is baseless. Anaya (2005), Ahren (2009), Aiken and Leigh (2011), Daes (2005, 2011), Poirier (2002), Scheinin (2005b) have written about the land rights of indigenous peoples and how states do not recognise these territorial rights of indigenous peoples. Barelli (2012), Goodland (2004), Mackay (2004), McGee (2009), Ward (2011) have talked about the norm relating to free, prior and informed consent and how this has emerged as an

important norm in indigenous rights discourse. The scholars argue that even though this does not accrue any veto right to indigenous peoples, it is still considered important when dealing with land rights of indigenous peoples. Coombe (2001-2002), Howden (2001), Mauro and Hardison (2000), McGregor (2008), Sinjela (2011) have discussed the rights related to preservation of traditional knowledge of indigenous peoples. These scholars argue that because the knowledge of indigenous peoples is traditionally passed from one generation to another and that it is in contrast to the modern knowledge systems, therefore this knowledge is stolen away from indigenous peoples or used without their consent and without giving them benefits. Therefore, the international community has to work towards stringent international laws and framework that can safeguard the protection of traditional knowledge of indigenous peoples.

Ahren (2009), Anaya (2009), Belllier and Preaud (2012), Charters and Stavenhagen (2009), Coulter (2008-2009), Crawhall (2011), Eide (2007, 2009), Engle (2011), Garcia and Hitchcock (2009), Lam (2009), Morgan (2011), Venne (2011), Wiessner (2009, 2010) and Xanthaki (2007) are some authors who have written about the United Nations Declaration on the Rights of Indigenous Peoples as the most celebrated norm. While most scholars have emphasised on the interactions and negotiations that took place among indigenous peoples, states and other non-state actors like NGOs and UN bureaucracy on the provisions that would be incorporated in the Declaration, there are scholars such as Lam (2009) and Anaya (2009) who have also analysed the future possibilities of the Declaration being turned into a convention and conclude that this is somewhat which will not be achieved in near future.

The emergence of non-state actors can be traced back to the late seventeenth century. Reinalda (2011) talks about the emergence of modern nation-state system after the Treaty of Westphalia in 1648 which was accompanied by the growth of a number of small societies comprised of citizens who were aware of the then prevailing social and political problems. Thus a number of societies and associations were formed on issues such as slavery and poverty.

The earliest non-state actors were the faith-based organisations or voluntary societies which were later clubbed under the umbrella term ‘voluntary organisations’ or the ‘non-governmental organisations’. While Charnovitz (1997) traces the historic

emergence of NGOs in the early eighteenth century, Willetts (1996) and Seary (1996) talk about the materialisation of NGOs in the domain of international politics in the nineteenth century. Charnovitz regards faith-based organisations such as churches as precursors of modern NGOs; Seary views the anti-slavery movement as the beginning of NGOs' activism in international politics. Although these authors differ in tracing the origin of NGOs, they generally agree with the fact that the growth of NGOs reached a zenith in the inter-war period, but declined during the Cold War period due to the east-west bloc politics. The period from the early 1970s witnessed diversification of roles of NGOs and the era from 1990s till now has been regarded as an era of empowerment for the NGOs (Alkoby 2003, Charnovitz 1997).

Willetts (1996) and Uvin (1995) focus on the consultative relationship between NGOs and United Nations. There are other scholars like Joachim (2011) and Raustiala (1997) who discusses the decision-making ability of NGOs at United Nations as the most important role. There exists divergence among scholars on the roles and functions performed by NGOs. Betsill and Corell (2001), Willetts (1996) argue that information and knowledge are the two main weapons that can be used by NGOs in state-led deliberations during the agenda-setting phase; Raustiala (1997), Cullen and Morrow (2001), and Yamin (2001) focus on the functions of monitoring, as well as initiating treaty making as the best tools that NGOs deploy particularly in the field of human rights. There are also disagreements among scholars on the admission of local/national NGOs in the United Nations. Willetts (1996) regards the decade of the 1970s as the era when national NGOs began to be accredited to the United Nations, whereas Joachim (2011) maintains that it was only in the year 1996 when local and national level NGOs could gain access to the United Nations. This was made possible with the increasing number of international conferences that took place in the decade of 1990s (Joachim 2011: 294). While Joachim (2011) elaborates that the national NGOs were given entry in the United Nations in order to expand the participation and equalise the presence of northern and southern NGOs (which was for a very long time dominated by the presence of northern country NGOs alone), Mckeon (2009) adds that the real reason for this expansion was that states wanted their NGOs to be present in international forums to give support to them.

Uvin (1995), Cullen and Morrow (2001) discusses the transnational links forged by NGOs in the contemporary times which have changed the working pattern

and the significance of NGOs in a big way. Keck and Sikkink (1998), Cullen and Morrow (2001), Karns and Mingst (2005) are the pivotal writers who have written extensively about how 'networking' between local/national and international NGOs made possible to strengthen their voice and impact at the international arena. This networking results in a 'boomerang effect' whereby local issues gain international attention with the help of NGOs. Thus, where local NGOs contribute authentic information and local knowledge, international NGOs often pool in a large number of resources for the local issues to be heard at the international level. These networks, often also called as transnational 'coalitions', have proved to be very effective in international realm and contribute to the effective functioning of NGOs in a big way (Karns and Mingst 2005, Keck and Sikkink 1998).

In contrast to the scholars who assert the growing importance of NGOs in the international realm, scholars such as Charnovitz (1997), Simmons (1998), Tramontana (2012), and Gordenker and Weiss (1995) view NGO activity in international relations as that of an unregulated one, which if given legal status would bring chaos. This is because of the fact that NGOs, according to these authors, have a habit of exerting unwarranted pressure on states to act according to the wishes of these non-governmental organisations which is not acceptable to states. Also, the relationship between NGOs and states is based on 'conflict, competition, cooperation and cooptation' (Goredenker and Weiss 1995: 551).

Scholars such as Barnett and Finnemore (2004, 2005), Biermann and Siebenhuner (2009), Venzke (2008) have written about the bureaucracy of international organisations emerging as an important non-state actor in the late nineteenth century. Barnett and Finnemore (2004, 2005) describe international bureaucracy as characterised by hierarchy, continuity, impersonality and expertise. Added to these features was the fact that most often bureaucracies had the maximum control over information and knowledge, therefore they wielded more power than states. Thus the Secretariat of the United Nations, the bureaucratic staffs of other international organisations such as ILO, UNESCO was an independent non-state actor which emerged as an important entity in the latter part of the nineteenth century. Scholars such as Biermann and Siebenhuner (2009) have emphasised on how the international bureaucracies, though similar in mandate, size, means and general functions often differed in the kind of influence they exercised over states. Thus,

whereas the Secretariat of the Convention on Biological Diversity was described as a "lean shark" (Siebenhuner 2009), others such as the Secretariat to the UN Framework Convention on Climate Change was described as "living in a straitjacket" because of the powerful governments as their masters (Busch 2009).

The epistemic communities also emerged as an important non-state actor at the international level in the decade of 1990s. Scholars such as Haas (1992), Adler and Haas (1992), Karns and Mingst (2005), Barnett and Sikkink (2008), Koch (2011) have written on the existence and working of these epistemic communities. According to these scholars, epistemic communities were the knowledge-based experts whose main weapons were information and expertise. This body of experts emerged for the first time in the field of environment and climate change. Karns and Mingst (2005) have differed between epistemic communities and 'global policy networks'. According to them, both these actors are similar as both emerged in the decade of 1990s as a direct consequence of globalisation. However, global policy networks differ from epistemic communities in the sense that these are networks which also draw heavily from members working in state departments, governments, corporations as well as NGOs. In addition to the epistemic communities and global policy networks, Reinalda (2011) and Karns and Mingst (2005) regard 'multinational corporations' as yet another significant non-state actor which became important in the international domain since the decades of the 1990s due to the advent of globalisation. Because of the financial leverage that these companies give to governments, these companies wield political power and therefore constitute important actors.

United Nations and Non-State Actors on Indigenous Peoples

Scholars like Washinawatok (1998), Anaya (1997), Niezen (2000), and Morgan (2011) have written about the early emergence of indigenous peoples' organisations in the international domain. Contrary to popular belief, it was the indigenous peoples' NGOs such as World Council of Indigenous Peoples (WCIP), International Work Group for Indigenous Affairs (IWGIA), South American Indian Council, and Inuit Circumpolar Council (ICC) which had taken the lead in addressing concerns of their own peoples who were oppressed and marginalised. The activism of these NGOs received popular support from Western NGOs such as Conservation International, Rainforest Foundation, and Forest Peoples Programme at the United Nations in the

late 1980s and this was how an important indigenous-led lobby came into existence at the United Nations. Anaya (1997), Niezen (2000) assert that a positive outcome of the emergence of this indigenous peoples' lobby was the catalytic role it played in making indigenous peoples participate in other international forums.

A number of organisations were established by anthropologists, which were supportive of the cause of indigenous peoples. Burger (1987), Jull (1999), Morgan (2011) discuss these organisations or body of experts on indigenous peoples which were established since 1960s onwards and which played a significant role in internationalising the indigenous peoples' movement. Other than NGOs, these epistemic communities organised events such as international conferences like the Port Alberni Conference, Barbados I and II. These international events were significant for mobilising indigenous communities in all parts of the world.

Not only were these epistemic communities and NGOs responsible for the early drafting of norms and standards relating to indigenous peoples. It was primarily because of the information generated by indigenous peoples' NGOs and the influence of Western NGOs that issues related to indigenous peoples began to be highlighted at the international stage for the first time. The Amazon issue was one such example which brought the indigenous peoples' concerns on the international stage for the first time. Scholars like Daes (2008), Pieck (2006) and Quane (2005) discuss the role of international propaganda by NGOs and epistemic communities which led international organisations to draft norms and policies conducive to indigenous peoples. The authors such as Arts (2004), Smith (2007) are of the view that the presence of NGO lobby at the Earth Summit of 1992 led to the recognition of indigenous peoples as one of the 'Main Groups' in Agenda 21 of the Outcome document. The importance of indigenous peoples was also recognised in the Forest Principles and Rio Declaration. The NGO Forum organised by NGOs as parallel summits to the main conferences have now become an important practice where thousands of NGOs unite and network with each other, issue declarations, deliberate on the pressing issues in an attempt to engage the states towards the concerns of indigenous peoples (Smith 2007, Arts 2004, Corell and Betsill 2001, and Reisman 1995).

Other than NGOs, a very important role was played by the 'bureaucracy' of United Nations in highlighting the indigenous peoples' issues at the international level. Peterson (2010), Sanders (1989), Barsh (1986), Anaya (2004), and Morgan (2007) have written explicitly about the positive role played by UN bureaucrats such as Augusto Willemsen-Diaz, and Erica Irene-Daes in encouraging discussions on the issues faced by indigenous peoples and keeping these as a distinct category within the United Nations. According to these scholars, these 'sympathetic bureaucrats' were important gatekeepers for the indigenous people's movement to reach the United Nations. In fact, it was at the behest of bureaucrats like Willemsen-Diaz, that studies were initiated on indigenous peoples for the first time. These studies such as the Cobo Study of 1971 became important milestones within the United Nations and resulted in the establishment of a number of mechanisms for indigenous peoples.

United Nations Mechanisms for Indigenous Peoples

A major portion of the literature on UN mechanisms vis-a-vis indigenous peoples discusses the role of general human rights treaty bodies that had been established since the early 1960s. Thornberry (2002, 2005), Pritchard (1998), and Scheinin (2005) have written about the role of four treaty bodies viz. Committee on Elimination of Racial Discrimination (CERD), Human Rights Committee (HRC), Committee on Economic, Social and Cultural Rights (CESCR), and Committee on Rights of the Child (CRC), in direct relation to indigenous peoples. These scholars discuss the paucity of UN engagement on issues of indigenous peoples in the decade of 1960s. The escalation of human rights violations in that decade had urged the UN to develop mechanisms to address the violation of human rights of indigenous peoples. However, as indigenous peoples had not yet emerged as an international issue, they made use of general UN human rights protection systems.

Farer (1987), Boven (1998), Wolfrum (1999), Fishel (2006), Thornberry (2002, 2005), Partsch (1992), Kedzia (2005) are some pivotal scholars who have written about the role and functions of CERD as a treaty monitoring mechanism. These scholars have written about the functions carried out by CERD such as examination of state reports and adoption of newer methods like early-warning and urgent action procedures. Thronberry (2005) and Fishel (2006) point out that the early-warning procedure of CERD has been beneficial for indigenous peoples as a

number of cases have been brought under this procedure which dealt with violation of indigenous peoples' rights. According to these scholars, the growing engagement of CERD with other non-state actors such as NGOs has been the primary reason for making it popular in the eyes of indigenous peoples over the years. Similarly, Pocar (1991), Boerefijn (1995), Thornberry (2002), Lintel and Ryngaert (2013), and Scheinin (2005) have written extensively about the functions of Human Rights Committee as a treaty monitoring mechanism. Mechlem (2009), O'Flaherty (2006), and Buergenthal (2001) have explained the functions of the Committee such as examination of state reports and individual communication procedure. Thornberry (2002) has explained how NGOs play a very active role in these functions of the Committee. Buergenthal (2001), Thornberry (2002), Keller and Grover (2012) explain how the General Comments given by the Committee on various aspects such as the right to self-determination, and the right to life are important from indigenous peoples' perspective.

Scholars such as Thornberry (2002), Scheinin (2005), Schutter (2010), and Alston (1992b, 1998) have explained the two most important functions carried out by CESCR viz. examination of state reports and issuing General Comments. Kedzia (2005) has explained how the Committee has worked in coordination with non-state actors such as NGOs. Similar is the case with Committee on the Rights of Child which according to scholars such as Pais (1977), Alston (1992), and Thornberry (2002) is the only treaty body that came into existence as a result of a dynamic role played by NGOs. According to these scholars, the Convention on the Rights of the Child is the only treaty till date to have a specific provision on indigenous children. The Committee has been playing an important role in the case of indigenous peoples' rights by way of examination of state reports and issuing General Comments.

The literature is replete with academic works on some of the early mechanisms which had been instituted by United Nations to ameliorate the condition of the indigenous peoples. Scholars such as Stomski (1991), Sambo (1993), Burger and Hunt (1994), Pritchard (1998b), Sanders (1989), Barsh (1986), Eide (2009), Daes (2008), Venne (2011) and Barelli (2012) have written extensively about the Working Group on Indigenous Populations (WGIP) which had been created in 1982 as a direct outcome of the 1981 NGO Conference. These scholars agree that the Working Group was the first mechanism which specifically dealt with the issues of the indigenous

peoples and gave a lot of leverage to the indigenous peoples' organisations. Scholars like Sambo (1993), Sanders (1989) have congratulated the United Nations for the creation of this mechanism because it became a popular arena for discussions and deliberations on indigenous peoples' concerns. Due to the open-door policy followed by the Working Group at the behest of the UN bureaucracy, this had become an open house amenable to the participation of indigenous peoples without caring too much about the rules of participation at the United Nations. However, there are other scholars like Daes (2008), Quane (2005) who have called it a failure because it eventually became a complaint mechanism where indigenous peoples largely lodged their complaints. Even though initially the Working Group was not designed to investigate the complaints made by indigenous peoples; with passing years the members of the Working Group started investigating these complaints by making field visits. Added to the above factor, the Working Group also began to be attended by non-indigenous peoples, which defeated the purpose of setting up the Working Group. Barsh (1994) and Bowen (2000) point out the fact that even though the mandate of the Working Group was completed in 1995 with the completion of the draft declaration, this did not lead to the immediate demise of the mechanism. In fact, Schulte-Tenckhoff and Khan (2011) states that the popularity of the Working Group among indigenous peoples was the primary factor which caused its termination because the states began to feel threatened by the existence of this mechanism. Even though the indigenous peoples wanted the Working Group to continue to function, the states eliminated it in 2006.

Authors such as Anaya (2004), Barsh (1994), Gilbert (2007), Daes (2008), Wiessner (2010), Venne (2011) and Engle (2011) have written about the Inter-Sessional Open-Ended Working Group on Draft Declaration (WGDD) whose sole purpose had been to make the draft declaration a reality. Barsh (1994) and Daes (2008) maintain that there were continuous conflicts between states like New Zealand, United States, Australia and indigenous peoples. These states were particularly against the provisions on the right to self-determination, rights to land and natural resources and collective rights. Morgan (2004) also states that while Latin American and Caribbean states were in favour of the right to self-determination, it was only after qualifications inserted in Article 46 that states like United States, Russia, Canada, New Zealand and Finland agreed to the adoption of the Declaration. While Morgan

(2004) and Venne (2011) regard the animosity between indigenous peoples and Canada, New Zealand and United States (the CANZUS Bloc) as the primary reason for the delay in the adoption of the Declaration, Engle (2011) and Daes (2009) particularly regard the delay was caused by African states because of their reservation on the secessionist tendency of the right to self-determination which was an important right in the Declaration. This working group ceased to exist once the Declaration was adopted in 2007. Barsh (1986), Alfredsson (1989), Anaya (1991), Eide (2009) and Burger and Hunt (1994) have discussed how the Voluntary Fund for Indigenous Peoples as a mechanism enabled to fund the travel of remotely located indigenous peoples to United Nations to be able to attend the meetings and seminars organised relating to indigenous peoples.

Pitty (2001), Garcia-Alix (2003), Garcia and Hitchcock (2009), Lindroth (2006, 2011), Malezer (2005) and Stamatopoulou (2009) have analysed the mandate and working of the Permanent Forum on Indigenous Issues which was established in 2000. It is the 'first ever mechanism to have indigenous peoples on an equal footing with the states' (Lindroth 2006: 45). Barsh (1994), Stamatopoulou (1994) and McIntosh (2001) maintain that the indigenous peoples demanded a forum for them at the human rights conference in Vienna, in order to be able to present their grievances to the international community. Niezen (2000) and Khosravi-Lile (2006) have highlighted the problems echoed by states in the creation of such a forum in light of the financial crunch faced by United Nations at that time.

Assessment of the Permanent Forum has been carried out in the academic works of Lindroth (2006), Morgan (2004, 2007, 2011), Malezer (2005) and Khosravi -Lile (2006). The interaction between states and indigenous peoples over the creation and working of the Forum has been captured in the works of Corntassel (2007), Schulte-Tenchoff and Khan (2011), and Khosravi-Lile (2006). While Lindroth (2006) and Stamatopoulou (2009) regard the fact that indigenous peoples for the first time have an equal footing with the states in the composition of the Permanent Forum as a victory of the struggle of indigenous peoples, Peterson (2010) and Corntassel (2007) are apprehensive about this victory and point out that even though it is an indigenous-led Forum, the actual power rests with the states as is evident from different time limits given to indigenous peoples and states and the few seats made available for indigenous peoples in the Forum. Overmyer-Vel zquez (2003) also asserts that the

predominance of the states in the matters of the Forum also reflects from the title of the Forum itself which labels indigenous peoples as indigenous 'issues'. This had been unacceptable to the indigenous peoples.

Malezer (2005) and Khosravi-Lile (2006) have highlighted the positive contribution of the Forum in advancing the cause of indigenous peoples and ensuring the better realisation of their rights. They pointed out the relatively high status the Forum enjoys in the hierarchy of United Nations and also the powerful recommendations made by the Forum over the years in its annual reports, which clearly point out the faults of governments, United Nations agencies, and other UN bodies. Even though the recommendations made by the Permanent Forum in its reports are not binding, it has exerted tremendous influence over protection and promotion of indigenous peoples' rights, in particular the rights of indigenous women, children and youth. Important recommendations have also been made by the Forum on indigenous peoples' rights related to environment, land and other natural resources. However, Schulte-Tenckhoff and Khan (2011) are apprehensive about the growing extension of the mandate of the Forum in terms of the monitoring and implementing the UN Declaration on the Rights of Indigenous Peoples. They are of the view that such extension of the mandate could prove fatal for the existence of the Forum because the Declaration is not binding on states and also undermines the legitimacy with which indigenous peoples have struggled to reach the international level.

Corntassel (2007), Niezen (2000) have written about the obstacles in the working of the Permanent Forum. There have been instances where a stiff deadlock emerges between states and indigenous NGOs over issues disagreed by both parties. The Forum's Reports have also mentioned situations where a kind of stalemate occurred between states and indigenous peoples, on issues such as UN-REDD programme, the principle of free, prior and informed consent, land rights, and development projects (United Nations 2005). In such situations, as these authors point out it is difficult to reach a consensus which ultimately hampers the recommendation making ability of the Forum. Recent years have witnessed the growth of indigenous caucuses during the annual sessions of the Permanent Forum which work towards the cause of the indigenous peoples (Malezer 2005: 67). The relationship between states and indigenous peoples is, however, not always conflictual. Lindroth (2006) and Malezer (2005) point out that some of the states formed a group in the Permanent

Forum called ‘Friends of the Forum’. This group is active in coordinating informal meetings between indigenous peoples and governments with the aim of resolving disputes and also lobby for issues like right to a healthy environment and right to native language favourable to the indigenous peoples.

Tauli-Corpuz (2002), Morgan (2011) and Preston (2007) have analysed the working of the mechanism of Special Rapporteur on the Rights of Indigenous Peoples which was created in the year 2001. There are works published by advocacy think-tanks such as International Work Group for Indigenous Affairs that assessed the contribution of the Special Rapporteur to advance the cause of indigenous peoples (IWGIA 2007: 54). The literature is replete with writings on Special Rapporteurs as human rights monitoring mechanisms of the United Nations. Rodley (2011), Subedi (2011), Abebe (2011), Mukherjee (2011) and Naples-Mitchell (2011) talk about the mandate and independence of the Special Rapporteurs in general covering aspects like the inherent tensions involved in the working of the Special Rapporteurs and the challenges faced by them. Preston (2007) has highlighted the supervisory role of the Special Rapporteur on the Rights of Indigenous Peoples which this mechanism carries out in cooperation with a range of actors such as local NGOs, state development agencies, media, university and academic institutes, and sometimes even international NGOs.

One important function of the Special Rapporteur, according to Tauli-Corpuz and Alcantra (2002) and Stavenhagen (2013) is to receive communication from indigenous peoples about the alleged violation of their rights. This kind of roles and functions brings hostility between the Special Rapporteur and the states because the Rapporteur has to undertake a country visit to verify the seriousness of the complaint. Preston (2007) says that in the past states like New Zealand and Kenya have been opposed to the Special Rapporteur undertaking visit. Tauli-Corpuz (2002) and Preston (2007) discuss the challenges of this nature faced by the Special Rapporteur in carrying out his/her mandated tasks. NGOs play significant roles in assisting the Special Rapporteur by way of providing alternative sources of information of the actual situation on the ground. However, recommendations made by Special Rapporteur have also facilitated the opening of spaces between indigenous peoples and governments which earlier were hostile to each other. Scholars such as Barsh (1994), Anaya (2004) and Corntassel (2007) question the creation of Expert

Mechanism on the Rights of Indigenous Peoples (EMRIP) as a separate mechanism in 2007. In view of these scholars, the function of providing thematic expertise to the Human Rights Council is already carried out by the Special Rapporteur. Thus the creation of this mechanism duplicates the work of the Special Rapporteur.

Cooper (2014), Vengoechea-Barrios (2008), McMahon (2010), Rajagopal (2007), Khoo (2014) are the primary scholars who have assessed the usefulness of Universal Periodic Review of the UN Human Rights Council. A point asserted by these scholars is that even though this mechanism is created for indigenous peoples, it has been playing an active role in the promotion and protection of indigenous peoples' rights. Hence this mechanism is important for indigenous peoples. Gaer (2007), Rathberger (2008), McMahon and Ascherio (2012), Smith (2012), Nadia (2009), Redondo (2008, 2012), and Vengoechea-Barrios (2008) are the scholars who have generally discussed the importance of Universal Periodic Review. These scholars discuss the potential improvement in UPR from other mechanisms in terms of its cooperative approach to monitoring human rights. Also, the fact that it produces a lot of documentation in the form of reports is seen as a positive factor. They are particularly positive about the effective working of the mechanism in terms of the interactions this mechanism witnesses among actors like states, NGOs, and the UN bureaucracy.

However, this optimism about the working of UPR is not shared by many scholars. There are others like Gaer (2007) and Redondo (2008) who are not enthusiastic about the mechanism and believe that the primary reason for UPR's failure is the fact that it is a state-driven process. This is aggravated by the fact that the reviewers of the human rights situation of countries are fellow member states and not independent experts. This makes the UPR ridden with the faults. Harrington (2009), Moss (2010) focuses on the politics among the states and NGOs in the working of UPR. States have often been opposed to the functioning of transnational NGOs in the UPR process and instead favour their national NGOs.

Higgins (2014), Cooper (2014), Harrington (2009) and Khoo (2014) particularly emphasise on the fact that for indigenous peoples UPR is a potent force which can lead to improvement of their situation but this has not been done till now as many states fail to report on the human rights situation of indigenous peoples. The

hesitant attitude of the states to report on the human rights violations of indigenous peoples is the primary reason for the failure of the mechanism. Gaer (2007) and Harrington (2009) believe it is primarily the indigenous NGOs whose reports show the gross violation of human rights of indigenous peoples that take place within the territory of the states. Moss (2010), McMahon and Ascherio (2012) and Salmon (2011) have talked about the powerful strategies deployed by NGOs in making the states accountable during the process of the UPR. Some of these strategies include making joint submissions, asking questions to the state under review, making recommendations and so on. Thus, even if NGOs cannot participate directly in the dialogue between states, NGOs have used their lobbying and advocacy power by way of documenting written statements, formulation of questions and criticisms in making the states accept recommendations suggested by the other states. In view of Freedman (2013), what has not worked in favour of indigenous peoples in the UPR process is their cultural distinctiveness which is often negated by the states. Thus, the states reject the review to be carried out in the case of cultural rights which negatively affects the situation of indigenous peoples (Freedman 2013: 280).

Global North-South Interface on the Indigenous Peoples

This theme has emerged as a major undercurrent in the writings of Corntassel (2007), Coulter (2008-2009) and Neizen (2005) who have emphasised in their works about the existing North-South dichotomy found in the indigenous peoples' movement and the way the UN mechanisms have been created. Corntassel (2007) and Stavenhagen (2009) point out the North-South politics when they discussed about the internationalisation of the indigenous peoples' movement. They argue that it was this North-South politics which led to the indigenous peoples' movement emerge at the international stage because the Southern countries like Guatemala repeatedly emphasised on the conditions and status of indigenous peoples worldwide in an attempt to target the countries of the North particularly the United States of America and Canada of continued violation of their indigenous peoples' rights. This kind of North-South politics, as argued by Corntassel, led to the United Nations taking up the indigenous peoples' cause in the early 1950s, though in a much-limited manner. However, the scenario is not the same today as suggested by Kenner (2011) who point out the fact that indigenous peoples as an issue have been used as a plot by Northern countries like the United States of America to target the development policies of the

countries of South, particularly Bolivia. This targeting of Southern countries on the issues of indigenous peoples makes these countries even more vulnerable at the hands of the countries of the North.

Kajese (1987) and Smith (1987) point out the dichotomies that exist between the NGOs of the North and indigenous NGOs of the South. Northern NGOs may not always be actual supporters and credible representatives of indigenous peoples, as they may be serving the interests of their own governments. These authors point out that often Northern NGOs impose their viewpoint on indigenous peoples, later labelling these expressions as those expressed by indigenous peoples themselves. However, this does not mean that Northern NGOs always misrepresent indigenous peoples. As expressed in the writings of Jull (1999), Lindroth (2006), Schulte-Tenckhoff and Khan (2011) the active lobbying efforts of Northern NGOs like Saami Council, Inuit Circumpolar Council (ICC) and International Work Group for Indigenous Affairs (IWGIA) led to the emergence of indigenous peoples as an international issue for the first time. In fact initially IWGIA and Survival International were the only Northern NGOs and advocacy groups which actively worked towards the plight of indigenous peoples of the countries of Global South particularly in Central and South America. IWGIA helped the local indigenous peoples' movements and regional NGOs in South America such as *Consejo Indio de Sud America* (CISA), to organise and become one potent force for the survival of indigenous peoples (Dahl 2009: 36).

The Northern NGOs and other organisations from Norway and Canada (*Inuit Tapirissat*) debated and lobbied at the United Nations for the setting up of the Permanent Forum in the first place. However, these NGOs from North failed to take into account the different issues faced by the indigenous peoples of the South. Lindroth (2006, 2011), Malezer (2005) point out the ferocious debates that took place in the Permanent Forum between the states of the North particularly the United States of America, Canada and Russia and indigenous peoples' organisations on some of the provisions in the Declaration of the Indigenous Peoples such as the provisions on self-determination, and right to land and natural resources. The presence of the Northern indigenous lobby is extremely useful for the effective working of the Forum from the indigenous peoples' point of view. The two most important organisations from the North are the IWGIA (advocacy organisation) and the ICC (NGO) who not only

initiated the dialogue with many governments of the North and the South for the establishment of the Forum but also took the initiative of organising workshops. Even today these Northern NGOs' active lobbying effort is significant for the working of Forum. The indigenous peoples' voices have also now multiplied by way of representation of indigenous peoples NGOs from all quarters, including the countries of the Global South. Asian Indigenous and Tribal Peoples' Network, Indigenous Peoples of Africa Coordinating Committee are primary examples of NGO representation from countries of the South. The north-south dichotomy is also reflected in the expansion of the mandate that is catapulted by the Forum because this is resisted by countries of the North. The northern countries do not wish to send reports or entertain the Forum's visit on their territory (Schulte-Tenckhoff and Khan 2011).

Tauli-Corpuz and Alcantra (2002) and Preston (2007) discuss the antagonism between the Northern countries of the USA, Canada and Russia and the indigenous peoples over the creation of the mechanism of Special Rapporteur on the Rights of Indigenous Peoples. The tussle here is interesting because the countries of the North here were resisted by the Northern NGOs. Tauli-Corpuz and Alcantra (2002) examines how the indigenous NGOs in the Northern countries such as International Indian Treaty Council (IITC) took the lead in asserting for the need of an Independent Expert in the indigenous peoples' rights. Chakma (2002) is apprehensive about the effective functioning of the Special Rapporteur since the communications that the Rapporteur receives is against the states. Even though the Rapporteur is armed with the power of making recommendations to the states, IWGIA reports warns that without a powerful NGO lobby present inside the territory of the state, the state may not comply with the recommendations of the Rapporteur. Tauli-Corpuz and Alcantra (2002) has given an elaborate account of the working of the Special Rapporteur by giving examples from the Rapporteur's visit to the Philippines and how a powerful NGO alliance helped the Rapporteur in completing his/her mandate.

While discussing about the North-South dichotomy in the working of the Universal Periodic Review, Gaer (2007) and Khoo (2014) point out the fact that states from the South have a habit of pitting up against the United States of America. These southern states are often grave violators of human rights of indigenous peoples. Southern NGOs are found to be more active in supporting indigenous peoples' cause

than their Northern counterparts in the Universal Periodic Review. For example, 'Observatorio Ciudadano', a Chilean NGO is active in the UPR process and plays an active role in advocating for the rights of indigenous peoples in all parts of the world. A coalition of NGOs from Peru has also submitted reports accusing its government of continued violation of rights of indigenous peoples (Gaer 2007). Northern NGOs such as Oxfam International and Amnesty International gain prominence in the UPR only when oral presentations have to be made. Also, southern countries like Sri Lanka have been found to oppose the functioning of transnational NGOs such as Human Rights Watch (Khoo 2014). Freedman (2013) talks about the use of regionalism as a way of protecting allied states. Thus the countries of the South like the African states have been seen protecting their allies by making multiple positive statements about their domestic human rights situation (Freedman 2013).

There is literature which deals with how the indigenous peoples became an international issue and the role played by non-state actors in the process, especially within the United Nations. There are also works on how the United Nations treaty bodies used to deal with indigenous peoples' concerns. There is also literature on how the UN Declaration on Indigenous Peoples has come about and also on the working of the UN mechanisms for indigenous peoples. There are also works on the North-South interface on the indigenous peoples. However, there exists no comprehensive academic literature on how the United Nations, its member states in conjunction with non-state actors particularly NGOs addressed the concerns of indigenous peoples. This study proposes to fill this evident gap by holistically looking at the politics played out by these three actors in the working of the select UN mechanisms related to indigenous peoples.

Definition, Rationale and Scope

Indigenous Peoples have been defined by international organisations such as United Nations, World Bank, and International Labour Organization. The definitions given by these international organisations are problematic for this study because these definitions emphasise on the colonisation phase which does not apply to the situation of indigenous peoples in the present times. Also, the definitions of these international organisations render the indigenous peoples in the countries of the Global South

vulnerable. Following definition is universal and applies to all countries and therefore adopted for the purpose of this study:

"Indigenous Peoples are considered those who inhabited a country or a geographic region at the time when people of different cultures or ethnic origins arrived, the new arrivals later becoming dominant through conquest, occupation, settlement or other means" (Das 2001: 55).

According to Pearlman and Cunningham, "non-state actors are individuals or organisations that have powerful economic, political or social power and are able to influence at national and sometimes international level but do not belong to or allied themselves with any particular country or state". For the purposes of this study, following definition of non-state actors by Pearlman and Cunningham is adopted: A Non-State Actor is "an organised political actor not directly connected to the state but pursuing aims that affect vital state interests" (Pearlman and Cunningham 2012: 3). In this study, the term non-state actors would include United Nations bureaucrats and United Nations as an actor, epistemic communities, Indigenous Peoples' Organisations (IPOs) as well as local/international non-governmental organisations (NGOs).

In recent times, non-state actors particularly non-governmental organisations have assumed an important role at the international level. It is due to their advocacy, lobbying and mobilisation efforts that indigenous peoples could gain entry into the United Nations in the first place and they play a substantial role in working of the UN mechanisms. Thus by way of this study, it would be interesting to analyse how politics is played out among United Nations, member states and these non-state actors in addressing the issues of indigenous peoples in general, and working of the major mechanisms dealing with indigenous peoples in particular. This study is significant as no study of this nature has been done so far and it has the potential to show how diverse actors with different interests interact in the working of the mechanisms.

The United Nations has established a number of mechanisms for indigenous peoples such as Working Group on Indigenous Populations, Voluntary Fund for Indigenous Peoples, Working Group on Draft Declaration, and Expert Mechanism on the Rights of Indigenous Peoples. This study is focused on four mechanisms viz. Working Group on Indigenous Populations, Permanent Forum on Indigenous Issues,

Special Rapporteur on the Rights of Indigenous Peoples and Universal Periodic Review of Human Rights Council. These four mechanisms have been selected because the dynamic interaction among the United Nations, member states and non-state actors are most visible and have made major impact in addressing the indigenous peoples' issue.

This research attempts to seek answers to the following research questions:

1. How has the United Nations-States-NGOs interface affected norm creation for the indigenous peoples?
2. In what ways does the equal representation of states and indigenous peoples' NGOs in the Permanent Forum affects its working?
3. How do the NGOs assist the Special Rapporteur in carrying out his/her mandated functions?
4. Why are 'shadow reports' of NGOs given prominence in the Universal Periodic Review? How has this affected the cause of indigenous peoples?
5. How do the external and internal factors affect the effective functioning of these UN mechanisms for indigenous peoples?

This research attempts to test the following hypothesis:

1. Despite the Permanent Forum symbolising equal representation of indigenous peoples and states, the states continue to dominate over indigenous peoples by stalling effective follow-up of its recommendations.
2. The reluctance of states to cooperate with the Special Rapporteur has made the role of non-state actors the central in effective functioning of this mechanism.
3. The interaction between United Nations mechanisms and NGOs ripens mutual benefit in terms of legitimacy for the former and international visibility for the latter.

Research Methods

This study relies on qualitative method. It uses the Principal-Agent theoretical approach in understanding the subject-matter. This approach accepts the possibility of an agent becoming principal and principal also becoming an agent. It also discusses the possibility of multiple principals and agents. This approach also discusses the

possibility of an agent cheating the principal and deviating from the assigned task. So it will provide a useful theoretical lens to examine the subject under study.

The study is based on primary sources such as official documents and reports of governments and various intergovernmental and nongovernmental international organisations and agencies. The study relies also on secondary sources such as books, journal articles, the thesis of other scholars, research articles presented in conferences and internet sources.

The thesis consists of seven chapters. The first chapter introduces the concept and traces the background of the study. It also consists of research design such as literature review, rationale, scope, research questions, hypotheses and research methods. The second chapter is on 'United Nations-States-Non-State Actors' Interface in norm-creation for Indigenous Peoples'. The first part of the chapter traces the emergence of major actors in international relations and analyses how despite the existence of these other actors, states continue to be a significant and dominant actor. The second part of the chapter focuses on the internationalisation of indigenous peoples' issues at the international level and explains how with intense lobbying of NGOs, and support from UN bureaucracy, the concerns of indigenous peoples reached the international stage. The third part of the chapter analyses the dynamic interaction between UN-States-Non-State Actors in formulating international norms and standards for indigenous peoples. This is done by first analysing their interaction in drafting the general human rights treaties and programs in various international organisations which have provisions related to indigenous peoples, and then examines their interactions in drafting the specific treaties relating to indigenous peoples.

The third chapter is on 'United Nations Institutional Mechanisms on Indigenous Peoples'. It is intended to give an overview of all the mechanisms at the United Nations related to indigenous peoples. The chapter begins with a brief examination of monitoring procedures (reporting, 1235 and 1503 petition procedures) created under Commission on Human Rights and analyses how because of Western Bloc dominance in the Commission, these procedures were highly ineffective of taking up the cause of human rights seriously. The chapter then discusses the monitoring mechanisms of United Nations treaty bodies focusing on the three functions- examination of state reports, inter-state communication and individual

communication procedures. It explains how over the years because of increased presence of other non-state actors like NGOs and their interaction with states and the UN, these treaty bodies have developed a number of other working methods such as review process, follow-up mechanism, early warning procedures and so on. Owing to these new procedures, these treaty bodies have become amenable towards the cause of indigenous peoples. A later part of this section briefly discusses the Universal Periodic Review (UPR) of the Human Rights Council and how it has been working for indigenous peoples' concern. Even though the first round of UPR gave insignificant attention to the issues of indigenous peoples, however increasing attention that is given to NGOs and other sources of information has made UPR somewhat friendly for indigenous peoples. The next part of the chapter analyses briefly the mechanisms created specifically for the indigenous peoples such as Working Group on Indigenous Populations, Voluntary Fund, Permanent Forum and Special Rapporteur. It critically discusses the roles played by states and other actors such as UN bureaucracy and NGOs and examines how the interface among these three actors in these mechanisms resulted in bending of official rules and regulations in order to address the concerns of indigenous peoples.

The fourth chapter focuses on detailed study of 'Working Group on Indigenous Populations and Permanent Forum on Indigenous Issues'. The first part of the chapter highlights the intense interaction between States, United Nations and other non-state actors primarily NGOs and epistemic communities in the creation and working of the Working Group. It then examines the interaction among these three sets of actors within the WGIP in the drafting of the declaration on indigenous peoples. This part ends with a critical examination of the challenges faced in the process of interaction among the three actors. The second part of the chapter analyses the interface among these actors in the creation and working of the Permanent Forum. It examines the intense battles fought between indigenous peoples and states over the establishment of the Forum and how despite equal representation of indigenous peoples and states, the Forum is regarded as mainly an indigenous peoples' body. It highlights the parts played by various actors in making this mechanism function in addressing the indigenous peoples' issues. It ends with an analysis of the limitations and challenges in the working of this mechanism.

The fifth chapter is the detailed examination of 'Special Rapporteur on the Rights of Indigenous Peoples'. The first part of the chapter starts with a discussion on the origin and appointment procedure of the SRIP, specifically highlighting the role of various actors in these processes. Then, it highlights how and why the mandate of the SRIP has undergone change and expansion. The rest of the chapter focuses on analysing roles and functions carried out by SRIP and how various actors play a part in the process. The chapter ends with highlighting the challenges the SRIP faced in carrying out its mandated tasks and its interactions with various actors in the process of carrying out his/her roles and functions.

The sixth chapter focuses on detailed study on 'Universal Periodic Review and Indigenous Peoples'. The first part of the chapter discusses the working procedure of the UPR in general and how various actors interact in various stages of the process. Then, it goes on to discuss how the indigenous peoples' issues are incorporated or not incorporated in the first phase of the UPR's information-gathering or the documentation stage, specifically the three reports in the first cycle of the review and compare the reports of the second cycle. Then it discusses how indigenous peoples' issues been raised or not raised in the 'the interactive dialogue stage' in the first cycle and compare it with the second cycle to see whether there is more or less attention on indigenous peoples' issues. Next, it discusses the role of the NGOs in raising indigenous peoples' concerns in the regular session of the Human Rights Council. It also compares the role of NGOs in the first and the second cycles of the review. The last part of the chapter discusses the significance of the UPR process for the indigenous peoples and challenges faced by UPR in dealing with indigenous peoples' issues.

The seventh chapter is the 'Conclusion' and it basically summarises the major findings of the study. This chapter also indicates how the research questions have been answered and also indicate how the hypotheses been substantiated or nullified.

Chapter II

United Nations-States-Non-State Actors' Interface in norm creation for Indigenous Peoples

The idea of the supremacy of the state as the sole important actor in international relations no longer holds the truth in contemporary times. Since the establishment of the state-system with the Treaty of Westphalia in 1648, the state-system gradually gained prominence. The realist school of thought premised on the presumption of the state as the only actor in international relations. The concept of state-system spread to the rest of the world after the Second World War due to the acceleration of the decolonization processes. However, the challenges of global problems such as destructiveness of modern sophisticated weapons, unfair world economy and large-scale violation of human rights made the states realise that individual states or group of states can no longer handle these challenges. This realisation prompted states to establish inter-governmental organisations in a bid to collectively find remedies to those problems.

A host of inter-governmental organisations (IGOs) was created to manage the common concerns which required cooperation and collective action. Apart from a series of functional international organisations, such as the International Postal Union, multi-purpose international organisations like the League of Nations and later United Nations were established with the primary purpose of 'maintenance of international peace and security'. Over the years various other inter-governmental organisations were created for varieties of purposes. States and their created inter-governmental organisations were the dominant actors in the international relations till the end of the Cold War. Although the non-governmental organisations (NGOs) existed since the early part of the nineteenth century, their presence was minuscule. It is only in the post-Cold War era that rapid increase in the visibility and function of NGOs and epistemic communities at international level have taken place.

After the end of Cold War, there has been a multiplicity in the number as well as issues taken up by NGOs at the international stage. Mostly, NGOs have taken up issues which are neglected by the states such as women, migrants, children, and refugees. The concerns of indigenous peoples have been one such issue in which NGOs, both the local as well as international NGOs played a pioneering role

specifically in advocacy as well as lobbying activities. The epistemic community's significance has also increased as most of the modern issues before international community required deep knowledge, such as trade and climate change. The concerns of indigenous peoples have been one such issue neglected by the states. Both NGOs, as well as epistemic communities, have played pioneering roles specifically in advocacy as well as lobbying activities with encouragement from international bureaucracy of international organisations.

Indigenous peoples constitute one of the highly discriminated and neglected sections of populations who face discrimination and violence at the hands of their own states. Their issues were the most neglected ones as both the states or inter-governmental organisations did not find it worth taking up. When indigenous peoples began to mobilise themselves throughout the decade of the 1960s, international NGOs such as Survival International came to their aid and helped them to internationalise their concerns. The growth of an international indigenous people's movement in the early 1970s with assistance by International Non-Governmental Organizations (INGOs) increased and this had forced the member states of the United Nations to address the concerns of indigenous peoples (Pitty 2001: 64).

This chapter focuses on the role played by states, UN and non-state actors such as NGOs, UN bureaucracy, and epistemic communities in the creation of international norms and standards relating to indigenous peoples. The first part of the chapter traces the emergence of major actors in international relations and analyses how despite the existence of these other actors, states continue to be the significant and dominant actor in international relations. The interaction between United Nations and non-state actors (NGOs) in this section is highlighted. The second part of the chapter focuses on the internationalisation of indigenous peoples' issues and explains how with intense lobbying of NGOs, epistemic communities, think-tanks, and support from UN bureaucracy enabled the concerns of indigenous peoples to reach the international stage. The third part of the chapter analyses the dynamic interaction between UN-States-Non-State actors in formulating international norms and standards for indigenous peoples. This is done by first analysing their interaction in drafting the general human rights treaties which have provisions related to indigenous peoples and then examines their interactions in drafting the specific treaties relating to indigenous peoples. It ends with critical concluding observations.

Major Actors in International Relations

The state as the sole subject of IR no longer remains relevant in contemporary times. IR as a field of study has evolved to include not just states but other non-state actors such as international institutions (both governmental as well as non-governmental), transnational networks and coalitions, global public policy networks, epistemic communities, and for-profit multinational corporations (Karns & Mingst 2005: 213-220).

The Treaty of Westphalia in 1648 led to the emergence of the concept of a nation-state for the first time. Since then IR has been understood to be a study of relations between the states. The realist theory in IR celebrated this absolute dominance of states in the international system (Wohlforth 2008: 132). The early part of the eighteenth century witnessed a balance of power structure amongst states in the international system. This structure was to achieve physical security of states and cooperation amongst states. But by the latter part of the nineteenth century, this theory faced a surgical decline. The prevailing anarchy in the international system and the continuous quest of states for power had already led to two disastrous and devastating world wars. These world wars had resulted in a lot of global challenges and problems which were left to the states to tackle. The challenges at the end of the wars were of such a high magnitude that no state could solve these problems on its own. Therefore, states resorted to the establishment of international organisations entrusted with the task of promoting cooperative collaboration among them. United Nations created after the end of the Second World War was one such important international organisation.

The liberal theory in IR emerged to explain how cooperation among states was responsible for the emergence of some functional international organisations. States delegated critical tasks to these organisations which had expertise in 'providing public goods, collecting information, monitoring agreements and helping states in enhancing collective welfare (Barnett and Sikkink 2008: 71). Thus a number of inter-governmental organisations were established with the aim of addressing international problems in the field of trade (GATT), fiscal and monetary matters (IMF), humanitarian assistance (ICRC), food (FAO) and so on. States usually provided the funds for these organisations and in some of the IGOs, states dominated the top decision-making bodies, thereby reducing these organisations to mere 'tools' to be

used by the states for their own purposes (Barnett & Finnemore 2004: 4). However, with efficient bureaucratic staff which not only controlled information but also had the ability to transform this information into useful knowledge, many of the IGOs were no longer regarded as mere 'agents' of their states. This bureaucracy of inter-governmental organisations helped states in solving problems not only by defining what those problems were but also by spreading, inculcating and enforcing global values and norms (Barnett & Finnemore 2004: 33). So along with the inter-governmental organisations, the bureaucracy of the IGOs emerged as major actors at international level. The growth of inter-governmental organisations at the international level led to a proliferation of norms and standards in various international issues such as in the field of conservation of the environment, human rights, development, and disarmament and so on.

Along with the development of the inter-governmental organisations, non-governmental organisations (NGOs) became active. The end of the Second World War opened up new avenues for participation of NGOs in international affairs. In fact, around 1200 NGOs along with state delegations participated in the drafting of the UN Charter at San Francisco in 1945 (Willetts 1982: 11). Most of these NGOs participated as 'consultants' to their state delegates. Most important was the role played by Western NGOs (from countries such as United States of America, Canada, and the United Kingdom), because at this time most of the world was under colonial occupation and hence there were no representations of NGOs from the Global South. Even though the representation of these NGOs in the San Francisco Conference was detested by states, these Western NGOs advocated for inclusion of a special article devoted to maintenance of relations between the newly created United Nations and NGOs (Article 71 of UN Charter) and also incorporating human rights provisions in the United Nations Charter (Albin 1999: 375; Alger 2002: 100; Charnovitz 1997: 252).

Article 71 of the United Nations Charter states that the Economic and Social Council (ECOSOC) "may make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence" (United Nations 1945). This meant that Article 71 established 'consultation' as a basis of the interaction between the UN and NGOs. This article was lauded as a very significant milestone achieved because for the first time it officially used the term

non-governmental organisations and also gave formal recognition to the IGO-NGO interactions. Hence, Article 71 started a new chapter on 'NGO participation in international policy-making' whereby NGOs got an official license to henceforth engage in the future activities of United Nations (Charnovitz 1997: 258). However, Article 71 was also criticised by many scholars because it not only limited the means of engagement between UN and NGOs to mere 'consultation' but also to only those areas which were covered by ECOSOC (Otto 1996: 109). Hence NGOs were officially to be consulted for their expertise in economic and social affairs only. This was a big limitation for those NGOs which had expertise in other issue-areas such as disarmament and arms control. Also, mere consultation meant that UN was not under any binding obligation to accept the recommendations given by NGOs. The second line of criticism, as one commentator pointed out, was that NGOs were already playing consultative roles during the League era. Hence what Article 71 gave was 'more incremental than transformational' (Charnovitz 2006: 358).

In the initial interactions between the United Nations and NGOs, three categories of NGOs were created. Category A organisations included those who had a basic interest in most of the activities of the Council, Category B included those organisations who had a 'specialisation' in any field covered by ECOSOC, and Category C organisations included those concerned with 'development of public opinion and dissemination of information' (Willetts 1996: 32). The Category C was removed in 1950, and a Register was created which comprised organisations which were specialised and could be consulted on an ad-hoc basis. However, with the precipitation of the Cold War, ECOSOC-NGOs interaction was affected, and relations reached its lowest ebb during the late 1960s.

A review took place in 1968-69 to revise the consultative arrangements of the NGOs with the United Nations. The main outcome of the 1968 review was Resolution 1296 which basically established newer mechanisms of control and periodic reviews to keep a check on governmental influence on the activities of NGOs. Also, the Categories A, B and Register were done away with, and Category I, II and Roster system was created (ECOSOC, 1968). The politics behind the classification of categories as I, II and roster were about NGO rankings in relation to their status (Willetts 1996:33). The Resolution 1296 also made way for participation of more NGOs from the Global South, thus attempting to bridge the gap that was too wide.

In the post-Cold War period, the increasing activities of NGOs in the international scenario have made them more active. In present times NGOs carry out a lot many responsibilities in international affairs. Since NGOs are armed with the capacity of bringing alternate information or knowledge about lesser-known issues, NGOs often bring these issues for discussions during international meetings or conferences, thereby setting the agenda of these meetings. This happened in the case of environment protection and the banning of landmines.

The epistemic community is another actor that started to emerge in the international scene since the 1990s (Barnett and Sikkink 2008: 71). An epistemic community is defined as 'a network of professionals with recognised expertise and competence in a particular domain and an authoritative claim to policy, relevant knowledge within that domain or issue-area' (Haas 1992: 3). The epistemic communities work on the basis of knowledge and expertise which are considered the critical weapons through which they generate awareness about global problems (Adler and Haas 1992: 370). Epistemic communities for the first time emerged in the field of scientific issues and environment. For instance, when the science of climate change was difficult to understand, a very significant role was played by this body of experts which developed alternate reports and cost-effective alternatives for the common people to understand about climate change. Had this information generation not done by the experts, climate change would have remained a problem not comprehensible to the general public. Other examples of epistemic communities can be found among the scientific experts on whaling, food aid, stratospheric ozone and trade in services (Karns & Mingst 2005: 222).

Global Policy Network is another kind of actor that became significant in IR since the 1990s. 'Global Policy Networks' differ from epistemic communities and NGOs in the sense that these draw experts from various government agencies, corporations, professional groups and sometimes NGOs. Such groups have the advantage of rapid communication and travel to promote collaboration, tap expertise and disseminate new knowledge (Karns & Mingst 2005: 220). World Commission on Dams, Consultative Group on International Agricultural Research are the two very important examples of global public policy networks which incorporate members from governments, IGOs, foundations, and NGOs.

With the advent of globalisation in the 1990s, Multinational Corporations (MNCs) emerged as yet another important actor in international relations. MNCs are companies based in one state with affiliated branches and activities in other states. They have the ability to invest capital, create jobs, lobby for changes in state laws and thus influence governments and international relations in a considerable way. The functioning of the international economy through international markets is an age-old phenomenon which was given a boost by forces of globalisation which resulted in porous borders contributing to the world becoming a village. This opening up of international borders led to the establishment of privately owned companies and later became an important actor because of the influence they exert in international politics. The large sum of capital owned by these companies is a major factor for these firms to have an important say on matters of political importance (Reinalda 2011: 14-16).

United Nations-States-Non-State Actors in making Indigenous Peoples as International Issue

Indigenous peoples or the original inhabitants of lands were ousted by the forces of European colonisers since the early sixteenth century. Europeans justify the annexation of indigenous lands on the basis of- the doctrine of discovery, the theory of terra nullius and so on. The doctrine of discovery as a theory was used by many Europeans in Spain to conquer lands based on the premise that these lands were for the first time discovered by them and hence belonged to them. Similarly, the theory of terra nullius meant that all uninhabited lands could be annexed by any outside force. This was used to justify the white settler domination in Australia. Treaties were another method of making the indigenous peoples a partner to govern the lands, but only on paper. Seldom were these treaties ever respected. The Treaty of Waitangi signed between the Maoris and the British Crown in New Zealand was a glaring example of the kind (Pitty 2001, Marks 1990-1991).

Apart from colonisation, the sixteenth and seventeenth centuries witnessed the mass uprooting of indigenous peoples from their lands in most parts of the world, particularly the Americas, Africa, and Australia due to various factors such as mass killings, war and most of the times by diseases brought to them by their colonisers. Conscious attempts were made by indigenous leaders to sensitise the international community about the plight of indigenous peoples.

The first major attempt to internationalise the issue was made in the year 1922 when the leader of the indigenous communities of Six Nations Iroquois Confederacy, Deskaheh brought the plea to the League of Nations. The Six Nations was an autonomous reserve which resisted integration into Canada. And states like Canada and the United Kingdom attempted to stall his efforts of reaching the League. Before the petition could reach the agenda of the League, Canada dissolved the traditional council at the Six Nations Reserve and established an elected band system which ultimately deprived the Six Nations of its autonomous status and hence deprived Deskaheh of speaking on behalf of natives of Six Nations, according to Canadian law (Sanders 1983: 14). On the other hand, states like Netherlands, Ireland, Panama, and Persia, which were sympathetic to the cause of Six Nations, revived the case by seeking an advisory opinion from the Permanent Court of International Justice in 1925.

Similarly, an attempt was also made by the religious leader of the Maori people of New Zealand, W. T. Ratana, to lead a protest against the breaking of the Treaty of Waitangi (which entitled the Maori to ownership of their lands). Like his predecessor Deskaheh, Ratana's delegation was also denied access to the League when he reached Geneva in 1925 (Stamatopoulou 1994: 55). Despite the fact that these cases could not reach the League due to the power of the states, these cases presented the first true examples of efforts by indigenous peoples themselves to internationalise their case.

The international environment turned somewhat favourable for the indigenous peoples after the end of the Second World War with the rise of national movements in various parts of the world. For example, in Latin America, there were many domestic uprisings beginning from the 1960s onwards where indigenous peoples clashed with police for their rights. These were common place in many countries like Colombia, Chile, Ecuador, Brazil, Canada, and the United States. Domestic uprisings gave rise to national movements in these countries where indigenous peoples emerged as important actors (Maiguascha 1994: 20-30).

Soon, these national movements began to be organised into national societies. Even the indigenous peoples started organising themselves in organisations such as the National Indian Brotherhood in Canada (NIB) formed in 1968, Regional Indian

Council of the Cauca (CRIC) formed in 1971, Union of Indian Nations in Brazil (UNI) formed in 1978, and Confederation of Indigenous Nations of Ecuador (CONAIE) formed in 1986. They were primary examples of such national level organisations which were composed of indigenous peoples and had made the indigenous issue a factor in domestic politics (Anaya 2013: 76). Thus, the indigenous peoples were able to organise themselves into national organisations through resistance and survival.

The next step of these national and regional indigenous organisations was to organise international conferences to share their stories and publicise their plight and mistreatment. The main reason for the need of indigenous peoples to go international was to bring their own states into pressure as the states tend to ignore their grievance. In many cases, their own states were the primary exploiters and violators of their rights. The period of the 1950s and 1960s witnessed mass expropriation of lands owned by indigenous peoples all over the world for construction of thermal power plants, extraction of natural resources (Gray 1998: 45). States in Latin America such as Bolivia, Brazil, Peru and Guatemala were guilty of the same. Indigenous peoples shared a hostile relationship with their states. They faced the common experience of their states' refusal to give the right to lands and natural resources to indigenous peoples as it would mean permanently giving away important parts of state-owned territories to these indigenous peoples (Pitty 2001: 24, Brash 1996: 67, Stamatapoulou: 1994).

Because their own states had turned a blind eye towards their insufferable conditions, indigenous peoples organised seminars and conferences to highlight their deteriorating situation. Examples of such early indigenous peoples' conferences include First International Indian Treaty Conference which was organised in 1974 and the four-day international conference organised in 1975. Both these conferences were organised by indigenous organisations from the Northern countries, and there was just slight participation from indigenous peoples of the Southern countries (Jull 2000: 15). However, their significance lay in the fact that by the end of 1975, two internationally-oriented indigenous institutions, World Council of Indigenous Peoples (WCIP) and International Indian Treaty Council (IITC) were created in North America. These two are the most prominent and effective international indigenous

peoples' organisations which have had a tremendous positive impact on the growth of the indigenous peoples' movement (Morgan 2011: 44).

The mobilisation of indigenous peoples at the national level resulted in the emergence of a number of supporter groups which had sympathy towards them. The most active group which supported the indigenous peoples' cause worldwide was that of anthropologists. They were academicians deeply engaged in conducting studies on indigenous peoples. Beginning from the 1960s and 1970s, they convened a number of conferences on indigenous peoples. Of particular relevance were two conferences which were of acute importance- Barbados I and Barbados II- in 1971 and 1977 respectively (Morgan 2011: 64). The outcome of these Conferences usually was a nonbinding declaration asserting the rights of indigenous peoples to be respected by their own sovereign states. The role of these conferences, however, was very important for the development of the international indigenous movement because these conferences enabled indigenous peoples to organise and emerge as a united entity.

A number of international organisations with a focus on indigenous peoples were also established by these anthropologists, with support from some northern states such as Norway. The International Work Group for Indigenous Affairs (IWGIA), established in 1968 was primarily an advocacy group which publishes reports and policy papers on rights of indigenous peoples. By way of its publications, it seeks to support other small indigenous organisations (Burger 1987: 276). London-based Survival International, established in 1969 was also formed with support from anthropologists in response to atrocities, land thefts and genocide taking place in the Brazilian Amazon. The Cultural Survival, formed in 1972 was also a contribution of anthropologists. It is a research-based organisation headquartered in the United States of America. It seeks to inform the general public about the peculiar problems faced by indigenous peoples and also tries to influence the policy of governments on indigenous peoples.

The Arctic Peoples Conference in Copenhagen in 1973 is often regarded as the beginning of modern indigenous internationalism (Jull 1999: 1). This conference, which was organised by the national indigenous peoples' movements of the Arctic and Sub-Arctic Region (Greenlanders, Sami, Inuit, Dene and Metis), was due to the

rush by North Atlantic states to secure oil, gas and hydroelectric energy. The conference was organised with the aim of uniting the indigenous peoples of this region and forge a common identity among them. There was no tangible outcome of this conference, except an understanding which emerged at the end of this conference that 'indigenous peoples were not poverty cases at the bottom of national priority lists, but a category of persons and cultures found all over the world' (Jull 1999: 1). This conference was significant because it was here that for the first time indigenous peoples discussed many of the common problems they faced related to land and sea rights, reindeer and caribou management, official policies of assimilation and so on.

By early 1970s, the United Nations had also started engaging on the question of indigenous peoples. On the insistence of Augusto Williamsen-Diaz, a bureaucrat in the United Nations, a study was conducted in 1970 on the problems faced by indigenous peoples. The Special Rapporteur from Ecuador, Jose RMartinez Cobo, conducted the study and the Cobo report titled 'Study of the Problem of Discrimination against Indigenous Populations', was published in 1985 (Cobo 1986/87: 114). However, the fact that it took almost fourteen years to complete and that too it did not account for the participation of indigenous peoples made it less popular in the eyes of the indigenous peoples (Ortiz 2006: 61).

The 1977 INGO Conference on Discrimination against Indigenous Populations in the Americas was the first major international conference held jointly by international and indigenous peoples' NGOs in Geneva. The NGOs from the Northern countries took charge of organising it, most notably International Indian Treaty Council. This conference was attended by more than 100 indigenous representatives together with the representatives of 38 states and 50 international NGOs (Ortiz 2006: 64). A 'Draft Declaration of Principles for the Defence of the Indigenous Nations and Peoples of the Western Hemisphere' was produced at the end of the Conference, which was seen as the first legal and authoritative text establishing indigenous peoples as nations and subjects of international law (Morgan 2011: 66). These principles 'recognised the special relationship of indigenous peoples to their land' and stressed that 'their land, land rights, and natural resources should not be taken away from them' (Venne 2011: 564). A positive outcome of this Conference was the catalytic role it played in making indigenous peoples participate in other international forums and emerge as important international actors in their own right.

Based on the success of the 1977 Conference regarding the kind of participation it received not just from indigenous representatives, but also from states and other intergovernmental organisations, it was decided to convene another conference in 1981 to specifically address the question related to land rights of indigenous peoples. The International NGO Conference on Indigenous Peoples and the Land were organised at Geneva in 1981. Like the earlier conference, this was also attended by an unprecedented number of indigenous leaders as well as state and UN bureaucrats. By this time, three indigenous NGOs (IITC, WCIP, and ILRC) had been granted consultative status at ECOSOC which made it easier for these organisations to submit written and oral statements. Testimonies of indigenous spokespersons were heard first hand, and the relationship that indigenous peoples shared with their land was also spelt out more clearly. In the end, a number of actions were demanded by the conference to protect these indigenous peoples against abuse at the hands of nation-states and also recognition to be granted to their rights (IITC 1977: 6).

Thus, these conferences were the most significant international attempts credited to have internationalised the indigenous peoples' movement and enabled them to form alliances with other indigenous groups across the world (Anaya 1998). Personal testimonies of indigenous peoples gathered in these conferences helped them forge an identity based on shared ideals and goals. Attending these conferences gave strength to the oppressed and marginalised indigenous peoples because for the first time they realised that in spite of their diversity, indigenous peoples across the world shared the same marginalisation and exploitation at the hands of their states (Zinsser 2004: 79). Hence both these conferences were instrumental in gaining UN recognition towards the plight of indigenous peoples and making UN take measures for the proper protection of indigenous peoples in the years to come (Burger & Hunt 1994: 407). The decision to formulate a Working Group on Indigenous Peoples was clearly an outcome of the second conference (Lam 2000: 38). This Working Group represented the first ever space created for indigenous peoples at the UN, even though the Working Group was at the lowest hierarchy in the institutional order.

It can be said that two forces were at work which made indigenous peoples an international issue. Indigenous peoples' NGOs like National Indian Brotherhood and Survival International had started mobilising indigenous peoples to give them a common identity and prepare the indigenous representatives to take part in

international seminars and sessions, thus organising the indigenous peoples as one unitary force. As indigenous peoples from all over the world were so heterogeneous, it was not easy to unite them and give them a common identity. However, the relentless effort of the local and international NGOs could unite the indigenous peoples as one community. The local NGOs were supported by scores of international NGOs such as Cultural Survival, Conservation International which took up the cause of indigenous peoples (Anaya 1996: 65). In this process, epistemic community, specifically the anthropologists played a significant role in not only generating knowledge about indigenous peoples but also played a pioneering role in establishing organisations devoted to concerns of the indigenous peoples. This way, epistemic community contributed to the cause of indigenous peoples.

The second force which gave a sense of breath to the indigenous peoples' movement was the support provided by the UN bureaucrats who encouraged discussions on indigenous peoples and prepared special reports on their problems. Although the United Nations is an organisation of states, a significant amount of discretion is enjoyed by the bureaucracy. Through the exercise of their discretionary power, the UN bureaucrats could persuade the UN to take up the cause of indigenous peoples (Peterson 2010: 223).

Along with the presence of 'supporter bureaucrats,' the prevalence of some 'friendly states' did help the indigenous cause too. These were those states who were supportive of indigenous peoples and who wanted to make indigenous peoples and their concerns a part of the international framework. Pioneering role among these states was played by Norway, Bolivia and Denmark (Engle 2011: 54). In fact, the term 'indigenous' was used for the first time within UN in 1950 in the context of a Bolivian delegation proposal which suggested to the Sub-Commission on Prevention and Protection of Minorities to create a Working Group which would look into the problems faced by indigenous peoples in the Americas. This proposal was shunned away as other states were opposed to it (Morgan 2011: 45).

Apart from the contribution of these various actors, certain events in the international relations also facilitated highlighting the plight of indigenous peoples. The decolonisation process had ignited the regime for the protection of ethnic minorities and racial discrimination. The (First) Decade for Action to Combat Racism

and Racial Discrimination (1973-1983) was inaugurated by the UN in order to engage NGOs on how to eliminate the evil of racial discrimination. This avenue was used by indigenous activists and supporters to incorporate the concerns of indigenous peoples. In this situation, two sympathetic gatekeepers within the UN played an essentially important role in order to keep the door of United Nations open for the indigenous peoples. One such gatekeeper was Theo Van Boven, a Dutch national, then in charge of UN Human Rights Centre at Geneva. He was deeply moved by the testimonies of the indigenous peoples at the NGOs conferences, and he encouraged broader discussions on their concerns at the United Nations. A second advocate of indigenous peoples' rights had been Augusto Williamsen-Diaz, a lawyer from Guatemala who also encouraged discussion on indigenous peoples by treating them as separate from issues of racial discrimination (Peterson 2010: 201). He had urged the United Nations to undertake a study on the problems of discrimination faced by indigenous peoples.

These 'sympathisers' "not only maintained but also expanded institutional momentum by favouring indigenous activists' positions" by way of encouraging discussions on indigenous concerns and by treating indigenous issues separate from issues of racial discrimination and minority issues (Sanders 1989: 403; Peterson 2010: 202). A number of measures were undertaken by these bureaucrats of United Nations which were unprecedented in the history of the organisation and which resulted in the ascendancy of issues of indigenous peoples at the international stage.

The United Nations definitely contributed to the strengthening of early indigenous networking and organisation, particularly by providing physical spaces for horizontal networks to develop. It is contended that these spaces were not offered by UN but rather fought for by indigenous peoples as they organised themselves from a loose local alliance into national societies and later into more organised NGOs (Morgan 2007: 277).

Therefore, in the case of indigenous peoples, a number of non-state actors played an important role. Indigenous peoples' organisations (IPOs) were the primary actors who got support from various other actors such as epistemic communities, the bureaucracy of intergovernmental organisations and international NGOs in their efforts to internationalise the case of indigenous peoples. Thus local organisations such as Grand Council of the Cree, National Indian Brotherhood were assisted by

international NGOs such as the International Indian Treaty Council (IITC), Inuit Circumpolar Council (ICC) and so on in highlighting indigenous peoples' issues at the international level. Apart of the activism of indigenous and international NGOs, the substantive role has been played by the bureaucracy of United Nations which actively supported the cause of indigenous peoples by way of encouraging studies, organising conferences and so on. Lately, an epistemic community consisting of indigenous experts has been formed which has raised concerns related to climate change and indigenous peoples at the international level. Arctic Climate Impact Assessment (ACIA) is an important example of such an epistemic community (Hough 2013: 135).

Apart from their assistance in making indigenous peoples as an international issue, these non-state actors play an important role in formulating norms and standards for the indigenous peoples. However, none of the norms and standards can come into effect without the approval of the states. Therefore the role of both states and non-state actors is important in formulating norms relating to indigenous people's issues.

United Nations-States-Non-State Actors in Formulation of Norms and Standards

There are many norms and standards which are either directly or indirectly related to indigenous peoples. In the process of making these norms and standards local and international NGOs, epistemic community, along with the UN bureaucrats have played larger roles than the states.

Even before the concerns of indigenous peoples were highlighted at the international level, the International Labour Organization (ILO), since 1921 showed a considerable amount of attention on the problems faced by indigenous workers (Das 2001: 45). The first Convention relating to indigenous peoples called *Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries.* It was also known as Convention No 107. It was drafted by ILO officials and state representatives. No indigenous voice was encouraged by either state or ILO representatives, and hence no consultations took place with representatives of indigenous peoples for this particular convention. From the beginning, states like the USA and Canada were against the drafting of a

Convention and suggested the establishment of a non-binding instrument (Barsh 1994: 45).

The Convention contained articles relating to various aspects of lives of indigenous peoples such as the right to life, education, social security, health and also participation. Due to the vast scope of the Convention, a number of states, such as Portugal, Australia and Canada criticised the ILO for entering into a domain not suitable for its competence, which was designated to be in worker's affairs only (Xanthaki 2007: 51). The Convention applied to 'members of tribal and semi-tribal populations, who live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong' (ILO 1957: 1). The indigenousness was defined in both historical as well as cultural terms. Indigenous peoples were not allowed to define themselves according to their own parameters; hence the notion of 'self-identification' was completely absent. Indigenous peoples were seen as backwards and less advanced sections of a population which had to be 'integrated' with the national population (Xanthaki 2007: 52).

Article 2 discussed the concept of integration of indigenous peoples with the mainstream society and asserted that 'governments shall have the primary responsibility for developing coordinated and systematic action for the protection of the populations concerned and their progressive integration into the life of their respective countries' (ILO 1957: 2). 'Integration' into the mainstream society was seen as the main aim of the Convention, and this resulted from the dominance of state representatives in drafting the Convention and complete absence of indigenous representatives. This was the assimilationist clause of the Convention which was seen as the most derogatory and most objectionable (Barsh 1990: 215).

The main thrust of the Convention could be seen in Article 11 which dealt with the land rights of the indigenous peoples. It recognised the indigenous peoples' right to ownership 'collective or individual- the lands which these populations traditionally occupy'. Article 11 of the Convention recognised the indigenous peoples' right to ownership of land. This is the first convention that had the binding provisions of rights of indigenous peoples. However, there were limitations. For example, the Convention failed to recognise claims to lands that were previously

occupied but were appropriated by force in later times (Barsh 1990: 223). The 'patronising attitude' of the Convention also did not go down well with indigenous peoples (Swepston 2005: 55).

The 'assimilationist' approach of the Convention also resulted in its rejection by organisations like the World Council of Indigenous Peoples (Sanders 1983:20). Though cultural distinctiveness was sought to be promoted under the provisions of the Convention, this was jeopardised because of the integration clause mentioned in the Convention.

The decade of the 1960s and 1970s witnessed growth in the adoption and ratification of general UN human rights instruments of a broad nature. Though no norms and standards were developed specifically for indigenous peoples in this period, however, the provisions in these instruments have been used by indigenous peoples.

The *International Convention to Eliminate All Forms of Racial Discrimination* (ICERD) of 1965 was the first of such international binding instruments. Even though nowhere specifically mentioned indigenous groups or individuals, it was believed to have particular implications for indigenous peoples (Anaya 2005: 135).

The *International Covenant on Civil and Political Rights* (ICCPR) contains provisions on the protection of individual rights such as the right to life, the right to a fair trial, the right to freedom from torture and arbitrary detention among other rights. The most important article of the Covenant (from indigenous peoples' perspective) is Article 27 which seeks to protect rights of people belonging to minorities. Even though there is no specific mention of indigenous peoples, they have benefitted a lot from this human rights instrument by way of filing claims under article 27. Article 27 of the Covenant states:

> In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language (ICCPR 1976: 27).

The wording of Article 27 was limited to 'ethnic, religious and linguistic' minorities only on the insistence of states like Chile. After the establishment of Human Rights Committee, the treaty body entrusted with the implementation of the

Covenant, the scope of Article 27 was broadened to include claims of indigenous peoples as well (Thornberry 2002: 75).

The indigenous leaders and their local NGOs have used the complaint procedure of the Human Rights Committee to the advantage of indigenous groups and communities. Many cases relating to indigenous peoples have been admitted under Article 27 which has an important bearing on their rights related to culture. In this respect, the most important case was the *Sandra Lovelace v. Canada*, where Lovelace- a member of the Tobique Band had alleged that the State of Canada was guilty of violating her right to be a member of her own community. Lovelace had married a non-Indian. Hence after the dissolution of her marriage, she wanted to return to her native place which the State did not allow. The Committee admitted her petition under Article 27 and ruled in her favour. The ruling stated that Mrs Lovelace belonged to the community and she had the right to enjoy her culture in community with other members of her group. Another very important case in this regard was *Kitok vs. Sweden*. Ivan Kitok was a member of Saami family which had been involved in reindeer breeding for some 100 years. The complaint was that his inherited right to reindeer breeding was in contravention to the Swedish law and this was the reason that his right was being denied to him. The Committee, however, did not find any violation of Article 27 and ruled that Kitok may be permitted to graze and farm his reindeer but not as a matter of right. This ruling of the Committee was not favourable to the indigenous community, and it showed that domestic policies of the State were given importance over the rights of indigenous peoples (Thornberry 2002: 76).

These cases were significant from indigenous peoples' view because through these cases the Human Rights Committee expanded the individualist notion of culture and brought a collective dimension. These cases gave an exclusive right to indigenous peoples, particularly to those who wished to enjoy their cultural rights within their community. Credit for this broad reading of the article goes to independent expert members who constituted the Committee, and those indigenous NGOs who brought their claims to the international platform in the first place (Anaya 2005: 65).

The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) has no specific article on indigenous peoples per se. However, all provisions mentioned in the Covenant from self-determination (Article 1) to

discrimination (Article 2), housing (Article 11), health (Article 12), education (Article 13), culture (Article 15) are relevant to indigenous peoples. For example, in 1991 the Committee on Economic, Social and Cultural Rights (CESCR) produced an extensive General Comment No 4 on the right to adequate housing which deals with issues such as security of tenure, availability of services, hospitality, cultural adequacy and forced eviction. These aspects have a lot in common with the issues of indigenous peoples (Thornberry 2002: 189). A specific section of the CESCR's General Comment No 14 is devoted to indigenous peoples and the actions taken by States in making the right to health an attainable standard. It is also quite active in implementing Article 13 on the right to education through the adoption of the General Comment 13. Special consideration is taken by the Committee to see whether children belonging to indigenous and minority and other groups face any discrimination in accessing education (Anaya 2005: 153).

By the end of the 1970s, as the issues of indigenous peoples had become an international issue, an increased attention began to be given to indigenous peoples. One result of this internationalisation could be seen in the provisions of the *International Convention on Rights of the Child* (CRC) of 1989. The CRC has a specific article on 'children belonging to indigenous communities.' This kind of specific mention of indigenous concerns is missing in the earlier treaties. With the coming into force of CRC in 1990, it became the first human rights treaty to unequivocally talk about indigenous children. The CRC makes explicit reference to indigenous peoples in three articles- article 17, 29 and 30. Article 17 provides that States shall encourage the mass media 'to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous.' Article 30 of the CRC states:

> In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with the other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language (CRC 1989: Article 30).

International NGOs and local NGOs like Aboriginal Children Society were prominent actors who lobbied state delegates to include provisions on children belonging to indigenous communities. States were not apprehensive about the inclusion of provisions on rights relating to indigenous children- their only condition

was the text of the Convention should not make repeated references to these indigenous children (Anaya 2005: 54). Because Article 30 of the CRC dwells on the collective dimension of human rights which even the ICCPR in its article 27 has not been able to achieve as it is basically meant for individuals, 'the CRC can be seen as elaborating the essential communal dimensions of human rights more thoroughly than the ICCPR' (Thornberry 2002: 234).

Meanwhile, the end of the 1980s was also significant for indigenous peoples because ILO Convention 107 was revised in light of vehement opposition to its assimilationist orientation and was adopted in 1989 as *Convention Concerning Indigenous and Tribal Peoples in Independent Countries* (Convention No 169). ILO Convention No 107 was drafted with no representation from indigenous peoples. This major flaw in the design of the Convention was attempted to be remedied when discussions began in 1986 about the revision of the Convention.

The decision to invite indigenous representatives during the negotiations were partly said to be influenced by the open-door policy prevalent in the United Nations (Swepston 2005: 114). The 1980s was a crucial time when the doors of United Nations had been opened, thanks to the UN supportive Secretariat and advocacy carried out by NGOs. This growing interest of the UN in the subject was perceived as a threat in the ILO and hence resulted in a decision to revise and adopt a newer version of Convention No 107 (Swepston 2011: 434).

At the time of the meeting to revise Convention No 107 in 1986, for the first time, indigenous NGOs were given official status along with worker's and employer's organisations. These NGOs were not granted expert status they were just allowed to act as observers offering frequent written and spoken interventions (Leckie 1986: 25). This meeting was dominated by international NGOs supporting the cause of indigenous peoples. However, by 1988 the representations of NGOs changed with indigenous peoples not allowing non-indigenous NGOs to speak on their behalf (Swepston 2005: 116).

The main points of difference between the two ILO Conventions lie in their orientation towards indigenous peoples. While tribal identity in Convention No107 was calculated on the basis of historical antiquity or territorial ownership, a provision of self-identification was added in the Convention No 169 at the behest of indigenous

as well as international NGOs. Thus, while historical and cultural ties were continued to be the criteria for determining indigeneity, a subjective notion of self-identification was added which was seen as most fundamental. This principle of self-identification by indigenous peoples was opposed by states like Brazil. However, with the support of states such as Argentina, Australia, and Canada this was finally added as criteria (Barsh 1990: 216).

The significant difference between the two Conventions is also on the way both these Conventions treat indigenous peoples. For the former assimilation into the dominant society had been the primary goal whereas for the latter, carving out a separate space for indigenous peoples where they could enjoy their cultural pluralism was the main motto. Thus in Convention No 169, assimilation of indigenous peoples into the mainstream society is no longer the goal. Recognition and coexistence of indigenous cultures with the majority of the population are seen as the guiding norm. This was again achieved after consultations with NGOs supporting the cause of indigenous peoples.

Another point of striking difference between the two Conventions is seen in the way the provision on participation is formulated. Convention No 107 in Article 5 stated that the governments had an obligation to 'seek the collaboration of these populations and their representatives.' However, this is no longer the case with Convention No 169 which quite explicitly states (in Articles 6, 7, 15, 17, 22 and 27) that the governments shall

> Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly. The consultations carried out in the applications of this Convention shall be undertaken, in good faith and a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures (ILO 1989).

The Convention goes one step further by giving an equal right to the indigenous peoples to share in the fruits of development.

At the United Nations Conference on Earth and Development (UNCED) or the Earth Summit in 1992, indigenous peoples considered natural custodians of their lands and environment. Convention on Biological Diversity (CBD) of 1992 acknowledged that traditional indigenous techniques and knowledge are necessary to

conserve biological diversity. Therefore States are directed 'to respect, preserve and maintain traditional knowledge, innovation, and practices of indigenous peoples' (CBD 1992: 5).

A number of actors were responsible for the inclusion of indigenous communities as important stakeholders in the Convention. Hybrid international organisations such as International Union for the Conservation of Nature (IUCN) were one of the primary actors involved in this. IUCN had a long history of working in the field of conservation as well as in the sphere of protection of indigenous peoples' rights. Because of IUCN's activism, indigenous peoples' concerns were sought to be addressed by the CBD. The idea of state-ownership of natural resources went against the interests of indigenous peoples. International NGOs such as Conservation International and IUCN organised workshops and regional consultations with indigenous peoples' groups with the main aim of getting the views of these peoples heard within the framework of Convention on Biological Diversity. As a result of these consultations and technical workshops, states included Article 8 (j) in the text of the Convention. This article related to 'access and fair and equitable benefit-sharing' in relation to genetic resources (CBD 1992: 8j).

This article was a breakthrough in recognition of indigenous peoples' rights and access to their natural resources. The article was achieved after a nexus of interaction took place between non-state actors particularly NGOs, intergovernmental organisations such as United Nations and Working Group on Article 8 (j) and so on (Wolfrum 1999: 375). Even after inclusion of this article which talked about equal sharing of benefits between indigenous peoples and states, issues of bio-piracy is on the rise. This has engaged indigenous communities all over the globe in a long battle with states, state-owned pharmaceutical companies to get their traditional rights recognised. The Nagoya Protocol to CBD which came into effect in 2014 (after 22 years of continuous engagement), is heralded as a major victory for indigenous peoples and their supporter organisations. This would be discussed in detail later.

The need for a document focusing exclusively on the rights of indigenous peoples was felt after it was realised that no one coherent document exists in relation to the needs and aspirations of indigenous peoples. It was due to this paucity of any legal document that the idea of constructing a draft declaration specifically suitable to

indigenous peoples was initiated. The Working Group on Indigenous Populations established in 1982 was charged with the mandate of developing new norms and standards relevant for indigenous peoples. The Secretariat of the Commission on Human Rights once again positively contributed to the momentum of indigenous peoples' movement by charting out a new procedure of participation of indigenous peoples in the Working Group on Draft Declaration (WGDD) in 1995.

It took concerted efforts on the part of African regional non-governmental organisations such as Indigenous Peoples of Africa Coordinating Committee (IPACC), global indigenous caucus and other international NGOs such as Inuit Circumpolar Council, Grand Council of the Cree to convince the African states to vote for the adoption of the Declaration. It was only after the promise by indigenous peoples' organisations that self-determination, as mentioned in the draft would not endanger sovereignty of states, did the African states agree to vote in favour of the Declaration. Another strategy adopted by the transnational advocacy network (comprising African regional NGOs and international NGOs) in convincing the African bloc was to take the side with the Latin American states that were completely in favour of the Declaration. These NGOs and the Latin American bloc then exerted a joint pressure on the African states to show their support for the Declaration. This alliance of NGOs and Latin American states proved to be successful in the end, and Africa did support the Declaration by the end of 2006 (Crawhall 2011: 14-20). This would not have been possible without the adequate lobbying efforts of the concerned NGOs. At the time the Declaration was adopted in 2007, states like Canada, Australia, New Zealand and the United States had refused to vote in favour of the Declaration citing their previous inhibitions on issues of definition of the term indigenous, granting the right of self-determination, and provisions on the right to land and natural resources as the major contentions. However, by the year 2010, all these four states acceded to the Declaration.

However, even after making concerted efforts on the part of various actors, the outcome was just a Declaration and not a legally binding Convention. Two reasons could be attributed to this. One, states were so reluctant in adopting a Declaration; adopting a Convention seemed a far-fetched dream. In fact, some states support the Declaration as it has no binding authority. Had the indigenous peoples demanded a Convention at the outset, it would have taken decades to convince the states. A second

more nuanced reason was the fact that all lobbying for the Declaration had taken place in Geneva which was considered a hub of international activity relating to the creation of new norms. However, this same level of lobbying and activity could not take place in New York which is regarded as the site of the inter-state system. Another asset that Geneva has and New York lacks is the critical mass of independent human rights experts (Lam 2009: 614). Hence, because of the change in site, one could possibly argue that the Declaration could not advance in the form of a Convention. However, even declarations have a moral value and a normative authority. The provisions of the Declaration such as on the right to self-determination, the right to culture, the right to lands and natural resources, the right to have a clean environment, and the right to participation would be discussed in the next section.

The most recent norm created after an intense interaction and discussions between indigenous peoples, their NGOs, and states is the *Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Share of Benefits Arising from their Utilisation* to the Convention on Biological Diversity which came into effect in 2014. The Protocol aims to secure indigenous peoples' access to their own biological resources and knowledge which are increasingly stolen or usurped by foreign pharmaceutical companies for their own profits. The profits are not shared with indigenous peoples- the primary people associated with conservation of those resources since time immemorial. This protocol was ratified after two decades of relentless struggle of indigenous peoples and local communities. Though Article 8 (j) of CBD talked about benefit sharing, a lot of weaknesses were found in the wording of the article- such as state obligations were watered down, the article did not speak about free, prior, and informed consent of indigenous peoples (Bavikatte and Robinson 2011: 41).

Some negotiations took place from 2004 onwards in which actors such as CBD Secretariat, indigenous peoples' communities (represented by Indigenous Forum on Biodiversity) and state representatives played a major part. The CBD Secretariat played a very positive role regarding mobilising and encouraging people who were well versed with community concerns to share expertise on the issue. Epistemic communities were formed who had basic experience of biodiversity prospecting. The indigenous peoples' groups during these negotiations intensively lobbied delegates, worked closely with government delegates who were supportive of the cause and

networked with millions of indigenous peoples across the globe to convince them to lobby their governments (Bavikatte and Robinson 2011: 43-44).

The loopholes found in Article 8 (j) of CBD were remedied with the adoption of Nagoya Protocol. This signalled a major victory for indigenous peoples because Article 8 (j) was strengthened by this Protocol. Mainly indigenous peoples wanted key provisions in Article 8 (j)- elimination of the term 'subject to national law', inclusion of references to 'customary laws and community protocols', securing rights over genetic resources, ensure reference to UNDRIP in the preamble of the protocol and strengthening compliance measures relating to traditional knowledge. All these points were achieved through an intense interaction between indigenous peoples and states. A lot of credit goes to media releases, press conferences which spread information, the interaction between Canadian indigenous peoples' organisations with the rest of the world and lobbying activities, along with support from sympathetic State parties, especially the African Group, Norway, and Canada. Through this Nagoya Protocol, indigenous peoples have attempted to gain access to their genetic resources and also prevented unwanted privatisation of these species (Bavikatte and Robinson 2011: 48-49, Moran et al. 2001: 512).

Specific Norms and Principles for Indigenous Peoples

Attempt here is to highlight and specify the specific rights accorded to the indigenous peoples by various conventions, declarations and protocols discussed in the above section.

Right to Self-Determination

The right to self-determination is granted to the indigenous peoples in the UNDRIP. This has been the most contentious and fiercely divisive provision of the UNDRIP. Historically, the term self-determination equates with the era of decolonization when liberating those under colonial oppression meant granting the right to self-determination leading to independence. However, this kind of granting of independence completely negated the indigenous peoples who were internally living within the colonies. As the decolonization phase unfolded, only colonies were given independence. Indigenous peoples actually constituted those internal colonies which were not given freedom or independence (Muehlbach 2003: 247). Indigenous peoples

who were colonised by these states were assumed to be the residing populations; hence no measure of self-determination was given to them. This erstwhile connection of self-determination with the decolonization process is what makes states fear any discussion on self-determination. States consider any talk on self-determination to be having a hidden meaning of independence or separate statehood (Anaya 2000: 54).

For indigenous peoples, self-determination has a completely different implication. By self-determination, indigenous peoples mean freedom to govern themselves, freedom to take their own decisions by themselves or through their own institutions; basically, they desire freedom to live their life the way they want. This is exactly what is echoed in Article 3 of the UNDRIP: "Indigenous peoples have the right to self-determination. By virtue of that right, they freely determine their political status and freely pursue their economic, social, and cultural development" (UNDRIP 2007: 3).

At the time the UNDRIP was deliberated upon and its provisions discussed, there were clusters of states who were totally opposed to the idea of self-determination. States like Canada, Norway, New Zealand, Australia and the entire African bloc were not in favour of applying this right until and unless it was provided that this right would not mean a right to secession or independent statehood. A qualification was demanded by these states saying that the right to self-determination could be accepted only if it mentioned that it would be enjoyed by indigenous communities in conjunction with the states (Daes 2008: 16). This meant that states were in favour of granting internal self-determination to indigenous peoples as opposed to external self-determination which was understood to have secessionist connotations.

There are major discrepancies between the provisions mentioned in the UNDRIP and the provisions that were penned down by indigenous peoples themselves in the 1993 draft. For instance, the current language of the declaration is a lot more watered down than what had been written in the previous drafts. The 2007 Declaration only talks about indigenous peoples having the right to self-determination; whereas the 1993 draft had also a list of areas on which the indigenous peoples could exercise their right to self-determination and other rights such as culture, religion, education, information, media, health, housing, employment, social

welfare, economic activities, land and resources management, environment and entry by non-members (Engle 2011: 145). This exclusive list is missing in the declaration. In place of this, the right to autonomy has been granted in Article 4 which reads as 'indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions'. By far this is the most limited version on the right to self-determination. And if this was not enough, the right to self-determination is further curtailed by ruling out the possibility of secession in Article 46 (1). Territorial integrity and political unity of a sovereign state have to be respected at any cost.

The right to self-determination is an important lifeline for indigenous peoples because it is through this right that they can express their wishes and aspirations and continue to live a life as they want. Primarily owing to this reason, the indigenous peoples struggled for centuries and kept demanding for this right.

Right to Participation

The right to participation is an indispensable right for indigenous peoples. Till the time they do not participate in decisions going to affect their lives, they would not be able to govern themselves. This is the reason that indigenous communities have always demanded participation rights to be granted to them by states. In international law, this participation is broadly ensured by the principle of 'free, prior and informed consent' (FPIC) which is enshrined in legal documents, declarations, and conventions but seldom applied in practice.

The characteristics of FPIC are: a) free i.e. the consultation process should be voluntary and whatever be the consent of the indigenous peoples should be given freely under no pressure, b) prior i.e. permission from the respective indigenous peoples is to be taken before the project is given a green signal, c) informed i.e. the people who are going to be affected should have full knowledge of what is going to happen to their area, their livelihood (Mackay 2004: 45).

As far as UNDRIP is concerned, the right to participation is an essential right of indigenous peoples enshrined in the Declaration. It is closely tied to the right to self-determination as this right to determine one's future also enables these indigenous

peoples to participate. Although this right is enshrined in the Declaration, however, in reality, indigenous peoples seldom get to exercise this right to participate in matters concerning them and their future.

Neither international organisations, nor states have taken any interest in making this principle a legal right for indigenous peoples. Even though it exists in paper and international organisations such as World Bank espouse it in its policies, these policies are never implemented. In fact the Bank, in its latest Operational Policy OP 4.10 adopted in the year 2005 changed the concept of consent to 'consultation which results in a broad community support.' This has been criticised by development practitioners all over the world because there exists no such provision which can ascertain how this broad community support is measured. At least consent entails a veto right which can be exercised forcefully by indigenous peoples on development projects that they do not wish to be carried out on their lands. This is not the case with consultation process (Mackay 2004: 46).

Implementation of this right of participation of indigenous communities actually depends on the will power of states and international organisations. The United Nations Development Group (UNDG) is in the process of formulating norms towards making free, prior and informed consent an established principle in international society.

Right to Culture

The term culture is defined as 'a complex whole which includes knowledge, belief, art, morals, law, custom and any other capacities and habits acquired by man as a member of society' (Kipuri 2009: 52). In other words, culture is a way of life which is shared by members of a community. The culture, in the words of Kymlicka, has a potential role in the development of human beings. This is because culture helps people locate or situate themselves and gives them a sense of identity. It 'provides an unconditional source of identification promotes social solidarity and trust and reinforces intergenerational bonds' (Kymlicka 1995: 84). It is because of these values of the culture that it is regarded as having high values in the eyes of groups, particularly indigenous peoples.

Culture, for indigenous peoples, is understood as something which includes 'economic or political institutions, land use patterns, as well as language and religious practices' (Anaya 1991: 17). It is a way of life common to them, a collection of beliefs and attitudes, shared understandings and patterns of behaviour that allow these people to live together in relative harmony (Kipuri 2009: 52). Since the international rights edifice is individualistic in nature, ensuring cultural survival of these groups becomes a little difficult.

In the decade of 1960s, the first article to have discussed about cultural activities had been Article 27 of ICCPR which states "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language". Article 27 has been invoked in favour of indigenous peoples in many cases such as *Lubicon Lake Band v. Canada* and *Kitok v. Sweden* where cultural activities of indigenous peoples were supported (Quane 2005: 673, Wiessner 2011: 133).

Other provisions discussing cultural rights are Article 15 of ICESCR (right to take part in cultural life), Article 5(e)(vi) of the International Convention on the Elimination of All Forms of Racial Discrimination (which talks about right to equal participation in cultural activities), Article 1 of the 1966 UNESCO Declaration of the Principles of International Cultural Cooperation which says that not only each and every people has the right to develop its culture but also affirms that all cultures have value and dignity and should be respected by all- Article 2 of ILO Convention 169 stresses that "governments shall have the responsibility for developing, with the participation of peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity. Such action shall include measures for promoting the full realisation of the social, economic and cultural rights of these peoples with respect for their social and cultural identity, their customs and traditions and their institutions" (ILO 1989).

UNESCO regards indigenous culture as a very important part of the heritage of humanity. Universal Declaration on Cultural Diversity adopted by UNESCO in 2001 states that the protection of cultural diversity 'is an ethical imperative, inseparable from respect for human dignity.' (UNESCO 2006: 9). The 2003 *UNESCO*

Convention on the Safeguarding of Intangible Cultural Heritage was another standard which recognised the important role played by indigenous groups in production, safeguarding, maintenance, and recreation of the intangible cultural heritage. Similarly, the 2005 *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* also acknowledged the important role played by the indigenous peoples in promoting sustainable development. Article 7 of this Convention talks about the creation of 'an environment that encourages individuals and social groups, to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the specific circumstances and needs of various social groups, including indigenous peoples'.

During the drafting process of the UNDRIP, states were not as hard on indigenous peoples on matters pertaining to cultural rights as they were when discussions were on the right to self-determination. States were generally softer and agreed to indigenous peoples' demands on soft issues such as rights pertaining to language, culture, intellectual property and so on. The main articles dealing with protection of cultural rights of indigenous peoples are found in Articles 11, 12 and 13 of UNDRIP. In Article 11 (i), it is mentioned that 'indigenous peoples have the right to practice and revitalise their cultural traditions and customs which includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature'. Added with this is the provision in Article 12 (i) which states that 'indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies, the right to maintain, protect, and have access in privacy to their religious and cultural sites, the right to the use and control of their ceremonial objects, and the right to the repatriation of their human remains'. Article 13 (i) assures that 'indigenous peoples have the right to revitalise, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literature, and to designate and retain their own names for communities, places, and persons.' States have been given special duties to ensure that provisions in the articles are carried out and implemented. Indigenous peoples have been provided with the right to redress or restitution in these articles (UNDRIP 2007).

Respect and Preservation of Traditional Knowledge (TK) of Indigenous Peoples

Tied to land rights and cultural aspects is the protection of traditional knowledge of indigenous peoples. Traditional Knowledge (TK) of indigenous peoples is understood as "the process of participating fully and responsibly in such relationships (between knowledge, people, all of Creation). It is not just about understanding relationships; it is the relationship with the Creation. TK is inseparable from the people who hold it" (McGregor 2008: 145-146). Protection of indigenous traditional knowledge is the most controversial. This is because on the one hand indigenous peoples' reservoir of knowledge has been regarded as 'common heritage of all mankind', but now indigenous peoples have themselves become aware that their knowledge is being used without keeping them in the loop. Thus the whole world is benefitting from their knowledge, except them who are the true keepers of this knowledge. Indigenous peoples have claimed that protection of their traditional knowledge is of utmost importance to their cultural survival.

While the current IPR regime at the international level is individual centric, the traditional knowledge of indigenous peoples is community driven. For the indigenous peoples 'knowledge is created and owned collectively, and the responsibility for the use and transfer of knowledge is guided by traditional laws and customs' (Kipuri 2009: 74). The indigenous traditional knowledge refers to the "complex bodies and systems of knowledge, know-how, practices and representations maintained and developed by indigenous peoples around the world", and this is obtained by their interaction and reliance on the natural environment (Kipuri 2009:64). Growing incidences of theft, bio-piracy, and biological prospecting have made preservation of traditional knowledge of indigenous peoples crucial. Owing to this awareness, a number of international treaties and protocols have come up with the aim to protect indigenous peoples' traditional knowledge (Mauro and Hardison 2000).

Principal among these is the Convention on Biological Diversity (CBD) which came into effect in 1993. The Preamble to this Convention recognises "close and traditional dependence of indigenous and local communities...on biological resources and the desirability of sharing in the benefits derived from the use of traditional knowledge, innovations and practices". Article 8 (j) of this Convention has been the most significant and states "Subject to its national legislation" each state party will

"respect, preserve and maintain knowledge, innovations, and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices, and encourage the equitable sharing of the benefits arising from the utilisation of such knowledge, innovations, and practices" (CBD 1992).

The indigenous peoples along with their NGOs and other advocacy organisations formulated norms regarding declarations in the First International Conference on the Cultural and Intellectual Property Rights of Indigenous Peoples that was organised in 1993. The resulting norm was called the Mataatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples. Due to the emphasis laid in this about the preservation of the intellectual property of indigenous peoples, UN specialised agencies like World Intellectual Property Organization (WIPO) has commissioned conferences and studies. In 1993 a study was commissioned by United Nations which resulted, two years later in the adoption of draft Principles and Guidelines on the Heritage of Indigenous Peoples (United Nations 1996). The heritage of indigenous peoples includes- language, art, music, dance, song and ceremony, agricultural, technical and ecological practices, spirituality, sacred sites and the documentation of these elements.

Likewise, Article 17(c) of the International Convention to Combat Desertification (1994) urges state parties to "protect, integrate, enhance and validate traditional and local knowledge, know-how and practices." On similar grounds, World Intellectual Property Organization (WIPO) also did come up with a program on Global Intellectual Property Issues which talked about how traditional knowledge of indigenous peoples has to be protected and respected and how they should become inclusive partners for safeguarding biodiversity (Kipuri 2009: 75).

In the UNDRIP, rights pertaining to protection of traditional knowledge is found in Article 31 which states that "indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs,

sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions" (UNDRIP 2007: 31).

The intellectual property right of indigenous peoples is a term of recent origin. Though activity has begun on this front at the international level, it needs to increase at a good rate for better protection and preservation.

Right to Land and Other Natural Resources

Lands have a special meaning for indigenous peoples. Their hundreds of years of inhabitance on their lands make these lands sacred for the survival of indigenous peoples. All over the world, indigenous peoples worship their land as their mother. This is the reason that their physical displacement from their lands results in spiritual and psychological alienation. In fact, it is only through the land ownership that indigenous peoples enjoy other rights. In other words, the right to culture, the right to life, and the right to participation are all inextricably tied to their right to own land and other natural resources. This is because it is only through land (with which indigenous peoples have a sacred relationship) can they feel secure and culturally rich. If their lands are safeguarded to them, it means they can fully participate in public life. How much significance land holds for indigenous peoples is reflected from the fact that the term indigenous itself means 'living within one's roots' (Wiessner 2010: 281). This is the reason that it is generally believed that indigenous peoples have always lived on lands and territories which their generations owned and passed on. This is also the reason why indigenous peoples perish once they are relocated from their original areas. They are just used to living on their own piece of land, practising their own social and cultural traditions and leading their ways of life the way they want.

Like the right to self-determination, the right to ownership of land and other natural resources is also a right which the States have not been ready to grant easily. Even though international law recognises the indigenous 'permanent sovereignty over their lands and natural resources,' this is not granted to them in practice. This is because the implementation of this right rests on the states whose interests are contrary to those of indigenous peoples. Because the areas inhabited by indigenous peoples are often rich in natural resources, the states believe these areas fall under the

theory of ‘eminent domain’ where the state can exercise authority over such lands. In fact, this has been the reason for the beginning of the international movement of indigenous peoples because of the evictions of indigenous peoples from their resource-rich lands done at the hands of their states (Bellier and Preaud 2012: 480).

The most profound treaty having provisions on land for indigenous peoples is the ILO Convention No 169. Though its predecessor, Convention 107 also had provisions on land rights, these were not considered adequate. This Convention No 169 has been ratified by almost all Latin American states and holds a very important place in the indigenous land rights discourse. It has important provisions on indigenous peoples’ right to own and possess the total environment that they occupy (Wiessner 2010: 282). Because of the participation of indigenous groups in the drafting, land rights were strengthened in the Convention (Xanthaki 2007: 80-85).

In this Convention, Article 13 states “Governments shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.” The use of the term ‘lands’ in Articles 15 and 16 includes the concept of territories, which covers the total environments of the areas which the peoples concerned occupy or otherwise use. Article 14 (1) talks about rights of indigenous peoples to own and possess the lands they traditionally occupy. Article 15 (1) allows them to participate in the use, management, and conservation of natural resources pertaining to their land. Article 16 asserts that indigenous peoples can remain on the lands they occupy, under certain exceptions. The Convention makes the states responsible for ensuring that indigenous peoples actually enjoy these rights prescribed in the Convention. Article 14(2) (3) suggests that states should identify lands that are in possession of indigenous peoples. Article 15 (2) establishes procedures to consult indigenous peoples before sanctioning any programs for the exploration and exploitation of natural resources on indigenous lands (Quane 2005: 677).

Article 26 of the UNDRIP deals explicitly with the right to land. Article 26 (1) states that ‘indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.’ Clause 2 of the same article states ‘indigenous peoples have the right to own, use, develop

and control the lands, territories, and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired'. As regards the duty that the states have in ensuring these land rights are implemented, Article 26 (3) mentions that 'States shall give legal recognition and protection to these lands, territories, and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned'. Clearly, these provisions have been written down before, and UNDRIP does not offer anything new in this regard. It has simply summarised the norms that were earlier present in international law (Ahren 2009: 24, Wiessner 2010: 287).

There have been agitations raised by indigenous peoples' NGOs on the issue of land alienation. The effort of International Land Coalition and Greenpeace are pivotal in this regard. However, in spite of the campaigns launched by these NGOs, nothing changes much as this is a matter which falls under the domestic jurisdiction of the state. Without the will of states, no implementation on land rights can take place in reality.

Right to Environment

Indigenous peoples share an intimate relationship with their natural environment. Because indigenous peoples have been living in the natural environment since time immemorial, they develop emotional ties with their lands and natural resources. Their simple and archaic lifestyle is seen as conducive to environmental preservation. To generate awareness of this critical linkage between indigenous peoples and environment, and to pressurise the international community to play a proactive role in protection and preservation of indigenous peoples' environment, both local, as well as international non-governmental organisations (NGOs) have played a significant role. Most of the indigenous peoples of the world inhabit areas which are rich in biological diversity. One finds indigenous peoples densely located in the rainforest areas of Brazil, Central America, South-east Asia, Philippines and Indonesia. These regions were the traditional and ancestral homelands of indigenous peoples clearly exhibit the kind of pious and virtuous relationship these peoples have with their natural environment. This is because not only these indigenous peoples derive their livelihood and basic sustenance through forest produce and activities like hunting, many of these

indigenous communities regard their forests and mountains as places of worship. In reciprocity, these regions of high biodiversity are also dependent on indigenous peoples because of the latter's unadorned way of life and their traditional knowledge through which they have been able to sustain their environment since time immemorial (Perrett 1998: 378).

In the Cold War period, activities of the modern state and non-state actors such as transnational corporations by way of building infrastructure projects, mining of natural resources have broken this intimate interdependence between indigenous peoples and their environment. The beginning of the 1960s witnessed many development projects sponsored by international financial institutions such as the World Bank, on lands occupied by indigenous peoples, mainly in the developing countries. This process of uprooting these indigenous communities from their traditional Adobe was intensified by the mid-1970s and continued till 1980s (Gray 1998: 65). In the process of building infrastructure projects such as dams and refineries, the communities which were hitherto self-sustained became literally destitute due to displacement and dispossession of their lands and other natural resources. Indigenous peoples who used to be engaged in agriculture and activities like hunting and gathering were forced to migrate from their habitats to cities where they often ended up as becoming wage labourers. Thus these activities interfered and ultimately ruined the lives of indigenous peoples.

Faced with the dire and threatening changes in their lives caused by the destruction of their environment led these indigenous peoples to form alliances with international NGOs. One such example was the 'Amazon Alliance' (in Brazil) formed by small and local NGOs like Rainforest Movement, Coordinating Body of Indigenous Organizations of the Amazon Basin (COICA), along with international NGOs such as Conservation International, Oxfam. This alliance had come into being after oil drilling in the forests of Amazon proved devastating for the local indigenous populations. The success of this network of local and international organisations could be attributed to the series of norms and declarations (Pieck 2006: 316).

International NGOs such as IUCN, WWF, Friends of the Earth and Greenpeace in association with regional and local NGOs have carried out advocacy and lobbying activities to sensitise the need of protection of the natural environment

for indigenous peoples. These concerns were incorporated in Agenda 21, Forest Principles, Convention on Biological Diversity, and Convention to Combat Desertification and so on. The United Nations gave a boost to this phenomenon by way of encouraging the participation of these NGOs in the conferences organised by United Nations (Morgan 2011: 74).

The Rio Summit, in 1992, adopted a Declaration on Environment and Development (known as Rio Declaration) in which Principle 22 recognised "indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development" (Barsh 1994: 45-48). Also, Statements on Principles of Forests (adopted at Rio Summit) states that "national forest policies should recognise and duly support the identity, culture, and the rights of indigenous people, their communities and other communities and forest dwellers" (United Nations 1992: 26).

The participation of indigenous peoples has increased in the United Nations Forum on Forests (UNFF) which was set up in 2000. Issues related to protection and use of forest-related knowledge and practices are discussed in the Forum. Also, the role of indigenous peoples in the sustainable forest management is also debated. However, the Forum has been criticised for ignoring the interests of those indigenous communities who reside in the forests and depend on them for their survival (Collings 2009: 107). Article 29 of UNDRIP is significant in this regard. It states 'indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources.' It is the duty of the state to establish 'assistance programs for such conservation and protection, without discrimination (UNDRIP 2007).

The interface between United Nations, States and NGOs is also very much evident in the Climate Change conferences, where after ten years of continuous advocacy, the United Nations allowed the participation of indigenous NGOs under the broad rubric of international NGO Climate Action Network. Indigenous peoples organise side events, host parallel sessions and participate in the sessions of the conference as a separate constituency (Schroeder 2010: 47). This interaction has not

resulted in any tangible norms for indigenous peoples. The formation of indigenous peoples' constituency in 2001 in the climate change conferences has enabled discussions to take place on the catastrophe of climate change and impact on indigenous peoples and their environment. This is a big step forward in recognition of the need to protect indigenous peoples' environment.

The implementation of environmental rights of indigenous peoples is a distant dream. Recognising the relationship that they have with their environment took so many years, implementing the norms mentioned in the treaties and declarations might take more time. But the fact that indigenous peoples have started lobbying as a group on environmental concerns is a positive step.

Thus, these norms and standards were drafted after intense exchanges between states, indigenous peoples, and bureaucracy. All actors contributed to the adoption of these norms. During the drafting of ILO Convention 169, for example, indigenous peoples submitted amendments which were deliberated upon with states. Because of this interaction, there were significant changes which were brought about in the Convention No 107 which was not acceptable to indigenous peoples. This kind of exchange and interaction between actors was not so visible at the time Convention on Biological Diversity was drafted. Because states were the dominant actors, those clauses which suited the interests of the states were inserted. Article 8 (j) that was relevant for indigenous peoples had serious loopholes which were later rectified through the adoption of the Nagoya Protocol in 2014. Similarly, the Declaration on the Rights of Indigenous Peoples was negotiated for around two decades by indigenous representatives, and states. The key provisions around which there were ferocious debates between representatives of indigenous peoples and states were: the right to self-determination, the right to culture, the right to participation, right to lands and natural resources and right to environment. The Declaration was adopted in 2007 after national, regional and international NGOs lobbied the African states to vote for the Declaration. It took two decades of relentless struggle on the part of indigenous peoples and their advocacy organisations to convince states to vote in favour of the Declaration. Even though achieving a Convention would have been more significant for the international indigenous peoples' movement, getting a Declaration adopted was no less a victory. In fact, the UNDRIP and Nagoya Protocol constitute the two biggest victories for indigenous peoples vis-à-vis their interaction with states.

Conclusion

Many actors, other than states have emerged at the international level in the post-Cold War era. Of these IGOs, NGOs, epistemic communities, global public policy networks, transnational networks and multi-national companies are the major players in the context of indigenous peoples' concerns. The states did not have inherent interests in tackling the concerns of the indigenous peoples. It was due to the active support of some of these non-state actors that enabled indigenous peoples to capture the international attention and got a number of norms and standards formulated to address their concerns.

The indigenous peoples' concerns reached the United Nations in the early 1970s. The United Nations was considered the single most important international organisation at that time. Three sets of actors played an important role in internationalising the issues of indigenous peoples. The indigenous peoples' movement comprising of indigenous peoples, their NGOs such as the NIB, national societies and regional organisations such as RAIPON played a very important role of mass mobilisation of indigenous peoples to emerge as a common entity. This set of actor played an active role in organising international conferences such as the Barbados Conference of 1969, NGO Conferences of 1977 and 1981 and so on. Participation of scores of indigenous peoples in these conferences helped them forge a kind of solidarity among themselves. Interaction with other indigenous communities from across the world, presenting their oral testimonies in these conferences helped them realise the need of emerging as one force. Some member states of United Nations also facilitated the indigenous peoples' movement and helped them reach the United Nations. These were mostly the Scandinavian countries such as Norway and Denmark and some Latin American states such as Guatemala and Bolivia. These were those states which had a majority of indigenous peoples as their national populations, and this was a major factor for them to be a factor in the indigenous peoples' movement. The bureaucracy of international organisations also played a positive role in making the indigenous peoples' claims reach the international stage. By way of encouraging studies and reports on the problems faced by indigenous peoples and creation of early institutional mechanisms such as the WGIP, Voluntary Fund on Indigenous Populations and WGDD, the bureaucracy acted on their own discretion

and contributed in making indigenous peoples' presence highlighted at the international level.

Continuous interaction of indigenous peoples with states and bureaucratic staff and international NGOs helped intensify the indigenous peoples' movement at the international level and making it as an international issue. The bureaucracy instituted ways such as the open-door policy to ensure the wide participation of indigenous peoples at United Nations. As a result of these positive developments, a number of norms and standards began rolling in for these indigenous peoples from the late 1980s.

The norms and standards were drafted after intense exchanges between states, indigenous peoples, and bureaucracy. All actors contributed to the adoption of these norms. During the drafting of ILO Convention 169, for example, indigenous peoples submitted amendments which were deliberated upon with states. Because of this interaction, there were significant changes which were brought about in the Convention No 107 which was not acceptable to indigenous peoples. This kind of exchange and interaction between actors was not so visible at the time Convention on Biological Diversity was drafted. Because states were the dominant actors, those clauses which suited the interests of the states were inserted. Article 8 (j) that was relevant for indigenous peoples had serious loopholes which were later rectified through adoption of the Nagoya protocol in 2014. Similarly, the Declaration on the Rights of Indigenous Peoples was negotiated for around two decades by indigenous representatives, and states. The key provisions around which there were ferocious debates between representatives of indigenous peoples and states were the right to self-determination, the right to culture, the right to participation, right to lands and natural resources and right to environment. The Declaration was adopted in 2007 after national, regional and international NGOs lobbied the African states to vote for the Declaration. It took two decades of relentless struggle on the part of indigenous peoples and their advocacy organisations to convince states to vote in favour of the Declaration. Even though achieving a Convention would have been more significant for the international indigenous peoples' movement, getting a Declaration adopted was no less a victory. In fact, the UNDRIP and Nagoya Protocol constitute the two biggest victories for indigenous peoples vis-à-vis their interaction with states.

The interaction between indigenous peoples, local and international NGOs, states and UN bureaucracy led to a number of specific rights for indigenous peoples, such as the right to self-determination, the right to environment, the right to culture and traditional knowledge. These norms were not new and were already mentioned in various other international sources. However, their inclusion in the Declaration served a gentle reminder to the international community that these rights ascribe to indigenous peoples. Each provision that finds mention in the Declaration was hotly debated upon. Now what remains to be seen is how the norms and standards relating to indigenous peoples would be implemented by the states. Even though the Declaration is not binding on states, it would be interesting to see how the provisions mentioned in the Declaration and other conventions and declarations are implemented by the states. The various mechanisms have been created by the UN to ensure adherence to the array of norms and standards established for indigenous peoples. It is on the interaction among the major actors in working of those mechanisms will be the subject matter of the subsequent chapters.

Chapter III

United Nations Institutional Mechanisms on Indigenous Peoples

For a very long time, the efforts of the United Nations were focused on the development of norms and standards related to human rights. In fact, the activities of the United Nations in the field of human rights have been categorically divided into three phases: standard-setting phase (1947-54), promotion of human rights (1955-66) and protection of human rights (since 1967) (Alston 1992: 3). The standard-setting phase, for example, marked the creation and development of norms and standards in the field of protection of rights of refugees and protection against the crime of genocide and formulation of the international bill of rights. This was followed by activities undertaken by United Nations such as the commissioning of studies and promoting human rights education in institutions like schools and colleges. It was not until the decade of the 1960s that protection of human rights became a serious issue within the premises of United Nations.

The need and urgency to ensure implementation began to be felt with the increasing number of human rights violations that continued unabated even after the states had ratified a number of human rights conventions. It was soon realised that states' ratification of human rights treaties was more of a policy to save their image at the international stage rather than actual commitment to promoting and protecting human rights. Therefore a need was felt of giving some teeth to human rights treaties.

Hence the late 1960s and 1970s witnessed the emergence of a number of human rights treaties with treaty bodies to ensure following-up on the implementation of contents of the respective conventions. By having provisions requiring states' periodic submission of reports of their implementation to these bodies, and handling inter-state as well as an individual communications system, the United Nations developed institutional mechanisms to ensure the actual promotion and protection of human rights in member countries.

The majority of these institutional mechanisms have no relevance to indigenous peoples as the vast majority of the international conventions on human rights were oblivious to the concerns of indigenous peoples. However, indigenous peoples and their groups, as well as other actors, started making use of these

monitoring mechanisms in order to highlight the plight of indigenous peoples at the international level. The monitoring mechanisms specifically related to the indigenous peoples developed in the early 1980s with the creation of Working Group on Indigenous Populations. When the concerns of indigenous peoples became an international issue, a number of other mechanisms were established by the United Nations to provide focused attention on their concerns.

A number of actors play an important role in these institutional mechanisms. States are no doubt the primary actors as without their assent and cooperation these mechanisms cannot function. Other than states, UN staff and non-state actors, particularly NGOs, and epistemic communities play significant roles in the general purpose mechanisms (like treaty bodies) as well as mechanisms that were specifically created for indigenous peoples (such as WGIP).

The discussion begins with a brief examination of monitoring procedures created under Commission on Human Rights and analyses how because of Western Bloc dominance in the Commission, these procedures were highly ineffective of taking up the cause of human rights in general and of indigenous peoples' rights in particular. The chapter then discusses the monitoring mechanisms of United Nations treaty bodies, focusing on the three functions- examination of state reports, inter-state communication and individual communication procedures. It explains how over the years because of increased presence of the non-state actors, like NGOs and epistemic community and their interaction with states and the UN bureaucracy, these treaty bodies have developed a number of other working methods such as review process, follow-up mechanism, and early warning procedures which over the years have made these treaty bodies more amenable towards the concerns of indigenous peoples. Then, it goes on to briefly review how the Universal Periodic Review (UPR) of Human Rights Council address the concern of the indigenous peoples and how the non-state actors try to use this mechanism to address indigenous peoples' concerns. It also briefly discusses the mechanisms created specifically for the indigenous peoples such as Working Group on Indigenous Populations, Voluntary Fund, Permanent Forum and Special Rapporteur. It critically discusses the interface of states and UN bureaucracy and NGOs in working through these mechanisms resulted in bending of official rules and regulations in order to accommodate the concerns of indigenous peoples. The

detailed analysis of the four most significant mechanisms is dealt with in the subsequent three chapters.

Procedures under Commission on Human Rights

The Commission on Human Rights was established in 1946 as a subsidiary organ by the UN Economic and Social Council to serve as the organisation's principal locus for human rights activity. The Commission was given a sort of 'limited' mandate of formulating an international bill of rights and other conventions related to human rights. States, like the erstwhile Soviet Union and the United States of America, was against the Commission taking up issues which compromised their national sovereignty. This was the major reason that the Commission was restricted to a general mandate of formulating norms and standards (Alston 1992: 128). Also, these states along with others such as Britain were also in vehement opposition to the Commission being composed of independent experts. They were of the view that independent experts would make the Commission too independent and would pose a threat to the states' national sovereignty. Hence it became a rule that the Commission would be composed of eighteen members appointed by the states and would serve as representatives of their respective governments (Lauren 2007: 314).

Since the time the Commission was established, it was decided amongst the member states that the Commission would not take up any monitoring function because that would tantamount to bringing the domestic affairs of the states under international scrutiny. This was the reason that the Commission was entrusted only with the task of formulating norms and standards. This was also the reason that for the first two decades of its existence, the Commission was only associated with standard-setting processes. However, it began to be realised by the late 1960s that human rights could not be protected without developing a system of monitoring states' obligations. Thus, the Commission gradually developed a system of making states accountable to their human rights commitments (Farer 1987: 572).

Reporting by states on the state of human rights in their countries was considered the only viable procedure for monitoring the progress of human rights compliance. However, the states were hesitant in presenting reports of the national situation in front of an international audience. Keeping in view this reluctance, the reporting obligations were made quite easy- states were to give a general overview of

the human rights situation prevalent in their countries. These reports were to be annually submitted to the Commission, but the Commission had no power to comment on the state reports (Lauren 2007: 313).

Since the time the Commission came into being, many complaints were sent with the hope that the Commission would take action against states which were gross violators of human rights. However for twenty years, until 1967, the Commission made it quite clear that it had 'no power to take any action in regard to any complaints concerning human rights' (ECOSOC, 1947). The reason behind the Commission's abdication of its responsibility was the states' objection of throwing open a system to individual citizens where they could criticise their states internationally and embarrass them in front of the international community. Even when some of the members of the Commission such as Eleanor Roosevelt, Rene Cassin of France, and Hansa Mehta of India were sympathetic to these early petitions received by the Commission, the states immediately put a stop to this practice by instructing their representatives to publicly declare that the Commission had no power to take any action in regard to complaints submitted by individuals (Lauren 2007: 315). These Western states were joined by the Eastern states in opposing the development of such procedures on the ground that these would breach Article 2 (7) of the UN Charter (Alston 1992: 141).

In the mid-1960s, certain developments took place which led the Commission to abandon its policy of not taking up petitions. This change in the Commission's position was due to the influx of newly independent countries from Asia and Africa during this time. Another major development was the adoption of International Convention on the Elimination of All Forms of Racial Discrimination in 1965. Article 14 of ICERD provided for a petition procedure for the first time in UN history wherein individuals or groups could submit complaints against the states. Even though initially not many complaints were received through this procedure, it certainly paved the way for adoption of the petition procedure in other human rights treaties as well as the Commission. The Commission adopted two separate procedures, 1235 procedure of 1967 and 1503 procedure of 1970.

The 1235 procedure was established after Resolution 1235 was passed on 6 June 1967 at the ECOSOC which authorised the Commission to 'examine information relevant to gross violations of human rights and fundamental freedoms as exemplified

by the policy of apartheid in the Republic of South Africa' and also decided that 'the Commission on Human Rights may, in appropriate cases, make a thorough study of situations which reveal a consistent pattern of violations of human rights and report, with recommendations to the Economic and Social Council' (ECOSOC, 1967).

A number of UN organs like General Assembly, ECOSOC, Commission and Sub-Commission on Prevention of Discrimination and Protection of Minorities played important roles in the 1235 procedure, and three phases were envisaged through which gross violations of human rights were to be discussed under this procedure. First, the Sub-Commission would examine all communications received and identified those situations which demonstrated a consistent pattern of human rights violations. In the second stage, the Commission would investigate any such situation by whatever means it deemed appropriate and held an annual public debate, and in the third stage the Commission would report its findings and recommendations to the ECOSOC (Alston 1992: 156).

The 1235 procedure was a breakthrough because it allowed public scrutiny and public debate on the situations of human rights in states for the first time. Human rights situation in many states such as Kampuchea, Nicaragua, and Equatorial Guinea were publicly discussed and also condemned by the Commission (Oberleitner 2007: 52). Till 1979, the procedure was closed to any kind of involvement of NGOs. However, in the decade of 1970s influential human rights NGOs such as Amnesty International emerged on the international scene. As a result of activities of these NGOs which mobilised public opinion against gross violation of human rights, international pressure began building up for the procedures to take certain kind of action against violator states. As a result, the 1235 procedure started passing resolutions against states which were accused of human rights violations. This way of naming and shaming was to exert pressure on states to improve their human rights situation.

Indigenous peoples never filed any complaint in the 1235 procedure. One reason could be the fact that by the time the procedure was instituted in 1967, indigenous peoples had still not gained agency. This was the time when indigenous peoples were trying to emerge internationally as actors in their own right through their own international movement. They were keen to raise awareness about their situation,

and so they did not focus on filing complaints. Also, around this time most of indigenous peoples' organisations had not emerged to lead their cause.

The second procedure instituted by the Commission on Human Rights was the 1503 procedure which was created in 1970 after the passing of ECOSOC Resolution 1503. This procedure allowed the Commission to 'consider all communications with a view to bringing to the attention of the Sub-commission on Prevention of Discrimination and Protection of Minorities which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms' (ECOSOC, 1970). The origin of this procedure can be traced back to the decade of the 1950s when UN was replete with debates about procedures which should give an individual the right to submit petitions or communication. Against this background, the 1503 procedure was created in order for individuals to submit complaints to the UN system.

The 1503 procedure was a 'confidential' procedure, unlike the 1235 procedure. Thus whereas in the case of 1235 procedure, public debate and discussion were the main components, this public scrutiny was totally absent in the case of 1503 procedure. Also, the states which were reviewed under 1503 procedure were not served any resolutions which had been the case with the earlier procedure. In this mechanism, either the state whose human rights situation was discussed was kept under review, or an ad-hoc committee was instituted by the Commission to conduct a confidential investigation and seek a friendly solution, or simply refer the case to the 1235 procedure thereby making all investigations and documents public (Alston 1992: 146-147).

Because of the confidential nature of the procedure, the 1503 procedure was severely criticised by scholars and NGOs. It was referred to as 'the most elaborate wastepaper basket ever invented' (Humphrey 1984: 28). The procedure was hardly used as a tool for urgent action as it could be invoked once a year. The biggest failure of the procedure lay in the fact that it excluded the working of NGOs from its ambit because of which it was criticised for lacking the strongest and most effective way of mobilising public opinion (Oberleitner 2007: 53). The 1503 procedure largely remained ineffective because of its failure to attend to urgent human rights violations.

However, it was used by indigenous peoples on two occasions to lodge complaints against states which were in violation of their rights. The first communication to the 1503 procedure was sent by the Six Nations Iroquois Confederacy against the United States in 1980. The communication was prepared by the Indian Law Resource Centre (ILRC), an NGO, on behalf of the indigenous communities of Six Nations and submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to be later passed on to the Commission on Human Rights. The communication was held by the Sub-Commission for a year and was then referred to the Working Group on Indigenous Populations. This Working Group never considered the communication. Even when repeated requests were made by ILRC for a response by the state government, no action was taken (Washington undated: 12).

Another case which was filed under the 1503 procedure was the Innu communication which was submitted to the Sub-Commission in 1990. The Innu comprised the indigenous communities of the Quebec-Labrador peninsula region in Canada. The Innus had a fragile ecosystem and land base to support them. Their land rights and the right to livelihood were constantly impaired by Canadian government's continuous sending of low-flying warplanes over the lands of the Innu since 1954. Over the years the number of warplanes flying over the Innu lands increased, destroying the physical as well as cultural lifestyles of these Innu indigenous people. The Innu Band Council, an NGO, prepared the Innu communication detailing the problems faced by the people and the number of rights violated by the Canadian government and sent it to the Sub-Commission for further consideration under the 1503 procedure. However, as in the previous case, the communication was not taken up by the Commission on Human Rights (Tennant & Turpel 1990: 288).

Thus as far as indigenous peoples are concerned, none of the above-mentioned procedures of the Commission on Human Rights was useful. While the 1235 procedure was never used by indigenous peoples, the 1503 procedure was a complete failure to provide any kind of respite to indigenous peoples. In fact, the Commission also failed to take up and formulate norms and standards related to rights of indigenous peoples. One reason which explains this negligence by the Commission could be the fact that by the time the Commission continued to formulate norms and standards i.e. till the 1960s, indigenous peoples had not even emerged as an

international issue. Another reason which could also account for the total absence of consideration of indigenous peoples' issues was the state-centric composition of the Commission. Another reason for the complete absence of indigenous issues in the Commission of Human Rights was the exclusion of non-state actors from its working.

Monitoring Mechanisms of the UN Human Rights Regime

As the early phase of United Nations was focused on promotional activities, none of the early human rights treaties has provision for a monitoring mechanism. When the instances of grave human rights violations in different parts of the world such as the Vietnam War, guerrilla warfare in Latin America were publicised by the mass media, the United Nations was compelled to shift its focus from promotion to protection of human rights, leading to creation of a number of mechanisms to ensure emphasis on implementation of the UN human rights conventions and protection of human rights. Since the 1960s onwards, the United Nations started to adopt human rights conventions with provisions on treaty bodies as monitoring mechanisms (Forsythe 1997: 335).

As of May 2016, there are nine treaties which have monitoring mechanisms to ensure compliance with the treaty provisions. The treaties and their monitoring mechanisms listed in Table 3:1.

Table 3:1 List of Human Rights Treaties and their Monitoring Mechanisms

Human Rights Treaties	Monitoring Mechanisms
International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965	Committee on the Elimination of Racial Discrimination (CERD)
International Covenant on Civil and Political Rights (ICCPR), 1966	Human Rights Committee (HRC)
International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	Committee on Economic, Social and Cultural Rights (CESCR)

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979	Committee on the Elimination of Discrimination against Women (CEDAW)
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984	Committee against Torture (CAT)
Convention on the Rights of the Child (CRC), 1989	Committee on the Rights of the Child (CRC)
International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, (ICMW), 1990	Committee on Migrant Workers (CMW)
International Convention for the Protection of All Persons from Enforced Disappearance, (CPED), 2006	Committee on Enforced Disappearances (CED)
Convention on the Rights of Persons with Disabilities (CRPD), 2006	Committee on the Rights of Persons with Disabilities (CRPD)

Source: http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx, accessed on 21 September 2016

The monitoring mechanisms of the following treaties have been used for indigenous peoples: CERD, HRC, CESCR and CRC.

Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination (CERD) was the monitoring mechanism created to monitor the implementation of International Convention on Elimination of All Forms of Racial Discrimination (ICERD). This Convention was adopted by the General Assembly on 21 December 1965, and it entered into force on 4 January 1969.

The Committee was established in 1970. The Committee is composed of 18 independent experts, acting in their personal capacities. The composition of the Committee reflects the principle of equitable geographical distribution and the representation of different forms of civilisations. The experts have different professional backgrounds. Over the years the Committee has seen an increase in the

appointment of experts with an academic background (Wolfrum 1999: 494). Though the experts are supposed to be independent, the fact remains that they are nominated by their states. Because of this dominance of the state in the selection procedure of the expert members, the actual independence of these experts is always doubtful.

The Committee performs three functions- examination of periodic State reports (Article 9), the consideration of communications from aggrieved individuals and groups i.e. the individual communication procedure (Article 14) and the examination of inter-state complaints (Articles 11, 12 and 13). Over the years, CERD has broadened its core activities. Other than issuing General Recommendations which means a set of comments on every state's periodic report, CERD has also adopted an 'early-warning' system since 1993 wherein it identifies potentially volatile situations that require the international community to keep a watch on and act swiftly if need be. The Committee has also adopted 'urgent procedures' wherein the Committee responds to problems requiring immediate attention to prevent serious human rights violations (Thornberry 2002: 200).

The Convention is very relevant for indigenous peoples even though there was no specific mention of indigenous peoples in it. This is because indigenous peoples were yet to become an international issue at the time of the adoption of the Convention. However, indigenous peoples, their supporters as well as members of the Committee could use ICERD to raise the issue of discrimination suffered by indigenous peoples through the working methods of the Committee.

Examination of State Reports- All state parties to the Convention are required to submit reports to the Committee within one year after the entry into force of the Convention and after that every two years. The state report basically comprises of all legislative, judicial, administrative and other measures which the states may have adopted in relation to the provisions of the Convention. The Committee does not issue any questionnaire or format for the submission of reports by the states. However, in later years the Committee has come out with its own guidelines describing the desired content of the reports. The Committee generally requests information from states on- demographic composition of the population, the existence of diplomatic, economic or other relations with racist regimes, implementation of the provision prohibiting

activities that incite racial hatred and such documentation as may be requested by the Committee (Partsch1992: 350).

During the process of examination of a state's report, the Chairman of the Committee invites state representatives to attend the session in which the respective state's report is being examined. This principle is not mandatory but followed by the Committee since a long time. The basic idea is that the state representatives should be able to answer any questions or clarify any issues raised by any Committee members during the examination of the report. This has been regarded as an important innovation by the Committee because it allows for a 'constructive dialogue' between the experts and the state representatives. The examination of each report is concluded by Concluding Observations, and during this time the representatives of states do not attend. These concluding observations are a set of common statements embodying a collective opinion (Wolfrum 1999: 508).

The Committee does not include any other source of information other than the report submitted by the states. Information provided by mass media and other entities such as non-governmental organisations are specially excluded as reliable sources of information. However, over the years with the rapid increase in the participation of NGOs in other treaty bodies, CERD has opened up space for NGOs to not only provide alternate information on the state report but also to be present in some instances during the examination of a state's report. The NGOs have been made part of the process by involving them in thematic discussions (Thornberry 2005: 249). After the submission of the state report, the Committee may 'request further information from the State Parties.'

The examination of the state reports ends with issuing of 'General Recommendations' (comments) by the Committee. These recommendations are very important as the Committee explains its position on the content of the provisions of the Convention or its implementation. However, states are not under binding obligation to accept these recommendations. The Committee expects the states to follow these recommendations and include their implementation status in the next report (Kedzia 2005: 44). Over the years general recommendations have become an important aspect of treaty-law as these are the legal interpretations made by the Committee.

CERD has been able to take up the concerns of indigenous peoples only minimally through its reporting procedure. This is because most of the times the states deny not only the existence of indigenous peoples on their territory but also about the incidence of racial discrimination against indigenous peoples. The reason why states deny the existence of ethnic groups or indigenous peoples is to prevent endangering the national policy of integration (Wolfrum 1999: 498). Initial reports by states never discussed the occurrence of racial discrimination against indigenous peoples on their territories. In fact, the states seldom acknowledged the existence of indigenous peoples on their territories. In response to this denial, the Committee has played a pro-active role. The Committee has never accepted the denial of the existence of racial discrimination. It has been very particular about the demographic composition of reporting of states. It has been critical of states like Sweden which has always objected to the existence of indigenous Saami population on its territory (Thornberry 2002: 205). However, the situation has not improved till date. Over the years, CERD has become very critical of member states' reports. For example, CERD vehemently criticised Mexico for its reluctance to link the treatment of its fifty-six indigenous groups to the definition of racial discrimination. On the report of El Salvador the Committee openly stated that 'assertion of the State party that, because there are no physical distinctions between the indigenous population and the population as a whole, and because the number of indigenous persons is insignificant, no racial discrimination exists, is not acceptable' (Barsh 1994: 45).

The Committee was concerned about the policies followed by states in relation to indigenous peoples in 1970s, and this interest has not waned in contemporary times. On the insistence of the Committee, indigenous issues have been identified in the 1996 and 1997 country reports of states like- Argentina, Bolivia, Brazil, Colombia, Denmark, Finland, Guatemala, India, Mexico, Norway, Pakistan, Panama, Philippines, Russian Federation and Sweden. In the concluding observations on reports of Argentina, Bangladesh, Japan and Sudan in 2001, the Committee explicitly referred to indigenous 'groups' as national populations of these states (Thornberry 2002: 209-211). This recognition of the indigenous identity by states on the insistence of the Committee has helped in the further prevention of discrimination against indigenous peoples.

The Committee has been able to highlight many aspects of indigenous peoples' rights. For instance, the Committee overtly talks about the group rights which are so central to the identity of indigenous peoples. An important normative statement made in this regard was by way of concluding observations of the Committee to the eighth, ninth, tenth and eleventh periodic reports submitted by Greece. The Committee concluded that membership of a group 'shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned' (Farer 1987: 76). Self-identification is viewed as significant by indigenous peoples for their identity. By upholding self-identification as a principle, the Committee in a way upheld the dignity of indigenous peoples. In the same report the Committee also openly espoused the intellectual property protection not only for individuals but also for groups. This was a major departure from the intellectual property law which exists at the international level and is bestowed upon individuals only. By recognising intellectual property rights to be granted to groups, the Committee made great strides in acknowledging the traditional knowledge of indigenous peoples (Thornberry 2002: 210).

The Committee has been very active in recognition of land rights of indigenous peoples. In many instances, for example, in its analysis of State reports submitted by Guatemala, Sweden, and Australia, CERD has stressed 'the importance that land holds for indigenous peoples and their cultural and spiritual identity, including the fact that they have a different concept of land use and ownership' (Stamatapoulou 1994: 67). CERD has also asserted the importance of other issues such as indigenous language (in case of Russian Federation, Mexico), bilingual education (Guatemala), translation of the Convention into indigenous languages (Denmark), political participation (Brazil), and the effects of mining activities and tourism on indigenous lands (Panama) (Thornberry 2002: 209).

Among the many issues on which the Committee has issued general recommendations, such as racism, racist hatred, discrimination, self-determination, the most relevant one from indigenous peoples' perspective is General Recommendation XXIII on Indigenous Peoples which was adopted at its 51st session in 1997. The Recommendation addresses a range of important issues including land, resources, culture, language and free, prior and informed consent (CERD 1997: 4). In this recommendation, the Committee states that 'the situation of indigenous peoples

has always been a matter of close attention and concern' and that 'discrimination against indigenous peoples falls under the scope of the Convention' (CERD 1997: 1). The Committee recommends to all state parties to 'recognise and respect the indigenous culture, history, language and way of life as an enrichment of the State's cultural identity.' The most important aspect of the recommendation is the way with which the Committee has opinionated on consent. As opposed to international practice which only talks about free, prior and informed consent on matters relating to indigenous peoples, CERD exclaims that indigenous peoples do have the right to veto. In this recommendation, CERD further recommends that indigenous peoples are free to use their lands and resources and wherever they have been deprived of this right, the states should take steps to return those lands to indigenous peoples (CERD 1997: 5). Even though this may never be realised in practice as states will seldom consider the veto rights of indigenous peoples, the General Recommendation is an important precedent as it touches upon something so significant from indigenous peoples' perspective.

Another General Recommendation adopted by CERD which is very relevant for indigenous peoples was General Recommendation on the right to self-determination adopted in 1996. This recommendation is important because it clearly distinguishes the internal as well as external aspects of self-determination and calls upon all state parties to take into account 'the right of every citizen to pursue freely their economic, social and cultural development and also to allow all citizens to take part in the conduct of public affairs without distinction as to race, colour, descent or national or ethnic origin' (CERD 1996: 2). This assertion of the right of self-determination of all peoples by the Committee in its general recommendation was a very significant move.

Over all, the reporting procedure of CERD did not address the issues of indigenous peoples extensively. Though there are references in concluding observations to state reports and some general recommendations, this was not enough to alleviate the condition of indigenous peoples. The reporting procedure of CERD has states as primary actors, and no role has been given to NGOs in the procedure. This could be a reason for under-reporting of the discrimination faced by indigenous peoples and no extensive comments in the General Recommendations.

Communications Procedures- The two procedures, through which complaints can be lodged in the Committee- inter-state communications (Article 11) and individual communication procedures (Article 12), are not used for the cause of the indigenous peoples. Inter-state communication procedure has never been used till date most probably due to fear of retribution among state parties. No complaints lodged under the individual communication procedure relating to indigenous peoples' concerns. One reason could be the fact that CERD does not take into account the role of NGOs as such and individual communication procedure is one which is most efficiently handled by NGOs. Indigenous peoples are most ably represented through their NGOs when filing complaints. It is because of this absence of NGOs that have made the procedure ineffective for indigenous peoples.

Other Procedures- The Committee innovated a procedure at its 41st session in 1993 when it introduced its 'early-warning' procedure with the aim to prevent the problems from escalating into gigantic conflicts (Wolfrum 1999: 514). The adoption of this procedure made the Committee a preventive mechanism of handling human rights violations. The early-warning procedure is of great significance for indigenous peoples. For instance, when Australia passed the Native Titles Act in 1993 (which gave the Australian Aborigines the right over their property and rejected the doctrine of terra nullius), the Committee had appreciated the efforts made by the Australian government. However, when an amendment was made to this Act in 1998 making the government the owner of the Aboriginal property, the Committee immediately declared Australia under the early-warning procedure. At its 53rd session, the Committee requested the Government of Australia to provide it with information on changes projected to be introduced in the Amendment. The Committee also called upon Australia to address the concerns as a matter of the utmost urgency and to suspend implementation of the 1998 amendment. The Government of Australia in the later sessions defended the amendment thereby disagreeing with the Committee that the amendment was a digression from the actual Act. The Committee continued to issue critical General Recommendations urging the Government of Australia to include indigenous peoples as stakeholders in the process and to take their informed consent (Thornberry 2002: 220-222). Similarly, the early-warning procedure of CERD was used by indigenous peoples of New Zealand, the Maori who petitioned the procedure against their state criticizing New Zealand's Foreshore and Seabed Act of

2004 which vested ‘full legal and beneficial ownership of New Zealand’s public foreshore and seabed in the Crown’ (IITC 2013: 17).

The struggle of indigenous peoples of Western Shoshone in the United States from the early 1990s till 2006 is another clear example of successful use of the early-warning procedure of CERD. In this case, the credit goes to the repeated attempts made by indigenous communities, their representatives, and supportive organisations such as Western Shoshone Defense Fund and epistemic communities such as the University of Arizona Indigenous Peoples Law and Policy Program. These actors made continuous appearances in front of the Committee members and lobbied the international procedure to take some action against the United States which was in violation of rights to property of indigenous peoples. The indigenous petitioners who defended the Western Shoshone case were physically present in the Committee proceedings in the years 2000, 2001, 2005 and 2006. This in-person delegation was the key to getting the attention of the Committee members. In addition they also made use of briefs, public film events and panel discussions in order to highlight the problems faced by the indigenous communities in preservation of their ancestral lands in Western Shoshone and also highlighted the negative role of United States in trying to commercialize the ancestral lands of these indigenous communities by way of starting mining activities and so on (Gruenstein 2008: 475). In 2006, all this effort bore fruit when for the first time, CERD issued a full decision against the United States urging the state to ‘freeze, desist and stop current or threatened actions against the Western Shoshone Peoples of the Western Shoshone Nation’ (CERD 2006: 4). This was the first time when any United Nations Committee issued a decision against any state. United States’ response has been weak in that it continues to deny its role in the case. However, for indigenous peoples in the United States and around the world, the CERD decision is monumental in terms of ‘a new opening to more effectively deal with indigenous human rights violations that have been covered up by the guise of economic development’ (Fishel 2006/2007: 621).

Thus by way of adopting early-warning procedures, the Committee made up for its initial neglect of indigenous peoples’ concerns which were neither addressed through the reporting procedure nor taken up by individual communications procedure. The main reason for the success of early warning procedure for addressing

indigenous peoples' concerns is the fact that this system is openly accessible by non-state actors such as NGOs and groups of epistemic communities.

Human Rights Committee

The Human Rights Committee (HRC) was established in 1976 entrusted with the implementation of International Convention on Civil and Political Rights (ICCPR) which came into effect on 23 March 1976. The Covenant binds its State parties to respect civil and political rights of the individual including the right to life, right to a fair trial, right to freedom from torture and arbitrary detention among other rights.

Even though ICCPR does not have specific provision for indigenous peoples, it is considered very important for indigenous peoples' rights as Article 1 (right to self-determination) and Article 27 (right to culture of minorities) are relevant to indigenous peoples. It is with this connection that HRC is viewed as a very significant international site for indigenous peoples to highlight their issues and concerns.

The HRC is composed of 18 independent experts of 'high moral character and recognised competence in the field of human rights' who are elected by State parties and meet three times a year for three-week sessions. The election process of the Committee members reflects the principle of equitable geographical representation as required under Article 31 of the Covenant. Since its formation, the Committee attracted a distinguished group of international lawyers, human rights lawyers and national judges as members. This composition of the Committee is attributed as a reason for the Committee to not getting involved in the Cold War politics and also to not get subjected to state dominance (Buergenthal 2001: 343).

Like CERD, the mandate of HRC comprises three functions: an examination of state reports, inter-state communication procedure and individual communication procedure (established after adoption of the First Optional Protocol). Other than carrying out these three functions, the Committee has also concerned itself with the adoption of General Comments concerning the implementation of the Covenant. A detailed examination of these procedures is pertinent in order to understand the significance of HRC as a site for indigenous peoples' concerns.

Examination of State Reports- According to Article 40 of the ICCPR, state parties are required to submit reports to the Committee within one year of the entry into force of

the Covenant and thereafter whenever the Committee so requests. However, in 1982 it was decided that all state parties are required to submit reports every five years. This was done in order to curb the growing problem of overdue reports which the states were unable to submit on time.

Through the system of periodic reports, the Committee aims to maintain a constructive dialogue between the Committee and the reporting States. These reports provide a basis for an active examination of the situation by the Committee through a process of direct cooperation with the representatives of the reporting States. Often, NGOs and other UN specialised agencies play an important behind-the-scenes role in the Committee's proceedings, thus providing an alternative source of information in the form of parallel or shadow reports. Over the years NGOs have also submitted 'alternate reports' which sometimes contradict the information in the state reports. The Committee also has started to rely heavily on the expertise of NGOs in carrying out its functions (Buergenthal 2001: 353). After much debate and deliberation, it was decided that the information provided in the NGO reports would be used to formulate a list of human rights issues. Based on this list, the Committee would ask state representatives about the reality of human rights situation. (Pocar 1991: 57-58).

Like CERD, the HRC also makes use of 'Concluding Observations' at the end of every state report duly studied by the Committee. This practice was developed in 1992 when it was decided that 'observations or comments reflecting the views of the Committee should be embodied in a written text, which would be dispatched to the state party concerned as soon as practicable' (HRC 1991-1992: 40).

Other than periodic reports which need to be submitted by state parties every five years, the Committee since 1991 started requesting the State parties to submit special reports on serious and urgent situations where enjoyment of human rights became a serious concern. This system of requesting for special reports is specifically suited to emergency situations. However it is not clear whether seeking special reports from states such as Rwanda, Nigeria has borne any positive consequence for their situation (Buergenthal 2001: 359).

Similar to the practice of CERD adopting general recommendations, HRC adopts 'General Comments' as part of the state reporting procedure. These general comments are not binding statements but are more of 'advisory opinions' and over the

years bears some resemblance to the advisory opinion practice of international tribunals. General Comments have acquired a separate status in the functions of the Committee and has become an important instrument in the lawmaking process, often complied to by the states as well. The early general comments which the Committee adopted since 1980 were short and quite laconic due to the prevailing situation of Cold War. It was difficult to reach a consensus on the most priority issues on which general comments were to be made. The quality of these general comments has improved after the end of the Cold War. Now, these general comments are longer, analytical and frequently address diverse issues. These Comments form an integral part of treaty body practice and a vital tool for the interpretation of treaty provisions. It entails a general assessment of how certain rights and obligations are to be implemented by state parties. In this way, these General Comments have been described as 'indispensable' sources of treaty interpretation (Keller and Grover 2012: 118).

In the case of indigenous peoples, examination of state reports has had less impact as states do not explicitly mention about the status and condition of indigenous peoples in their reports. It is the 'general comments' issued by the Committee which is more crucial to the concerns of indigenous peoples. The Committee has made a lot of General Comments which have a bearing on indigenous peoples such as General Comment 12 (21) on self-determination, 6 (16) on the right to life, 22 (48) on freedom of religion, 10 (19) on freedom of expression, 18 (37) on equality and non-discrimination, 23 (50) on Article 27 i.e. minority rights. For example, the Committee gave a recommendation to Brazil to 'guarantee' rights of persons belonging to minorities and indigenous communities. In the case of Cambodia, the Committee insisted that 'immediate measures should be taken to ensure that the rights of members of indigenous communities are respected' (Thornberry 2002: 161). In some cases, the Committee has gone as far as to actually give instructions to the states as to how and what needs to be done to ensure better implementation of rights relating to minorities and indigenous peoples. Examples- the Committee instructed Brazil that the process of demarcation of indigenous lands be speeded up, and concerns were expressed to Guatemala that a constitutionally required law on indigenous communities had not been enacted (Thornberry 2002: 120). However, there is no

official follow-up mechanism to ensure how the Comments are implemented by the states.

Individual Communication Procedure- This procedure was established under the First Optional Protocol to the ICCPR and has the potential to highlight human rights violations at the international level. The idea behind setting up an individual communication procedure was to make the individual the basis of the international system which until that time had been state-centric. Through the procedure, the individual was given a possibility of bypassing its state and reaching the highest international order in case of human rights violations (Scheinin 2005: 10). The individual communication procedure authorises the Committee to receive and consider 'communications from individuals subject to the Covenant provisions who claim to be victims of a violation' (Optional Protocol 1976). There are some criteria that need to be fulfilled before lodging complaints under this procedure: communication must be filed by an individual and not by any organisation or companies, all available domestic remedies must have been exhausted, communication must not be anonymous, and the communication must be compatible with the provisions of the Covenant. As the organisations cannot file complaints and only individuals can lodge complaints under the system, the indigenous peoples are at a disadvantage in the system. Nevertheless, indigenous peoples have used this procedure widely in order to redress and remedy their situation a bit. Some of the landmark cases involving indigenous peoples are discussed below in order to understand the significance of the Committee as a site for promotion and protection of rights of indigenous peoples.

For instance, in the *Lubicon Lake Band vs. Canada,* the communication by Chief Ominayak claimed a violation by Canada of the Lubicon Lake Band's right to self-determination under Article 1 of the Covenant. The communication accused that Canada had violated the rights of the indigenous peoples by allowing the Provincial Government of Alberta to expropriate the band territory for the benefit of private corporate interests through leases for oil and gas exploration. The complaint alleged that the energy exploration violated their right to dispose of their natural wealth and resources and deprived the people of their basic means of sustenance. The Committee did not admit this case as a violation of Article 1 because it could not be established whether the Lubicon Lake Band could be characterised as peoples or not. However,

the Committee did make the case admissible as a violation of Article 27 (which talks about rights of minorities) and voted in favour of indigenous peoples ruling that a violation of article 27 had in fact occurred and that the state must make amends (Quane 2005: 673). Even though Article 27 does not mention indigenous peoples, however, indigenous peoples have used the individual communication procedure to remedy the violation of their cultural rights.

In another instance, in the *Sandra Lovelace v. Canada*, Lovelace- a member of the Tobique Band had alleged that the State of Canada was guilty of violating her right to be a member of her own community. Lovelace had married a non-Indian. Hence after the dissolution of her marriage, she wanted to return to her native place which the State did not allow. The Committee admitted her petition under Article 27 and ruled in her favour, ruling that Mrs Lovelace belonged to the community and she had the right to enjoy her culture in community with other members of her group. The Indian Act of Canada was declared discriminatory in this regard (Kedzia 2005: 45).

However, the Committee did not always rule in favour of indigenous peoples. This became true, for instance, in the case of *Kitok vs. Sweden*. Ivan Kitok, the author of the communication, was a member of Saami family which had been involved in reindeer breeding for some 100 years. The complaint was that his inherited right to reindeer breeding was in contravention to the Swedish law and this was the reason that his right was being denied to him. The Committee, however, did not find any violation of Article 27 and ruled that Kitok may be permitted to graze and farm his reindeer but not as a matter of right. This ruling of the Committee was not favourable to the indigenous segments, and it showed that domestic policies of the State were given importance over the indigenous peoples (Washington undated: 12). Similarly, in the case of *Mikmaq Tribal Society vs. Canada,* the violation of the right to public participation of indigenous communities came to the attention of the Committee when the tribal people alleged that their democratic right to participate under Article 25 was violated because they were not invited to attend a constitutional conference on the rights of Indians in Canada. Leaders of other aboriginal groups were invited to attend but not the representatives of Mikmaq who had also applied to attend. The Committee, however, found that Article 25 had not been violated (HRC 1992: 43).

Even though the Human Rights Committee has attempted to be concerned with the protection of indigenous peoples' rights through the working of its individual communication procedure, there are certain inherent limitations. These limitations need to be overcome to make it in friendlier light to the concerns of indigenous peoples. One of the major limitations is -the problem of overdue of reports which hinder the efficient functioning of the Committee. Despite the fact that the Committee has come out with flexible rules of procedure concerning the submission of reports (wherein two overdue reports could be submitted as a combined report), the problem of reporting remains. Often states which violate the rights of vulnerable communities such as indigenous peoples are the ones that do not submit reports on time. With the backlog of many reports, this poses a serious challenge for indigenous peoples especially. Hence the reporting procedure is not beneficial for indigenous peoples as states seldom report on human rights violations of indigenous peoples (Scheinin 2005: 20).

One major lacuna of the Human Rights Committee of the ICCPR is the provision that only individuals are eligible to apply for the individual communications procedure. No organisation or group of persons can make use of this procedure. This has been to the disadvantage of indigenous peoples who do not see themselves as mere individuals but a group. Also, indigenous peoples are so distant from these technicalities because of poor literacy and no know-how that even when they are the victims, they cannot use the individual communications procedure. This is the reason that most of the communications that the Committee receives are from the indigenous peoples from Northern countries who are better mobilised than their Southern counterparts. Many cases of violation thus go unnoticed and unreported (Thornberry 2002: 154). Though NGOs are now allowed to assist in the filing of communications in the post-Cold War era, there should be full-scale involvement of NGOs in the process. Even when NGOs can assist those filing communications, there is no provision for NGOs to defend a case orally before the Committee.

Another challenge is a lack of implementation of the General Comments adopted by the Committee. The General Comments are very important for the indigenous peoples as it is in these Comments that most of the human rights jurisprudence related to rights of indigenous peoples is found. However, less available

information and evidence on the newly instituted follow-up procedure of 2002 on the implementation of these Comments is a major hindrance for the indigenous peoples.

Committee on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights (ICESCR) deals with such rights as the right to work, the right to compensation, right to form trade unions, the right to equal pay for equal work and so on. The Covenant calls upon State Parties to actively take up steps and measures in order to implement these rights progressively and gradually over a period of time. Because the nature of these rights is such that these can be gradually and progressively implemented unlike civil and political rights, these rights could not be guaranteed immediately, and therefore the Covenant did not provide a monitoring body.

Later, a need was felt to have a Committee to monitor the implementation of the Covenant and therefore established one in 1985. It consists of 18 independent experts who are elected for a term of four years directly by ECOSOC. These experts are persons of high moral character and recognised competence in the field of human rights. Members are asked to serve in their personal capacity and may also be re-elected.

Like other international human rights treaties, there is no specific provision in the ICESCR devoted for indigenous peoples per se. However, some of the articles of the Covenant are relevant to indigenous peoples such as- self-determination (Article 1) non-discrimination (Article 2), housing (Article 11), health (Article 12), education (Article 13), and culture (Article 15).

The CESCR carries out its monitoring functions through two basic procedures- examination of state's reports and issuing General Comments to elaborate the various provisions of the Covenant for the benefit of the state parties. The Committee also has a follow-up procedure in place to oversee the implementation of the general comments and recommendations given by the Committee from time to time. The individual communication procedure, enabling the Committee to receive complaints from an aggrieved individual, has been entered into force on 5th May 2013 through the ratification of the Optional Protocol (CESCR 2013: 2). Hence there is not much information on the use of this working method. A detailed examination of

other working methods is essential to understand how these procedures have been useful to indigenous peoples.

Examination of State Reports- The State Parties are required to report on the measures they have adopted and the progress they have made in implementing the provisions mentioned in the Covenant. The reports need to be submitted initially after two years from the entry into force of the Covenant and after that every five years. The reports should have a section titled 'factors and difficulties' encountered in implementing the provisions of the Covenant. The reports should have an overview of national legislation, administrative rules and procedures, and practices undertaken in order to implement the Covenant. The Committee has given unequivocal support to many non-governmental organisations working in the economic, social and cultural field (Alston 1992: 491). The state reports are to be designed in consultation with these NGOs.

The CESCR since the beginning took notice of the fact that state reporting on indigenous peoples was entirely missing in the early reports. For example, in the reports submitted by Argentina and Paraguay, the Committee took notice of the failure on the part of the state to incorporate indigenous peoples in the section on Demography figures and in case of Paraguay the Committee informed the state of its failure to inform the indigenous peoples of their rights mentioned in the Covenant (Thornberry 2002: 185).

During the examination of States' reports, the Committee often resorts to putting up questions and seeking clarifications on the relevance of domestic legislations for indigenous peoples. For example, the Committee has often asked Australia about information relating to the rights of indigenous Australians to self-determination. Also, in the case of Guatemala, the Committee pointed to the need for affirmative action for indigenous groups. In the case of Peru, the Committee enquired about the existence of acute forms of discrimination against indigenous peoples. The Committee was equally concerned about the budgetary resources for indigenous culture during the examination of Columbia's report (Thornberry 2002: 186). These examples highlight the point that the Committee has started taking an active interest in indigenous peoples' issues.

The interaction of state and non-state actors with that of the UN staff in the Committee led to the taking up the issues of indigenous peoples. This was the case

with many indigenous peoples of Peru and Colombia, whose right to health and housing were taken up by the Committee only after NGOs lobbied the Committee members and the UN Secretariat. Only when the seriousness of the violation of these rights was brought before the Committee members in 2004 by the NGOs, the Committee gave stern instructions to the states to take urgent action (Scheinin 2005: 56).

General Comments- The CESCR Committee often issues General Comments not only to articulate its opinion on various aspects of the implementation of the Covenant but also to explore the content of the standards laid down therein. Many of the General Comments that the Committee has issued over the years have a direct relevance for indigenous peoples. This is because most of the rights mentioned as provisions in the Covenant are directly or indirectly related to the needs and interests of indigenous peoples. For example, in 1991 the CESCR produced an extensive General Comment on the right to adequate housing which deals with issues such as security of tenure, availability of services, hospitality, cultural adequacy and forced eviction. These aspects have a lot in common with the issues of indigenous peoples and therefore have direct relevance for them (Schutter 2010: 808). Similarly, CESCR's General Comment on health elucidates about the right to the highest attainable standard of health. This Comment on health has a relation with health rights and environment, importance of popular participation in decision-making, and the need for all health facilities to be culturally appropriate. A specific section of this General Comment is devoted to indigenous peoples and the actions taken by States in making the right to health an attainable standard (Thornberry 2002: 188).

The CESCR is quite active in implementing Article 13 on the right to education. Special consideration is taken by the Committee to see whether children belonging to indigenous and minority and other groups face any discrimination in accessing education (Thornberry 2002: 190-193). Through these General Comments, the Committee brings to the attention of the states the problems faced by indigenous peoples. As mentioned previously under other treaty-bodies, these general comments are not binding on states but are required to be implemented by the states. NGOs do not play a role in the formulation of these General Comments by the CESCR.

Follow-up Procedure of CESCR- The current follow-up procedure of the CESCR was established in the year 2000 as an attempt to strengthen the compliance of the Committee's General Comments. Under the system, the Committee may request a State Party to provide information in its next periodic report about steps taken to implement the General Comments and Concluding Observations given by the Committee at the end of the previous state report. In case the State does not comply with this newly created follow-up procedure, the Committee may request the State Party concerned to accept a mission consisting of one or two members of the Committee. The purpose of this on-site visit is to a) gather first-hand information which the state is unable to share in its report, and b) to provide a more comprehensive basis upon which the Committee might exercise its functions in the future (Kedzia 2005: 40).

One of the most striking features of the Committee's work is the way it works in coordination with NGOs as well as UN specialised agencies. In fact, CESCR is the first of its kind to have active engagement with the NGOs since the beginning. NGOs provide the Committee with valuable information. However from indigenous peoples' perspective, one cannot be sure as to the involvement and participation of NGOs representing indigenous interests (Kedzia 2005: 40). This is because the local NGOs working on social and economic issues of indigenous peoples are too localised and hence do not participate in high-level sessions of the Committee. They often face language barriers in working with other UN officials in Geneva. Therefore indigenous interests often go unnoticed in the work of the Committee.

Committee on Rights of Child

The Committee on the Rights of Child (CRC) was established in the year 1991 as the mechanism to monitor the implementation of the International Convention on the Rights of the Child which came into effect in 1990. The creation of this monitoring mechanism was provided for in the text of the Convention itself.

Unlike other general human rights treaties (like ICERD, ICCPR, and ICESCR) the Convention on Rights of the Child is the only general treaty that devoted specific provisions for the indigenous peoples. It makes explicit reference to indigenous peoples in Articles 17, 29 and 30. While Articles 17 and 29 have mere references to indigenous peoples, Article 30 is completely devoted to the cause of indigenous

children. Article 17 provides that States shall encourage the mass media 'to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous.' Similarly, Article 29 talks about the purpose of education and is replete with phrases 'identity' and 'ethnicity.' Article 30 states:

> "In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with the other members of his or her group, to enjoy his or her own culture, to profess and practice his or her own religion, or to use his or her own language" (CRC 1989: 30).

It is because of these explicit references to indigenous children and indigenous peoples that the working of the Committee becomes crucial for the interests of indigenous peoples.

Originally the CRC comprised ten independent experts as members. However, due to the increasing workload, the members were increased to 18. They are persons of high moral character and recognised competence in the field of human rights. These experts are selected by the State Parties for the duration of four years. There is only one major mechanism through which the Committee tries to monitor implementation of the Convention i.e. by periodic State reporting. Till 2011 there was no provision of receiving individual communications or inter-state complaints. However, on 19 December 2011, the United Nations General Assembly adopted an Optional Protocol to the Convention which allows for individual children to file communications about an alleged violation of rights. Thereafter the communication procedure as a mechanism came into being. Like other treaty bodies, the Committee also makes concluding observations on country reports and issues General Comments on thematic issues. CRC is the first committee which holds days of general discussion, undertakes country missions and like CERD has developed an early-warning procedure (Pais 1977: 393-504). The Committee is also the most open forum for the activities of NGOs. This comes as no surprise because the NGOs had played a major role in the shaping up of the Convention itself.

Examination of State's Report- State parties are required to submit reports to the Committee initially after two years from the entry into force of the Convention and thereafter every five years. The aim of the reporting procedure under the Committee is not merely an administrative exercise, but it is intended to give a state party an

opportunity to review the existing legislation, harmonise it with the Convention provisions, evaluate their implementation, and interacts with NGOs and to appreciate the problems. Further, the report is supposed to be widely circulated within general public of that country for debate and domestic scrutiny (Alston 1992: 345).

While scrutinising state reports, the Committee has made many observations over the years relating to indigenous peoples. The Committee has expressed concern about discrimination against indigenous or minority children (Indonesia), school absentees (Bolivia), and general lack of resources for children of minorities and other vulnerable groups (Indonesia). These observations by the Committee have helped in a deeper understanding of problems relating to indigenous children (Thornberry 2002: 232).

In the observations at the end of the examination of a state's reports, the Committee does not deal with the situation of indigenous children in particular. Even when the Committee till now has made no specific General Comment on the situation of indigenous peoples in general or on indigenous children, in particular, the Committee declared 19 September 2003 as a day of discussion on indigenous children and invited all relevant stakeholders like State parties and NGOs to discuss the issues facing indigenous children. The Committee has also given a series of recommendations to states for effective implementation of Article 30. For example, the Committee has recommended public campaigns to reduce discrimination and enforceable legislation to the same end. The Committee has been forthright on the issue of translation of the Convention in indigenous languages in order to help the indigenous children to understand the Convention (Thornberry 2002: 237-239). As the individual communication procedure came into existence in 2014, it is too early to examine the working of this procedure, and further, there is no explicit complaint lodged by indigenous children under this procedure.

There are serious problems in the working of the Committee in particular reference to indigenous peoples. There is no provision for action against erring states. In the state's report to the Committee, there is seldom any information on violation of rights of indigenous children. Secondly, the involvement of NGOs relating to indigenous peoples rights is very low in the working of the Committee. This is because NGOs working on providing better lives to indigenous children work in

remote areas and hence are not even remotely aware of the processes of international organisations such as United Nations. The international NGOs which are active in the Committee, such as Amnesty International are not always well versed with the problems that local indigenous children face in remote parts of the world. Therefore it is not always easy for NGOs to participate in the Committee as far as indigenous children are concerned (Felix 1990: 54).

Universal Periodic Review Mechanism of the Human Rights Council

Universal Periodic Review (UPR) is one of the most significant innovations of the Human Rights Council which replaced the highly politicised Commission on Human Rights (UNCHR) in 2006.

The Commission had come under severe criticism from all quarters because of its politicisation and selective targeting of countries. Human Rights Council adopted UPR to overcome these problems of the Commission (Alston 2001: 65). As the name of this institutional mechanism suggests, the purpose of the mechanism is to review the human rights situation of all countries (universal) periodically (i.e. every four years).

Under the UPR, states are reviewed every four years. There are three types of reports on the basis of which the Human Rights Council makes its assessment on the situation of human rights in a particular country. The first report is that submitted by the state. This is expected to be compiled by the state in consultation with all stakeholders and needs to be twenty pages long. The report is not supposed to be made too lengthy and should only highlight the steps taken by the state to improve the situation of human rights. The second report is that of the one compiled by the Office of the High Commissioner for Human Rights (OHCHR). This report is made by the Office by taking into account all previous reports that the State under review had submitted to other UN treaty bodies and organisations. This is also limited to twenty pages. The third report is that compiled by the OHCHR of the information prepared by NGOs. These shadow reports are used as alternative sources of information and are often considered as more reliable than the reports submitted by the states (Rathberger 2008: 54).

There have been two cycles of reviews so far wherein all states have been reviewed in order to assess their human rights situation. In these reviews, the issues that came in front of the international community were issues of women, children, disappearance, environmental degradation, and the disabled people and so on. The issues of indigenous peoples are hardly on the agenda, even though indigenous peoples faced problems in every member country. Non-Governmental Organisations are playing a pivotal role in highlighting the issues faced by indigenous peoples in the UPR process. Through the NGO reports in the UPR process, NGOs from the North have been instrumental in bringing to attention of the states the problem of development-induced-displacement faced by the indigenous communities such as Orang Asli in Philippines, the discrimination borne by the indigenous peoples of the Chittagong Hill Tracts in Bangladesh, the land alienation suffered by indigenous peoples across Asia, Africa and Latin America (Gaer 2003: 47).

However, as with other international mechanisms, UPR is ridden with faults such as the omnipresent power of the states, states refusing to accept or implement recommendations made specifically by NGOs (Khoo 2014: 34). For instance, out of 18 recommendations relating to the condition of Ainu indigenous people given to Japan in the second review cycle, only two recommendations were accepted by the state (Gaer 2003: 56). In spite of these inherent problems with UPR, it can still serve as a potent force for the disadvantaged groups such as indigenous peoples mainly with the assistance of the NGOs (Cooper 2010: 45).

From the above analysis, it is clear that till 1980s indigenous peoples' issues and problems were addressed by some of the general human rights treaties and their monitoring mechanisms. For indigenous peoples, the human rights instruments also fall short of expectations. This is because the concerns of these indigenous peoples did not find a clear reference in these human rights treaties. In cases where their rights are protected by means of insertion of articles as in the case of Convention on Rights of Child, there is no actual serious implementation. The reporting procedure of these Committees, in general, is not up to the mark because of unwillingness and uncooperative nature of the State parties. States often do not comply with the recommendations of the Committees (Smith 2010: 223).

In spite of these shortcomings found in the working of the human rights treaty bodies, the importance of these treaty bodies cannot be underestimated. There are problems of lack of implementation and specific references to indigenous peoples, but the widening powers of these Committees have had an unprecedented effect on the development of the indigenous peoples' movement and development of general awareness of their problems. The presence of these procedures facilitated the indigenous peoples' movement and paved the way for internationalising their issues (Peterson 2010: 228). In contemporary times despite various specific mechanisms created for the indigenous peoples, such as Special Rapporteur and Permanent Forum, these treaty-bodies do not go into oblivion. They are still relevant for indigenous peoples in contemporary times as well.

Mechanisms Specifically Created for Indigenous Peoples

Apart from these treaty bodies, the United Nations had established specific mechanisms for indigenous peoples over the course of the period when the indigenous peoples became an international issue. They are Working Group on Indigenous Populations (WGIP), Voluntary Fund for Indigenous Populations, Permanent Forum on Indigenous Issues (PFII), Special Rapporteur on the Rights of Indigenous Peoples (SRIP), and Expert Mechanism on the Rights of Indigenous Peoples. Among them, Working Group on Indigenous Populations, Permanent Forum on Indigenous Issues, and Special Rapporteur on the Rights of Indigenous Peoples are briefly discussed here as more details on them have been discussed in the subsequent chapters.

Working Group on Indigenous Populations (1982-2006)

The Working Group on Indigenous Populations (WGIP) was the first ever international mechanism created in 1982 to address the concerns of the indigenous peoples. The Working Group had a two-fold mandate: a) to review developments concerning the indigenous peoples all over the world, and b) to generate standards relevant for indigenous peoples.

The Working Group was an extremely significant site for the international indigenous peoples' movement. This was because it was this Working Group which had given a kind of physical space for the indigenous peoples to unite themselves, to increase their networking and forge a common identity. A number of actors played an

important role in making the Working Group a significant mechanism. First and foremost, the sympathetic bureaucracy of United Nations is the one who advanced the idea of establishing such a Working Group. Even after the Working Group was established this bureaucracy was extremely helpful to the cause of indigenous peoples by devising various methods to ensure the participation of indigenous peoples in this space. One such method was the open door policy which enabled even those NGOs, which did not have accredited status with ECOSOC, to participate in the Working Group (Morgan 2011: 45).

The second set of actors which were extremely useful in making the Working Group a success were the scores of indigenous as well as international NGOs representing the interests of indigenous peoples. The Working Group witnessed participation of these indigenous peoples' NGOs from the Northern countries as well as Countries from Africa, Asia, and Latin America. However, NGOs from Global South were quite marginalised as compared to their northern counterparts. The Working Group was a site of contestations and hot debates between these indigenous NGOs and states (Morgan 2007: 141). These debates paved the way in the evolution of further norms and standards relevant for indigenous peoples.

States also played a catalytic role in making the Working Group significant. Initially, states were reluctant to be a part of a forum dominated by indigenous interests. However, a group of friendly states from the Scandinavian region participated in the sessions of the Group and took part in the debates. These debates and discussions were a key factor that pushed forward the draft declaration on indigenous peoples. The United Nations Declaration on the Rights of Indigenous Peoples was initiated at the Working Group with the active participation of scores of NGOs, representatives of indigenous peoples, and state delegations and eventually it was adopted in 2007. Epistemic communities also played a major role in the adoption of the Declaration.

The significance of the Working Group as a mechanism for indigenous peoples also stands out because it was located at the bottom of the UN hierarchy. Owing to its low location, its members were relatively invulnerable to political pressure and were able to go ahead with their work without the restrictions of close

state supervision. So the low position in the hierarchical structure facilitated the efficient working of the WGIP.

States wanted the Working Group to be disbanded after the Permanent Forum was created in 2002. However such was the popularity enjoyed by the Working Group among millions of indigenous peoples that it continued its work till 2006. Due to the financial crisis of the United Nations, the Working Group was finally disbanded in 2006.

Voluntary Fund for Indigenous Populations

The idea of a Voluntary Fund for Indigenous Populations took birth after the creation of the Working Group on Indigenous Populations in 1982. An important question was how would indigenous peoples, particularly from least developed countries be able to participate considering the high cost of travelling and lodging in Geneva. To facilitate the participation of remotely located indigenous peoples, the Voluntary Fund has been created in 1985 to fund their travel and living expenses in Geneva (Morgan 2011: 76).

The creation of the Voluntary Fund sparked controversies as the states who were going to be the sponsors of this Voluntary Fund wanted the term 'indigenous' to be defined so that there would be no chance of the Fund being misused. However, there emerged no consensus on this as the indigenous peoples continued to be vehemently opposed to the idea of defining indigenous peoples (Anaya 1994: 56). To the indigenous peoples, the idea of a single definition was appalling because they felt a single definition with certain defined criteria would not do justice to the multitude diversity found among so many indigenous communities all over the world. This was the reason that indigenous peoples did not want a set definition to be ascribed to them at the international level.

The Voluntary Fund mechanism proved to be useful when the open-door policy of WGIP was established which ensured the participation by scores of indigenous peoples from all over the globe. Today, the title of the mechanism has been changed to make it in tune with the post-Declaration era. It is now called as the 'United Nations Voluntary Fund for Indigenous Peoples' (United Nations, 2013).

There are a lot of administrative problems attached to the Voluntary Fund, and mostly these relate to the politics among states. When the idea of a Fund was

discussed, the only supporters of this Fund had been Norway and Denmark, and these states are the ones that have been continuously contributing to the Fund. The United States has never contributed to this Fund. Canada is also seen to reduce its share of funding. Most of the states wanted the Fund to get its resources from UN's annual budget. However, with increasing financial constraints of the United Nations, this is not possible (Morgan 2011: 45). In recent times, the management of the Fund is with a Board of Trustees consisted of people of indigenous origin.

Permanent Forum on Indigenous Issues

The most celebrated victory of the international indigenous peoples' movement was the establishment of the Permanent Forum on Indigenous Issues (PFII) in 2000. The significance of the Forum lies in its composition- it is comprised of sixteen expert members, eight appointed by governments and eight appointed in consultations with indigenous organisations. This equal representation between the state representatives and indigenous peoples is the most positive feature of the Forum from the perspective of indigenous peoples.

As compared to the WGIP, the Forum is located at a much higher location. This is also reflected by the broad mandate that the Forum has. Its mandate is threefold: providing advice and making recommendations on indigenous issues to ECOSOC, raising awareness and promoting coordination of activities on indigenous issues within the UN, and preparing and disseminating information on indigenous issues (ECOSOC, 2000). The Forum deals broadly with issues of environment, health, economic development, and poverty related aspects of indigenous peoples. The decisions in the Forum are made through consensus.

Over the years, the annual reports released by the Forum contain important critiques of the activities of UN specialised agencies as well as states. The annual reports also contain recommendations about the activities to be undertaken by the states as well as other intergovernmental and non-governmental organisations on issues of concern to indigenous peoples. The forum also produces a number of publications, reports and desk reviews concerning indigenous peoples. The creation of Inter-Agency Support Group on Indigenous Issues (IASG) in 2002 to promote and support the mandate of the Forum has opened up an important international space for

dialogue and coordination among UN agencies on matters relating to indigenous peoples (Morgan 2011: 31).

The creation of the Permanent Forum was not without politics among states and the bureaucracy of United Nations. The establishment of the Forum comprised a tale of bitter failures and little successes for the indigenous peoples- failure because indigenous peoples could not keep the phrase 'peoples' in the title, and success because the creation of the Forum was nevertheless regarded as an achievement for the hundreds of years of struggles of multitudes of indigenous peoples worldwide. Suffice it is to say here that the Permanent Forum represents a significant achievement for the indigenous peoples because they lobbied hard for the Forum to become a reality. It was due to their hard work and lobbying that the Forum was finally formed in 2000, although they have been demanding for it since the 1993 Human Rights Conference in Vienna.

The Forum is obviously not without ruptures. The equal representation of states and indigenous representatives in the Forum is a matter of pride but also a serious cause of conflict and delays in the decision-making authority of the Forum. The deadlock that sometimes emerges between both parties hampers the effective functioning of the Forum. The decision-making authority rests on consensus, and this is a problem in itself as has been witnessed on so many occasions during so many sessions of the Forum. States do not agree on hard issues such as land, self-determination, and natural resources. It is during these sessions when the Forum often gets trapped in a deadlock. In spite of these setbacks, the Forum is considered and is indeed an unprecedented victory for the indigenous peoples (Stamatopoulou 2009: 45, Morgan 2007: 34).

Special Rapporteur on the Rights of Indigenous Peoples

The post of Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples was created in the year 2001 with the twin mandate of gathering information from governments and other stakeholders on the occurrence of violation of human rights of indigenous people and to formulate recommendations and proposals on measures to be adopted to remedy the situation (CHR, 2001).

The Special Rapporteur is different from the WGIP in the sense that while the WGIP was outside the purview of receiving complaints from indigenous peoples in violation of their rights, the Special Rapporteur has the authority to investigate the violations of rights of indigenous peoples. The Special Rapporteur fulfils his/her task by employing some work methods such as- receiving and responding to communications from indigenous peoples and communities, undertaking country visits and compiling country reports and carrying out thematic studies on issues of particular relevance for indigenous peoples (Preston 2007: 4). Initially, the mandate of the Special Rapporteur was only for three years, and since 2007, the mandate has been extended for three more years repeatedly. The fact that the mandate of the Special Rapporteur has not elapsed into obscurity shows the importance of the post.

The Special Rapporteur is an independent expert working on the issues and problems faced by indigenous peoples. The Rapporteur has to constantly depend on state and non-state actors for its efficient functioning. In order to fulfil most of his/her tasks such as making country visits, receiving communications and compiling reports, the Rapporteur needs the constant support of states and non-state actors such as NGOs and epistemic communities. In recent times the Special Rapporteur has seen to be working in close coordination with UN agencies and treaty bodies. Working in close cooperation with other UN bodies not only addresses the problem of the duplicity of work but also saves time and energy (Morgan 2007: 56).

As the Special Rapporteur for indigenous peoples was demanded by the indigenous peoples themselves, it reflects the importance of the post in the eyes of the indigenous peoples. The investigative role of the Special Rapporteur makes it a popular mechanism for indigenous peoples.

As with other special procedures of the Human Rights Council, the Special Rapporteur also faces limitations of underpaid staff and limited budget of the United Nations. The fact that state consent is necessary for the Rapporteur to undertake country visits is a major shortcoming for the rapporteur to fulfil his/her mandate. The rapporteur interacts with a number of actors while carrying out his/her activities. This interaction with so many actors has also presented a number of challenges. Even with these limitations the Special Rapporteur is an important mechanism for indigenous peoples and carries out important roles and responsibilities for the promotion and

protection of indigenous peoples' rights. The current Special Rapporteur is Victoria Tauli-Corpuz, an indigenous lobbyist from the Philippines.

Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) is an initiative of the United Nations which was created in 2007. The EMRIP is a subsidiary expert mechanism of the Human Rights Council. Its mandate assumes the aims of the previous WGIP and also aims to provide thematic expertise on the rights of indigenous peoples to the Human Rights Council and also to give advice and recommendations to the Council for its consideration and approval. The EMRIP does not only have a similar mandate as the WGIP but also its composition is similar to that of the WGIP. The EMRIP is composed of five independent experts. The difference being that in the appointment of experts of EMRIP, due consideration is given to experts of indigenous origin (Morgan 2011: 32).

The EMRIP has had two sessions till date. The first session in 2008 made explicit proposals to the Human Rights Council about the organisation of work and participation of indigenous peoples. EMRIP has undertaken two thematic studies to date as part of its mandate- *'Study on Lessons Learned and Challenges to Achieve the Implementation of the Right of Indigenous Peoples to Education'* in 2009 and *'Study on Indigenous Peoples and the Right to Participate in Decision-Making'* in 2011. The creation of the EMRIP has jeopardised one of the functions of the Special Rapporteur to a certain extent and this is the main point of criticism levelled against this mechanism. A lot depends on how the content of the studies is materialised in practical life and how far the impact will be felt by indigenous peoples.

Conclusion

The codification of human rights into relevant treaties began to take place from the 1960s onwards at the international level. The indigenous peoples' movement which had also begun to emerge at the international level by this time helped to sensitise the international community about the situation and plight of indigenous peoples. The decade of the 1960s also witnessed the early emergence of indigenous peoples within the United Nations by way of human rights instruments such as ICERD, ICCPR, ICESCR and CRC. Even though these treaties did not have specific provisions on

indigenous peoples, at that time these instruments were pivotal in sensitising the international community about the problems faced by indigenous peoples.

The concerns related to violation of indigenous peoples' rights was brought to the notice of the monitoring mechanisms of these international treaties by way of reporting procedure, and individual communication procedure (in the case of HRC). Other than these, indigenous peoples also found mention in the general comments and general recommendations of these Committees (CERD, HRC and CRC). The formulation of other methods such as early-warning procedures (under CERD) was quite useful for indigenous peoples as these procedures were immensely used by indigenous peoples' organisations in filing complaints. The opening up of spaces in these treaty bodies to many NGOs (by way of submitting alternate reports, filing complaints under individual communication procedures, in formulating general comments) has facilitated the advancement of indigenous concerns. However, there are a number of general problems too that pervade the functioning of these treaty bodies such as lack of funds for the expansion of their functions and the unremunerated Committee members. The main working method of these treaty bodies is the reporting procedure i.e. the periodic reporting by States. Monitoring of state compliance through reporting procedure is a tricky affair, as discussed above because it is entirely on the will of the state as to submit a report or not. And even when the States submit their reports, the content of the reports may not be of high factual value, and they may not have reference to indigenous peoples. For example, states seldom report on the presence of indigenous peoples in their territories and in cases where states do mention them, these are often labelled as ethnic minorities and not indigenous peoples. The discrimination faced by these indigenous peoples also goes under-reported in many state reports. Argentina, Guatemala, Paraguay being the prime examples. The State may also bypass the recommendations of the Committees, and the Committee can do nothing about it. This is the reason that these kinds of monitoring bodies prove to be 'toothless'.

In recent years the Universal Periodic Review of the Human Rights Council is becoming an important mechanism. The UPR comprises the latest international mechanism to be working, though not specifically in the field of indigenous peoples' rights, still having a lot of potential for protection of indigenous peoples' rights.

The decade of the 1970s witnessed the emergence of indigenous rights questions formally in the United Nations. Owing to developments such as organising of international conferences by NGOs on issues faced by indigenous peoples wherein these indigenous peoples discussed the problems faced by them, passed declarations and norms and in the process emerged as an important force; the United Nations had become familiar with the problems of indigenous peoples. A certain positive role was also played by friendly states like Norway and Sweden who pushed the United Nations to create specific international mechanisms specifically suited to the interests of indigenous peoples. The Working Group on Indigenous Populations was the first such mechanism created for indigenous peoples which turned out to be quite significant for the cause of indigenous peoples. By developing standards such as the draft declaration and letting indigenous peoples become primary stakeholders in the process (open-door policy), the Working Group played a very important role. To assist the participation of indigenous peoples in this WGIP, a Voluntary Fund was created which exists till today.

The establishment of the Permanent Forum was a high point and a victory for indigenous peoples worldwide because for the first time a forum was created which was devoted to the cause of indigenous peoples. The interface among states and NGOs on issues of participation, mandate, and composition made the Forum quite significant. The Forum continues to be significant because till now it is the only source of participation for indigenous peoples in the UN system. Due to the equal representation of indigenous peoples and states within the Forum, it adds legitimacy to the aspirations voiced by indigenous peoples. The Forum is tasked with an advisory role with no mandate of handling complaints.

With the creation and establishment of the post of Special Rapporteur on demands of indigenous peoples, the handling of complaints is also taken care of. This is because it is one of the primary tasks of the Rapporteur to take into account complaints voiced by indigenous peoples. In fulfilling this task the Rapporteur takes into account the role of NGOs because most often these complaints are filed by indigenous peoples' organisations. In handling its other tasks like country visits and preparing country reports, the Rapporteur works in tandem with states also. Expert Mechanism was created in 2007 as a thematic research body tasked with the mandate

of giving advice and recommendation to the Human Rights Council on the issues of indigenous peoples.

International mechanisms created specifically for indigenous peoples is a good precedent set by United Nations after deliberate interactions with state and many non-state actors such as NGOs. These mechanisms do not hold the actual implementation power which continues to stay in the hands of the states. However, these mechanisms have come a long way and address indigenous peoples' human rights violations. In the light of the lack of implementation power of these mechanisms, it would be interesting to see how these function in a way so as to benefit indigenous peoples.

Chapter IV

Working Group on Indigenous Populations and Permanent Forum on Indigenous Issues

It is obvious from the above chapters that a number of actors aided the internationalisation of indigenous peoples' movement in the decade of 1970s, pivotal among these being non-state actors such as indigenous peoples' national liberation movements, non-governmental organisations such as International Indian Treaty Council, epistemic communities and research-based think tanks such as International Work Group for Indigenous Affairs, and international NGOs such as Survival International. Other than these non-state actors, the preceding chapters show that friendly states such as Norway and Denmark also played a major role in highlighting the indigenous cause at the international level by encouraging international discussions on the issue at major international forums. The UN bureaucracy was also an important actor and played a significant role in the movement by means of providing a physical space to the indigenous movement, thereby giving a much needed international identity to the movement. These three sets of actors worked to achieve a heightened level of awareness about the problems faced by indigenous peoples through organising international conferences, publications, organising studies on indigenous peoples, and by the creation of international mechanisms to address their problems.

One of the earliest mechanisms specifically created for the indigenous peoples by the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities was the Working Group on Indigenous Populations (WGIP). The creation of the mechanism in 1982 was in cognizance to repeated demands made by scores of indigenous peoples who attended the 1977 and 1981 NGO Conferences. WGIP was regarded as the most 'inclusive' international institution because of the participation of indigenous peoples (Morgan 2011: 45). Armed with a twin mandate of reviewing international developments relating to indigenous peoples and developing new norms and standards, the Working Group was the focal point where most interactions between indigenous peoples and states took place. The adoption of the draft declaration on indigenous peoples was the single most appreciable achievement of the Working Group which was achieved after intense battles were fought between

indigenous peoples and states. The significance of the mechanism lay in the fact that even after the creation of Permanent Forum as the officially designated space for indigenous peoples at UN, the Working Group did not fade into obscurity. It continued to exist till 2006.

The Permanent Forum on Indigenous Issues (PFII) was a milestone achievement of the three-decade long struggle of the indigenous peoples. Indigenous peoples demanded the creation of this mechanism since the early 1990s. However, the reluctance of the states in letting a permanent space be created for indigenous peoples and the fiscal challenges faced by UN resulted in long delays. After the preliminary studies by the UN to assess the need for creation of such a mechanism and a number of workshops organised at the behest of NGOs, the PFII was created in 2000 as an advisory body with the mandate to give recommendations on issues of indigenous peoples to ECOSOC. In spite of the fact that the Forum was created with no real implementation power, its creation was lauded as the single most victory for indigenous peoples because of its composition and its position in the UN, which was not at a lower hierarchy as the WGIP. With the adoption of the Declaration in 2007, the Permanent Forum attempts to expand its mandate to be a monitoring mechanism for adherence to the provisions of the Declaration.

In order to analyse the interaction of various actors in the working of these mechanisms, this chapter is divided into two main parts. The first part of the chapter highlights the intense interaction between states, United Nations and other non-state actors primarily NGOs and epistemic communities in the creation and working of the Working Group. It then examines the interaction among these three sets of actors within the WGIP in the drafting of the declaration on indigenous peoples. This part ends with a critical examination of the challenges faced in the interaction among the three actors. The second part of the chapter analyses the interface among these actors in the creation and working of the Permanent Forum. It examines the intense battles fought between indigenous peoples and states over the establishment of the Forum and how despite equal representation of indigenous peoples and states, the Forum is regarded as mainly an indigenous peoples' body. It highlights the parts played by various actors in making this mechanism function in addressing the indigenous peoples' issues. It ends with an analysis of the limitations and challenges in the working of this mechanism.

Working Group on Indigenous Populations (1982-2006)

The Working Group was established in the year 1982 as a result of consistent demands made by indigenous NGOs (mostly from Northern countries) during the international conferences on indigenous peoples held in the years 1977 and 1981. As a direct result of the intense lobbying done by these actors in these conferences, the United Nations agreed to look into the prospect of creating a working group for indigenous peoples. In 1981, the Sub-Commission on Prevention of Discrimination and Protection of Minorities recommended to the Commission on Human Rights to establish a Working Group, which would address the needs and problems faced by indigenous peoples. The ECOSOC identified three reasons for the creation of the Working Group. They were, firstly an 'urgent need' to protect and promote the rights of indigenous populations, considering the lack of institutional measures at that time, secondly, the need to give attention to various avenues at the national, regional and international level to address the issues related to indigenous peoples, lastly, the Sub-Commission had also very strongly asserted that the plight of indigenous peoples was of a serious nature and special measures were therefore needed to protect indigenous peoples' rights (ECOSOC 1982: 1).

Developments Leading to Establishment of the Working Group

The unfettered international advocacy and mobilisation from the 1970s onwards resulted in the establishment of the Working Group as the first institutional mechanism devoted to the cause of indigenous peoples. A number of actors played an important role in this international mobilisation. The first and foremost important role was played by experts working within the United Nations. The experts such as Augusto Willemsen Diaz were the key actors who initiated the process of inclusion of indigenous peoples within the framework of United Nations. During the time when the Martinez Cobo study was commissioned by ECOSOC in 1971, it was realised by the UN experts and officials that the Secretariat would have a difficult time in obtaining information about all indigenous peoples through the questionnaires that had been sent to the governments as part of this exercise. Willemsen Diaz, for the first time, in 1974 aired suggestion to establish a special working group for indigenous peoples. The purpose of this working group, according to Diaz would be "to endeavour to cover all sectors and shades of opinion and different problems involved,

as well as solutions envisaged as suitable by the indigenous populations themselves" (Minde 2007: 14-15). Demands from indigenous peoples for the creation of a working group had already begun to get surfaced, but this was the first time that such a suggestion came from people associated with the United Nations.

Although the majority of the states were not enthusiastic about the inclusion of indigenous peoples within the UN system, the Nordic countries were pivotal in demanding the creation of the working group for indigenous peoples. This encouragement from countries such as Norway was not because of any real interest in the indigenous peoples' issues. The real reason behind this push for the creation of the working group was to save face in the eyes of the international community which had vehemently criticised the brutal actions of Norwegian government against its Sami population during the land right protests from 1979-1982. Because of atrocities committed by Norway on its indigenous peoples, the government was questioned by the UN and was all set to lose its reputation. This triggered the decision of the Norwegian government to fully support the idea of the establishment of the working group for indigenous peoples (Minde 2007: 23).

The indigenous peoples, through their own organisations, was another important actor pushing for the establishment of such a body. Two notable indigenous peoples' organisations viz. World Council of Indigenous Peoples (WCIP) and International Indian Treaty Council (IITC) worked hard to keep the issues of indigenous peoples alive in the eyes of the international community. The Port Alberni conference organised in 1975 was an important activity and provided the immediate background to the creation of the working group. This conference was used by indigenous peoples' organisations as political and cultural workshops wherein around 260 indigenous peoples attended from nineteen countries (Malezer 2005: 74). A number of indigenous peoples' issues were discussed. The conference agreed on a plan of action where Willemsen Diaz' idea of a UN working group for indigenous issues was once again raised by WCIP and IITC.

The 1975 Port Alberni conference was followed by the much talked about 1977 and 1981 NGO Conferences which again gave boost and impetus to the demand for creation of the working group. The statements and action plans from these conferences made a significant impact on the activity of the UN on indigenous issues.

The demand to establish the Working Group was also repeated in the 1977 and 1981 international conferences. A number of recommendations and urgent appeals were made to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities to establish a permanent space for indigenous peoples at UN by way of creation of a Working Group (Morgan 2011: 66).

It is true that NGO activism and indigenous peoples' movement enabled to make the indigenous peoples' concern an international issue but had it not been for the 'supportive sympathizers' within the United Nations, who believed in the cause of indigenous peoples, the indigenous peoples movement may not have reached its zenith (Peterson 2010: 201). The UN staff like Augusto Willemsen-Diaz and Martinez Cobo argued within the United Nations that the problems facing indigenous peoples should be studied separately from issues of racial discrimination as well as minority rights. Due to such intervention, the United Nations identified the indigenous populations as a distinct category, separate from other categories (Sanders 1989: 406-407). Taking advantage of this international visibility and recognition as a separate category, indigenous peoples' demand for the creation of a working group was a reminder to the member states that all it was asking for was a separate space that would be solely dedicated to addressing the problems suffered by indigenous peoples (Anaya 2004: 56).

States which were antithetical to the interests and voices of indigenous peoples within their national territories, were completely taken by surprise with the emergence of indigenous peoples' movement on the international stage. Mostly states from North America, like Canada and the United States, along with some Latin American states, such as Guatemala and Argentina, did not really care about the establishment of any mechanism for indigenous peoples. The real reason for the states' approval on the creation of such a mechanism was 'to respond to the growing disenchantment among scores of indigenous peoples worldwide' (Morgan 2007: 45).

It cannot be said that all states were against any kind of international discussion on indigenous peoples. There were some friendly states, as well such as Bolivia, which were in favour of international engagement on questions of indigenous peoples. In fact, Bolivia was the first state which had requested the United Nations Sub-Commission way back in 1946 for the establishment of a working group on

indigenous peoples which would enquire into the problems faced by indigenous peoples in Americas. This proposal was shunned away because of lack of support from other states. In the 1970s, there were fierce accusations by countries of the Eastern Bloc against the countries of the Western Bloc for mistreating their indigenous populations. The countries of the Eastern Bloc urged the United Nations to set up some mechanism in order to investigate into the problem (Anaya 1996: 34). In a way, indigenous peoples became the part of Cold War politics of Eastern and Western blocs.

Thus, while indigenous peoples desperately hoped, lobbied, advocated and worked towards the creation of a Working Group, states did not really care about the creation of such a mechanism so long as it did not challenge their authority. The final onus to create a working group and work out its modalities fell on the United Nations, and this was done by the bureaucrats at the UN secretariat. Most states did not care about the establishment of the mechanism at this stage because the mechanism was at a lower hierarchical position in the United Nations and without any real power to challenge the discretion of the states. In fact, most northern states which participated in the sessions of the Working Group did so merely to know what all was being discussed within the group. There was no real intention of making some significant contributions on the part of the states for the concerns of indigenous peoples (Maiguascha 1996: 54).

The establishment of the Working Group was significant for the indigenous peoples' movement because it was the first time a kind of physical space was created at the United Nations. This physical space, even when located at a lower level in the UN hierarchy, meant that indigenous peoples from all over the world could meet, deliberate, and discuss their issues which had never been the case prior to the creation of the Working Group. Hence it was a significant achievement for indigenous peoples.

Composition of the Working Group

The Working Group on Indigenous Populations was established in 1982 as a subsidiary organ to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities under the Commission of Human Rights (ECOSOC 1982: 1). The Working Group was located at a lower hierarchical level. Its recommendations

were first to be accepted by the Sub-Commission and then reach the Commission on Human Rights and ECOSOC, before reaching the General Assembly for approval.

The Working Group was composed of five members, drawn from the ranks of the Sub-Commission. Out of the twenty-six members of the Sub-Commission, five were selected by the Chair of the Sub-Commission to sit as the Working Group on Indigenous Populations. These five members represented each of the five geographical UN regions- Africa, Asia, Eastern Europe, Latin America, and 'Western Europe and Others'. This was done to ensure the equitable geographical representation (Sanders 1989: 410). The members of the Working Group were independent experts, who even though were nominated by their governments, were still expected to serve in their individual and personal capacities. Since 1984, it was seen that the members of the Working Group served more as political representatives of their governments than as independent experts. A peculiar thing to be noted about the composition of the Working Group was that since 1984, all members came from countries which denied the existence of indigenous peoples on their territories (Sanders 1989: 412).

Asbjorn Eide was elected the first Chairperson of the Working Group. The Working Group followed open-door policy in terms of representation of indigenous peoples at the behest of the UN bureaucracy. The UN bureaucracy felt that in order to be a catalyst for indigenous peoples and in order to be fully an effective body, indigenous peoples had to be represented in the Working Group in order to present their demands and their problems. However, the problem was that indigenous peoples could only attend the sessions of the Working Group after having their organisations accredited with ECOSOC. This was a cumbersome process and could take a very long period of time. This problem of attendance of the Working Group by indigenous peoples was sorted to a great extent by the Secretariat of United Nations. This is because the United Nations moulded its own rules and procedures and for the first time allowed any participant or organisation to attend the sessions of the Working Group in Geneva without been accredited with the ECOSOC. This open-door attendance policy continued until the end of the Working Group. According to Asbjorn Eide, the open-door policy was the result of 'unsolicited support' given by the then Director of the UN Centre for Human Rights, Theo van Boven from the Netherlands. At a time when the member states were against the inclusion of

indigenous peoples into the UN system, 'the open-door policy was instituted so as to ensure the participation of millions of indigenous peoples from all over the world. It was deliberated among the members of the working group that in order to make the group a success, participation of the best experts on indigenous issues had to be ensured; and these experts were the indigenous peoples themselves' (Eide 2007: 169).

This open-door policy was welcomed by indigenous peoples. As a result of this policy, there was an immediate increase in the number of organisations and indigenous representatives attending the Working Group sessions. Fifteen indigenous representatives attended the first session of the WGIP in 1982, increasing by 1993 to over 400 indigenous delegates representing diverse constituencies of indigenous peoples (Stamatopoulou 1994: 69). Over the years, indigenous peoples' participation in the Working Group also expanded from the usual dominance of the America's inclusion of indigenous delegates from the northern regions of Europe, Australia, New Zealand, Asia and also Africa (Muehlebach 2001: 420). Through this bringing together and diversifying the character of the participating delegations in the Working Group, it also opened up a reliable and regular space for indigenous peoples to come together and assert their identity as the 'world's indigenous peoples' (Morgan 2011: 67). However, this policy of open-door was later criticised for being too flexible in its approach. In the later sessions, it was realised that this policy was misused as many non-indigenous groups were also attending the sessions of the WGIP (Daes 1995: 67).

Functions of the Working Group

The ECOSOC Resolution, which established the Working Group, elaborated a two-fold mandate: a) to review developments concerning promotion and protection of human rights and fundamental freedoms of indigenous peoples, and b) to create new standards on rights relating to indigenous peoples (ECOSOC 1982: 1). The first mandate was decided by the UN bureaucracy who, at that time, was new to the issues of indigenous peoples and therefore reviewing the developments was considered as an essential building block. The second mandate, which pertained to creation of norms and standards, was also instituted by important people like Asbjorn Aide, in order to fulfil the aspirations of indigenous peoples (Morgan 2011: 75). The Working Group was required to meet annually for up to five working days before the annual sessions

of the Sub-Commission. This was later increased to ten working days due to the ever increasing work load.

The annual meetings of the Working Group were a highly structured event, regulated mostly by the Chair of the Working Group. The Chair had the responsibility to not only regulate the session by maintaining strict law and order but also acting as the chief mediator to whom all interventions and submissions- written or oral were to be directed. The Chair was often seen reminding all indigenous delegates and state representatives to respect the time limitations (ten minutes) while presenting their interventions. The interventions presented and submitted by indigenous representatives mostly talked about the gross violations of their right to land, self-determination, lands and natural resources, assault on culture and so on. State representatives were also given a chance to respond to the claims of violations made by indigenous peoples. States were in fact encouraged to not only respond but also discuss the policy initiatives and legal developments related to indigenous peoples (Williams 1990: 677-678).

The Working Group fully devoted the first few years of its existence to the first aim i.e. reviewing developments relating to rights of indigenous peoples. As part of this mandate, a lot of interactions took place between indigenous representatives, NGOs, states and the Chair of the Working Group. Indigenous participants mostly made oral interventions about the gross violations of their basic human rights which took place at the hands of the states. For example, in the 1995 session of the Working Group, many indigenous peoples from Asia and Latin America reported about the occurrence of indiscriminate violence by military forces, the occurrence of life-threatening situations such as genocide, mass murder, and forced displacement. When an indigenous participant said that the lack of definition of the term indigenous was used as a pretext for denying political rights to indigenous peoples in many countries in Asia, the observers from India and Bangladesh replied by saying that there did not exist the concept of indigenous peoples in these countries as the entire population in these countries had been living there for generations (ECOSOC 1995: 13-16). The networking of indigenous peoples at the Working Group, testimonies in the form of interventions made by them helped them bond with each other as they realised that in spite of vast differences and diversity among them, their fate was the same everywhere. Additional activities included discussions with UN agencies, films and

special-issue presentations by various NGOs (Feldman 2002: 37). The WGIP also broadened the horizons of the indigenous peoples' movement by bringing into its fold indigenous peoples from Asia, Africa and Latin America who were for a long time absent from the international scene (Morgan 2011: 65).

Other than receiving updates from indigenous peoples and states about the situation of indigenous peoples, the Working Group also discussed the activities of the United Nations that were going on in relation to indigenous peoples. Thus, for example, the sessions of the Working Group also engaged in discussions on the activities taken up by indigenous peoples to celebrate the International Year and International Decade for Indigenous People. In these discussions, it was repeatedly emphasised that it was imperative for the states to consult indigenous peoples and that these peoples should be a part of the process (ECOSOC 1995: 25-27).

Thus, in order to fulfil its first mandate, the Working Group engaged indigenous peoples and state representatives in discussions on issues such as the definition of the term indigenous, rights such as the right to life, self-determination, freedom of religion, political rights and other cultural rights (Ortiz 2006: 70). The principal aim of this kind of interaction between indigenous peoples and states was to spread awareness about the situation of indigenous peoples and emphasise on the need to take steps to promote the rights of indigenous peoples.

From 1996 onwards, as part of its mandate to review international developments on indigenous peoples, the WGIP devoted its energies on thematic discussions among indigenous peoples, states and UN. These themes pertained to issues such as health, environment, land and sustainable development, education, language, indigenous children and youth. For example, at the 2001 session, the Working Group examined the theme 'Indigenous peoples and their right to development" (United Nations undated). These thematic discussions witness interactions between the UN experts, the secretarial staff, member states and NGOs. For example, at the 2005 session, the Working Group held a discussion on the theme 'Indigenous peoples and the international and domestic protection of traditional knowledge'. Almost 50 indigenous NGOs and government observers stated their views on the theme. Mostly indigenous representatives talked about the sacred importance of traditional knowledge and mentioned globalisation as a threat to the

preservation of this traditional knowledge. Also, the absence of a framework to secure the free, prior and informed consent of indigenous peoples in states was a factor which contributed to the erosion of traditional knowledge. To this, states such as Canada and Mexico shared the positive developments in their respective states and the steps taken by their governments in order to preserve the traditional knowledge of indigenous peoples. Many indigenous organisations also gave a call to United Nations bodies such as WIPO, UNESCO to collaborate and jointly work for the benefit of indigenous peoples (ECOSOC 2005: 8-10).

Similarly, the 2006 session of the Working Group was devoted to the theme of 'Utilisation of indigenous peoples' lands by non-indigenous authorities, groups or individuals for military purposes'. Around sixty-six indigenous participants and three state delegations made oral presentations on the topic. Indigenous peoples said that militarization of their traditional lands was a growing problem in almost all parts of the world and often involved the use of weapons and vehicles that polluted these ancestral traditional lands, forests and water and also harmed wildlife. The three state delegations of Venezuela, Canada and Bolivia cited positive steps taken by their respective governments in order to curb the growing menace of militarization of indigenous peoples' lands (ECOSOC 2006: 7-9).

The initiation of these thematic discussions by the Working Group with active inputs from states as well as indigenous groups reflected the seriousness of the WGIP to make an impact on the lives of indigenous peoples. By way of these thematic discussions on a range of issues, a space for dialogue and deliberation was opened between indigenous peoples and states which continued till the last session of the Working Group in 2006.

To fulfil the second mandate of the Working Group to promote and protect the rights of indigenous peoples, the WGIP from 1985 onwards began working on the Draft Declaration on the Rights of Indigenous Peoples. The idea of the declaration as the linchpin of the future indigenous rights regime was first mooted by the second Chairperson of the Working Group, Erica Irene-Daes. Daes gave a call to all indigenous peoples of the world to formulate points which had to be included in this draft. From 1985 till the time the declaration was drafted (in 1993), the Working Group devoted its sessions to discuss and deliberate on the provisions enlisted by

indigenous peoples. These were then discussed with state representatives who were instructed by their governments not to give assent on any provision (Morgan 2011: 67). State representatives often attended the sessions with a view to know what was happening. They did not attend as attentive participants but only as mute spectators. By the time the declaration was deliberated and adopted by the Working Group in 1993, there were 22 principles which were agreed upon by indigenous peoples from all parts of the world. These principles touched upon important aspects of indigenous lives such as the right to self-determination, the right to own lands and natural resources, the right to veto, the right to culture, the right to political autonomy and so on. The indigenous peoples were the main architects of this draft declaration with no input from states and the Secretariat of UN playing the role of mediator between scores of indigenous peoples who came and attended the sessions (Anaya 2004: 56).

The draft declaration was then submitted to the UN Sub-Commission, which then submitted it to the Commission on Human Rights for further deliberations and discussions. This was the point from where states began playing an important role in the discussions on the principles mentioned in the draft declaration. From here the draft declaration was moved to another Working Group called Working Group on Draft Declaration (WGDD) specially created to discuss the provisions of the draft declaration. This had been created by Commission on Human Rights and was composed of state representatives only. Since it was a state-led Working Group unlike the previous one, indigenous delegates and representatives were worried about the status of their declaration and feared that the provisions would be changed without the approval of the indigenous delegates. However, these fears were put to rest by the assurance given by the Chairperson of WGDD who promised them that no decision would be taken without consulting the indigenous peoples. At the behest of the Chair, the open-door policy of the WGIP was then followed by this Working Group too, which facilitated scores of indigenous NGOs and their representatives to participate in the sessions of the WGDD to debate and discuss on the provisions of the draft declaration (Malezer 2005: 78).

The Chair of the WGDD decided to proceed with the draft declaration in two stages- ‘informal meetings’ would be held where indigenous chosen representatives and government delegates would hold an equal number of votes, and then have ‘formal meetings’ in which only government appointees would vote (Peterson 2010:

204). Though clear leverage was given to states, the fact that indigenous peoples were given voting powers in the first stage meant that they could prevent the adoption of proposals not acceptable to them. This was an important precedent set by the UN bureaucracy in the field of indigenous peoples' rights.

In addition to working on the draft declaration, the Working Group also authorised studies on indigenous peoples to be taken up by the UN as a part of its mandate on developing new norms and standards. Cobo Study had already been completed by this time, and one of the crucial recommendations made in the Cobo study was to take up yet another study on the treaties, agreements and other constructive arrangements signed between indigenous peoples and states. It was this study which the Working Group authorised in 1987. Many states such as Canada and the United States were resistant to the idea of the Working Group appointing a special rapporteur from Cuba to be in-charge of this study. However, due to other states not taking any active interest in the issue, the decision was approved by other members of the Working Group (Sanders 1989: 409).

Other than this study, the members of the Working Group have also completed extensive and expert studies on topics such as the relationship between indigenous peoples and land and on the importance of heritage protection for indigenous peoples. These studies add to the knowledge base of the UN and are used as reference points (Malezer 2005: 78). Since 2004 onwards, the Working Group has initiated the practice of allowing indigenous peoples to choose topics on which they feel new studies should be conducted. Many indigenous participants proposed studies to be undertaken on a broad range of topics such as- study on the impact of landmines on indigenous peoples, on the participation of indigenous peoples in international sports and games, on constructive elements for cooperation between states and indigenous peoples and so on (ECOSOC 2006: 8).

The significance of the WGIP as an institutional mechanism lay in the fact that it was the first mechanism created by the United Nations to address the issues faced by indigenous peoples. Through the WGIP, the United Nations gave a physical space to the indigenous peoples which had not been the case before. Through the open-door policy followed by the WGIP, it attempted to fulfil its two-fold mandate of reviewing developments and creating new norms and standards. This was the reason that the

WGIP was, indeed a ‘unique exercise in international affairs’ (Burger 1994: 90) and ‘an exceptional UN forum in this regard’ (Lam 1992: 617).

Challenges

Even though the Working Group was lauded as the first site of indigenous participation in international relations, the Working Group encountered a number of challenges. One major limitation of the Working Group was its low position in the UN hierarchy. Because of this low position, it could not directly converse with such bodies as UN General Assembly or ECOSOC. This made unwarranted delays in communication and also delays in accepting the suggestions of the Working Group. A resolution of the Working Group would nearly take eighteen months to reach the General Assembly. This was ample time for any state to dampen the initiative of the Working Group by simply not taking up the resolution at the Commission on Human Rights or ECOSOC or the General Assembly (Malezer 2005: 80). Also, because of its low position in the UN hierarchy, the member states regarded it as an unimportant mechanism. Therefore they never considered the Working Group as a significant and serious mechanism (Sanders 1989: 428).

Another major challenge that the Working Group witnessed was the growing number of non-indigenous participation as a result of its open-door policy. The open door policy was instituted in order to enable indigenous peoples to participate in the functioning of the Working Group. However, when non- indigenous groups such as minorities also began to attend the sessions, it became a major problem for the Working Group to manage such big numbers. An increasing number of minorities as participants rather than indigenous peoples meant serious discussions on the problems faced by indigenous peoples often did not come to the fore (Morgan 2009: 56). Also, the sessions of the Working Group were large forums with limitations of time. The participants compete for a few minutes on the agenda to present their interventions. Mostly, interventions presented by indigenous NGOs do not get direct responses. This scuttles the process and undermines the utility of the Working Group as a body devoted to the cause of indigenous peoples (Malezer 2005: 79).

Over the years, the indigenous peoples increasingly used the Working Group to lodge complaints rather than engaging in discussions. Treating it as a forum to make demands or lodge complaints was problematic because the Working Group was

not given the mandate to receive complaints. The members of the Working Group reminded the other participants that it was not a complaints-based mechanism (Wilmer 1993: 76).

In spite of these shortcomings and limitations, the WGIP was an important mechanism as it was first of the kind created for the indigenous peoples at the international level. It could become a reality because of the enthusiasm of a number of UN bureaucrats and experts such as Asbjorn Eide, Erica-Irene Daes from Greece, Julian Burger, and Elsa Stamatopoulou. Some of the states also strongly supported the functioning of the Working Group. However, the other states sent delegations to attend the sessions of the Working Group just to keep a check on the discussions taking place. There were also states like Sri Lanka, who on the one hand supported the open-door policy of the WGIP, while on the other hand interfered with its indigenous representatives from travelling to Geneva to attend the sessions of the WGIP by denying them passports (Barsh 1986: 384).

Even though the location of WGIP was at the bottom of the UN hierarchy, this, in fact, facilitated the efficient working of the WGIP. Owing to its low location its members were relatively invulnerable to political pressure and were able to go ahead with their work without the restrictions of close state supervision (Minde 2007: 26). Thus, it was because of this low position that helped the WGIP to achieve some important milestones for indigenous peoples, such as the draft declaration, and the emergence of indigenous identity at the United Nations.

It was in 1993, that the idea to replace the Working Group with the Permanent Forum emerged. Even when the WGIP engaged indigenous peoples and states on the modalities of the Forum, it was unanimously agreed by indigenous peoples that Working Group was an irreplaceable entity. However, this view was not shared by states. And since 2006, the states no longer viewed the Working Group to be of much relevance since it had completed its task of standard-setting with the adoption of the Declaration. Hence the states urged the General Assembly to disband the Working Group. Another reason was that as the Permanent Forum was in place, the idea of abolition of WGIP gained currency to avoid duplication of work. Already the Expert Mechanism on Indigenous Peoples had also been created in 2007. Also, as the United Nations was in financial distress, the continuation of the functioning of the Working

Group was not favoured. However, the indigenous peoples were opposed to this idea of discontinuing the Working Group. Indigenous representatives were fond of this institution as this was their 'first formal arena' inside the United Nations. Hence the Working Group was of high value to these indigenous peoples, and they did not want the institution to be banished. The Working Group had been a source of strength and aspiration for these indigenous peoples, hence the states were opposed to the existence of the Working Group, and they eliminated it in 2006. The real reason behind the move was to weaken the unity and solidarity of indigenous peoples.

Permanent Forum on Indigenous Issues (PFII)

The Permanent Forum on Indigenous Issues was created in 2000 as a nodal advisory body responsible and accountable to the ECOSOC where all discussions and engagements on the issues of indigenous peoples would take place at the United Nations (ECOSOC 2000: 2). Its significance lay in the fact that it represented a permanent place at United Nations for discussion on all issues relating to indigenous peoples.

Developments Leading to the Establishment of the Forum

There is evidence to show that the idea to establish a forum dedicated to the interests and cause of indigenous peoples first emerged at the seminar on 'Experience of Countries in the Operation of Schemes of Internal Self-Government for Indigenous Peoples' held in September 1991 in Nuuk, Greenland. At the United Nations Conference on Earth and Development, held in Rio de Janeiro in 1992, indigenous participants were called upon to make presentations at the Conference. Similar invitations were given to indigenous delegates to present their grievances and address the World Conference on Human Rights in Vienna in 1993. This was the same period when indigenous activists were in constant touch with UN bureaucracy and member states about the inauguration of International Year and Decade dedicated for the indigenous peoples. However, these demands were not taken seriously by the states (Barsh 1994: 67). According to the indigenous peoples, even though the theme of the International Year had been designed as 'A New Partnership', there was actually no partnership between indigenous peoples and the states because the states were not ready to listen to any ideas of indigenous peoples. Frustrated with the obstructions by the states, indigenous peoples for the first time voiced their wish of having a forum

for themselves that would be suited to the wishes of the indigenous peoples. Thus, technically the origin of the Permanent Forum can be traced back to the decade of the 1990s when for the first time such a demand was made by indigenous peoples at the international level (Barsh 1994: 43).

The further push to create a forum was given by the Human Rights Conference in Vienna in 1993 which became the first UN body to fully appreciate the idea that a permanent space should be devoted for indigenous peoples in the United Nations. In fact, the Vienna Declaration recommended that the General Assembly proclaim an international decade of the world's indigenous people. Also, action-oriented goals were also to be decided upon by the UN in consultation with the indigenous peoples. The Declaration also stated:

> In the framework of such a decade, the establishment of a permanent forum for indigenous peoples in the United Nations system should be considered (United Nations 1993: 32).

The General Assembly took the lead in assessing possibilities of establishing such a forum for indigenous peoples. It directed the Commission on Human Rights to take account of the matter. The Commission responded by calling all governments and interested NGOs to give their comments on the need and feasibility of establishing the forum. A number of interactions ensued between states and UN, states and indigenous peoples about the creation of the forum.

Two Expert Workshops were organised by the UN Secretariat in order to finalise the finer details as to who would head the forum and for how many years, how the funding would be done, what would be the role of NGOs in the forum and what kind of relationship the forum would have with the states. The First Expert Workshop was held in June 1995, hosted by the Government of Denmark and the Home Rule Government of Greenland. The Workshop was attended by 21 governments, 21 indigenous representatives and two independent experts (Morgan 2007: 36). General questions that were discussed here were about the need for a permanent forum, structure, mandate, and representation. No consensus could be reached as some states such as Canada and France were against the creation of the forum. However, one decision reached by the Workshop was about the need to first conduct an in-depth review of the existing mechanisms for indigenous peoples in the United Nations so that there would be no duplication in the role and responsibility of

any UN agency. At the end of the Workshop, it was decided that the Secretariat of the UN would first come out with the much-needed review and only then discussions and deliberations on the forum would continue (Corntassel 1996: 53).

The General Assembly then requested the Secretary General to prepare a review of the already existing mechanisms, procedures, and programs that were in place for indigenous peoples. In 1996, the Secretary General, with full support from the Secretariat sent a questionnaire to all the stakeholders asking for information about the kind of programs that were in place for indigenous peoples. The same questionnaire was also sent to many NGOs and indigenous peoples' organisations. The questionnaire enquired about the status of indigenous peoples' participation within UN, policy planning or guidelines related to indigenous peoples that were developed and any specific programs or projects for indigenous peoples that were in place.

The Report of the Secretary General confirmed firmly that problems suffered by indigenous peoples had begun to be addressed as an important topic for a number of UN bodies and that a lot of policies and guidelines were formulated by many UN bodies on indigenous peoples. The Review thus concluded that:

> The fact that there are now a number of indigenous-related programs and projects being implemented and planned by United Nations agencies only underlines the striking absence of a mechanism to ensure regular exchange of information among the concerned and interested parties- governments, the United Nations system and indigenous people- on an ongoing basis (United Nations 1996: 166).

The review also took cognizance of the fact that other than ILO's Convention No 169 there did not exist any binding international policy on indigenous peoples. It concluded that no mechanism was in place which made effective participation of indigenous peoples possible within the framework of UN.

This review by the Secretary-General, drafted by the Secretariat of the United Nations was an important milestone for the establishment of the Permanent Forum. It was because of the review that it was finally confirmed that the forum was indeed an urgent necessity (Khosravi-Lile 2006: 20).

After the review, the Second Expert Workshop was organised in June 1997, at Santiago de, Chile. Twenty-six governments, twenty-nine indigenous organisations,

five UN bodies and three NGOs with consultative status at ECOSOC participated in the meeting. Though there was a kind of stalemate reached here because of insistence by states on the need to define the term indigenous; while NGOs believed that the definition would stall the progress achieved and, hence insisted that the definition could be worked out in the later meetings (Garcia-Alix 2003: 67). A lot of discussions took place about the name of the forum, its composition and mandate. The second workshop then primarily centred on areas such as the forum having a broad mandate and the fact that there had to be equal representation of indigenous delegates and state delegates. Many NGOs also highlighted the need for the forum to be placed on a higher status than the Working Group on Indigenous Populations had been if the forum wanted to have influence and real discretionary powers (Khosravi-Lile 2006: 56).

There was a big controversy between the indigenous peoples and the states over the label of the forum. While the actual name as it exists today represents the wishes of the states, indigenous peoples had demanded the term 'peoples' to be used rather than 'issues' as exists today. Several indigenous peoples' NGOs issued statements that indigenous peoples were not issues to be tackled by the international community and that their identity should be properly represented. However, this was not acceptable to states because according to them any use of the term peoples would regard them as peoples with the right to self-determination. In the end, when the indigenous peoples realised that the politics over the name of the forum could scuttle the whole process of establishment of the forum, the indigenous peoples decided to make a compromise and went ahead with the use of the term 'issues' rather than 'peoples' (Morgan 2004: 34).

A huge controversy erupted over the definition of the term 'indigenous' between state officials and indigenous peoples' representatives. On the one hand, state officials wanted some kind of definition of the term indigenous to be included so that the machinery created for indigenous peoples could not be misused by others. For the purpose of defining the term indigenous, the definition given in the Cobo study was referred to by the states. This was unacceptable to indigenous peoples. Many indigenous groups tried to convince the states that the situation of indigenous peoples was so diverse all over the globe that it would be difficult to define them. Also, the indigenous NGOs raised the point that the definition contained in the Cobo study was

kind of pre-historic and suited the colonial situation better than the present times. Hence the indigenous peoples asserted that self-identification was the best way to decide who was indigenous and who was not. Though this was not something that the states were happy about, they had no choice than accepting what indigenous peoples had to say. Thus the forum was designed to serve the interests of indigenous peoples who were not defined by others except indigenous peoples themselves (Lindroth 2006: 243).

One important activity taken up by the NGOs was convening of parallel seminars and conferences. This was done with the purpose of negotiating the modalities of the Permanent Forum amongst indigenous peoples themselves and then keeping demands in front of the state delegates. Six such international conferences were organised in between 1997 and 2000. These conferences were significant for two reasons. One, organising such parallel conferences gave an opportunity to indigenous NGOs to organise, network and form important strategies. And second, these meetings had a decisive impact on the official UN debates. The outcomes of these conferences were also added as official documents to the UN meetings. The obvious points raised by the NGOs in these conferences had been: equal representation between state and indigenous delegates, higher status of the forum and open participation of NGOs not accredited with ECOSOC (Khosravi-Lile 2006: 20).

In 1998, the Commission on Human Rights established an open-ended inter-sessional Ad-Hoc Working Group to elaborate and consider further proposals for the establishment of the Permanent Forum. Details of the forum regarding its mandate, composition, and work were discussed at length. Based on the meetings held by this working group on 27 April 2000, the resolution to establish the Permanent Forum was adopted by a vote of 43 in favour to none against with nine abstentions. Thus the Permanent Forum became a reality in 2000 after around a decade of consultations between states, UN staff, and the NGOs. The Permanent Forum is at a relatively higher level in the scheme of United Nations than the location of the Working Group.

Composition of the Forum

The composition of the Forum was a tough battle between the states and indigenous peoples. The Forum could not be created without state support and state representation because of the nature of the international order which is state-

dominated. However, state representatives were against sharing power with indigenous peoples and unacceptable of equal representation of states and indigenous peoples. On the other hand, indigenous representatives had no problems sharing power with states. They were opposed to the proposal that indigenous seats should be less in number than states. Indigenous peoples were vehement on this point and asserted themselves as one voice that if the forum had to be representative of them, there had to be equal representation between indigenous peoples and states. This had been the foremost demand of the indigenous peoples. Though this was not acceptable to many states, NGO activism by way of lobbying supporter states and staff of the UN resulted in equal representation (Morgan 2011: 30). Thus it was finally agreed that there would be a total number of sixteen members- with eight representing the states and another eight representing the indigenous peoples. Members of the Permanent Forum are appointed for a year and usually meet for ten days each year at the UN headquarters in New York.

Eight state members of the Forum are nominated by the governments and elected by the ECOSOC based on the principle of equal geographical representation criteria of the United Nations. The remaining eight members are appointed by the President of ECOSOC following broad consultations with indigenous organisations, taking into account the diversity and geographical distribution of the indigenous peoples all over the world (ECOSOC 2000: 3). Indigenous peoples, through their NGOs, organised broad regional consultations among them for the nomination process to be fair and transparent. These consultations were held in Asia, Central America, South America, Russia, Pacific and the Arctic. These consultations resulted in six of the eight nominations of indigenous peoples being done by indigenous peoples themselves. The remaining two were appointed by the ECOSOC. This was a significant step as for the first time it enabled indigenous peoples to choose their own representatives.

The Forum like its predecessor, WGIP is also open to participation from indigenous NGOs and other national and international NGOs. In fact, the participation of NGOs in the Forum adds colour to the sessions of the Forum. This is because indigenous peoples through their respective NGOs participate wearing their cultural and traditional dresses thus making their difference felt among states and also giving a

strong reminder to the state delegations that this is a Forum exclusively meant for them (Corntassel 2007: 74).

Roles and Functions

Some sort of confrontation did occur between indigenous peoples and the states over the area of the work that the proposed Forum was supposed to cover. The states did not want the Forum to deliberate on an area such as the right to self-determination, land rights and rights related to natural resources. These were the hard areas recognised by the state and states were of the view that they should not be discussed within the confines of the Forum. Initially, the Forum was established with a mandate to deal with indigenous issues related to economic and social development, culture, the environment, education, health and human rights (ECOSOC 2000: 2). The Forum was designated as an advisory body accountable to ECOSOC, and its main function at the initial stage had been to give advice and recommendations to ECOSOC on matters of indigenous peoples.

Advisory Role: The first and foremost function of the PFII is to give advice to ECOSOC. To carry out this role, the Forum has worked closely with indigenous peoples' organisations such as Grand Council of the Crees, WCIP, and IITC to ensure active participation of indigenous peoples in the activities of the UN, in general, and Forum, in particular. Only when indigenous peoples participate and share their problems, the Forum could advise the ECOSOC to take future steps.

The annual sessions of the Forum constitute one of the biggest events, for which pre-sessional meetings are organised for all members of the Forum in which they discuss issues to be taken up at the annual session and also review major international developments. This annual session is attended by member states, UN organisations and agencies dealing with indigenous peoples and indigenous peoples' organisations, and other NGOs. The draft program of work for the annual session is prepared by the Secretariat of the Forum around two months in advance. The annual session is addressed by High-level speakers and state representatives, members of indigenous NGOs, members from other UN organisations and so on. A very characteristic feature of the annual session is the dynamic participation of indigenous peoples through its caucuses. These indigenous caucuses, along with support from the Secretariat of the Forum have been responsible for organising a number of cultural

and other special events during the annual session, in parallel to the official work. In addition to the presentation of indigenous art exhibits, a lot of space is created over the years to include indigenous arts and crafts, music, dance and theatrical performances as part of these side events. These are based on themes relevant to the lives and struggles of indigenous peoples (UNPFII 2007: 11-17).

The annual sessions are also marked by specific meetings which take place between members of the Forum and states, sometimes between members of the Forum, states and heads of other organisations. These specific meetings also take place among 'Friends of the Forum'- a group of representatives from member states supportive of the Forum's mandate (UNPFII 2007: 15).

The annual reports of the Permanent Forum issued after these annual sessions are a stark reminder to the states as well as intergovernmental organisations such as United Nations, its specialised agencies, other organs and departments of UN and NGOs about the status of indigenous peoples and the lack of participation of these indigenous peoples with the UN. Though the Forum is an advisory body, the annual reports of the Forum make it more than just an advisory body. The recommendations made in these annual reports carry a lot of weight for other UN bodies, programs and agencies, states, civil society as well as NGOs. These recommendations are prepared by the members of the Forum, after listening to the states, indigenous representatives and other speakers in the annual sessions. Hence, these recommendations are based on the thematic content of the annual sessions organised by the Forum and outline specific action that is needed to promote and protect the rights of indigenous peoples. Thus, the main function of the Forum through which it carries out its advisory role is by giving detailed recommendations.

These recommendations are given not only to UN agencies and other bodies but also to states and indigenous NGOs and also to the members of the Forum as well. For example, in 2004 the Forum made a number of recommendations specifically directed to UN agencies such as CEDAW, UNESCO, UNDP, UNICEF, CBD, and member states on the issue area of indigenous women. Some of these recommendations entailed appointing a rapporteur to undertake a study on genocidal practices and use of forced sterilisation among indigenous women, to convene a workshop on the theme- indigenous women, traditional knowledge and convention on

biological diversity, to take steps to increase indigenous women's participation within states and so on. While it is difficult to measure the success of implementation of these recommendations, some of these recommendations have been implemented. For example, the Task Force on Indigenous Women was created in 2004 after a recommendation was made by the Forum. The main task of this Task Force was to focus on gender mainstreaming as regards special concerns of indigenous women (UNPFII 2004: 12).

Besides giving recommendations, the Forum has also carried out studies and brought out working papers on topics of relevance to indigenous peoples. For example, the study titled 'Oil Palm and Other Commercial Tree Plantations, Monocropping: Impacts on Indigenous Peoples' Land Tenure and Resource Management Systems and Livelihoods', written by Victoria Tauli-Corpuz and Parshuram Tamang in 2007. The Forum appointed Victoria Tauli-Corpuz and Parshuram Tamang (indigenous members) as special rapporteurs to conduct this study. The study highlighted the problem of large-scale eviction of indigenous peoples from their lands in various countries. It also discussed the positive developments in states vis-a-vis land tenure systems but concluded that these developments were not enough. The study recommended to all UN bodies which had experience of working on the topic, to share and disseminate information widely with all stakeholders (UNPFII 2007: 16-17).

A number of such studies have been carried out by members of the Forum on a broad range of interesting topics. These topics such as- 'Impact of Climate Change Mitigation Measures on Indigenous Peoples and on their Territories and Lands' (2008), 'Indigenous Peoples and Boarding Schools: A Comparative Study' (2010), 'International Criminal Law and the Judicial Defence of Indigenous Peoples' Rights' (2011), 'Study on Shifting Cultivation and the Socio-Cultural Integrity of Indigenous Peoples' (2012), 'Study on resilience, traditional knowledge and capacity-building for pastoralist communities in Africa' (2013), 'Study on the relationship between indigenous peoples and the Pacific Ocean' (2016) are crucial for indigenous peoples. The studies are conducted by the members of the Forum in cooperation with other actors such as states, NGOs, indigenous peoples. Important input is solicited from these actors by these members. It is because of this interaction among actors that these studies hold high value. When these studies are disseminated at large, it leads to

information generation on indigenous peoples. Therefore, carrying out studies is an important function of the Forum which helps it in carrying out its advisory role.

Role of Coordination: The second main role had been that of coordination. So many activities were going on within UN for the indigenous peoples that the Forum was charged with the responsibility of coordinating the activities of various UN agencies. For this purpose, an Inter-Agency Support Group (IASG) had also been created in 2002. The departments and organisations participating in the IASG were Department of Public Information (DPI), ILO, OHCHR, UNESCO, United Nations Institute for Training and Research (UNITAR), UNFPA, UNICEF, FAO, WHO, WIPO, UN-Habitat, Secretariat of the Convention on Biological Diversity, UNDP, UNHCR, WTO and the World Bank (ECOSOC 2002: 2-3). IASG meets three times, usually in September. This meeting is generally based on a thematic focus relevant to indigenous peoples. This meeting is used 'to address specific agency concerns, address system gaps, develop common statements and papers, and submit an annual report to the Permanent Forum' (UNPFII 2007: 19). Here, not much role is ascribed to the NGOs as IASG is mostly comprised of inter-governmental UN agencies. This is more of a bureaucratic exercise with limited inputs from states and nearly no input from indigenous peoples whatsoever.

In 2004, following the recommendations given by the Forum, UNDP as a participating member of the IASG took the lead and formulated a thematic study on the topic 'free, prior and informed consent' to be widely understood. A questionnaire was sent out to 19 nodal UN agencies whose work touched upon the issue of free, prior and informed consent and indigenous peoples. The principal question dealt with the applicability of the principle of free, prior and informed consent in the respective organisation's work. Based on the responses from the organisations, the study concluded that because there was no standard definition of the principle, each organisation based this principle in the framework of international human rights (ECOSOC 2004: 3). Through its reports, the IASG has tried to streamline the coordination role of the Forum. All participating organisations of the IASG prepare presentations of the activities undertaken by them as regards indigenous peoples and these are then formulated in the form of a report, to be later submitted to the Forum for its perusal. The presentation of their work was usually followed by a brief dialogue of questions and answers between the members of the Permanent Forum and

the representatives of these UN bodies. This gave rise to a constructive dialogue on how to strengthen UN's work in relation to indigenous peoples. This has, to an extent, relieved the Forum from its burden (ECOSOC 2002: 3).

Monitoring Role: The states clearly did not want the Forum to possess any kind of implementing or monitoring role. For this reason, it was decided that the decisions would always be taken by consensus only so that the wishes of the states could never be taken for granted. The Forum when it had been created was designated as an advisory body accountable to ECOSOC with no implementation power. However with the adoption of the Declaration (UNDRIP) in 2007, many NGOs like WCIP, ICC and IWGIA escalated the demands for the implementation role or a monitoring power to be added to the mandate of the Forum. This was because Article 42 of the Declaration states "The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialised agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration" (UNDRIP 2007: 42). Even when this kind of granting of monitoring role to the Permanent Forum by the Declaration was not acceptable to states and some states like India were vehemently opposed to the Forum taking up any kind of monitoring role.The indigenous NGOs rejoiced at the inclusion of Article 42 in the Declaration and from 2007 onwards demanded a monitoring power to be given to the Forum to ensure implementation of the provisions of the Declaration (Minde 2007: 56).

Based on these demands, the Permanent Forum in 2009 convened an expert group meeting to explore the possibility of an 'expansion' in the mandate to review States' implementation of the Declaration. The meeting was attended by indigenous peoples and their organisations, states, the staff of United Nations and other organisations. The expert group meeting discussed the possible ways in which the Forum could monitor the implementation of the Declaration. At that time it was decided that the implementation would have to be done by states and that states should be willing enough to submit reports to the Forum on how the implementation of the provisions was done (ECOSOC 2009: 12). The discussion on the Forum having some kind of monitoring role was further discussed in 2011 when the Forum appointed the members to undertake a study on an optional protocol to the UNDRIP, to serve as a potential complaints mechanism. The discussion among the participants

who consisted mostly of states and indigenous representatives focused on the need to fill the implementation gap that existed at the international level in relation to indigenous rights. However, nothing concrete was decided. It was agreed by all that there existed an implementation gap but what steps were needed to be taken in order to bridge this gap could not be decided (ECOSOC 2015: 5).

Though legally the Declaration is a soft law and therefore does not need monitoring in implementation, however, the Forum on its own has sometimes taken up the duty of ensuring compliance with the Declaration. The Forum tries to monitor the implementation of the Declaration through recommendations it makes in its annual reports. For example, the Forum recommended in 2008 to the UN agencies, multilateral bodies and member states to provide technical and financial support to protect indigenous peoples' way of life and natural resource conservation as a measure to combat climate change. It recommended to the Framework Convention on Climate Change to make indigenous peoples important participants when discussing the problem of climate change, and should also make available mitigation funds to indigenous peoples who have suffered climate change-related disasters (UNPFII 2008: 4-7). These annual reports, as noted by Khosravi-Lile (2006) have become quite ferocious in recent years in directly attacking the aggressive states who are the violators of indigenous peoples' rights. This happened, for instance, when the rampant disappearance of indigenous peoples' communities happened in Congo. The Forum asked the state to sincerely look into the problem of the indigenous peoples and to take measures to solve the problem (Khosravi-Lile 2006: 43).

In recent years, the Forum has adopted newer work methods to ensure that it is fulfilling its monitoring role, for instance, in 2009 the Forum received complaints made by indigenous peoples of Chaco region of Bolivia and Paraguay who complained about the problem of slavery faced by indigenous communities. Upon receiving an invitation from the state, the members of the Forum planned a mission to both countries in order to investigate and open up a dialogue between the states and their indigenous peoples. The Forum, through this mission, could successfully bring the parties to a negotiating table where the indigenous peoples stated the problems they faced (UNPFII 2010: 9-11). This gradual expansion of the power of the Forum is not viewed positively by the states. The states view the expansion as an encroachment on their national sovereignty. Whether the implementing power of the Forum will

remain in force will have to be seen in future, but currently, this has resulted in the Forum making very strong claims in its annual reports (Schulte Tenckoff and Khan 2011: 686).

India, Canada, the United States and the Russian Federation prepared a paper in order to respond to the interpretation of Article 42 of the UNDRIP by the Forum. This paper critiqued the idea of implementation role for the Permanent Forum and stated that Article 42 was erroneously interpreted by the Forum. These states insisted on the status of the Declaration as not having any legal authority and therefore not required to be monitored at all (Schulte-Tenckhoff & Khan 2011: 688).

One important precedent was set by the Forum in 2003 for its pro-active role in ensuring the protection of indigenous peoples. The Forum was appalled when it received reports by way of testimonies, of mass killings of indigenous peoples, systematic rape of indigenous women by military forces, forced labour, slavery, and torture from various parts of the world. The most heinous of these crimes were committed in Congo in Africa. These instances were brought to the notice of the Forum by local NGOs which were active in the field. Seeing the seriousness of the situation, even when the Forum had no mandate to monitor the situation, the Forum made direct contact with the President of the Security Council and asked him to take immediate action on the situation and save the Mambasa indigenous group from getting decimated. The Security Council responded to the urgent appeal of the Forum, thus giving a powerful signal that the United Nations, at the highest level, was willing to work with the Permanent Forum (Khosravi-Lile 2006: 29).

Challenges

The Permanent Forum is a very important mechanism from the vantage point of indigenous peoples. However, it faces a number of challenges for effective functioning. One of the major challenges which have been the crippling effect is the lack of assured funding. The Permanent Forum is funded through voluntary contributions, not through UN regular budget. As the states are sometimes the primary opponents to indigenous peoples, they refuse to contribute fund. The lack of financial resource constraints the Forum from carrying out its activities. Even after the Forum was established in 2000, its Secretariat was created only in 2003 due to rampant

financial shortages. The lack of financial sources severely affects the Forum in carrying out its activities (Khosravi-Lile 2006: 40).

Another major challenge lies in the fact that the Forum is merely an advisory body with no proper monitoring power. The recommendations given by the Forum have no binding obligation on states or international organisations. In fact, recommendations given by the Forum as early as its third session in 2003 have not been implemented till now, almost a decade later. The implementation status of these recommendations in the database shows as 'ongoing' (UNPFII undated). There is also no follow-up procedure in assessing whether the recommendations made by the Forum in its annual reports have been implemented or not. Though annual reports of the Forum have had a strong impact, these reports have no actual value unless the recommendations made in those reports are followed upon.

The Forum is said to be an arena for the indigenous peoples to come together and deliberate. However, till today it is a state-dominated arena (Lindroth 2011: 548). The participation of NGOs makes the Forum a respectable institution in the eyes of the indigenous peoples. However, state dominance is felt frequently. The Forum is created for indigenous peoples, but the sessions of the Forum are state-dominated. The state-dominated process has made it difficult for the participation of indigenous peoples. The passing years have depicted the weaknesses that lie in the design of the Forum and the persistent marginalisation of indigenous peoples that continues to take place within the premises of the Forum. This can be seen in the way the seating capacity of the Forum is structured where most of the seats are reserved for states irrespective of the fact that the officials may be absent. Indigenous peoples who make a presence in the Forum through their NGOs are given the space at the back, and sometimes no seats are available for hundreds of these NGO representatives.

Apart from this spatial problem which is a hindrance for the indigenous peoples, temporal difficulties have also been raised. It is observed that while states are given more time to make oral statements, the time limit is comparatively shorter for indigenous peoples. Sometimes indigenous peoples are expected to make a statement of the problems they face and their recommendations in just two minutes. At other times, many NGOs are asked to make joint statements in lieu of the fewer time limits (Lindroth 2011: 550). This has led to repeated marginalisation of the indigenous

peoples in a space ideally designed for them. However, indigenous peoples have learnt to resist these strategies devised by the states. Indigenous peoples have no problem being at the back of the premises but refuse to sit on a seat reserved for the states, thus distancing themselves from states and signalling to the world that indigenous peoples and states can never be on the same level. Also since 2005, there has been an assertion of their cultural identity which can be gauged by the colourful dresses they wear, traditional headgears they use, use of their own language when addressing a meeting. For this reason, the Forum is sometimes called as 'the most colourful part of the UN'. These are important attributes used by indigenous peoples to bring home the point that even though states dominate over the sessions of the Forum, it is actually a place where the indigenous peoples belong (Corntassel 2007: 87).

Also, the equal representation of states and indigenous peoples' representations is an asset for the Forum. However, it also becomes a difficulty for the smooth and effective functioning of the Forum. This is because all decisions have to be taken by consensus. State officials have no problems on discussing on matters of low relevance to them (such as social, economic problems, cultural matters). However, the moment when land use or ownership of natural resources is discussed, state representatives do not agree. This scuttles the process. On matters relevant to indigenous peoples such as UN-REDD, state officials do not agree on any decision, thereby undermining the whole procedure of the Forum (Malezer 2005: 78).

Lastly, the recent attempts at expansion of the mandate by the Forum have made it less popular in the eyes of the states. The adoption of General Comment on Article 42 in 2007 whereby the Forum justified its expansion of the mandate was detested by states such as India and the United States which wrote a paper criticising this move. The Forum is an important body for indigenous peoples, but must not forget that states still dominate the international system. Without the support and assent of states, the Forum cannot make progress. Also, this expansion of the mandate by the Forum also led to some serious duplication of work by UN mechanisms on indigenous peoples. This is because while the Forum visited Paraguay in 2009 for an on-site visit, the Special Rapporteur on the Rights of Indigenous Peoples had already visited the state in 2007 and made some recommendations. This leads to serious

duplication of work for UN bodies which should be avoided in order to avoid extra costs (Schulte-Tenckhoff and Khan 2011: 685).

Conclusion

The internationalisation of the indigenous peoples' movement with indigenous peoples at the helm of affairs resulted in a number of developments at the international level since the beginning of the 1970s. These developments such as the Cobo study on the problems of discrimination suffered by indigenous peoples, the organising of international conferences in 1975, 1977 and 1981 have heightened the awareness about indigenous peoples. These attempts led to the establishment of mechanisms solely dedicated to the cause of indigenous peoples. The Working Group and the Permanent Forum are two such primary mechanisms specifically dedicated to the cause of indigenous peoples.

The Working Group was the first site of indigenous participation in international affairs. It was created by the United Nations after repeated demands were made by indigenous peoples at various international forums and conferences. States were not too keen for the establishment of an all indigenous mechanism. The creation of the Working Group in 1982 was an achievement because of a number of reasons. There were a lot of interactions which used to take place within the premises of the Working Group mainly between the bureaucratic staff of UN, states and indigenous peoples themselves. The open-door policy was a remarkable achievement because it enabled scores of indigenous peoples' NGOs to participate in the sessions of the Group. It was because of this open-door policy that hundreds of indigenous groups, mostly from Northern countries and later from Asia and Africa too could attend the sessions. The Working Group had a two-fold mandate of reviewing developments and creating norms and standards for indigenous peoples. The Working Group carried out this mandate by conducting studies and listening to indigenous peoples' complaints. The most important achievement of the Working Group was the draft declaration of UNDRIP. It was not an easy task to maintain the balance between indigenous peoples' aspirations and wishes of the states. But the Working Group completed this task in 1993 after which the draft was submitted to the Commission on Human Rights for further deliberations and discussions. Despite fierce opposition by indigenous peoples, the Working Group was finally disbanded in 2006.

The Permanent Forum replaced the Working Group as the space for indigenous peoples at the international level. A number of interactions took place between UN, states and indigenous peoples over the creation of this forum. Though indigenous peoples had to compromise on a lot of points such as the name of the forum, there were certain numbers of victories also for them. The equal number of members in the Forum was a major achievement because till date no international mechanism or institution had been created with an equal representation of States and indigenous peoples. The mandate of the Forum required it mostly to play an advisory role which it did by organising thematic sessions, making recommendations to states, UN bodies and other organisations. The Forum routinely interacted with indigenous peoples, member states and UN staff in carrying out these functions. Other than this, the Forum also played a coordinating role where it had to work in cooperation with other UN agencies and programs on indigenous peoples. The Inter-Agency Support Group comprising mostly of inter-governmental organisations assisted the Forum in carrying out this role.

From 2009 onwards, the Forum took charge of the monitoring role on itself after the UNDRIP was adopted in 2007. This was affirmed by the General Comment that it passed on Article 42 of the Declaration which justified this expansion of the mandate. Even though this move was highly criticised by states such as India and the United States, the Forum has time and again tried to monitor the implementation of the provisions of the Declaration- by making on-site country visits as happened in 2009 when the members of the Forum visited Paraguay and Bolivia. A number of challenges continue to grapple the effective functioning of the Forum such as limited funds, state dominance, marginalisation of indigenous peoples, lack of effective follow-up, consensus as a method of taking decisions and recommendatory nature of its decisions. For the Forum to be an effective international mechanism, it needs to overcome the challenges stated above. The shortcomings of the Forum have to be worked upon and removed so that the Forum can be an effective tool to address the problems faced by indigenous peoples. The cooperation of the states in working in the Forum is essential after all considering the fact that international relations is still state-centric. The Forum cannot take the state power for granted. Therefore it needs to carry on its balancing act between the concerns of states and indigenous peoples to enable it to function effectively.

Chapter V

Special Rapporteur on the Rights of Indigenous Peoples

Initially, despite the continued violation of human rights across the world, the UN Commission on Human Rights followed a 'no-petition doctrine' on the insistence of member states whereby the Commission was instructed not to entertain petitions or complaints from individuals. However the worsening condition of human rights and increase in the crimes of enforced disappearances and military executions in countries of Latin America, Asia and Africa along with the pressure from non-state actors, such as NGOs and media, led the Commission from 1967 onwards to appoint independent experts, special representatives, working groups, and special rapporteurs as international mechanisms to deal with the situations. Today these mechanisms are known as the 'Special Procedures' of United Nations.

The Commission on Human Rights initially appointed working groups to examine the violation of human rights in different countries. The first such Working Group was appointed in 1967 to examine the discriminatory apartheid regime in South Africa. This was followed by the appointment of another Working Group in 1979 to analyse the human rights violation in Chile. Since the 1980s, the Commission began the practice of appointing an independent expert as Special Rapporteur with countries as well as thematic mandates to deal with human rights violations (Pinheiro 2003: 5).

Special Rapporteur is an independent expert, appointed by the United Nations with the sole purpose of advancing the cause of human rights either on a particular theme or in a particular country. Special Rapporteur help bridges the gap between the formulation of human rights norms and standards and their implementation. All Special Rapporteurs (whether pursuing a country mandate or a thematic one) carry out their mandate through a number of activities such as fact-finding, undertaking country visits, receiving complaints, and making annual reports highlighting the problems and recommending policy actions for states to follow. In these activities, Special Rapporteurs are assisted by a number of actors such as states and non-state actors such as NGOs, epistemic communities, research and advocacy groups, and media without whose interaction the Special Rapporteur would not be able to carry out his/her tasks effectively (Piccone 2011: 265). As of 24 March 2017, there are 43

thematic as well as 13 country-specific mandated Special Rapporteurs. According to Hoehne (2007), thematic mandates are more advantageous than country mandates as all states are under equal scrutiny. Thematic mandates allowed the examination of a topic from a holistic point of view. This is certainly not the case for the Special Rapporteur with a country-specific mandate (Hoehne 2007: 4).

The Special Rapporteur on the Rights of Indigenous Peoples (SRIP) is a thematic mandate Rapporteur and the post was created in 2001 because of demands made by many advocacy-based non-governmental organisations. At the time the post of Special Rapporteur was created, the need was felt among indigenous peoples all over the world for such mechanism which would not only address the problems and issues faced by indigenous peoples but would also cater to their complaints. It became clear that the Working Group on Indigenous Populations was not suited for the purpose of lodging complaints and Permanent Forum was just at a very initial stage. The treaty-bodies of the human rights conventions were also ill-suited to deal with the complaints of indigenous peoples. Therefore, some indigenous organisations and NGOs came up with the idea for a Special Rapporteur (IWGIA 2007: 67). The significance of this mechanism lies in the fact that SRIP is a gateway between indigenous peoples and the United Nations with an ever-expanding mandate which ensures that the demands of the indigenous peoples are taken into account.

The chapter starts with a discussion on the origin and appointment procedure of the SRIP, specifically highlighting the role of various actors in these processes. Then, it highlights how and why the mandate of the SRIP has undergone change and expansion. The rest of the chapter focuses on analysing roles and functions carried out by SRIP and how various actors play a part in the process. The chapter ends with highlighting the challenges the SRIP faced in carrying out its mandated tasks and its interactions with various actors in the process of carrying out his/her roles and functions.

Origin and Appointment Procedure

Although the United Nations started the practice of appointing Special Rapporteurs with a thematic mandate way back in the 1980s, Special Rapporteur on the Rights of Indigenous Peoples was created in 2001. The delay in the creation of Special Rapporteur for indigenous peoples could be attributed to the lack of political will

among the states to have a complaint mechanism for the indigenous peoples. The states were quite antithetical to the idea of indigenous peoples as a community having international rights, and also the fact that most of the atrocities committed against indigenous peoples were due to the policies and actions of the states. No state wanted any outside intervention to look into the human rights situation of indigenous peoples in their territories.

However, the internationalisation of the indigenous peoples' issues with the growing advocacy of indigenous peoples' themselves for more international mechanisms led to the creation of specific mechanisms better suited to the needs and concerns of indigenous peoples (Anaya 1996: 34, Barsh 1989: 54, 1996: 34, Sanders 1983: 45).

Until 2000, there was no specific mechanism to receive complaints from indigenous communities. The Working Group on Indigenous Populations (WGIP) did receive complaints from time to time, but the mandate of the Working Group did not allow it to investigate those complaints. The demand for a mechanism to look into the complaints of indigenous peoples increased. A campaign was launched by NGOs headed by the International Indian Treaty Council (IITC) for the creation of a Special Rapporteur with the capacity to not only receive complaints but also investigate the situation (Morgan 2011: 65). According to members of IITC, "We saw an urgent need to have a UN mechanism that could put a stop to the gross and massive attacks on the survival of indigenous communities or at least denounce them for grave violations that they are" (IITC undated).

Active lobbying by NGOs bore fruit when Guatemalan and Mexican state delegations put a draft resolution on human rights and indigenous issues at the 57th session of the Commission on Human Rights. This draft resolution, which also recommended the creation of the post of the Special Rapporteur, was adopted without a vote in 2001. There was tough opposition to the adoption of this resolution from states such as United States, Canada, New Zealand, Australia and Russia (Tauli-Corpuz & Alcantara 2004: 6). In spite of their opposition, the post of Special Rapporteur on Rights of Indigenous Peoples was created in 2001.

However, the terminology of the post was a bit different than what is today. When the post was created, it was labelled as 'Special Rapporteur on the situation and

fundamental human rights of indigenous people'. The missing 's' in the term people could be attributed to the arrogant behaviour of states who were always against indigenous peoples being called as peoples having international rights. Also, the term 'indigenous peoples' was not accepted in international standards at that time. The title 'Special Rapporteur on the Rights of Indigenous Peoples' was adopted at the 15th session of UN Human Rights Council in 2010. States like Canada and United States continued to object to the adoption of the term 'peoples'. This change of label is significant for indigenous peoples because it hints towards recognition of their collective rights and identity being accepted by the UN and the entire international community. It is also in line with existing international standards, in particular, the UN Declaration on the Rights of Indigenous Peoples (IITC 2010).

The Special Rapporteur was to serve as an independent expert and was supposed to maintain independence from the United Nations as well as the state of his/her origin. The resolution that created the post stated that the Special Rapporteur should be appointed for three years by the Chairperson of the Commission on Human Rights. There was no exquisite mention in the resolution about any special qualification that the Special Rapporteur needed to possess in order to get appointed. It only stated that the Chairperson of the CHR should appoint "an individual of recognised international standing and experience" (CHR 2001: 1). Through direct consultations with the regional groups and the member states of United Nations, the Chair appointed the Special Rapporteurs. The process lacked transparency and coordination since the name of the selected candidate was announced in press releases, without giving any hint as to how he or she was selected. The process of selection and appointment of candidates was criticised as there was no format or standards by which the appointment of Special Rapporteurs was judged (Pinheiro 2011: 164, Pinheiro 2003: 7).

Rodolfo Stavenhagen from Mexico was the first Special Rapporteur on Indigenous Peoples. He was a Sociologist and an Anthropologist, having immense knowledge on indigenous rights and therefore had a long association of working on the subject. This decision was not met with any resistance from member states because here was a candidate proficient in the subject and representing a developing country. His appointment was in fact celebrated by indigenous peoples (Thornberry 2002: 76). The Special Rapporteur was initially appointed for a three-year term and

his mandate was extended for another three-year term. So the first Special Rapporteur held the office from 2001-2008.

When the UN Commission on Human Rights was replaced by the UN Human Rights Council in 2007, a series of reforms were initiated for selection of the Special Rapporteur on the Rights of Indigenous Peoples. The work experience and expertise of the candidates now had a greater weight in the selection. Till today, Special Rapporteurs are selected keeping in mind a number of attributes such as their personal integrity, independence, impartiality, objectivity, expertise and experience in the area of the mandate. Independence is a key criterion for selection of the mandate-holders. Under the reformed procedure of selection, Special Rapporteurs are appointed through a competitive and transparent process which involves an online written application in response to a call for candidatures issued by the Secretariat of the United Nations. Candidates can be nominated by governments, regional groups, and non-governmental organisations. A Consultative Group composed of five Ambassadors from each of the five regional groups is then constituted by the Human Rights Council which reviews all the applications and proposes a list to the President of the Human Rights Council from which the President appoints the Special Rapporteur (HRC 2007: 5/1). This new procedure of Human Rights Council allows other organisations such as NGOs, private individuals and other UN institutions to nominate candidates. Thus, the attempt has been made to introduce transparency in the process.

The appointments of James S Anaya in 2008 and Victoria Tauli-Corpuz in 2014 as Special Rapporteurs were subjected to the new procedure of the Human Rights Council. Like his predecessor, James Anaya also served as Special Rapporteur for two terms, i.e. from 2008-2014. While Anaya's candidature was supported by the Council and member states with less input from indigenous peoples themselves, the name of Victoria Tauli-Corpuz was suggested by indigenous peoples' organisations. One reason for the active support of indigenous communities to her candidature could be the fact that she herself is an indigenous rights activist, heading her own organisation called Tebtebba Foundation in the Philippines and has an elaborate experience of nearly two decades of working on the subject. Also, her appointment made the selection process gender neutral (Pinheiro 2003: 54, Anaya 2013: 65). Table 5:1 listed the Special Rapporteurs on the Rights of Indigenous Peoples till now.

Table 5:1 List of Special Rapporteurs on the Rights of Indigenous Peoples

Name of Special Rapporteur	**Nationality**	**Tenure**
Rodolfo Stavenhagen	Mexico	2001-2007
James S. Anaya	United States of America	2008-2014
Victoria Tauli-Corpuz	Philippines	2014- continuing

Source: http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/SRIPeoplesIndex.aspx, accessed on 12 April 2017.

Thus, the Special Rapporteur on the Rights of Indigenous Peoples is appointed as an independent expert representing the United Nations. The term 'independent' denotes independence from the UN as also from their respective governments. Thus, Special Rapporteur is not a permanent employee of the UN. The Office of the High Commissioner for Human Rights (OHCHR) provides the Special Rapporteur with one assistant to carry out his or her roles and functions. Usually, these assistants are appointed from legal background to enhance the work of the Special Rapporteur. It cannot be assumed that because the mandate is to work for indigenous peoples, the Special Rapporteur is answerable to indigenous communities. He/she definitely works towards the betterment of the condition of indigenous peoples but has to be independent of the indigenous communities also (IWGIA 2007: 12).

Roles and Functions

The original mandate required the Special Rapporteur to perform three kinds of roles- supervisory, monitoring and to work in co-ordination with other UN bodies. These roles were carried out by the Special Rapporteurs by taking up activities such as information gathering, formulating recommendations, submitting annual reports, receiving communications from aggrieved individuals, and co-ordinating activities on indigenous peoples with other UN bodies and agencies (CHR 2001:1).

After completion of the first three-year period of the Special Rapporteur, the Commission once again extended the mandate in the year 2004 for another period of three years without bringing in any change in the roles and functions. Thus, the Special Rapporteur continued to perform the three functions from the period 2004 till 2007.

It was in 2007 when the Commission was replaced by the Human Rights Council and a major reform were made of the 'Special Procedures' system which led to an extension not only in terms of the time period but also the roles and functions. In 2007, the Council extended the mandate of the Special Rapporteur for another period of three years and added a new promotional role. This promotional role meant that the Special Rapporteur was supposed to identify and promote best practices and also promote the provisions mentioned in the Declaration on the Rights of Indigenous Peoples. Along with this, the Council resolution also strengthened the co-ordination role of the Special Rapporteur, pointing out clearly that the Rapporteur was required to co-ordinate its activities with not only the Permanent Forum, other Special Rapporteurs and UN treaty-bodies, but also "a co-operative dialogue had to be constructed with all state as well as non-state actors relevant to indigenous peoples" (HRC 2007: 1).

After 2007, the mandate of the Special Rapporteur has been extended twice, i.e. from 2010-2013, and from 2014-2017. The extended mandates do not have any new role and function assigned to it. Therefore, as of today, the Special Rapporteur performs four major roles- supervisory, monitoring, role in co-ordination with other UN bodies and promotional role.

Supervisory Role

Under the initial mandate, the Special Rapporteur was assigned more of a supervisory role. The Special Rapporteur carried out this role by carrying out various functions such as gathering information and writing annual reports, and giving recommendations on how to prevent or remedy violation of the rights, taking country visits, and preparing thematic studies. In addition to these functions, the Special Rapporteur under the Council resolution 6/12 was also to consider the recommendations made in various UN conferences and treaty-bodies. In carrying out each of these functions, the Special Rapporteur interacted with a number of actors.

Information Gathering- This is the first function performed by the Special Rapporteur in fulfilling the supervisory role. It involves gathering information which pertains to the situations and conditions of indigenous peoples all over the world. The information sought include the situation of indigenous peoples in their states, the steps taken by states to ameliorate the condition of these indigenous peoples, steps taken by

international organisations to include the issues of indigenous peoples in their agenda and so on. This information is sought from a number of actors. The states being the most important source, states provide information on the demographic situation of indigenous peoples, locations where they are found in huge numbers, legislative and constitutional steps taken up by states to recognise the rights of these indigenous peoples and so on. The information provided by non-state actors such as NGOs is very crucial from the stand point of indigenous peoples. It is because this often acts as a 'shadow report' reflecting the true situation of indigenous peoples. For example, the Philippines in 2008 portrayed a quite rosy picture of the indigenous communities, mentioning the adoption of Indigenous Peoples' Rights Act of 1997 as a milestone achievement in relation to indigenous people's rights. However this picture was totally falsified by the information provided by the NGOs working on indigenous peoples' rights who mentioned how the indigenous communities were the largest casualties at the hands of Philippines military and how disappearance of indigenous communities constituted the biggest violation of their rights in the state (HRC 2009: 5).

The Special Rapporteur also seeks information from a number of other actors working on indigenous peoples such as research and advocacy organisations, epistemic communities, and universities and so on. The main purpose of soliciting information from such a vast array of sources is to make sure that the information provided to the Special Rapporteur is genuine, legitimate and true. All information gathered by the Special Rapporteur is put to use while formulating annual reports and carrying out thematic studies on issues of relevance to the indigenous peoples.

Annual Report- The compilation of an annual report by the Special Rapporteur is the most important function carried out by the Rapporteur in order to fulfil his supervisory role. The Special Rapporteur is required to submit annual reports of the activities undertaken by him/her, earlier to the Commission on Human Rights, and later to the Human Rights Council and General Assembly. In order to prepare these reports, the Special Rapporteur requests submissions of information from indigenous peoples, NGOs, UN agencies and governments. Questionnaires are sent to these stakeholders requesting information about legislations, programs and policies on indigenous peoples and about the participation of indigenous peoples. The main source of information for the formulation of annual reports is provided by local non-

governmental organisations. This is because the Special Rapporteur cannot visit each and every country. Hence this reliable local information is essential. For example, the annual report on New Zealand submitted to the Commission in 2005 mentioned about the violation of sea rights of Maori people. The local and regional NGOs highlighted that the Foreshore and Seabed Act passed by the state in 2004 was the reason for the excessive violation of rights of indigenous peoples (CHR 2005: 15).

Special Rapporteur's annual report generally does not exceed more than twenty pages. The reports generally start with a summary of the activities undertaken by the Special Rapporteur as part of his/her mandate, such as the participation of Special Rapporteur in a number of international conferences and seminars and how the Rapporteur co-ordinated its work with other UN agencies. Some reports discuss issues which the Special Rapporteur deemed important during the course of their mandate. For example, the annual report presented by James Anaya in 2013 discussed ways to strengthen the commitment of states to upholding the UNDRIP. Similarly, the annual report submitted by Victoria Tauli-Corpuz in 2015 discussed the problems related to indigenous women and girls (HRC 2013: 3).

The Special Rapporteur often invites state representatives to comment on the content of the reports before presenting to the Human Rights Council. This gives a chance to the state officials to know beforehand what the Special Rapporteurs' reports contain. There have been instances when some Special Rapporteurs antagonised states by criticising the state policies in their reports. However, this has not been true in the case of Special Rapporteur on the rights of indigenous peoples. There has also never been an instance when the states have asked the Special Rapporteur to change the contents of the report or the states find the matter too condemning (IWGIA 2007:).

Thematic Research Studies- The Special Rapporteur also carries out 'thematic research studies' on issues that have had an impact on the human rights and fundamental freedoms of indigenous peoples. The Special Rapporteur carried out thematic research on a number of issues that plagued the indigenous communities all over the world. These thematic studies were prepared after going through a number of relevant UN documents, national reports, indigenous peoples' submissions and questionnaires that the Rapporteur sent to the states as well as indigenous peoples' communities. For the first three-year term, the Special Rapporteur carried out two

thematic studies. The first such study was on the impact of large-scale development projects on human rights of indigenous peoples. This study was undertaken by the Special Rapporteur along with the assistance of a number of other actors. The study highlighted the negative consequences of the large-scale development projects on the physical as well as the psychological well-being of indigenous peoples and addressed a number of issues such as displacement, the concept of free, prior and informed consent, which have an important bearing on the rights of indigenous peoples (HRC 2007: 4). The study concluded with the recommendations to Governments, private business enterprises, and to the UN as a whole about the importance of respecting the land rights of indigenous peoples.

The second thematic study was on the question of the administration of justice related to indigenous peoples. This was carried out in 2004. The Special Rapporteur, through indigenous peoples' submissions and his own research realised that indigenous peoples comprised one of the most vulnerable segments of populations because there was inequity as far as the administration of justice was concerned for them. Therefore, in order to overcome the problem, the Special Rapporteur urged the states to bring reform of justice systems in their countries and wherever applicable, to also recognise indigenous laws and customs. This thematic study was a result of interactions which the Special Rapporteur had with indigenous peoples' NGOs by way of questionnaires that were sent out to these organisations, his country visits, and the 'Expert Seminar on Indigenous Peoples and the Administration of Justice' which was held in November 2003 (Tauli-Corpuz 2004: 24).

After the creation of Expert Mechanism on the Rights of Indigenous Peoples in 2007, the function of the Rapporteur to undertake thematic studies has taken a back seat. This is because both these mechanisms share the mandate of undertaking research on issue-areas of utmost priority for indigenous peoples. Therefore, after 2007, the Rapporteur mainly assists the experts of the Expert Mechanism in the studies (Morgan 2011: 32).

There have been instances where the Special Rapporteur interacted with NGOs and indigenous experts on thematic areas related to indigenous peoples. This happened in 2009 when the Special Rapporteur interacted with NGOs Khredda and the UNESCO Centre of Catalonia on dispute resolution mechanisms with regard to

extractive industries and their impacts on indigenous peoples. The second study was carried out by the Special Rapporteur, in conjunction with International Council on Human Rights Policy on legal pluralism and indigenous customary law. These studies helped the Special Rapporteur in gaining a nuanced understanding of the issues faced by indigenous peoples (HRC 2009: 10).

The most recent thematic study undertaken by the Special Rapporteur in 2015 was on 'the impact of international investment and free trade on the human rights of indigenous peoples'. In this report, the Special Rapporteur highlighted that the current investment regimes were highly detrimental to the interests and rights of indigenous peoples, particularly their right to self-determination, lands, territories, resources, participation, and free, prior and informed consent. The report concluded that a thorough reform of the international investment regimes was necessary in order to protect the rights of indigenous peoples. This thematic study was conducted after thorough interactions with a number of other Special Rapporteurs working on the same issue such as Special Rapporteur on the Right to Food, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Independent Expert on the promotion of a democratic and equitable international order and so on (HRC 2015: 5).

These thematic reports are prepared by the Special Rapporteur after intensive interaction with all relevant actors- Governments, indigenous peoples' NGOs, other UN agencies dealing with indigenous peoples' rights. The significance of these reports lies in the fact that these are important sources of information on indigenous peoples. These thematic reports have a lot of influence and value because of the power they are able to exercise over the UN system. Sometimes seminars on these topics are also organised with the help of the Special Rapporteur. Once these reports are submitted, they can be put to larger use for media and other interested persons, to be used for generating awareness and policy and program formulation for the benefit of indigenous peoples worldwide (Preston 2007: 19).

These thematic reports are often used by international organisations such as United Nations and regional organisations such as the African Union for promoting indigenous peoples' rights. An example could be the report of Special Rapporteur which was used by the Office of the High Commissioner for Human Rights as a

guiding resource in implementing indigenous peoples' rights in countries such as Guatemala and Andean region in Latin America (HRC 2007: 17). Another important way in which the recommendations given by the Special Rapporteur in his/her thematic report are used is for initiating dialogues between different sectors of government. For example, after the Special Rapporteur submitted report on effect of multinational corporations on indigenous peoples' rights in 2007, a round table discussion was organised with participation from multinational corporations, government and indigenous peoples, on the need to create corporate social responsibility to develop standards for behaviour for Canadian companies involved in resource extraction. Another example where the recommendations given by Special Rapporteur was used relates to the creation of an alliance between human rights and indigenous organisations in Chile in the building of an observatory to monitor the human rights of indigenous peoples (IWGIA 2007: 26-27).

Also, these reports are often used by a number of different agencies working for indigenous peoples such as Permanent Forum, treaty bodies of UN conventions and specialised agencies. Recently, the reports of the Special Rapporteur also constitute an important element in the system of Universal Periodic Review. The reports of the Special Rapporteur are included in the compilation of reports by the OHCHR. Thus the thematic reports of Special Rapporteur are useful for protection and promotion of indigenous peoples' rights and concerns.

Country Visit- The Special Rapporteur also undertakes country visits as part of his/her mandate in order to fulfil his/her supervisory role. The purpose of a country visit is "to better understand the situation of indigenous peoples, to learn about policies and practices designed to promote and protect their rights, and to dialogue with government officials at the national and provincial levels, with representatives of civil society, with the United Nations country team and the donor community on ways to strengthen the responses to the demands and needs of indigenous peoples" (IWGIA 2007: 6). The first-hand information that the Rapporteur gathers by the visiting, conversing with the victims, state officials, NGOs makes the Special Rapporteur in a better position to supervise the protection and promotion of the rights of indigenous peoples.

The Special Rapporteur undertakes two types of country visits- official and unofficial. The official country visit occurs when the state formally extends an invitation to the Special Rapporteur to visit the country and assess the situation of indigenous peoples. This type of country visit warrants a normal and usual exchange between the Special Rapporteur and states. Even when the Special Rapporteur is invited by the state, he/she cannot depend on the state alone to furnish all details because seldom states paint a negative picture of themselves. The Rapporteur has to dig out details from other alternative sources. It is here that the role of NGOs becomes important. NGOs often plan 'shadow schedule' for the Special Rapporteur detailing visits to the most marginalised indigenous communities which the government may not inform about (IWGIA 2007: 6). The Special Rapporteur has undertaken country visits in almost all parts of the world. As part of these country visits, the Rapporteur extensively interacted with the state as well as non-state constituents. For example, during her visit to Sweden in 2015, the Special Rapporteur attended a conference organized by the Sami Parliamentary Council, which gave her an opportunity to assess the issues affecting the Sami people, interact with government officials from Norway, Sweden and Finland and also to explore the implementation of the recommendations made by her predecessor, James Anaya (IWGIA 2007: 8).

The Special Rapporteurs may also mobilise the civil society actors in the state, pressurise the state to issue an invitation to the Special Rapporteur. Condemning human rights crisis situations through press releases is also made use of by Special Rapporteurs as a method of seeking an invitation.

. The unofficial country visit occurs when the Special Rapporteur visits a country on his/her own accord without official invitation. The consent of the state is paramount, but there were instances when the Special Rapporteur was not getting a formal invitation to visit some countries such as southern Africa, Japan and the Nordic countries. In such instances, the Special Rapporteur may undertake an unofficial state. In such case, the role of the civil society in the country then becomes important.

As the entire onus falls on the NGOs to arrange the visit, all background work is done by them, for example, they decide who are the indigenous groups who are so vulnerable that the Rapporteur has to visit, NGOs also lobby its government members

to fund the visit of the Rapporteur to make it more smooth and efficient (IWGIA 2007: 30-38). The NGOs have to work harder and present a common united front in front of the government to invite the Special Rapporteur. An example of Special Rapporteur's unofficial visit was when he visited Norway and Saamiland in October 2003 to attend a Conference at the invitation of the University of Tromso (IWGIA 2007: 31). Also in 2006, the invitation to the Special Rapporteur to visit the Philippines came from indigenous organisations and not the state (IWGIA 2007: 37).

A major outcome of the country visits undertaken by the Special Rapporteur is to generate awareness about the problems faced by indigenous communities and to bring these problems to the attention of the government concerned. After completion of a country visit, the Special Rapporteur makes a country report which explains his visit, the general overview of the situation of indigenous peoples, who he/she met within the country and the recommendations issued by the Special Rapporteur. Like the annual report, the country report can also not be more than twenty pages. The report usually comprises five main section- schedules of the visit and meetings, historical background and context, human rights situation of indigenous peoples, conclusions and recommendations. The draft of the country report is sent out to all the stakeholders, including the government to make comments on the draft report. Only after taking into consideration these comments, the Special Rapporteur officially drafts the country report (Tauli-Corpuz 2004: 24). Many of his/her recommendations given in country reports have been implemented with active support from state and non-state segments. For example, on the recommendation of the Rapporteur, to Guatemala, an inter-institutional Forum on Human Rights has been created with technical support from the OHCHR. Also in South Africa, an interdepartmental working group was created, and a policy protocol on indigenous peoples developed (IWGIA 2007: 34).

Special Reports- Special Reports focus on specific topics, themes or situations. Special reports often result from the country visits undertaken by the Special Rapporteur or as a result of communications received by the Rapporteur about violation of human rights of indigenous peoples. These special reports contain a detailed analysis of a particular situation which the Special Rapporteur may deem important. These special reports are submitted either to the Human Rights Council or to the General Assembly. For example, after Special Rapporteur's visit to Panama in

2009, the Rapporteur made a special report on the situation of the Charco la Pava community and other communities affected by the Chan 75 hydroelectric project in Panama. During the visit, the Special Rapporteur interacted with a number of government agencies and all stakeholders, UN agencies in Panama and was able to maintain a constructive dialogue with all these actors. In his conclusion, the Rapporteur mentioned that the project harmed the indigenous peoples of the surrounding area. Their right to free, prior and informed consent was not taken into account by the state agencies. The Rapporteur recommended to the state authorities to address this lack of consultation among indigenous peoples and to also address their territorial claims (HRC 2009: 2).

Special Reports are also submitted by the Special Rapporteur in cases where the Rapporteur undertakes a country visit in order to follow-up on the recommendations made by the previous Rapporteur. For example, this happened in 2009 when James Anaya visited Chile in order to assess the human rights situation of the indigenous peoples and also to follow-up on the recommendations made by his predecessor Rodolfo Stavenhagen during his country visit in 2003. In his special report submitted to the Human Rights Council in 2009, Special Rapporteur Anaya applauded the efforts of the Chilean government in ratifying the ILO Convention No 169. The Special Rapporteur also noted that the recommendations of the previous Rapporteur in terms of making assistance policies for indigenous policies were also positively taken up by the state. However, the Special Rapporteur recommended that further steps still needed to be taken up by the state in terms of consultation, lands and territory, development of natural resources and so on (HRC 2009:1).

Recommendations- The formulation of recommendations and proposals to prevent and remedy violations of the human rights and fundamental freedoms of indigenous peoples is another important function assigned to the Special Rapporteur of the Indigenous Peoples. The Special Rapporteur's recommendations are given at the end of the annual reports, thematic reports, country reports and special reports. These recommendations are very important because it is these words of the Rapporteur that are expected to be accepted and implemented by the various actors dealing with indigenous peoples.

Recommendations are usually given at the end of thematic reports and country reports. This is because thematic studies and country reports are based on a theme or a topic studied by the Rapporteur. Therefore, it is easy for the Rapporteur to make recommendations for states or United Nations. For example, when Special Rapporteur discussed the concept of 'duty to consult' in his 2009 report submitted to the Human Rights Council, the Rapporteur made recommendations to states on the creation of mechanisms at the national level which would ensure that indigenous peoples' consent would be taken into account on matters affecting them. Another recommendation given by the Rapporteur to states pertained to developing adequate analysis and impact assessments of proposed measures for indigenous peoples to know beforehand. Developing the technical capacity of indigenous peoples was also something the states had to ensure and this was another recommendation put forward by the Rapporteur (HRC 2009: 22).

Recommendations given at the end of country reports are crucial for the advancement of the rights of indigenous peoples. These recommendations then serve as a yardstick for measurement of the country's progress. For example, in her 2014 visit to Paraguay where the Special Rapporteur visited indigenous territories and met all stakeholders, she submitted a report to the Human Rights Council wherein she gave a list of recommendations to the state about setting up of mechanisms to address the problem of land alienation among indigenous peoples, establishment of prosecution services and courts specialized in indigenous law, adoption of a law criminalising the practice of racial discrimination against indigenous peoples and so on (HRC 2015: 22).

Thus, the supervisory role of the Special Rapporteur is very important for the protection and promotion of indigenous peoples' rights. The Special Rapporteur evolved his/her functions to carry out this role over the period of time- from information gathering, writing annual reports to conducting thematic studies, undertaking country visits, writing country reports and special reports and formulating recommendations. The Special Rapporteur interacted with actors at all levels of governance in carrying out these functions. Although the interactions of the Special Rapporteur with all other actors were mostly smooth, there are a number of challenges that plagued the efficient working of the Special Rapporteur.

The need for the Rapporteur to have a cordial relationship with states was seen as a major challenge for the Rapporteur to overcome. This requirement prevents the Rapporteur from being honest and truthful about his/her observations during the country visit. The country visit is contingent upon the discretion of the state, and this is the reason that he/she needs to be in a working relationship with the states. Sometimes the Special Rapporteur submits provocative country reports on the basis of his/her country visit. This kind of report provides certain kind of legitimacy to the concerns of indigenous peoples. It helps in the creation of a dialogue between indigenous peoples and their government. For example, the visits of the Special Rapporteur to Guatemala and Philippines proved to be a catalyst in opening up of spaces between the government and the indigenous peoples (IWGIA 2007: 35). Some states have been quite open to the Special Rapporteur in terms of seeking technical assistance, while there have been states such as the Philippines which denied any kinds of violations of indigenous peoples; rights on their territories. Therefore, the Special Rapporteur has to maintain a fine balance with the states to carry out its functions.

Further, the Special Rapporteur works in close cooperation with NGOs which facilitate unofficial visits, provide confidential information, and facilitate meetings with indigenous peoples. However, their continuing hostility with their states might have a negative impact of Special Rapporteur's relations with the states. Nevertheless, most of the time the Rapporteur tries not to offend the states. While this is for the best interests of indigenous peoples, it becomes a major irritant in the working of the special rapporteur.

The Special Rapporteur on the Rights of Indigenous Peoples also faces financial constraints. Because of financial constraints of the UN, the Special Rapporteur is granted one staff. Because of lack of capable and efficient administrative staff, all secretarial level jobs also need to be handled by the Rapporteur alone which is unnecessarily time-consuming. This becomes a major impediment for the Rapporteur to successfully carry out its functions of compiling data, conducting thematic studies and writing annual reports. This also often explains the delays in submitting reports to the Human Rights Council.

Role of Co-ordination

The resolution, which created the post of Special Rapporteur, mandated him/her to "work in coordination with other Special Rapporteurs, special representatives, working groups and independent experts of the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights" (CHR 2001: 1). In the Human Rights Council Resolution of 2007, it mandated to work with other special procedures and subsidiary organs of the Human Rights Council, relevant United Nations bodies, the treaty bodies, and human rights regional organisations (HRC 2007: 1). The resolution further stated that the Special Rapporteur to "work in close cooperation with the Permanent Forum on Indigenous Issues and to participate in its annual session". One of the reasons for the need to work in close co-ordination with other actors is to avoid duplication of work within United Nations. Special Rapporteur James Anaya also discussed the problem of duplication of mandates in his second report submitted to the Human Rights Council in 2009. In this report, he mentioned that a lot of confusion existed among indigenous groups about the mandates of the Permanent Forum, Expert Mechanism and the Special Rapporteur. To avoid this duplication, the Special Rapporteur followed the steps taken by his predecessor Rodolfo Stavenhagen. For example, as soon as Rodolfo Stavenhagen was appointed in 2001, he started attending the sessions of the Working Group on Indigenous Populations where he met with indigenous peoples, governments, human rights organisations, UN bodies and other agencies. He also attended the World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001.

Therefore, attending international seminars organised by NGOs, academic institutions, other UN bodies, and regional organisations is the primary activity undertaken by Special Rapporteur in order to better co-ordinate its work with other agencies. For example, in 2009, the Special Rapporteur participated in a seminar in Madrid along with members of the Expert Mechanism and Permanent Forum. The objective of the seminar was to initiate an informal dialogue among the working methods of the three mechanisms for better co-ordination. It was pointed out here that since Permanent Forum and Expert Mechanism are not mandated to receive complaints, therefore the complaints lodged by indigenous peoples in the sessions of these mechanisms should be addressed by the Special Rapporteur for effective co-

ordination (HRC 2009: 12). Similarly, the current Special Rapporteur has also participated in various international conferences and dialogues such as the Conference of Parties to thr United Nations Framework Convention on Climate Change in 2014, World Conference on Indigenous Peoples in 2015, World Bank Global Dialogue in 2015 and so on. Participation at these events is crucial for the visibility of the Special Rapporteur as an important mechanism and also gives a chance to the Rapporteur to interact with diverse actors and find ideas of coordination with other actors (HRC 2015: 3).

The Special Rapporteur also interacts with regional organisations such as Inter-American Commission on Human Rights (IACHR). For example, in 2008 the then Special Rapporteur James Anaya, gave a presentation on land rights of indigenous peoples as well as explained the concept of free, prior and informed consent as applicable in the Americas. The Special Rapporteur also interacts with other international organisations such as the African Commission on Human and People's Rights and the World Bank (HRC 2009: 16-17).

The Special Rapporteur shares an intimate relationship with Permanent Forum on Indigenous Issues. This is because both these mechanisms were created around the same time, and both were a result of a decade-long indigenous activism at the international level. The Special Rapporteur has since the year 2005 started attending the annual sessions of the Permanent Forum. The Special Rapporteur not only listens to the state participants; and indigenous NGOs but also makes notes of the sessions to use in its own report and also get ideas of area of coordination among various actors working on indigenous peoples. Special Rapporteurs network with the states, NGOs, who attend the sessions of the Permanent Forum and also explore the possibility of coordination with these actors to avoid duplication of work (Vienne 2005: 56).

The Special Rapporteur on the Rights of Indigenous Peoples also engages with other Special Rapporteurs of United Nations on topics common to the mandate of these Rapporteurs. For example, in 2008 the Special Rapporteur participated in the Regional Consultation on "Violence against Indigenous Women in Asia Pacific", along with the Special Rapporteur on Violence against Women. This was attended by scores of indigenous women who discussed issues contributing to violence such as economic globalisation, militarisation, culture, tradition and armed conflict and so on.

This detailed analysis on the issue of violence helped the Special Rapporteurs in their understanding about the subject and directed their energies in identifying effective strategies and mechanisms to address the issue of violence in coordination with other actors (HRC 2009: 10).

The Special rapporteurs also interact with treaty-bodies of the UN human rights conventions in terms of examination of their reports and the communications these bodies receive in the form of complaints. The Special Rapporteur has mostly interacted with Committee on Racial Discrimination. This is because CERD has been one of the most active treaty-bodies in relation to indigenous peoples. Many of initial complaints of indigenous peoples related to racial discrimination were taken up by CERD. Special Rapporteur also looks up to the reports of the Committee when faced with similar challenges (IWGIA 2007: 44). Similarly, NGOs have used the early-warning procedure of CERD to lodge complaints when the recommendations of the Special Rapporteur are not paid heed to by the states. This happened in case of New Zealand, when a group of organisations representing the Maori used the CERD as a site to pressurise the state by throwing light on the recommendations of the Special Rapporteur that were not implemented by the state (Preston 2007: 54). Also, Special Rapporteurs have an advantage over treaty-bodies as the principle of exhaustion of domestic remedies does not apply in the case of filing complaints and sending communications to the Special Rapporteur. This is the reason that Special Rapporteurs receive a lot of complaints from indigenous peoples and their organisations (Rodley 2011: 54, Pinheiro 2007: 76).

Special Rapporteur also interacts and coordinates with the Expert Mechanism on the Rights for Indigenous Peoples. These two mechanisms share so much in common in terms of the mandate, it is difficult to ascertain if duplication occurs or not. While the main aim of the Expert Mechanism is to conduct research and studies, Special Rapporteur was already dealing with this mandate in the conducting of thematic studies and writing of thematic reports. But with the creation of the Expert Mechanism in 2007, the Special Rapporteur only assists the Expert Mechanism in conducting the research studies. This is true in the case of the thematic study on the right to education conducted by the Expert Mechanism in 2009 wherein Special Rapporteur assisted by sharing his knowledge and information.

From the above discussion, it is clear that the role of the Special Rapporteur in coordinating its work with other UN agencies is of paramount importance. Though the initial resolution of 2001 had also mentioned this role, it was only in 2007 that all actors with which the Rapporteur had to co-ordinate their activities been clearly spelt out. The Special Rapportuer does not face many challenges while performing this task because every UN agency and body is familiar with the UN working procedure. The confusion arose in the minds of the indigenous peoples who are often clueless about the difference in the mandates of the Special Rapporteur, Expert Mechanism and Permanent Forum. It then becomes a challenge for the Rapporteur to explain to the indigenous peoples. However, with the deepening of ties and intensifying of working relationship and coordination between the Special Rapporteur with other UN agencies, these obstacles can be easily overcome.

As there is no specific treaty body to implement the rights of indigenous peoples, the Special Rapporteur has to work singularly in coordination with other actors to ensure adherence to the UNDRIP. This sometimes can prove to be a challenging task considering the strenuous work load of the special rapporteur (Naples-Mitchell 2011: 45).

Monitoring Role

The 2001 resolution of the Commission on Human Rights entrusted the promotion of and monitoring the adherence to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and other international instruments relevant to the advancement of the rights of indigenous peoples to the Special Rapporteur. The promotion of the Declaration falls on the shoulders of the Special Rapporteur because of his/her intricate links and interactions with all levels of Government and even other actors. This makes the Special Rapporteur better suited to advance the rights mentioned in the Declaration. To carry out this monitoring role, the Special Rapporteur mainly receives complaints or communications from the indigenous peoples and act on them.

Receiving and Acting on Complaints- One of the major functions performed by the Rapporteur under the role of monitoring is to receive communications or written complaints from indigenous peoples and their NGOs of violation of their rights. Though communications were also received under the tenure of the first Rapporteur,

the intensity of the communications increased after the 2007 expansion of the mandate. Based on these complaints, the Rapporteur takes three types of action.

The first action taken by the Rapporteur is called urgent appeals in cases of imminent danger of indigenous peoples' rights. These appeals are sent to the states with the hope of making the state act towards preventing the violation of indigenous peoples' rights. Urgent appeals are warranted in situations when "the alleged violations are time-sensitive in terms of involving loss of life, life-threatening situations or either imminent or ongoing damage of a very grave nature to victims that cannot be addressed in a timely manner" (HRC 2008: 5). For example, in 2007 the Special Rapporteur sent an urgent appeal to the Government of Finland concerning the alleged forced slaughter of Saami reindeer-herders property. In its response, the Government replied that the Supreme Administrative Court had prohibited the implementation of the decision to slaughter reindeer by force. To this, the Special Rapporteur observed that the Government should continue to follow-up on the case (HRC 2008: 46).

Other than urgent appeals, the Rapporteur also transmits 'allegation letters' to the Governments in cases of less urgent violation. For example, in 2002, the Special Rapporteur Rodolfo Stavenhagen in a letter of the allegation on torture, sent a communication to the Government of Argentina and enquired about an attack perpetrated by the police of Formosa Province against Toba-Qom indigenous peoples. Several members of the indigenous community were arbitrarily detained, threatened and also physically abused by the police. The letter sent by the Special Rapporteur asked the Government of Argentina to furnish further details and also urged the Government to take some steps towards protection of indigenous peoples' rights. In 2003, the Government of Argentina replied to the letter of the allegation and said all measures were taken to protect the indigenous peoples' rights. However, when the Special Rapporteur further asked for the details, there were no replies (IWGIA 2007: 50). Similarly, in 2007 Special Rapporteur James Anaya sent a letter of allegation to the Government of Australia to draw the attention of the Government towards the possible imminent destruction of a sacred indigenous art complex situated in the Burrup Peninsula and the rights of indigenous communities that were violated. The Government of Australia gave a detailed response to the letter stating the consultation

processes that were carried out with indigenous communities and also listed the mechanisms that were established to obtain their consent (HRC 2008: 6).

In stark contrast to the case mentioned above where a state promptly replied to the letter of allegation sent by the Special Rapporteur, there are other cases where the state did not respond positively. For example, this happened when the Special Rapporteur sent a letter of allegation to Bangladesh in 2008 over an alleged illegal seizure of the traditional lands of Jumma indigenous community in the Chittagong Hill Tracts and alleged that this was seen as a systematic attempt to support the settlement of non-indigenous families in the area. To this letter, the Government replied by acknowledging the receipt of the letter and said that it had been forwarded to the respective ministry. The Special Rapporteur regretted the lack of any positive response from the Government and said that it would continue to monitor the situation (HRC 2008: 15).

The third type of action taken by the Rapporteur includes follow-up letters on earlier communications. This means when the urgent appeals or the letters of allegation sent by the Special Rapporteur are not answered or responded by the states, the follow-up letters are sent by the Special Rapporteur seeking the response of the state. This is the least effective way of redressing indigenous peoples' rights violations. This is because states which do not reply the first time seldom give a response in the second time. It has seldom happened when follow-up letters have been answered by the states, thus making this the most ineffective monitoring tool ( ).

Thus, the Special Rapporteur is the only existing international mechanism armed with the mandate to receive complaints and communications from indigenous peoples. This is a very important function assigned to the Special Rapporteur, as no other mechanism on indigenous peoples is mandated to do so. The Special Rapporteur interacts with states and civil society, particularly NGOs, in order to carry out this function. However, this interaction with states and NGOs presents a number of challenges for the Special Rapporteur in successfully performing the monitoring role. In the case of receiving complaints from indigenous peoples, NGOs act as the driving force because mostly these local NGOs are responsible for filing complaints. However, not all local NGOs are well-versed with the UN submission system. In

remote areas where indigenous peoples are found, the NGOs might not be able to transmit their complaints to the UN system because of language issues. This then acts as a barrier for the Special Rapporteur to reach out to these local indigenous communities (IWGIA 2007: 54). Also, in states where there is no robust civil society, the Special Rapporteur can seldom address the problems faced by the indigenous communities.

Once the Special Rapporteur receives communications, the next obstacle comes when interacting with the state. The Special Rapporteur either sends urgent appeals or letters of allegation to states to direct their attention towards the violations of indigenous peoples' rights. But what the states want to do with those letters and appeals is up to the states. The Special Rapporteur cannot at any time force the states to take positive action, and this is the biggest obstacle for efficient working of the Special Rapporteur. States may or may not respond to the appeals sent by the Special Rapporteur. Even when states have started taking the work of Special Rapporteur more seriously, a lot needs to be done by the Rapporteur in order to make delinquent states somewhat accountable.

Promotional Role

The 2007 mandate of the Human Rights Council added the promotional role for the Special Rapporteur. One reason for the expansion of this mandate could be the fact that 2007 was also the year when the United Nations Declaration on the Rights of Indigenous Peoples was adopted. The Declaration was an important instrument for the decades-long struggle of indigenous peoples and therefore promoting the provisions of the Declaration was seen as something very important. The Special Rapporteur was assigned the task in 2007 and the mandate called on the Special Rapporteur "to promote the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples" (HRC 2007: 1).

The then Special Rapporteur James Anaya fulfilled this role by 'promoting best practices' related to the advancement of the rights of indigenous peoples. One of the key steps that the Rapporteur took was in the way of encouragement and international acknowledgement of the positive steps taken by the states. For example, in 2009 after Australia officially endorsed the UNDRIP to which it had earlier made

reservations, this was officially acknowledged by the Special Rapporteur in a press release and hailed as a positive development to be adopted by other states as well (HRC 2009: 9). The National Apology of Australia to its indigenous populations in 2008 was also positively noted by the Special Rapporteur in press releases (HRC 2010: 1). Likewise, the decision of Chile to fully give support to the ILO Convention No 169 in 2008 was also commended by the Special Rapporteur (HRC 2009: 10). In addition to this, the Special Rapporteur also promoted the good practices of states by attending events and sharing information on those good practices. For example, the Special Rapporteur attended a ceremony in Awas Tingni, Nicaragua, where the Government officially handed over to the indigenous community the much-awaited title to their ancestral lands. This was applauded by the Special Rapporteur in a press release (HRC 2009: 8).

As part of his/her responsibility, the Special Rapporteur undertake country visits, encounters the situation of indigenous peoples first hand, engages with state officials, NGOs, indigenous peoples and other important officials. These interactions allow the Special Rapporteur to be in a better position to compare and promote what is good for indigenous peoples at large. This is the reason promotion of best practices has become one of the important functions under this role. The recommendations of the Special Rapporteur in the annual reports, thematic reports and country reports along with the promotion of best practice are the functions performed to promote the implementation of the UNDRIP.

There is no doubt that promoting best practices of states in relation to indigenous peoples is a good way of promoting the cause of indigenous peoples. However, the main challenge is that it is contingent upon the will of the state. Most of the times, states are not willing to engage in any positive way for the indigenous peoples. In that case then it becomes difficult for the Special Rapporteur to promote these best practices.

Conclusion

The mechanism of special rapporteurs has been termed as ‘crown jewels’ of the human rights protection system of the United Nations by Kofi Annan (Subedi 2011: 45). This is because of the myriad roles they play and the diversity of interactions that they have with other important actors. The significance of the post of Special

Rapporteurs lies in the fact that through their activities they open up spaces for dialogue between governments and victims. These special rapporteurs constantly have to maintain a balance between the United Nations, states and other important non-state actors.

Special Rapporteur on the Rights of Indigenous Peoples has been a significant achievement for the decade-long struggles of the indigenous peoples. The Special Rapporteur is significant because the Rapporteur represents the UN as an organisation in front of the millions of indigenous peoples and similarly represents these indigenous peoples in front of the international community and the UN. Even though the Rapporteur has to maintain independence both from UN, states and indigenous peoples, the existence of the mandate of the Rapporteur is a boost for the struggling indigenous peoples. Through its activities such as undertaking country visits, interacting with government officials, state representatives and scores of indigenous peoples, the Rapporteur has gained a niche in the international community. The Rapporteur stands as an important mediator between the states and indigenous peoples, sometimes opening up spaces for a dialogue between states and indigenous peoples.

The Special Rapporteur on the Rights of Indigenous Peoples was established in 2001 after a realisation among indigenous peoples and their NGOs that there existed no international mechanism to receive complaint of indigenous peoples and monitor their plight.

The initial mandate of the Special Rapporteur was limited to performing supervisory and monitoring roles as well as working in co-ordination with other UN bodies. Later, promotional role of the Special Rapporteur has been added with the adoption of UNDRIP. From carrying out a supervisory role, the Special Rapporteur carried out a number of functions such as- information-gathering, writing annual reports, thematic reports, special reports and undertaking country visits. Today, the Special Rapporteur is charged with not only promoting best practices and the UN Declaration, but also co-ordinate the activities on indigenous peoples within the UN by cooperating with other actors such as Permanent Forum, other UN agencies dealing with indigenous peoples and so on. As a part of its monitoring role, the Special Rapporteur receives and acts upon the communications received from

indigenous peoples. In carrying out these activities, the Special Rapporteur interacts with the UN, states and non-state actors particularly NGOs and media. It is the interaction with these actors that make the work of Special Rapporteur quite unique as well as challenging.

The significance of the position of Special Rapporteur has increased over the years due to the important roles he/she play. However, Special Rapporteur also faces a number of loopholes and challenges which need to be overcome. The financial limitations faced by the Special Rapporteur are the severe most challenge which has the capacity to negatively impact the working of the Rapporteur. Apart from this, the interactions made by Special Rapporteur with states and non-state actors also sometimes pose challenges. This is because mostly states and non-state actors, particularly NGOs do not interact well on the issues of indigenous peoples, thereby making it challenging for the Special Rapporteur to work in peace. Also, lack of willingness on the part of the states to implement the recommendations made by the Special Rapporteur jeopardises the usefulness of the mechanism. This lack of willingness can be seen in states' refusal to implement the recommendations, or simply refusal to extend standing invitation to the Special Rapporteur. The Special Rapporteur needs to overcome these limitations in order to work effectively for the cause of indigenous peoples.

Chapter VI

Universal Periodic Review of UN Human Rights Council and Indigenous Peoples

The Commission on Human Rights was established as the pivotal institution to deal with matters related to human rights in the United Nations. From 1946 till the early 1980s, the Commission played an important role in creating norms and standards of human rights. Initially, the Commission restricted its role in the creation of norms and refused to deal with petitions or individual complaints of human rights violations. Later, the Commission opened up its doors for such complaints and created human rights complaint mechanisms such as the 1235 and the 1503 procedures. It also adopted a mechanism of 'naming and shaming' states for their bad human rights record (Donnelly 2007: 300).

Politicisation of the Commission was the first weakness with which the Commission had to grapple for a long time. The Commission adopted selectivity in targeting the countries for their bad human rights record. Most often, states used to vote on the basis of regional blocs and they formed political alliances based on social and cultural homogeneity, and geographic proximity (Freedman 2011: 290). The Commission was accused of adopting selectivity in targeting the states and the members of the Commission were accused of bias in their voting, especially in its latter years. Further, the countries with bad human rights record became the members of the Commission with the intention to prevent adverse resolutions passed against them and some of them were even made the Chairs in the Commission's proceedings.

A number of problems plagued the efficient working of the Commission on Human Rights which led to its eventual replacement by the Human Rights Council in 2006. The primary motivation for the establishment of the Human Rights Council was to make it less controversial than its predecessor and more effective in terms of protection of human rights. The size of the Council was reduced to forty-seven members to make it a compact body.

One of the most exciting and unique mechanisms of the Human Rights Council was the 'Universal Periodic Review' (UPR). As the name suggests, the UPR was created with the purpose of establishing a peer-reviewed mechanism which would monitor the adherence of the human rights norms and standards by all the members of

the United Nations, eliminating the defect of the selectivity of the Commission. Peer-review system was adopted by the Human Rights Council as the most feasible method of ensuring compliance with human rights provisions internationally. Before the adoption of UPR system by the Human Rights Council, peer-review mechanisms were in vogue in several international organisations such as Organization for Economic Cooperation and Development (OECD) and African Union (McMahon 2013: 266).

The member states of the United Nations, the Secretariat or bureaucracy of UN and non-state actors such as NGOs, epistemic communities, advocacy organisations, academic institutions, and media are the important sets of actors who play a role in the working of the UPR. All 193 member states of the UN have been reviewed during the first cycle in 12 sessions from 2008-2011 (Redondo 2012: 56).

The rights of indigenous peoples have been quite rarely taken up by states-neither in the reporting nor at the review stages. This is because of the reluctance of states to discuss rights of indigenous peoples on an international platform. However, it is the NGOs that raise the issues related to indigenous peoples at the process of UPR. States seldom make recommendations to other states about the human rights of indigenous communities out of a fear of a possible retribution. However, NGOs have been quite active in this regard and have used the UPR as an opportunity to raise awareness about the conditions of indigenous peoples through forming alliances with international NGOs, lobbying friendly states to make recommendations and criticise the states for noncompliance (Moss 2010: 45).

In order to understand the working of the UPR and how various actors interact in the mechanism to make it amenable to the concerns of indigenous peoples, this chapter is divided into four main parts. The first part of the chapter discusses the working procedure of the UPR in general and how various actors interact in various stages of the process. Then, it goes on to discuss how the indigenous peoples' issues are incorporated or not incorporated in the first phase of the UPR's information-gathering or the documentation stage, specifically the three reports in the first cycle of the review and compare the reports of the second cycle. Then it discusses how indigenous peoples' issues been raised or not raised in the 'the interactive dialogue stage' in the first cycle and compare it with the second cycle to see whether there is

more or less attention on indigenous peoples' issues. Next, it discusses the role of the NGOs in raising indigenous peoples' concerns in the regular session of the Human Rights Council when the outcome of the state reviews is considered. It also compares the role of NGOs in the first and the second cycles of the review. The last part of the chapter discusses the significance of the UPR process for the indigenous peoples and challenges faced by UPR in dealing with indigenous peoples' issues.

Working Procedure of Universal Periodic Review

The UPR was established in 2006 by UN General Assembly which directed the Human Rights Council to 'undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; such a mechanism shall complement and not duplicate the work of treaty-bodies' (United Nations, 2006). The UPR has been instructed to carry out its tasks based on the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation (United Nations, 2006).

The UN General Assembly did not establish any modalities and left to the Human Rights Council to decide about the work procedure of the UPR system. Intense discussions took place among member states of UN, UN bureaucracy and other non-state actors such as NGOs, think-tanks, advocacy organisations and epistemic communities to decide about the working procedure and the documentary basis of the UPR. The procedure that resulted from these negotiations was three 2-week sessions of the full Council sitting as a Working Group with 48 states to be reviewed each year so that each UN member state would be reviewed once every four years (McMahon and Ascherio 2012: 240-242).

The reviews are conducted by the UPR Working Group which consists of the 47 members of the Human Rights Council. Each State review is assisted by groups of three States, known as "troikas", who serve as rapporteurs. These three states are picked by other member states of the Council by lottery from three of the five UN regional groups. The state under review (SuR) has the right to request that one of the troika members should be from its regional group. The troika rapporteurs serve as a facilitator of written questions by governments via the HRC Secretariat to the

concerned state. All written questions have to be transmitted not later than ten days in advance of the hearing. The troika also acts as a kind of supervisor of the minutes of the interactive dialogue (second stage) and the recommendations made to be coordinated with the state concerned (Rathberger 2008: 2).

The first phase of the UPR is the information-gathering or the documentation stage. This information relates to providing background material for the SuR. The UPR process relies on three sets of reports- report submitted by the SuR, the compilation reports submitted by the Office of the High Commissioner for Human Rights, and reports submitted by other stakeholders within the state such as NGOs, National Human Rights Institutions (NHRIs), and international NGOs and so on. This is the most important stage of UPR, and clear Guidelines have been spelt out by the Human Rights Council as to the content of these reports. For example, the reports submitted by SuR have to be formulated after having wide and detailed consultations with all stakeholders within the country, and information on all aspects of human rights has to be provided. The report provided by SuR should be twenty pages long, detailed with all kinds of demographic information, and other details relating to laws prevalent in the country and obstacles faced in implementing human rights. There have been examples of states like South Africa who did not submit their reports at the initial stage and only submitted at the time of interactive dialogue. Not submitting reports on time is a problem for other members who then cannot ask questions or give recommendations (Rathberger 2008: 2).

The second category of the report is compiled and presented by the Office of the High Commissioner for Human Rights (OHCHR). As opposed to the national report, this report should not exceed ten pages. This report is an amalgamation of all documents already scattered in various UN forums and other international bodies. The OHCHR makes use of state reports made to various UN treaty-bodies, the conclusions and recommendations by UN treaty bodies, reports compiled by special procedures such as independent experts and special rapporteurs, and also reports compiled by NGOs. Thus, in a way, this compilation report submitted by OHCHR becomes one standard document of the UN bodies about the human rights situations in the SuR.

The third category of the report is the report submitted by other stakeholders within the SuR. This other stakeholders' compiled report also cannot exceed ten

pages. This stakeholders' report is the crucial aspect of UPR when reviewing the human rights situation of a state. This is because this shadow report often comprises the truest picture on the ground which may be missing in the national report. The reliance on other stakeholder's report in the UPR process has given a sense of credibility and legitimacy to the UPR (McMahon and Ascherio 2012: 245).

Non-Governmental Organisations are important actors in the UPR process. Although the states wanted a much-curtailed role for NGOs in the UPR process, the Human Rights Council granted certain freedoms to the NGOs. For example, the Council allowed NGOs to attend and observe the Working Group review sessions much to the dislike of the states. Even though NGOs at this stage could neither pose questions nor present information nor participate actively, they are at least allowed to be present and attend the presentation of the national reports by the states.

Another way through which the Council broadened opportunities for NGO participation in the UPR was by allowing national (domestic) NGOs from the country under review, being 'other relevant stakeholders', to submit information into the UPR process- irrespective of the fact whether they had been accredited or not by the UN as NGOs with official consultative status under ECOSOC (Moss 2010: 9). Thus the Council allowed the NGOs presence in the otherwise state-dominated process of the UPR. NGOs' report as the "other stakeholders" report is one of the bases considered during the review. The information they provide can be referred to by any of the States taking part in the interactive discussion during the review at the Working Group meeting.

Another very important way through which NGOs contribute to the UPR process is through their active day-to-day lobbying and advocacy even when UPR session is not in place. This continuous cycle of advocacy by NGOs internally in societies around the world has enabled the UPR to be amenable towards all local, national as well as international NGOs. This continuous cycle of advocacy by NGOs entails advocating for national consultations, special procedure visits, asking for ratification of human rights treaties, submitting information to international human rights treaty bodies and advocating for the acceptance of recommendations made by other states. This aspect of the functioning of NGOs has made local and national NGOs an important part in the UPR process which was hitherto limited to

participation by well-known and highly regarded international NGOs having a presence in Geneva, and consultative status with UN (Moss 2010: 11). Active participation by local and national NGOs along with international NGOs in the UPR process has opened the doors of the review on many domestic issues such as that of minorities, indigenous peoples, women, transgender, children, and so on.

After the information on the state to be reviewed is gathered from various sources the next stage of the review process is labelled as the 'interactive dialogue stage'. This is the phase when the state under review presents its national report before the UPR Working Group. The state has to present it in the mode of a public hearing for three hours. The state can speak for around an hour. States such as Finland have presented well in time, thus not eating up the time reserved for asking questions. However, there have been states such as Argentina who have deployed strategies such as that of speaking for much of the time so that there would be no time available for question answer session (Rathberger 2008: 3). This phase is called 'interactive' because it is here that a real dialogue is exercised among states. For example, during the first UPR cycle when Malaysia was reviewed, a lot of states asked questions and made recommendations to Malaysia on issues such as ratification of human rights agreements, the condition of political prisoners and issues related to freedom of speech (Khoo 2014: 65). Thus during the interactive dialogue, other states may ask questions and may also make recommendations to the state under review which the SuR may or may not accept. Although NGOs and other non-state actors can attend the process in the second stage, they are not allowed to address the gathering and cannot ask questions to the SuR. It is only the member states of the Human Rights Council as well as other member states of the United Nations who are involved in the interactive dialogue with the SuR. However, the interactive dialogue is accessible for the public via webcasting (Moss 2010: 14).

The third stage of the UPR process is the regular session of the Human Rights Council when the outcome of the state reviews is considered. This is the stage where NGOs gain prominence and have the power to address the plenary session. This is the only point where NGOs are given an opportunity to raise questions, give recommendations to the SuR and thus be visible on the international platform. After the recommendations are given to SuR by other states and stakeholders, the SuR has to enumerate the recommendations which it is going to accept or reject. Once this

process is completed, a report is prepared by the troika with the involvement of the SuR and assistance from the OHCHR. This report, referred to as the "outcome report", provides a summary of the actual discussion and it also consists of the questions, comments and recommendations made by states to the SuR, as well as the responses by the reviewed State. The listing of the acceptance/rejection of recommendations by the SuR is important in this Outcome Document to ensure the follow-up of these recommendations four years later when the state would come up for its second review. The report then has to be adopted at a plenary session of the Human Rights Council, which is the last step in the process.

Indigenous Peoples' Issues in the Working Procedure

The indigenous peoples' groups and communities were elated with Universal Periodic Review system and celebrated it as a new mechanism that better suited their interests. It was believed that the issues of indigenous peoples would effectively be taken up by the UPR system. The inclusion of NGOs along with states into the working of the process was also considered positive by indigenous peoples. This is because the NGOs tend to take up indigenous peoples' issues at the international level rather than the states. The inclusion of these NGOs as important actors in the UPR process was considered a positive sign for the sake of indigenous interests and concerns (Khoo 2014: 67).

Documentation Stage

The first point to examine whether indigenous peoples' interests are taken into account in the UPR process is the information gathering stage to see whether the reports prepared by states, OHCHR and other stakeholders contain information relating to indigenous peoples. The OHCHR places human rights issues into 14 distinct categories on which the states are expected to report. Out of the 14 categories, one is that of 'minorities and indigenous peoples'. This categorisation which combines both indigenous peoples and minorities in one category is restrictive. It restricts the ability of states to report on both minorities and indigenous peoples. States have been given the choice of reporting on minorities as well as indigenous peoples or one of these, and sometimes states do not report on any of these two groups (Higgins 2014: 382).

It is generally seen that most often state reports do not contain much information on indigenous peoples. Even the states which have a bulk of indigenous populations, their national reports hardly mention about the indigenous peoples. Thus states like the United States of America and Nigeria are the classic cases which did not include any mention of indigenous peoples in their national reports (HRC 2010b). There are states which present a rosy picture in their national reports about how the states were working hard for the upliftment of their indigenous communities. States like Canada and Australia presented rather vague reports about the otherwise negative situation of indigenous peoples living within their territories (Harrington 2009: 45). Table 6:1 presents the national reports of ten states with reference to their indigenous populations.

Table 6:1 Select State Reports with Reference to Indigenous Peoples in the First Cycle

S. No	State	Year	Particulars
1.	Brazil	2008	The report mentions the affirmative action taken in order to remedy the problem of racial inequality. The steps include reservation of seats for indigenous students in higher education, providing scholarships to indigenous communities under the 'University for All' program. A section of the report focuses on 'Rights of Indian Population' wherein indigenous peoples' land rights are discussed in detail (A/HRC/WG.6/1/BRA/1).
2.	Guatemala	2008	The report acknowledges 'Mayan' people as the official indigenous peoples in the country. The report talks about some efforts of the Government for indigenous peoples such as setting up of Presidential Commission on Discrimination and Racism against Indigenous Peoples, Office of the Ombudsman for Indigenous Women, Guatemalan Fund for Indigenous Development (A/HRC/WG.6/2/GTM/1).
3.	Peru	2008	The report mentions that a Collective Reparation Program was initiated in 2007 to do justice for violence suffered by peasant and indigenous communities. The report highlights some of the achievements of the state viz. increasing the quota to ensure the political participation of indigenous women, steps taken to address indigenous concerns such as land title, education, health and environment (A/HRC/WG.6/2/PER/1).
4.	Philippines	2008	The report mentions about indigenous peoples as the most vulnerable groups. It states that the Indigenous

			Peoples' Rights Act of 1997 recognises indigenous peoples' justice system and conflict resolution system. National Commissioner on Indigenous Peoples has ensured land security for these communities (A/HRC/WG.6/1/PHL/1).
5.	Bolivia	2009	The report highlights the fact that a number of consultations were done with indigenous peoples before preparing the report. The first indigenous person is elected as the President in 2009 is mentioned as a key achievement. The report mentions a number of steps to be taken related to indigenous territories, health, education, language. A number of organisations have been established to ensure political participation of indigenous peoples (A/HRC/WG.6/7/BOL/1).
6.	Canada	2009	The report recognises three groups of indigenous communities- Indians, Metis and Inuits as official indigenous peoples of Canada. The report highlights that the Government has authority over Indian lands and Indian Band Councils, education of Indian children. Reconciliation as a policy was followed in 2008 to remedy the past wrongs done to Indians (A/HRC/WG.6/4/CAN/1).
7.	Chile	2009	The reports mention a number of Government bodies such as Presidential Commissioner for Indigenous Affairs set up to look into indigenous affairs. There is a separate section on rights of indigenous peoples which highlight the steps taken by the Government such as two exhibitions organised in 2006 and 2008 to preserve indigenous cultures, creating communal dialogues since 1999 to ensure political participation of indigenous peoples and so on (A/HRC/WG.6/5/CHL/1).
8.	New Zealand	2009	The report highlights that it is prepared after consultations with Maori peoples. A section is devoted to Rights of Indigenous Peoples where it mentions that the Government considers the Treaty of Waitangi as the basis of Government- Maori relationship. Education and native language are two issue-areas where steps have been taken by the Government. Strengthening the partnership between the Government and Maori is a key priority (A/HRC/WG.6/5/NZL/1).
9.	United States of America	2010	The report has a section on Native Americans and highlights that education, Native language restoration are two priority areas for the Government. One key step of the Government has been signing the Tribal Law and Order Act in 2010 which grants some kind of authority to the 564 recognised Indian tribes (A/HRC/WG.6/9/USA/1).
10.	Australia	2010	The report mentions the state of Aboriginals in Australia in bad condition, in need of attention from the Government. The report highlights the steps taken by the

			Government in terms of the intention to establish National Congress of Australia's First Peoples, the formal apology offered to the Aboriginals for the Stolen Generations; the reforms suggested in the Northern Territory Emergency Response of 2007 and also stressed the importance of cultural and land rights for the Aboriginals of Australia (A/HRC/WG.6/10/AUS/1).

Source: http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx, accessed on 14 April 2017

In the second review cycle, there were some states like Brazil which mentioned in their national reports the steps they had taken in response to the recommendations made in the previous cycle. States like Guatemala and Peru highlighted the legislative actions taken up by their respective governments in order to protect the rights of their indigenous peoples. Table 6:2 summarises the main points highlighted by select states in the national reports they submitted in the second cycle.

Table 6:2 Select State Reports with Reference to Indigenous Peoples in the Second Cycle

S. No	State	Year	Particulars
1.	Brazil	2012	The report mentions that the state has taken actions to reduce the vulnerabilities of indigenous peoples. The section on rights of indigenous peoples highlights steps taken towards demarcation of indigenous lands. The Statute on Indigenous Peoples submitted in 2009 is not yet approved. All these steps were taken in response to recommendations 3, 5 and 12 given in the first cycle (A/HRC/WG.6/13/BRA/1).
2.	Guatemala	2012	The report discusses the legislative steps taken in order to accord rights to indigenous peoples. These pertain to the General Act on Indigenous Peoples, Act on Consultation with Indigenous Peoples, Office for Defence of Indigenous Women and so on. Illiteracy and language are two challenges which the Government needs to tackle among indigenous groups (A/HRC/WG.6/14/GTM/1).
3.	Peru	2012	The report acknowledges the Decree Law on Prior Consultation of Indigenous Peoples issued in 2011 as an important step taken by the Government. In order to comply with some of the recommendations, a Fund for the development of indigenous peoples is being administered. Education of indigenous communities in their language is considered a challenge (A/HRC/WG.6/14/PER/1).
4.	Philippines	2012	The report gives a sole reference to indigenous peoples

			when it talks about Administrative Order 249 which was issued in 2008 and talks about adherence to all rights mentioned in the Universal Declaration of Human Rights, thereby taking into consideration the rights of indigenous peoples too (A/HRC/WG.6/13/PHL/1).
5.	Chile	2013	A separate section on Indigenous Women is highlighted in the report in response to recommendation 18 in the previous cycle. It says that indigenous women are made flag bearers of 'Bearers of Tradition Program' in order to spread awareness about the importance of cultural heritage of indigenous peoples. Another important step was the establishment of Council of Ministers for Indigenous Affairs in 2010 to implement the provisions of the ILO Convention No 169 (A/HRC/WG.6/18/CHL/1).
6.	Canada	2013	The report talks about the First Nations Land Management Regime which was launched in order to give control over their reserve lands to these first nations (A/HRC/WG.6/16/CAN/1).
7.	New Zealand	2013	The report highlights the steps taken by the Government in areas of education, land rights, cultural claims for indigenous peoples. The Government repealed the 2004 Foreshore & Seabed Act and enabled the Marine and Coastal Areas Act in 2011 for all to benefit including the Maori. The status of Treaty of Waitangi is continually being discussed by the Government to strengthen the relationship between the Government and Maori (A/HRC/WG.6/18/NZL/1).
8.	Bolivia	2014	The report discusses the actions taken by the Government for indigenous peoples such as- effort to combat racism by promoting the work of indigenous heroes and heroines, Indigenous Universities of Bolivia being set up to provide education in their languages, Access to Justice Program launched from 2013-2015 to prevent indigenous communities from being subjected to forced labour (A/HRC/WG.6/20/BOL/1).
9	United States of America	2015	The report consists of a section on indigenous issues wherein the Government's support for the UN Declaration is highlighted. Also the report talks about activities of the Government such as setting up of White House Council on Native American Affairs in 2013, commencement of 'Generation Indigenous'- an initiative in 2014 to remove barriers for indigenous youth (A/HRC/WG.6/22/USA/1).
10.	Australia	2015	The report highlights that efforts started in order to constitutionally recognise Aboriginals. A section is devoted to Indigenous Australians which talks about the Indigenous Advancement Strategy of 2014, the establishment of Prime Minister's Indigenous Advisory Council as key achievements of the Government

			(A/HRC/WG.6/23/AUS/1).

Source: http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx, accessed on 20 May 2017.

The state reports submitted during the first and the second cycles of UPR highlight the fact that states present a rosy picture and listed the actions they have taken for indigenous peoples in their territories.

The report compiled by OHCHR is an important source of information as far as indigenous peoples are concerned. This report focuses more on indigenous peoples than that of state reports. For instance, during the first cycle, Canada made only a vague reference to indigenous peoples. However, the report by the OHCHR not only mentioned about Canada's exploitation of its Aboriginal's lands and natural resources but also mentioned about some complaints filed by indigenous communities against Canada on matters relating to climate change. The OHCHR report highlighted matters of policy and law, as well as matters of provincial jurisdiction and reminded that recommendations were made by treaty body and special rapporteur on Canada's treatment of its indigenous communities. The OHCHR report emphasised the fact that Canada had to deal with corporations which violated rights of the indigenous communities. This mention of indigenous peoples' rights in the OHCHR report led to an intense discussion on the issue in the interactive dialogue stage where many states recommended Canada to take punitive measures against such corporations (Harrington 2009: 84).

The suggestions given by UN treaty bodies such as HRC and CESCR to Canada to negotiate with the indigenous peoples in the Lubicon Lake Band area were also mentioned in the report (HRC 2008: 44). Similarly, the reports by OHCHR have been quite inclusive of indigenous peoples' issues in cases of other states as well such as Malaysia, Bolivia, and Guatemala and so on. It became a matter of public embarrassment for states when they get questioned on issues not mentioned in their reports but mentioned in reports of OHCHR (Khoo 2014: 34). Tables 6:3 and 6:4 illustrate the content of reports by OHCHR with select reference to indigenous peoples' concerns during the first and second cycles.

Table 6:3 Report of OHCHR with Select Reference to Indigenous Peoples in the First Cycle.

S.No	State	Year	Particulars
1.	Brazil	2008	The report enumerates a number of letters sent by CERD on the situation of the indigenous land of Raposa Serra of the State of Roraima in 2006-07. CESCR, in 2003-04 expressed concerns about discrimination against indigenous peoples. In 2004, CRC also asked the state to look into the lack of education opportunities for indigenous children (A/HRC/WG.6/1/BRA/2).
2.	Canada	2008	A number of treaty-bodies such as CEDAW, CERD and the Special Rapporteur on Indigenous Peoples urged legislative solutions to address the problem of discrimination against indigenous women. In 2006, the HRC and CESCR urged Canada to negotiate with the Lubicon Lake Band (A/HRC/WG.6/4/CAN/2).
3.	Guatemala	2008	A number of treaty-bodies such as CEDAW and CERD expressed concerns about the situation of indigenous women and discrimination against indigenous peoples respectively. CERD also was concerned about the obstruction to the use of traditional sacred sites of indigenous peoples (A/HRC/WG.6/2/GTM/2).
4.	Peru	2008	Treaty-bodies such as CRC, HRC and CAT expressed concern about discrimination against indigenous children and about reports of indigenous women undergoing involuntary sterilisation. CERD, under its early-warning procedure, considered the impact of a project involving water drainage on the rights of indigenous peoples (A/HRC/WG.6/2/PER/2).
5.	Philippines	2008	In 2005, CRC recommended that indigenous children should enjoy rights without discrimination. Communication was also sent by Special Rapporteur on the adequate housing about forced eviction of indigenous peoples due to the construction of a railway line. In 2007, CERD under its early-warning procedure said that the IPRA was not implemented (A/HRC/WG.6/1/PHL/2).
6.	Bolivia	2009	In 2007, SRIP, CESCR, Special Rapporteur on Right to Food, and PFII made recommendations on the suppression of all forms of forced labour. The SRIP also expressed concerns about environmental pollution of many indigenous territories due to mining (A/HRC/WG.6/7/BOL/2).
7.	Chile	2009	In 2004, CESCR welcomed the establishment of CONADI, an organisation to represent indigenous peoples. In 2004, CESCR recommended Chile to

			continue to strengthen efforts to reduce poverty among indigenous groups. In 2006, CRC recommended that Chile continues to promote the use of traditional medicine. The SRIP and HRC urged the Government to solve the problem relating to territorial rights of indigenous communities (A/HRC/WG.6/5/CHL/2).
8.	New Zealand	2009	In 2005, CESCR explained that rights of Maori are not constitutionally recognised. In 2003, CESCR expressed concern on the schooling system being disadvantageous to Maori. In 2005, CERD expressed concerns with the discrimination provisions in the Foreshore and Seabed Act of 2004 and urged the Government to repeal or at least amend it (A/HRC/WG.6/5/NZL/2).
9.	United States of America	2010	CERD recommended that the rights of Native Americans to participate in the decisions going to affect them be recognised (A/HRC/WG.6/9/USA/2).
10.	Australia	2010	CESCR encouraged the Government to reduce greenhouse gas emissions for indigenous peoples so that their right to a clean environment and right to clean drinking water are not jeopardised (A/HRC/WG.6/10/AUS/2).

Source: http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx, accessed on 12th April 2017.

Table 6:4 Report of OHCHR with Select Reference to Indigenous Peoples in the Second Cycle

S.no	State	Year	Particulars
1.	Brazil	2012	In 2009, SRIP recommended that new legislation be adopted to implement ILO Convention 169. CESCR recommended that the Family Grant Program was limited in its approach and should be extended to indigenous families. UNICEF noted that right to health and education was violated in the case of indigenous children. UNESCO congratulated the state on the adoption of Law 11.645 in 2008 as a measure to promote cultural rights of indigenous peoples (A/HRC/WG.6/13/BRA/2).
2.	Guatemala	2012	OHCHR noted the problem of segregation among indigenous communities owing to continued racism and discrimination against them. Indigenous communities were also excluded from social, political and cultural spheres. CRC and CEDAW expressed concern about the problem of forced evictions suffered by indigenous peoples. Special Rapporteur on Right to Education expressed concerns about teaching in indigenous language which was limited to the first three years of primary education. CERD raised concerns about the pollution suffered mostly by indigenous peoples

			(A/HRC/WG.6/14/GTM/2).
3.	Peru	2012	Special Rapporteur on Slavery recommended that the Forestry Bill should respect the rights of indigenous peoples. CERD under its early-warning procedure raised concerns on the exploitation of sub-soil resources of the indigenous community of Ancomarca in Tacna province. CESCR welcomed the Act on the Rights of Indigenous or Aboriginal Peoples to Prior Consultation. In 2010, CERD noted that the Dorisso Agreement concerning the Achuar people affected by oil drilling had not been implemented (A/HRC/WG.6/14/PER/2).
4.	Philippines	2012	In 2008 and 2010, CERD under its early-warning procedure considered the Subanon Mt Canatuan case where mining was allowed on the land of the Subanon people without their consent. CESCR urged the state to implement IPRA fully. CRC recommended that indigenous children should not be recruited in the armed forces (A/HRC/WG.6/13/PHL/2).
5.	Chile	2013	CERD expressed concerns about the low level of participation of indigenous peoples in the parliament and also problems faced by indigenous peoples in gaining access to justice. CEDAW was concerned about high illiteracy rates among indigenous women. UNCT observed that out of seven bills tabled in 1991 to give constitutional recognition to indigenous peoples, only one had been passed. UNCT also criticised the Counter-Terrorism Act which had prosecuted many of Mapuche people in 2011. In 2013, CERD recommended that a policy on environmental impacts on indigenous peoples be devised by the state (A/HRC/WG.6/18/CHL/2).
6.	Canada	2013	CERD urged the state to implement the rights of Aboriginal people to consultation and FPIC. In 2009, under its early-warning procedure, CERD raised concerns about increased development in indigenous territories without their consent (A/HRC/WG.6/16/CAN/2).
7.	New Zealand	2013	CERD recommended that the state should make efforts to improve the situation of Maoris in the field of employment, health, justice and education. CAT expressed concern about the prevalence of violence against indigenous women. CESCR recommended that steps should be taken in order to curb tobacco consumption among the Maoris. SRIP applauded the efforts of the Government in accepting the UNDRIP, repealing the Foreshore & Seabed Act, and initiating the Treaty Settlement Process with the Maoris (A/HRC/WG.6/18/NZL/2).
8.	Bolivia	2014	CERD expressed concerns that indigenous peoples still

			faced discrimination. CAT and CERD urged the state about the captivity of the Guarani people. CERD and HRC expressed concerns about the consultation process in Bolivia which did not take into consideration the consent of the indigenous peoples (A/HRC/WG.6/20/BOL/2).
9.	United States of America	2015	CERD reiterated its concerns for indigenous women who suffered a lot of discrimination. It also called upon the state to prevent the forced removal of indigenous children from their families. HRC welcomed the states' support for the UNDRIP. CERD expressed concerns about the growing extractive industries sector and the problems it caused to the indigenous communities (A/HRC/WG.6/22/USA/2).
10.	Australia	2015	CRC noted that discrimination against Aboriginal children was a problem. In 2012, the SRIP urged the state to engage with the Aboriginals in taking out initiatives for these communities. Access to justice, cultural and land rights were major issues which needed attention by the Government (A/HRC/WG.6/23/AUS/2).

Source: http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx, accessed on 22 May 2017.

The OHCHR reports during the first and second cycles reveal the active role played by the treaty bodies and special procedures of the United Nations in the case of indigenous peoples. Through the various activities and work methods employed by these procedures, such as concluding remarks, urgent action procedures, these mechanisms brought out the actual situation of indigenous peoples in various states. For example, whereas the state report presented by the Philippines during the first and the second cycle highlighted the adoption of Indigenous Peoples' Rights Act in 1997 as the biggest achievement of the state, this claim was annulled by the CERD under its early-warning procedure which mentioned that IPRA till 2007 was in fact not implemented by the state. Similarly, the state report of New Zealand in the first cycle did not mention about the violation of rights of the indigenous Maori after the adoption of the Foreshore and Seabed Act of 2004. The continuous appeals by treaty-bodies such as CERD and Special Rapporteur were mentioned in these OHCHR reports which talked about the gravity of the situation and later forced the state to repeal the Act (HRC 2013i: 23).

The third very useful kind of documentary evidence in the case of indigenous peoples is the one submitted by 'other stakeholders', the reports prepared by other

non-state actors such as NGOs, research-based think-tanks, epistemic communities and academic institutions. Local NGOs are the most important players in the non-state actor category as far as indigenous peoples are concerned. This is because local NGOs know the ground reality of these indigenous peoples and are aware of the problems and exploitation of their human rights. However, UPR being an international mechanism, it becomes difficult for these local NGOs to participate at such a grand level. It is here then a number of strategies have been used by these local NGOs to be able to make it and attend UPR sessions. The first and the foremost way of getting participation is by way of making a joint submission to UPR. This has been the case with a number of local-level organisations in African states such as Congo and Ethiopia. A number of local NGOs represent the interests of indigenous peoples in these states. No international NGO can know about these indigenous peoples because of their own language, their own customs and most important their own location. So, in order to highlight the problems of such remotely found indigenous peoples, their local organisations jointly write reports with other local indigenous NGOs and submit it as a stakeholder submission. The UPR also favours jointly authored reports from the non-state actor category as this saves a lot of time. Also, usually most of the problems and issues faced by indigenous peoples are similar, so it saves a lot of time if all local NGOs submit one report. Joint submission is also advantageous for these locally found indigenous NGOs which are neither trained nor have the expertise to participate in such international avenues (Moss 2010: 23). Another strategy which could be employed by local NGOs to find ways of participating in the UPR can be by way of lobbying international NGOs specially the ones having a consultative status with ECOSOC. The participation and input from the local NGOs make the stakeholder's report look legitimate and authentic at the international level (Moss 2010: 12). Tables 6:5 and 6:6 present some highlights with reference to indigenous peoples of the stakeholders' reports during the two UPR cycles.

Table 6:5 Select Highlights of the Stakeholder's Report with Reference to Indigenous Peoples in the First Cycle.

S.no	State	Year	Particulars
1.	Brazil	2008	The report claims that all federal agencies have failed to protect the rights of indigenous peoples of Raposa. Amnesty International (AI) recommended that the Government should ratify ancestral indigenous lands. NGOs like AI, COHRE and STP, talked about land

			rights of indigenous peoples and blamed the lack of political will among the Government agencies to protect their rights (A/HRC/WG.6/1/BRA/3).
2.	Canada	2008	Organisations like Assembly of First Nations (AFN) said that the Government is not serious in making the Declaration a minimum standard. AI said that Canada has no disaggregated data on indigenous peoples. AI also talked about the increasing incidents of resource extraction on indigenous lands without their consent. FAFIA, AI and NWAC said that Aboriginal women experienced grave and systematic forms of violence (A/HRC/WG.6/4/CAN/3).
3.	Guatemala	2008	The report mentions that the legislations and Acts passed by the Government are not enough for the protection of rights of indigenous peoples. STP mentioned that most of the victims of violence had been indigenous peoples, but there is no data on them. Access to justice for these indigenous peoples is a myth. AI observed that conflict over land remains a critical issue where forced evictions of indigenous peoples are repeatedly done (A/HRC/WG.6/2/GTM/3).
4.	Peru	2008	Organisations like FIDH, and APRODEH reported that indigenous NGOs are constantly attacked by the Government. The indigenous women suffer from forced sterilisation and indigenous communities also suffered from the perils of oil exploitation and suffer water contamination and environmental pollution (A/HRC/WG.6/2/PER/3).
5.	Philippines	2008	Organisations like AITPN mentioned that indigenous peoples have become the targets of extra-judicial killings and enforced disappearances. TEBTEBBA claims that on paper IPRA is passed by the Government, on the other hand, other laws are passed to undermine the provisions mentioned in this legislation. In recent years indigenous peoples comprise the most deprived and marginalised sections (A/HRC/WG.6/1/PHL/3).
6.	Chile	2009	AI recommended that the state should work towards a national declaration on the lines of existing standards and that ILO Convention should be implemented. The constitutional recognition of Mapuche is still pending and that these communities are not consulted in decisions going to affect them. Land issues are not addressed by the Government (A/HRC/WG.6/5/CHL/3).
7.	New Zealand	2009	NGOs maintain that the Government has belittled international institutions that have criticised the Government's approach towards indigenous peoples. According to Cultural Survival (CS), Maori are discriminated in education, employment, housing,

			healthcare, and language (A/HRC/WG.6/5/NZL/3).
8.	Bolivia	2009	AI recommended that the state should take strict action against discrimination against indigenous peoples. There are reports that climate change threatens local indigenous cultures. AI has also recommended the Government for making progress in areas of economic, social and cultural rights but more needs to be done. Access to justice for these indigenous peoples is far from reality (A/HRC/WG.6/7/BOL/3).
9.	United States of America	2010	Organisations urged the Government to give support to the Declaration. The reports mention that indigenous peoples continue to suffer from discrimination. The US courts provide little protection to traditional indigenous practices. IITC mentioned that the US failed to comply with CERD regarding the decision on Western Shoshone (A/HRC/WG.6/9/USA/3/Rev.1).
10.	Australia	2010	The report mentioned that violence against indigenous women is a serious issue. Aboriginals face difficulties getting access to the criminal justice system. The Constitution should recognise the rights of indigenous peoples and that Native Title Act should be amended (A/HRC/WG.610/AUS/3).

Source: http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx, accessed on 26 April 2017.

Table 6:6 Select Highlights of the Stakeholder's Report with Reference to Indigenous Peoples in the Second Cycle.

S.No	State	Year	Particulars
1.	Brazil	2012	CIVICUS stated that activists working to protect the rights of indigenous peoples were at risk. STP noted that the protection status of indigenous territories was weakened to facilitate exploitation of natural resources. Indigenous right to free, prior and informed consent was violated by the construction of large hydro-electric dams. The construction of Madeira River Hydroelectric Complex Project was a case in point. Similar concerns were expressed about the rights of the Xingu community in Amazon whose rights were violated by the construction of Belo Monte dam project. Lack of land demarcation had resulted in a dire situation of food scarcity for indigenous peoples (A/HRC.WG.6/13/BRA/3).
2.	Guatemala	2012	Indigenous women continued to face discrimination; appropriate legislation was still not enacted, no free legal counsel for indigenous women. A lot of reports also noted that amendment to the Broadcasting Act (a UPR recommendation) had not been enacted and indigenous peoples were still denied access to media. AI informed that indigenous families faced evictions,

			there was no protection of the intellectual property of indigenous woven fabrics (A/HRC/WG.6/14/GTM/3).
3.	Peru	2012	The Act on the Rights of Indigenous or Aboriginal Peoples to Prior Consultation of 2011 was seen as a step forward. Implementation was seen as a challenge. STP recommended including peasant rights when discussing indigenous rights, fighting racism, discrimination against indigenous peoples, and prohibiting extractive industries in fragile regions for the better protection of indigenous peoples' rights (A/HRC/WG.6/14/PER/3).
4.	Philippines	2012	UNPO recommended ratification of ILO Convention No 169. It also stated that extraction of resources in the Cordillera and Mindanao region violated the collective rights of indigenous peoples. KAMP stated that despite IPRA of 1997, indigenous peoples' rights to lands and natural resources were collectively threatened. UNPO also noted that extrajudicial killings and enforced disappearances of indigenous peoples by military continued to be a problem (A/HRC/WG.6/13/PHL/3).
5.	Chile	2013	INDH reported incidents of sexual abuse of indigenous children and women committed during police raids in indigenous territories. Constitutional recognition of indigenous peoples was still pending. The highest level of poverty and discrimination, the lowest level of participation and access to education and employment was found among indigenous groups. The report also mentioned that the Government initiated several bills such as Fisheries Act, Forestry Development Act which threatened the lives of indigenous peoples. The steps taken by Courts ruling in favour of recognising indigenous property rights were welcomed (A/HRC/WG.6/18/CHL/3).
6.	Canada	2013	AI recommended that Canada develops a plan of action to implement the UNDRIP. It also noted that Canada has failed to acquire the consent of indigenous peoples in resource extraction projects. HRW questioned Canada's commitment to engage with indigenous communities on issues of police accountability. NWAC called upon Canada to conduct a national enquiry regarding disappearances and murder of Aboriginal women. VV recommended that adequate funding should be made available to indigenous children and family services agencies (A/HRC/WG.6/16/CAN/3).
7.	New Zealand	2013	MHF-NZ highlighted that Maori were disproportionately represented in mental illness statistics. Reports recommended that the Government should consult the Maoris before making policies. AI recommended that policies be implemented for the

			further appointment of Maori judges. The Runanga called for constitutional recognition of Maoris as First Peoples. It was alleged that in the name of counter-terrorism, racially discriminatory treatment was done to Maori (A/HRC/WG.6/18/NZL/3).
8.	Bolivia	2014	Older people from indigenous communities were not documented so could not benefit from the old age pension. AI noted that all recommendations given in the previous UPR were implemented. CIDOB-CONAMAQ alleged that the Government had failed to consult indigenous peoples and its practices were aimed at weakening the indigenous organisations. IHRC recommended that all measures be taken to ensure that indigenous peoples are consulted in decisions that will affect them. CORIDUP noted that the Kori Kollo gold mine caused severe contamination of water and soil on which indigenous peoples depended on (A/HRC/WG.6/20/BOL/3).
9.	United States of America	2015	Many NGO reports mentioned that indigenous peoples continue to face challenges related to historical discrimination, acts of oppression, and inadequate government policies. It was recommended that the Government should adopt measures to protect sacred areas of indigenous peoples against environmental exploitation and degradation. The Government was also called upon to implement UNDRIP fully (A/HRC.WG.6/22/USA/3).
10.	Australia	2015	AHRC recommended that the Government, in consultation with Aboriginal and Torres Strait Islander people should develop a national strategy to give effect to the UNDRIP. ANGOC noted that Aboriginal people continued to be disproportionately targeted by police. A number of positive steps taken by the Government such as constitutional recognition, adoption of the outcome document of World Conference of Indigenous Peoples, were welcomed by NGOs (A/HRC/WG.6/23/AUS/3).

Source: http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx, accessed on 25th May 2017.

The stakeholders' reports prepared for the two review cycles highlight the fact that in the second cycle there were more reports submitted which mentioned a lot of indigenous peoples. One reason for the increase in reporting on indigenous peoples by NGOs could be the fact that NGOs had become somewhat accustomed to the practice of UPR by the end of the first cycle. The second cycle witnessed a number of joint submissions made to the UPR in relation to indigenous peoples. For example, for the second cycle of UPR of Democratic Republic of Congo which took place in 2014,

NGO report was submitted on the situation of Pygmy peoples. This report was jointly written by a number of local NGOs such as FDAPYD-Hope Indigenous Peoples, National League of Indigenous Pygmy Association of the Congo, Organization for Care and Support of Pygmies, Integration and Development Programme for Pygmy People in Kivu, Programme for the Rehabilitation and Protection of Pygmies, Network of Indigenous and Local Populations for the Sustainable Management of Forest Ecosystems in the Democratic Republic of Congo, and Union for the Emancipation of Indigenous Women. The report highlighted a number of problems faced by indigenous Pygmy communities such as problems of dispossession, land insecurities, problems related to the right to health, education, and no opportunity to access justice (Congo 2014: 2-3).

A comparison of the three reports in the first and second cycles of UPR reveals a stark difference between the reports. For example, the state report of Brazil submitted to the UPR in the first cycle stated the positive steps taken by the Government in the case of indigenous peoples such as taking affirmative action to address the phenomenon of racial inequality and in the field of education for indigenous children and so on. The state report submitted in the second cycle mentioned about the steps taken in order to restore land rights for indigenous peoples in order to reduce their vulnerabilities. What the state reports did not mention was highlighted in the OHCHR reports submitted during the first and second cycles. The OHCHR report highlighted the continuous violation of the land rights and rampant discrimination against indigenous communities of Raposa. The stakeholder's reports further confirmed the human rights violations of indigenous communities in Raposa and highlighted the flaws with which the state was carrying on with the land demarcation of indigenous lands. This is a case to show how state reports are different from what was presented in other OHCHR and stakeholders' reports.

Interactive Dialogue Phase

The second phase of the UPR process, which is known as 'interactive dialogue phase' is the most important phase because it is here that all the documentation collected in the first phase comes to use. The SuR present its national report followed by questions raised by other states. The interactive phase lasts three hours. As interactive dialogue phase is an arena dominated by states, states have the sole

authority over the issues they want to discuss. Usually, the states are not in favour of any discussion on indigenous peoples' issues at international forums such as the UPR. Therefore, there is less discussion on indigenous peoples in this phase of the UPR. Generally speaking, the interactive phase of the UPR has not been a positive force for indigenous peoples.

Some of the states recommended to the SuR to take some measures to promote or protect indigenous peoples' rights. For instance, Slovenia recommended Bolivia that it should continue with its efforts to implement the provisions of its new Constitution so that indigenous communities could enjoy their rights (HRC 2010d Para 98). Similarly, Denmark recommended to Chile about the same (HRC2009i: Para 96). The ratification and implementation of ILO Convention 169 were also a major issue which was raised during the interactive dialogue procedure of the first cycle. The recommendation to implement the Convention 169 was made to a number of states with huge indigenous populations such as Australia, Finland, and New Zealand (HRC 2011: Para 86, HRC 2009: Para 86). A number of recommendations were made to states such as New Zealand, Canada and United States regarding the adoption of the UNDRIP to which these States had not declared support. Participation of indigenous peoples in decision-making and public affairs was also one issue on which many states received recommendations. For example, Slovenia recommended to Australia that it consult with Aboriginal and Torres Strait Islander people and take into consideration the guidelines proposed by the Australian Human Rights Commission before considering suspension of the Racial Discrimination Act for any future intervention affecting these indigenous communities (HRC 2011: Para 86). On the issue of land rights, Slovenia recommended to Belize to protect Mayan customary property rights in accordance with Mayan customary laws and land tenure practices in consultation with affected Mayan people (HRC2009: Para 68). Cultural and educational rights of indigenous peoples also found mention during the interactive dialogue when Austria recommended to Australia that it enhance the contacts and communication between Aboriginal and Torres Strait Islander communities and law enforcement officials and enhance the training of those officials with respect to cultural specificities of these communities (HRC 2011: Para 86).

Even in the second cycle of the UPR, number of recommendations been made by states to SuR. For example, Finland recommended to the USA to continue to pay

attention to violence against indigenous women by ensuring that all reports of violence are thoroughly investigated, Egypt and Bolivia recommended to the USA's delegation to fully implement the UN Declaration on the Rights of Indigenous Peoples and China recommended that the United States should respect indigenous peoples and ethnic minorities interests and rights (HRC 2015: Para 5). Ireland, Korea and Trinidad & Tobago recommended to Bolivia to take up measures to eliminate discrimination against indigenous peoples (HRC 2014d: Para 35). Bolivia and Egypt recommended to the United States to take actions in order to fully implement UNDRIP (HRC 2015j: Para 67). Table 6:7 presents a summary of the select recommendations made by states on indigenous peoples. In case of acceptance of recommendations, the implementation or follow-up of these recommendations would be assessed four years later during the next UPR cycle. However, many of the recommendations were rejected by states. Although NGOs and other non-state actors can attend the interactive dialogue process in the second stage, they are not allowed to address the gathering and cannot ask questions to the SuR.

Table 6:7 Summary of Recommendations to States during the Two Cycles

S.no	States	First Cycle (2008-2012)	Second Cycle (2012-2016)
1.	Brazil (2008, 2012)	To take up more activities in case of indigenous women (United Kingdom), consideration to human rights violations of indigenous peoples (Korea).	To remove poverty among indigenous groups (Ecuador, Egypt), ensure equality of opportunity (Turkey), protect human rights of indigenous peoples (Switzerland, United Kingdom, Thailand, Cape Verde, Morocco), right to education (Holy See), right to be consulted (Netherlands, Peru, Germany), right to land and natural resources (Norway, Slovakia, Poland).
2.	Guatemala (2008, 2012)	Improvement of indigenous rights (Switzerland, Canada, Slovenia), combat racial discrimination (South Africa, Switzerland), indigenous children (Switzerland), indigenous women (Slovenia), the right to participation (Jordan), accelerate poverty alleviation	Implement strategy of birth registration for indigenous communities (Uruguay, Slovenia), ensure protection of indigenous peoples' rights (Hungary, Trinidad & Tobago, Bolivia, Greece), ensure right to consultation (Costa Rica, Norway, Paraguay, Peru), access to safe drinking water,

		(South Africa).	sanitation and medical facilities for indigenous peoples (Slovenia, Liechtenstein, Holy See), indigenous women (Bolivia), indigenous children (Norway), right to culture (Norway).
3.	Peru (2008, 2012)	Improve situation of indigenous peoples (Algeria).	Eliminate discrimination against indigenous communities (Slovakia), combat poverty (Bangladesh), the right to education (Costa Rica), the efforts to improve situation of indigenous peoples (Greece, Trinidad & Tobago, Bolivia, Mexico), the right to consultation (Hungary, Germany).
4.	Philippines (2008, 2012)	No recommendation on indigenous peoples.	Improve situation of indigenous peoples' rights (Thailand), Implement Indigenous Peoples' Rights Act to ensure mining dos not negatively affect their rights (Mexico).
5.	Canada (2009, 2013)	To establish transparent mechanisms for greater participation of indigenous peoples (Portugal, Mexico), implement UN treaty-bodies' recommendations (Jordan, Portugal), prevent discrimination (Malaysia, Azerbaijan), disappearance and violence against indigenous women (Mexico, Bolivia, Norway), fully endorse UNDRIP (Cuba, Norway, Denmark, Pakistan), improve healthcare (Indonesia).	Combat racism and discrimination against indigenous peoples (Malaysia), improve living conditions (China, Iran, Mexico), Aboriginal children (Cape Verde, Norway), right to participation (Peru, Gabon, Morocco), give full effect to UNDRIP (Togo, Cuba), employment, healthcare and education related rights (Gabon, Morocco, Burundi, France), prevent violence against indigenous women (Peru, Sweden, France, Ecuador, Switzerland, Slovakia, Slovenia, Norway, Indonesia, Ireland), right to water and sanitation (Ecuador, Spain).
6.	Chile (2009, 2014)	Ensure rights of indigenous peoples (Uzbekistan, Vietnam, Brazil, Norway, Austria, Bangladesh), discrimination against indigenous women and	Right to consultation (Iraq, Sweden, Austria, Australia), eliminate discrimination against indigenous peoples (China, Congo, France, Azerbaijan, Bangladesh), education for

		children (Bolivia, United Kingdom, Azerbaijan), poverty reduction for indigenous peoples (Malaysia, Algeria), constitutional recognition (Denmark), access to education (Algeria, Slovenia), right to participation (Bolivia, Bangladesh, New Zealand, Finland), right to culture (Uruguay), implement ILO Convention No 169 for land claims (Canada, Denmark, Guatemala, Mexico, Azerbaijan), right to consultation (Denmark, Austria, Sweden), not apply the Anti-Terrorism Act (Czech Republic, Switzerland).	indigenous women (Estonia, Djibouti), enhance employment, education and healthcare for indigenous peoples (Vietnam), protect rights of indigenous peoples (Ecuador, Greece, Trinidad & Tobago, Angola, Iran, Uzbekistan, Slovenia), constitutional recognition of indigenous peoples (Uzbekistan, Brazil), right to participation (Canada, Peru), implement ILO Convention 169 (Norway, Bolivia), ensure Anti-Terrorism Act does not undermine the rights of indigenous peoples (Cuba, United States of America, Germany), reduce environmental impacts on indigenous peoples (Belarus).
7.	New Zealand (2009, 2014)	Extend support to UNDRIP (Iran), economic, social and cultural rights of Maoris to be protected (Netherlands), right to participation (Russian Federation), take steps to reduce disparities (Turkey, Jordan, Japan), address all kinds of discrimination (Bangladesh), continue dialogue on the Foreshore & Seabed Act (Mexico), provide compensation for loss of land (Angola).	Improve situation of Maoris (Congo, Mauritius, Germany, Djibouti), constitutional recognition (Trinidad & Tobago), address discrimination against Maoris (Somalia, Czech Republic, Greece), full implementation of UNDRIP (Norway), right to participation (Slovenia, Canada, Angola), engage in the treaty-settlement process (Slovenia, Ecuador), right to consultation (Mexico, Ireland), right to employment, education (Namibia, China), address inequalities (Australia, Cabo Verde), address prison detentions of Maori (Thailand), Maori women (Ireland), develop a new Maori language strategy (Bangladesh), combat child poverty (Mexico).
8.	Bolivia (2010, 2014)	Eliminate racial discrimination against indigenous peoples (Guatemala, Azerbaijan, Kyrgyzstan), implement constitutional provisions	Eliminate discrimination against indigenous peoples (Korea, Trinidad & Tobago, Ireland, Angola), right to sexual and reproductive rights of indigenous women (Mexico),

		(Slovenia), ensure that indigenous justice system should confirm to international standards (Canada, Netherlands, Austria, Switzerland), right to sexual and reproductive health of indigenous women (Sweden), strengthen rights of indigenous peoples (Venezuela, Norway, Pakistan), right to participation and consultation (Venezuela), address situation of Guarani indigenous peoples (Germany).	right and access to education (Palestine, Iran, Ghana, Dominican Republic), ensure that indigenous justice system should confirm to international standards (Finland), right to participation and consultation (Spain), recognition to labour and environmental rights of indigenous peoples (Spain).
9.	United States of America (2011, 2015)	Ratify and implement UNDRIP (Venezuela, Iran, Bolivia, Libya, Finland, Ghana, New Zealand, Nicaragua), the right to participation (Bolivia), promote rights of indigenous peoples (Finland, Cuba).	Implement national plan of action for the benefit to indigenous peoples (Cabo Verde), address violence against indigenous women (Macedonia, Finland), ensuring enjoyment of human rights of indigenous peoples (Spain, Nicaragua), implement UNDRIP (Egypt, Bolivia), right to consultation (Moldova, China).
10.	Australia (2011, 2016)	Right to consultation (Slovenia, Indonesia), address over-representation of aboriginals in prisons (Austria), enhance contact between aboriginals and law-enforcement officials (Austria), establish a national compensation tribunal to provide compensation (Slovenia), reform Native Title Act of 1993 (United Kingdom), institute formal reconciliation procedure (Slovenia), constitutional recognition (Guatemala), address disparities (Austria).	Ensure partnership with Aboriginals to implement UNDRIP (Estonia, Ireland), the right to consultation (Namibia), address socioeconomic disparities (Poland, Ecuador), address discrimination against indigenous peoples (Timor-Leste), strengthen access mechanisms to social services (Rwanda, Timor-Leste), implementation of national policies (Nicaragua, Singapore).

Source: http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx, accessed on 29th May 2017.

A look at the table is sufficient to conclude that the recommendations made on indigenous peoples were more in number in the second cycle than the first cycle. This could be attributed to the seriousness which was accorded to the issue of indigenous peoples in the UPR during the second cycle. Three sets of reports dwelling on the situation of indigenous peoples, corroborated from all possible sources, unleashed so much information on indigenous peoples which had never been the case prior to the establishment of UPR. This could be a compelling reason for states to take the concerns of indigenous peoples more seriously than ever before and give recommendations on indigenous peoples in the second cycle.

Outcome Report Phase

The third phase of the UPR is the outcome report stage of the SuR. In this phase, most of the discussion on indigenous peoples takes place because it is at this stage that NGOs (mostly international) can take to the floor and are free to give recommendations and comments on the state report. Even when it is up to the states to accept or reject recommendations, this stage is extremely crucial for raising the issues and concerns of indigenous peoples on the global platform. A number of issues were brought forward by NGOs during the first and second cycles of UPR in relation to indigenous peoples in this last phase. Two most criticised states during the first cycle were Malaysia and Canada. These were criticised for the atrocities that have been committed on their indigenous populations over the years and the lack of action taken by these states. In the case of Malaysia which was reviewed in 2009, several national NGOs such as SUHAKAM, Coalition of Malaysian Non-Governmental Organisations in the UPR Process (COMANGO) and indigenous organisations such as Indigenous Peoples Network of Malaysia (JOAS) attended as observers. During the interactive dialogue, Malaysian delegation comprising of all high-level officials took more than the allotted one hour to speak. Out of the allotted three hours for the interactive dialogue, when two hours were used in the presentation of the report, no time was left for any interaction among states and other stakeholders, a point which was later pointed out and criticised by NGOs when the outcome report was adopted (Khoo 2014: 27). Other than these national NGOs, several international NGOs also took the floor, such as Amnesty International, Asian Forum for Human Rights and Development and Arab Commission for Human Rights. These NGOs made important

statements on the condition of indigenous communities in Malaysia and that the lack of legal recognition of these communities was the biggest problem (Khoo 2014: 25).

Malaysia publicly rejected the recommendation put forward by Amnesty International about military crackdown on the indigenous peoples in Malaysia and destruction of their lands and natural resources (Khoo 2014: 28-30).

Lobbying of state delegates by Canada's NGOs took place in early 2009 outside the UPR process. These Canadian NGOs with support from international NGOs such as Amnesty International and Human Rights Watch were unhappy with Canada's decision to not ratify the UNDRIP in 2007. At that time Canada had stated that some provisions on the right to self-determination and lands and natural resources had been the prime reason for Canada not accepting the Declaration. Lobbying by national as well as the pressure put forth by international NGOs was considered a significant factor for Canada to rethink its decision. Even during the interactive dialogue of Canada, it was asked to reconsider its position with respect to the Declaration. Later in 2009, Canada agreed to give its assent to the Declaration. The advocacy and lobbying activities of NGOs could be an important reason for Canada to change its stance. This was a very positive role played by NGOs which had a long-lasting impact on the indigenous peoples in Canada. Since 2009, Canada has tried to keep its promises of providing schools to indigenous children in their language, of giving equal rights to indigenous women and so on (Abebe 2009: 45).

Canada accepted twenty-six recommendations and out rightly rejected fifteen recommendations (Harrington 2009: 88). The accepted recommendations dealt with policies on women's freedom, equality and non-discrimination and so on. There was no recommendation on indigenous peoples per se. One peculiar thing in the case of Canada which was brought forward was the fact that the NGOs were quite inactive during the plenary session where they take the floor and can speak. This was surprising because Northern NGOs are better placed and have better facilities to attend these sessions as compared to their Southern counterparts. The NGO activism that was present at the time of Malaysia had been absent at the time of Canada's review (Harrington 2009: 87).

The two examples used here show two states in whose cases there was interplay among major actors in the UPR process. While Malaysia was a positive

example to show that NGOs are quite active in the UPR process and can raise an issue seldom mentioned in the national reports presented by States, Canada was totally opposite in this case. The NGO activism was totally dormant in the case of Canada. Whatever information on indigenous peoples was mentioned was because the report compiled by OHCHR which had drawn sources from other state reports, reports by special rapporteurs, state reports to treaty bodies and so on. While the outcome reports of both states were the same i.e. both did not accept any recommendation made by indigenous peoples, the media attention that was given to the UPR reviews and the issues discussed therein were quite significant and influential for the states to at least start working with their respective indigenous communities (Khoo 2014: 25, Harrington 2009: 65).

The follow-up stage of the UPR is quite ambivalent as far as indigenous peoples are concerned. This is because it is difficult to assess whether recommendations made by states and NGOs have been satisfactorily implemented or not. States do not tend to accept recommendations given by NGOs. This was the case during Japan's review in 2011. When the national NGOs of Japan made recommendations about giving constitutional recognition to Ainu people as indigenous people of Japan, this was rejected (Moss 2010: 32). Rejection of recommendations is usually higher in the case of indigenous peoples. This is because states do not easily accept their failure at international platforms. In order to prove their superiority states reject certain recommendations. Also, states tend to reject recommendations made by NGOs. In the case of rejected recommendations, these do not always die. In some instances, rejected recommendations have been quite successfully implemented in the case of indigenous peoples if there is an active NGO constituency and lobbying available at the national level. For example, Congo was recommended by Ghana to improve educational standards of indigenous peoples by opening up residential schools for indigenous children which would have courses taught to these children in their languages. This was not internationally acceptable to Congo, so this recommendation was rejected. However once the ministerial delegation of Congo was back from Geneva and a national discussion took place on the issue raised at UPR, there were serious considerations given to the issue. With the active support and advocacy by local and national civil society in Congo, two residential schools were opened for indigenous children in 2012. Thus a rejected

recommendation at the international level was later not only accepted but also implemented with active support from NGOs (Harrington 2009: 45).

On the issue of indigenous peoples, a total of 385 recommendations were made during the first cycle of the UPR making the issue of indigenous peoples the 33rd most important issue of those raised under the UPR. Based on statistics collected from an NGO- UPR Info, 81 states raised the issues of indigenous peoples, and 55 states received recommendations on the same. The five states which received the most recommendations on the issue of indigenous peoples were Australia, Chile, Canada, Mexico and Paraguay. The five states who made the most recommendations on the issue of indigenous peoples were Norway, Mexico, Bolivia, Austria and Denmark (UPR Info 2011: 45).

From the first and the second cycle of reviews, it has been observed that Latin American states have been quite open and committed towards following-up of recommendations given by states and NGOs alike. Most of the following-up is done with the assistance of the NGOs. For example, during its first cycle in 2009 Guatemala received recommendations about securing the right to free, prior, and informed consent for its indigenous communities from states like Austria and Peru. This was attempted to be achieved by taking help of NGOs such as COICA. Guatemala ensured through these NGOs that indigenous peoples had awareness about their rights. In such situations, NGOs are often assisted by epistemic communities, anthropologists, and academics (Higgins 2014: 65). Following-up on recommendations related to the economic, social and cultural rights of indigenous peoples is quite difficult as there are no criteria to measure that implementation. In the case of follow-up of recommendations, the UN bureaucracy or Secretariat plays no role as such. States and NGOs are the pivotal actors in this regard.

Even when a number of studies have been conducted assessing the effectiveness of UPR as an international mechanism, it is still difficult to assess the success or the failure of UPR in the domain of indigenous rights because of its relative newness. Also, non-codification of human rights related to indigenous peoples in any one binding instrument makes it difficult for UPR to review the follow-up of indigenous rights. However, important insights and observations related to indigenous peoples have been made in the first and second cycle. UPR system and

more and more focus have been accorded to the indigenous peoples in the second cycle than that of the first cycle. These are positive indications of this mechanism been becoming more active in addressing the concerns of the indigenous peoples.

Efficacy for Advancing the Rights of Indigenous Peoples

There is no doubt that it is difficult to assess the effectiveness of UPR as a monitoring mechanism considering the fact that the second cycle of UPR got completed very recently in 2016. This newness of UPR is perhaps the reason that a truly robust assessment is difficult to make about its efficacy. It becomes all the more difficult to judge whether UPR has been a successful tool or not for promoting and protecting the rights of indigenous peoples. This is because UPR is a State-driven mechanism. States have always shied away from reporting on their obligations towards indigenous peoples. In this case, it becomes difficult to evaluate how states fare in the implementation chart on issues which they do not report in the first place. However, based on the first two cycles of UPR process, a certain number of observations can be made about how effective a mechanism the UPR has been for indigenous peoples.

The most positive impact of UPR on the indigenous peoples has been the documentation part of the process. Indigenous peoples as a topic have always remained at the periphery of United Nations with states mostly sidelining the issues faced by indigenous communities. Due to UPR system, a dearth of information on the issues of indigenous peoples worldwide has been overcome. Reports from three sources i.e. states, UN and NGOs means availability of objective, impartial and unbiased information on indigenous peoples. Though states usually misrepresent figures and do not give accurate information all the time, this can now be countered by documentation available and compiled by OHCHR as well as shadow reports from NGOs. This has led to a lot of information generation on indigenous peoples which had not been the case prior to the working of the UPR (Rathberger 2008: 4).

Another positive impact of the UPR process has been the condition set by the Council that states must have a broad consultation with national stakeholders before submitting their national report. Some states such as Indonesia, Brazil, Philippines, and Finland have made the best possible use of this exercise. A number of indigenous peoples' organisations were consulted before compiling the national report. However, the majority of the states have failed to do so. States like South Africa, Peru and

Bangladesh have been amongst those who failed to meet this criterion. When states meet all stakeholder organisations- NGOs, local organisations representing peoples' interests and prepare a report representing all these interests, it is bound to have a positive impact, especially for indigenous peoples who otherwise remain unrepresented most of the times (Khoo 2014: 26, Rathberger 2008: 5). However, there have been other cases also where even when states showed a willingness to consult all stakeholders it was unable to do so because of lack of resources. Developing states such as Kenya and Peru are the prime examples of such states which have asked for the Council's assistance to be able to meet this criterion (Higgins 2014: 6).

Another advantage of the UPR for indigenous peoples is its universal coverage. UPR covers all countries irrespective of size, power and resources; and covers all types of human rights within its ambit. This is beneficial for indigenous peoples living in all countries as well as crucial border areas because the human rights record of their states would be assessed. Thus all states, as big as Canada to as small as Tuvalu Islands, have been reviewed under the UPR system with positive consequences for indigenous peoples. Apart from its universality, the cooperative, dialogic approach also makes it somewhat positive for indigenous peoples. This is because states are given recommendations on what problems need to be addressed; there is no coercion, imposition or confrontation. This friendly approach makes the UPR a better mechanism for indigenous peoples. And this has been the case with developing countries, especially which lack technical know-how. Once given the knowledge these developing countries such as Kenya, Peru, and Argentina have worked in tandem with other actors such as NGOs and the UN. This was the case with Kenya when after its review at the UPR it became more open to other international mechanisms on indigenous peoples such as the special rapporteur. This had not been the case before (Rathberger 2008: 12).

Perhaps the biggest advantage of the UPR over other monitoring mechanisms for indigenous peoples is the provision for the inclusion of NGOs and other stakeholders into the process. The international indigenous movement is comprised of scores of local, national, regional and internationally based NGOs. Indigenous peoples identify the most with NGOs. The inclusion of these NGOs in the UPR is, therefore, a milestone for them. Even though the UPR being a state-driven process places restrictions on these NGOs, but the fact that a stakeholders' report is submitted

and their right to attend the interactive dialogue process and their right to comments at outcome report, states enable them to make an impact in the procedure. The role of NGOs also become important because since no binding UN instrument exists on the issues of indigenous peoples, such rights could be easily sidelined in the UPR process if they are not adequately highlighted by NGOs (Higgins 2014: 400).

However, in spite of all the potential positive impacts of the UPR on indigenous peoples, there are some limitations on its functioning which has a negative impact on the rights of vulnerable communities such as indigenous peoples. One of the major disadvantages of the UPR process is its slow speed. Recommendations made to states are not reviewed until four years later during the next state review. This makes the process lose the momentum. For indigenous peoples, this becomes a further disadvantage because not many states are ready to accept recommendations made by indigenous peoples. Whatever recommendations are accepted may not be implemented because of the time gap between the recommendation and follow-up stage (Higgins 2014: 403).

Also, the fact that UPR is a State-driven process is itself a major obstacle in the better realisation of human rights of indigenous peoples whose concerns and interests are of not much of interest to the states. States are the main actors driving this mechanism. The states also become the major hurdles in the implementation of the human rights norms and standards. This is because of the strategies the states have devised which do not ensure a fair review of states. For example, at the time Malaysia was reviewed in 2009, the strategies used by the state did not allow for an impartial assessment. During the interactive dialogue session when the states are supposed to present their national reports in one hour, Malaysia took two hours which further shortened the time for the question-answer session. Also, too many friendly states wanted to take the floor and congratulate Malaysia for an outstanding human rights record. This was a farce. An increase in the number of states meant too much of time being taken by these and no time is given to states whose recommendations were more critical than congratulatory. With so many states registered to speak, the number of states admitted within the time allotted was restricted to no more than 60 at the maximum, with each state given two minutes. In tactical consideration, in two minutes, not much can be said for or against a state. Hence Malaysia at no time felt

under pressure to be answerable to the crimes committed by its military against its indigenous populations (Khoo 2014: 31).

Another major loophole in the UPR process as far as indigenous peoples are concerned is the exclusion of NGOs during the interactive dialogue. It is this stage where most important issues are discussed among states. Keeping NGOs out of this process has had a negative impact and could in all probability scuttle the process. The time when NGOs are given a chance to speak at the Outcome Report phase; there are usually too many stakeholders and less time. Even when NGOs are part of the process, not much power is actually accorded to them. This is because NGOs can just recommend to the states. It is totally at the discretion of the state whether to accept or reject those recommendations without being answerable to anybody (Rathberger 2008: 4).

In view of the shortcomings and loopholes in the functioning of the UPR, the Human Rights Council mandated a review of its working after the first four years i.e. in 2011. A number of actors such as the states, academic community, experts, research organisations, think-tanks and NGOs participated in the review and discussed the ways and means of removing possible shortcomings. After the intense engagement, a few points were agreed upon. It was decided that the time to engage in the follow-up of recommendations would be increased from the initial period of four years to four years and six more months. Also keep in mind the difficulties witnessed during the three-hour long interactive dialogue stage, the time slot for discussion with other states was increased from three hours to three hours and an additional thirty minutes (Rathberger 2008: 54). How these changes bring an impact on the working of the UPR in relation to interests of indigenous peoples remains to be seen in the third cycle of review which is scheduled from April to May 2017. Suffice it is to say here that because of the shortcomings, sensitive issues such as minority protection and protection of indigenous peoples are not accorded sufficient importance. It will take a serious concerted approach on the part of states, NGOs, and the UN to make UPR a positive force for these sensitive communities.

Conclusion

The failure of the Commission on Human Rights in protecting human rights made the international community to think about replacing it with a much smaller body that

would be effective and removed from the ills of politicisation and selectivity that had marred the working of the Commission. As a result, the Human Rights Council was established in 2006. Universal Periodic Review was one mechanism which was created by the Council. A universal, peer-reviewed system was expected to overcome the problems of politicisation and selectivity experienced in the working of the Commission on Human Rights.

The Universal Periodic Review is the first international peer-review mechanism created by United Nations Human Rights Council with the sole purpose of following-up on the implementation of human rights norms and standards. The significance of UPR as an international mechanism to protect human rights lies in its non-adversarial, noncoercive, and co-operative approach. The fact that the working of the UPR encompasses cooperation among all its actors did render a certain kind of optimism in its performance. Also, the fact that it was universal in terms of giving coverage to all kinds of human rights in all states irrespective of the size of the state has given it legitimacy in front of the international community. In a few years time, UPR was recognised as the most novel idea of the Human Rights Council (Abebe 2009: 65).

UPR is universal not only because it applies to all states, but also because it mandates the participation of all relevant stakeholders, guided by the principles of universality, impartiality, objectivity and non-selectivity. This inclusion of all stakeholders in the UPR process is quite significant because it de-monopolizes states as the sole suppliers of information. The inclusion of NGOs as important stakeholders in the process has meant the inclusion of a diversity of voices in the UPR process.

A number of actors played an important role in the functioning of the UPR. These were the states, OHCHR and other IGOs and other stakeholders including NGOs, advocacy research based organisations and the media. The interplay of these actors could be seen in all stages of the working of the UPR. Right from the documentation stage, when national reports were compiled by the states, and OHCHR compiled reports based on other available sources in the UN and the stakeholders' reports were submitted, these actors generate voluminous information on indigenous peoples, apart from other information.

During the first and second cycles of UPR, the concerns and interests of indigenous peoples were raised a number of times, very rarely in the national reports presented by States but most prominently in the shadow reports of NGOs and the recommendations given to states by states as well as other actors. The reason that states don't usually report on their policies towards the indigenous communities is the fact that since quite a number of years states have been in denial about the existence of indigenous populations on their territories. Also, anything related to indigenous peoples is considered a domestic matter to the states. This is the reason they don't present on an international platform such as the UPR. NGOs have served as the lifelines for indigenous peoples since times immemorial. Through their stakeholders' report which is submitted to UPR, NGOs tell it all. Instances of human rights violations of indigenous peoples not mentioned in the national reports also get featured in these reports and thereby raised at the international level. These are thus very important actors working for the benefit of indigenous peoples, especially in the UPR.

The interaction of actors such as states, NGOs, and the UN within the UPR has made it an important mechanism in the eyes of indigenous peoples. All three actors are important when it comes to taking up the case of indigenous peoples. Sometimes when states do not take into account the existence of indigenous peoples in their national reports, this omission is compensated by United Nations OHCHR report which gives a factual account of the ground situation in reality. Among these three actors, it is the NGOs without which the entire UPR process would be scuttled as far as indigenous peoples are concerned.

The interaction of these three actors has also led to some challenges in the working of the UPR, about indigenous peoples. Even though NGOs are regarded as important parts of the process, it is an irrefutable fact that UPR is a state-dominated process. And this dominance of states in the UPR is not regarded as too healthy for indigenous peoples. This is because acceptance or rejection of recommendations takes place on the will and dominance of the states, as perceived by the states. Also, implementation of the recommendations is to be done by the states of course with support from the NGO sector, but the decision making power rests with the states. This dominance of the states as an actor in the UPR process is itself a challenge which needs to be tackled.

The interaction between local and international NGOs in the domain of the UPR is also a big challenge as far as indigenous peoples are concerned. The UPR mandates for local, authentic information which is usually garnered by local organisations. However local NGOs often find it difficult to reach the international level in Geneva. Therefore contact with international NGOs is a must for these local NGOs. However, too much dominance of international NGOs could also render the process inefficient because often international NGOs have their own agendas behind supporting a particular cause. International NGOs in most cases do not have the local knowledge about the situation of human rights and can lead to misinterpretation of information in the UPR process. Therefore local NGOs must be adequately represented by international NGOs but not dominated by the latter.

In spite of the inherent limitations and challenges in the working of the UPR, the UPR process has indeed been a deliberative force for good, especially for indigenous peoples. Even though many times the UPR has failed indigenous peoples by not taking up their cases due to state behaviour and so on, there has been active mobilisation at the international level on questions of indigenous peoples owing to discussions in the UPR. Though it would be too soon to call UPR a success for indigenous peoples, it cannot really be deemed a failure as well. The limitations of state dominance and inadvertent delays have to be worked out in order for the UPR to be a positive force for indigenous peoples in the future.

The UPR at face value seems a toothless mechanism. However, under some circumstances, it can have a real impact. Peer-to-peer accountability, universal in scope and repeated in form- engages states in cooperative dialogue that leads to their ratifying human rights treaties that they had failed to ratify before. Furthermore, the deliberative engagement is not with the states alone but also with the civil society, and the dialogue is continuous in form. In this way, the UPR mechanism induces a much more cooperative, deliberative culture across the system as a whole.

Chapter VII

Conclusion

This study has examined the interaction among United Nations, its member states and non-state actors, particularly non-governmental organisations, in internationalising, protecting and promoting the concerns of the indigenous peoples. It specifically examines the interaction of these actors in the working of four institutional mechanisms to protect and promote the interests of the indigenous peoples. The four institutional mechanisms that have been examined in the study are Working Group on Indigenous Populations, Permanent Forum on Indigenous Issues, Special Rapporteur on the Rights of Indigenous Populations and Universal Periodic Review of the Human Rights Council.

The concern for territorial security had made the international system state-centric, with states being the central actors in the international affairs. The theory of realism explained the dominance of the state in international relations. The numerous challenges in the 20th century could not be addressed by a state on its own. For example, the world had witnessed large-scale displacement of the population; the world economy had been destroyed which had to be resurrected, the arms race had threatened the very existence of human species, witnessed the increased level of destruction of the environment on a massive scale and so on. These were problems of such a high magnitude that no state, on its own could find solutions. Therefore, states resorted to the establishment of international organisations, where states would cooperate with each other to find remedies through collective effort. The establishment of United Nations was a paramount example. This was followed by the creation of a score of other international organisations such as IMF, GATT, World Bank, FAO and so on. This phase in international relations was explained by the liberal theory which espoused international organisations as important actors, other than states.

Many actors, other than states have emerged at the international level in the post-Cold War era. There are inter-governmental organisations, non-governmental organisations, epistemic communities, global public policy networks, transnational networks and multinational companies which have become important non-state actors in contemporary times. Mostly, these actors dwell on issues often neglected by states.

For example, NGOs and epistemic communities deal with issues of less concern to states such as human rights, refugees, development aid and so on. The concerns of indigenous peoples also fall in this category of issues taken up by non-state actors, particularly NGOs. The constructivist approach to international relations explains this phenomenon of non-state actors' role in otherwise state dominant system.

Indigenous peoples, or the original inhabitants of lands, have always shared an inimical relationship with their states. These original dwellers were mostly colonised by the Europeans from the sixteenth century onwards. The Europeans used pretexts such as the theory of terra nullius or doctrine of discovery to justify their annexation of indigenous peoples' lands. Since then, indigenous peoples share a kind of hostility with their states. The states look with suspicion at the demands of indigenous peoples because of the collective nature of rights- mainly the right to self-determination and the collective right of ownership to lands and natural resources. Therefore the dubious relationship between indigenous peoples and states has continued till today.

It was only in the twentieth century, with the establishment of the League of Nations after the First World War, that leaders from indigenous communities began appearing at international platforms to highlight the problems faced by indigenous peoples. The appeal made by the leader of the Six Nations in Canada, Deskaheh was the first such attempt made by indigenous peoples to reach the international community but resulted in failure as the League refused to pay heed to their accusations of assimilation made against Canada.

With the establishment of a series of human rights regimes at the international level in the post-Second World War era, the concerns of indigenous peoples started to re-emerge. The national liberation movements in most of Latin America, Canada and the United States of America, which were hitherto confined to the domestic level, became important international topics. CERD had come up as an important avenue for indigenous peoples to lodge complaints of their human rights violations. With the support of non-state actors such as supporter advocacy groups and NGOs, the indigenous peoples emerged as an important issue at the international arena by mid-twentieth century.

Three sets of actors played an important role in internationalising the issues of indigenous peoples. The indigenous peoples' movement comprising of indigenous

peoples, their NGOs such as the NIB, national societies and regional organisations such as RAIPON played a very important role of mass mobilisation of indigenous peoples to emerge as a common unified force. This set of actor played an active role in organising international conferences such as the Barbados Conference of 1969, NGO Conferences of 1977 and 1981 and so on. Participation of scores of indigenous peoples in these conferences helped them forge a kind of solidarity among themselves. Interaction with other indigenous communities from across the world, presenting their oral testimonies in these conferences helped them realise the need of emerging as one force. By this time some indigenous peoples' NGOs such as the ICC and the WCIP had gained consultative status with the ECOSOC. The efforts of these NGOs along with those of some international NGOs such as Cultural Survival, Survival International and so on, the problems faced by indigenous peoples began to emerge as an international concern at the United Nations.

Not all states were sceptical of indigenous peoples' demands. Some states also facilitated the indigenous peoples' movement and helped them reach the United Nations. These were mostly the Scandinavian countries such as Norway and Denmark and some Latin American states such as Guatemala and Bolivia. These were those states which had a majority of indigenous peoples as their national populations, and this was a major reason for them to account as a factor in the indigenous peoples' movement. The third actor to have played a significant role for indigenous peoples was that of the bureaucracy of international organisations, most significantly that of the UN itself. By way of encouraging studies and reports on the problems faced by indigenous peoples and creation of early institutional mechanisms such as the WGIP and Voluntary Fund on Indigenous Populations, the bureaucracy acted on their own discretion and contributed in making indigenous peoples' presence highlighted at the international level.

The decade of the 1980s and 1990s witnessed an increase in the interactions among indigenous peoples, their NGOs, member states of United Nations and the bureaucracy of UN. This was because the awareness generated by the international conferences on indigenous peoples had resulted in the creation of the Working Group as a first site where indigenous peoples could assemble, meet each other and discuss their problems. It was this Working Group which facilitated the discussions among states and indigenous peoples on topics of most relevance to indigenous peoples such

as defining the term indigenous, activities to be undertaken by the UN to promote and protect the interests of the indigenous peoples, work on developing commonly accepted norms and standards of treatment of indigenous peoples and so on. As a result of these intense interactions among indigenous peoples, states and the UN, a number of norms and standards as well as mechanisms began rolling in for these indigenous peoples.

The ILO was the first among the international organisations to devise norms for indigenous peoples. The ILO Convention No 107, which though had been adopted in 1957, had to be revised as pressure was exerted by a number of indigenous communities from across the world. The assimilationist clause of this Convention was not acceptable to the indigenous peoples, and after much deliberation, the ILO revised the clause and adopted Convention No 169 in 1989 with the integration of indigenous peoples as the goal of the Convention. Similar kind of intense exchange of information and interaction took place among the actors for inclusion or interpretation of provisions in the general human rights treaties and also for formulation of other norms and standards such as the Declaration on the Rights of Indigenous Peoples which was adopted in 2007 and most recently, the Nagoya Protocol which was adopted in 2014.

The Declaration on the Rights of Indigenous Peoples is the most significant among them. It was negotiated for around two decades with active participation from various actors. The UN also played an important role by providing a physical space (the Working Groups) for these discussions to take place. The key provisions around which there were ferocious debates between representatives of indigenous peoples and states were the right to self-determination, the right to culture, the right to participation, right to lands and natural resources and right to environment. The Declaration was adopted in 2007 after national, regional and international NGOs lobbied the African and the Latin American states to vote for the Declaration. It took two decades of relentless struggle on the part of indigenous peoples and their advocacy organisations to convince states to vote in favour of the Declaration. Even though achieving a convention would have been more significant for the international indigenous peoples' movement, getting a Declaration adopted was no less than a victory.

Similarly, the Nagoya Protocol to the Convention on Biological Diversity was yet another norm which had been discussed at length among various actors. The need for the protocol was felt after it was realised that Article 8 (j) of the Convention on Biological Diversity (CBD) was lopsided in favour of states and against the interests of indigenous peoples. Therefore, indigenous peoples after having consultations with states and UN bureaucracy urged the states to adopt the Protocol which talked about aspects of equity and benefit sharing when it came to biological resources of indigenous peoples. Among all the rights formulated for indigenous peoples, the right to self-determination, the right to environment, the right to culture and traditional knowledge are the most important ones and they were constituted with active involvement and interaction among the various actors was quite evident.

Even though the indigenous peoples' movement had emerged in a big way at the international level by 1970s, no mechanism existed for indigenous peoples. The only international recourse the indigenous peoples could take by this time was through the human rights treaty-bodies which the United Nations had started establishing since the mid-1960s. Therefore, CERD was the first formal arena through which indigenous peoples made entry into the UN system. Even though these human rights treaties did not have specific provisions on indigenous peoples, nonetheless they have been able to use some of them with active support of international NGOs, epistemic community as well as support of other actors.

CERD, HRC, CESCR and CRC were the main treaty-bodies that were invoked by indigenous peoples through their NGOs and support groups. These treaty-bodies were composed of independent experts who functioned through two main work methods that were common to them i.e. periodic state reporting and issuing general comments/recommendations. Both these work methods engaged all the actors viz. states, non-state actors such as NGOs and the UN bureaucracy in one way or another. Thus whereas state reporting was an exercise which involved the state representatives as well as shadow reporting by local as well as international NGOs and think-tanks, issuing general comments and general recommendations did not involve the non-state actors. It was an activity that was confined to the independent experts and how they perceived certain topics and the comments/recommendations that they issued to the states. In addition to these two work methods, treaty-bodies such as HRC also made use of individual communication procedure as a tool which

could be used by individuals whose rights were severely attacked by their states. This method was open to individuals alone and not to NGOs and other advocacy organisations. CESCR has very recently (since 2013) started using this tool as a work method. Therefore, there is not much clarity about the type of cases heard under this method. Other than this, CERD initiated the use of early-warning and urgent action procedure since 1993 wherein only those cases which threatened the human rights of people on an urgent basis were examined. This procedure could be initiated by individuals and groups, thus giving leverage to non-state actors, particularly NGOs.

As far as indigenous peoples were concerned, these four treaty bodies were quite useful in advancing the cause of indigenous peoples. This was particularly true in the case of CERD and HRC. The reporting mechanism of states was not of much use for indigenous peoples because states seldom reported about the existence of indigenous peoples on their territories. However, the early-warning system of CERD was used by scores of indigenous peoples through their NGOs and matters of grave violation of indigenous peoples' rights were brought to the attention of the Committee. The amendment to the Native Title Act of 1993 (Australia), Western Shoshone Struggle (the USA) and the Foreshore & Seabed Act of 2004 (New Zealand) were the prime cases which were brought to the notice of the Committee under the early-warning procedure. Likewise, the individual communication procedure of the HRC was repeatedly used by indigenous peoples. This procedure was not open to NGOs and only individuals could file complaints. In spite of the initial difficulties, indigenous peoples used this procedure and in some cases, as in the case of Sandra Lovelace vs. Canada, the Committee ruled in favour of the indigenous peoples, thereby giving much-provided relief.

The indigenous peoples also found mention in the general comments and general recommendations of these Committees (mainly CERD, HRC and CRC) which were issued to states. These general comments and recommendations were issued on topics of relevance to indigenous peoples such as on the right to self-determination, right to education, housing, health and other such issues. However, the only difficulty being that it was difficult to measure the implementation of these general comments and recommendations.

The opening up of spaces in these treaty-bodies to many NGOs and other non-state actors by way of submitting alternate reports, filing complaints under individual communication procedures, in formulating general comments had facilitated the advancement of indigenous concerns. However, there were a number of general problems too that negatively affected the functioning of these treaty-bodies such as lack of funds for the expansion of their functions and the unremunerated Committee members. The lack of any mechanism for effective follow-up of recommendations given by the Committee was another major challenge. Also, overdue state reports were the toughest obstacle to overcome. There was no compulsion on states to submit their reports well in time, which proved to be a challenge to the treaty bodies. In case of HRC, the use of individual communication procedure was itself a limitation for indigenous peoples as it could not be used by organisations or groups of individuals.

The first institutional mechanism specifically created for indigenous peoples was the Working Group on Indigenous Populations in 1982. A number of developments had resulted in the establishment of this mechanism. The internationalisation of the indigenous peoples' movement with indigenous peoples at the helm of affairs since the beginning of the 1970s was the major reason for the international attention. This internationalisation resulted in a number of developments such as the Cobo study in 1971 which was initiated by the UN bureaucracy to study the problems of discrimination suffered by indigenous peoples, the organising of international conferences in 1975, 1977 and 1981 by indigenous caucuses to heighten the awareness about indigenous peoples, and the advocacy and mobilisation at the international level resulted in the development of a thought process at the United Nations leading to establish mechanisms solely dedicated to the cause of indigenous peoples.

One such mechanism was the Working Group on Indigenous Populations which became the first site of indigenous peoples' participation in international affairs. It was created by the United Nations after repeated demands were made by indigenous peoples at various international forums and conferences such as the 1975 Port Alberni conference, 1977 and 1981 Geneva conferences. The establishment of the Working Group was the result of consistent interaction between UN staff such as Augusto Willemsen-Diaz and many indigenous supporter organisations such as IITC, WCIP and so on. States were not too keen for the establishment of an all indigenous

mechanism, but some states supported the move in order to save their international reputation which at that time was being destroyed because of rampant human rights violations of indigenous peoples within their territories. Norway was a prime example.

The Working Group was composed of five independent experts. It had a two-fold mandate of reviewing developments and creating norms and standards for indigenous peoples. In order to carry out this mandate, the bureaucracy of the United Nations, particularly experts such as Augusto Willemsen-Diaz and Erica Irene-Daes had instituted an open-door policy which allowed indigenous peoples, through their respective NGOs, to participate in the sessions of the Working Group irrespective of their consultative status with ECOSOC. At the time when this policy was instituted, this was a radical step taken in the history of the UN. It was because of growing participation of indigenous peoples in the sessions that states also began to attend the sessions of the Working Group in big numbers.

As part of carrying out its first mandate, the Working Group encouraged indigenous peoples to make oral interventions on the human rights situations in their states. To these interventions, states were also given opportunities to respond and clarify the policies initiated by them for indigenous peoples. The mandate of reviewing developments on indigenous peoples was also carried out by initiating studies and thematic discussions on topics such as health, education, and environment and so on. These thematic discussions mostly witnessed an in-depth interaction among UN agencies, secretarial staff, indigenous peoples' organisations and NGOs and states.

As part of its second mandate which was related to the creation of new norms and standards for indigenous peoples, the Working Group mainly worked towards the adoption of a draft declaration since 1985. It invited indigenous communities from all parts of the world to discuss the provisions that were to be included in this draft. After this draft had been submitted to the Commission on Human Rights, another institutional mechanism was established by the United Nations. This was the Working Group on Draft Declaration which was created in 1995 to serve as a formal arena where states could deliberate on the provisions passed by indigenous peoples. After 1993, the Working Group on Indigenous Peoples returned to its first mandate of

reviewing developments by undertaking thematic studies, expert studies which required coordination with all actors.

The creation of the Working Group in 1982 was an achievement because of a number of reasons. There were increased interactions between the bureaucratic staff of UN, states and indigenous peoples in the Working Group. The open-door policy instituted by the Chairpersons of the Working Group was a remarkable achievement. It was because of this open-door policy that number of indigenous groups, mostly from Northern countries and later from Asia and Africa too could attend the sessions and deliberate on the concerns of the indigenous peoples at the international level on continuous basis as long as the Working Group existed. The most important achievement of the Working Group was the draft declaration it produced after intense deliberations with indigenous peoples and states and other actors. It was not an easy task to maintain the balance between indigenous peoples' aspirations and wishes of the states. But the Working Group successfully completed this task in 1993. However, in spite of these achievements the Working Group suffered from setbacks such as its low hierarchy which made communication difficult between different organs of UN. Also, the rate at which the sessions of the Working Group was attended by non-indigenous persons, it made it extremely difficult for the Working Group to be accountable to indigenous peoples needs alone.

The Working Group was finally disbanded in 2006 after states urged the UN to take such a step due to the increasing financial stress and also because another body for the indigenous peoples in the form of the Permanent Forum had been established in 2000. This was fiercely opposed by indigenous peoples. Such had been the popularity of the Working Group as it was the first formal arena at the United Nations where indigenous peoples forged a real identity.

The Voluntary Fund for Indigenous Populations was established in 1985 as a means to ensure the participation of indigenous peoples from remote regions to the annual sessions of the Working Group. This was created at the request of the Chairs of the Working Group who wanted indigenous peoples to be the main drivers of the institution. Today, the Fund is administered by a Board of Trustees who are people of indigenous origin. However, the effective functioning of the Fund is compromised due to power politics among states. In spite of this power politics, the creation of the

Fund was useful for indigenous peoples to be able to participate at the international level. Although this mechanism is important, it is not one of the four select mechanisms for this study.

The Permanent Forum on Indigenous Issues was established in 2000. A lot of interaction took place among the actors from the time the mechanism was demanded by indigenous peoples in 1991. Indigenous peoples through their NGOs demanded the creation of a forum which would be suitable to their needs and aspirations. Regional consultations were held among indigenous peoples and states to discuss the modalities of the forum. The expert workshops were organised by NGOs and UN respectively on this issue. Though indigenous peoples had to compromise on a lot of points such as the name of the forum, there were certain numbers of victories also for them. The equal number of state representatives as well as indigenous representatives in the Forum was a major achievement because till date no international mechanism or institution had been created with an equal number of members as the states. The Permanent Forum was the first ever mechanism to have an equal number of indigenous representatives as members, other than the states. This equal composition of the Forum was an important achievement. Therefore, after the discussions and deliberations among various actors, the General Assembly decided to create the Forum as an advisory body to ECOSOC with recommendation-making power in areas such as health, education, and environment and so on.

From the beginning, the Forum performed supervisorily and coordinating roles in conjunction with other actors such as NGOs, states, IPOs and other UN agencies and organisations. The functions performed by the Forum as part of these roles were making recommendations as part of the annual report which till date continues to be the most important function. These recommendations were made to states, IPOs and other UN bodies. By 2003, the Forum also started preparing thematic studies on issues of relevance to indigenous peoples. Other than the supervisory role, the Forum also performed the coordinating role which was carried out by participating in the activities of the other UN mechanisms such as Special Rapporteur and so on. Likewise, the sessions of the Forum were also attended by the members of these bodies. The Inter-Agency Support Group comprising mostly of inter-governmental organisations was created in 2002 to assist the Forum in carrying out this role. NGOs and other non-state actors such as advocacy organisations and think tanks, till today

continue to perform a very important role in organising parallel meetings during the annual sessions of the Forum. These parallel side-events address topics which the states usually avoid, thereby exerting pressure on the states to address those issues.

From 2009 onwards, the Forum took charge of new role of monitoring the implementation of the Declaration which was adopted in 2007. Even though this new role was opposed by states such as India and the United States, the Forum continued carrying out this role by writing reports and also making on-site country visits as happened in 2009 when the members of the Forum visited Paraguay and Bolivia. This has made the Forum's mandate overlap with other mechanisms such as the Special Rapporteur. This can be the case of duplication of roles and responsibilities among the mechanisms.

The Forum is an important mechanism, a success for the international indigenous peoples' movement as it resulted in the creation of this permanent space in the United Nations. However, a number of challenges continue to grapple the effective functioning of the Forum such as limited funds, state dominance, marginalisation of indigenous peoples, lack of effective follow-up, consensus as a method of taking decisions and recommendatory nature of its decisions. However, for the Forum to be an effective international mechanism, truly representative of its indigenous peoples, the Forum needs to overcome these challenges. State co-operation is very essential. The Forum cannot take the state power for granted. Therefore it needs to make a certain amount of balance between states and indigenous peoples. The shortcomings of the Forum have to be worked upon and removed so that the Forum can be an effective tool to address the problems faced by indigenous peoples.

The Special Rapporteur on the Rights of Indigenous Peoples (SRIP) was created in 2001 after a need was voiced to establish a mechanism to receive complaints of violation of rights of indigenous peoples. This mechanism has become essential as the treaty-bodies of the United Nations, though sometimes used by indigenous peoples, were not indigenous-centric. The Working Group on Inidgenous Populations was not mandated to receive complaints of human rights violations. Therefore, there was a gap in terms of an institutional mechanism for indigenous peoples which could address the complaints lodged by indigenous peoples. A

campaign was launched, spearheaded by International Indian Treaty Council, an international NGO on indigenous peoples, which urged the states and the United Nations to establish such a mechanism solely for indigenous peoples. The indigenous communities wanted a UN representative who could uphold the interests of indigenous peoples in front of the UN. Thus, the Special Rapporteur was appointed by the Commission on Human Rights. Initially, the appointment was made in a non-transparent manner, with discussions only with the Bureau of the Commission and the member states. The Chair of the Commission had a bigger role to play. However, after the replacement of the Commission by the Human Rights Council, the process of appointment and nomination of Special Rapporteur has become more transparent with member-states of all five regional groups making a list of candidates and handing to the President of the Human Rights Council. Due leverage is now given to experience and expertise of the candidates for the post.

The initial mandate of the Special Rapporteur was limited to performing supervisory and monitoring roles as well as working in coordination with other UN bodies. The Human Rights Council in 2007 has given a new role of promoting the UN Declaration on the Rights of Indigenous Peoples and removal of all impediments in achieving indigenous peoples' rights. From carrying out a supervisory role with information-gathering, writing annual reports, thematic reports, special reports and undertaking country visits as the main functions, the Special Rapporteur has come a long way in terms of the mandate. Today, the Special Rapporteur is charged with not only promoting best practices and the UN Declaration but also co-ordinate the activities on indigenous peoples within the UN by cooperating with other actors such as Permanent Forum, other UN agencies dealing with indigenous peoples and so on. As a part of its monitoring role, the Special Rapporteur undertakes country-visits and receives and acts upon the communications received from indigenous peoples. In carrying out these activities, the Special Rapporteur interacts with the UN, states and non-state actors particularly NGOs and media. It is the interaction with these actors that make the work of Special Rapporteur quite unique as well as challenging.

The Special Rapporteur is significant because he/she represents the UN in front of the millions of indigenous peoples and similarly represents these indigenous peoples in front of the states and the UN. Even though the Rapporteur has to maintain independence both from UN, states and indigenous peoples, the existence of the

Rapporteur is a boost for the struggling indigenous peoples. Through his/her activities such as undertaking country visits, interacting with government officials, state representatives and scores of indigenous peoples, the Rapporteur has gained a niche in the international community. The Rapporteur stands as an important mediator between the states and indigenous peoples, sometimes opening up spaces for a dialogue between them.

In spite of the growing significance of the Special Rapporteur, this mechanism also faces a number of loopholes and challenges which need to be overcome. The financial limitations faced by the Special Rapporteur are the severe most challenge which has the capacity to negatively impact the working of the Rapporteur. Apart from this, the interactions made by Special Rapporteur with states and non-state actors also sometimes pose challenges. When states are unwilling to extend a standing invitation to the Special Rapporteur, NGOs and local indigenous peoples' organisations have to fulfil the task. This rivalry between states and non-state actors sometimes has an adverse effect on the positive working of the Special Rapporteur. Lack of willingness on the part of the states jeopardises the usefulness of the mechanism.

Another mechanism was the Expert Mechanism on the Rights of Indigenous Peoples in 2007 which was established as a subsidiary mechanism of the Human Rights Council. The mandate of this mechanism was limited to providing thematic expertise to the Human Rights Council on issues and concerns of indigenous peoples. This mandate was carried out by initiating thematic studies. Till date, two such thematic studies have been carried out by this mechanism on right of indigenous peoples to education and right to participate in decision-making. These studies are conducted after extensive consultations with states, UN and NGOs working on indigenous peoples' issues. However, because the mandate of this mechanism encroaches upon that of the Special Rapporteur, there exists confusion about the actual need for this mechanism. This mechanism although important in its own right, has not been taken as one of the select mechanism for this study.

One of the important mechanisms to monitor the human rights situation is the Universal Periodic Review of UN Human Rights Council. A number of actors played an important role in the functioning of UPR. These were the states, UN or OHCHR

and other stakeholders including NGOs, advocacy research-based organisations and the media. The UPR works in three stages and the interplay of these actors could be seen in all stages of the UPR. The first stage is the reporting stage where reports compiled by various actors such as states, NGOs, other stakeholders such as think tanks, national human rights institutions and so on are submitted to the OHCHR. The second stage is the interactive dialogue phase where the states present their national reports, and a dialogue ensues among the states seeking answers and clarifications. States give recommendations to other states in this stage. This stage does not involve the working of other actors. The third stage is the final stage where the NGOs can take the floor and comment on the performance of the SuR about its human rights situation. At the end of this stage, the final outcome report is adopted. At this stage, the state under review has to state the recommendations accepted/rejected by it. This is important for the examination of the implementation of the accepted recommendations in the next cycle.

Two cycles of UPR have been over till now which means that the human rights situation of states has been reviewed twice every four years. Generally, the issues of indigenous peoples have rarely been brought up. During the first and second cycles of UPR, the concerns and interests of indigenous peoples were raised a number of times. They are rarely raised in the national reports presented by States but become an important item in the shadow reports of NGOs and the recommendations given to states by other states as well as other actors. Many of the states have been denying the existence of indigenous populations on their territories. And also states regard anything related to indigenous peoples as a domestic matter. This is the reason the indigenous peoples do not figure in many of the states' report. There are also some states, such as Malaysia, which presented a very rosy picture of the situation of its indigenous communities in their national reports. Some states, like Canada and the USA, did not report much in the first cycle, but in the second cycle, they reported on the steps taken by them towards the indigenous communities. For example, states like Bolivia and Australia mentioned in the reports submitted to the second cycle, about the positive steps taken by their respective governments to constitutionally recognise the indigenous communities. However, these states seldom mentioned about the problems faced by their indigenous populations on the territories which were often highlighted in the stakeholder's submissions. The reports prepared by the OHCHR

were, in this respect, better as compared to the national reports because it generated so much critical information on indigenous peoples which was not mentioned in the national reports. For example, whereas the state report presented by the Philippines during the first and the second cycle highlighted the adoption of Indigenous Peoples' Rights Act in 1997 as the biggest achievement of the state, this claim was annulled by the CERD under its early-warning procedure which mentioned that IPRA till 2007 was in fact not implemented by the state. The third category of reports which were the stakeholder's reports usually contained the most accurate information on indigenous peoples. This was because the information of this report was submitted by local as well as international NGOs associated and working with indigenous peoples.

The interactive phase of the UPR, during the first and second cycles also remained oblivious to the issues and concerns of indigenous peoples. This was because these interactions have been between states only. States commented and made recommendations on the national reports presented by states. Usually, the interactive phase was the one where states unnecessarily congratulated each other for policies taken up by them. Indigenous peoples were rarely brought up as an issue. This particularly happened at the review of Malaysia in the first cycle, when most of the states applauded Malaysia for the steps taken by it towards protecting human rights in general. There was no critical appraisal as such. Also, a number of recommendations were given by states to the SuR at this stage. Though a number of states gave recommendations on indigenous peoples, it cannot be known as to how the accepted recommendations would be implemented by the state. Therefore, like the previous stage, this stage of the UPR also remained dubious for indigenous peoples.

It was mostly the third stage where indigenous peoples found most mention. This was because this was the phase where mostly non-state actors such as international NGOs, national human rights organisations and others took an active part in commenting on states' reports as well as making recommendations to the states. The first cycle witnessed, for example, the national NGO delegation of Malaysia refuting all the tall claims made by the government in its national report. In fact, the delegation presented a true picture of the situation of human rights of indigenous peoples in reality. Similar was the experience in the second cycle where claims made by states such as Australia and Chile were refuted by the NGOs and other stakeholders. Even when this stage witnessed the maximum discussion on

indigenous peoples, it is hard to ascertain whether this recommendation would bore fruitful results for indigenous peoples because the acceptance and implementation of those recommendations depend on the positive will of the states.

NGOs have served as the lifelines for indigenous peoples since times immemorial. Through their stakeholders' report which is submitted to UPR, NGOs tell it all. Instances of human rights violations of indigenous peoples not mentioned in the national reports also get featured in these reports and thereby raised at the international level. Local NGOs make joint submissions to UPR, jointly authored with international NGOs. This local-international nexus of NGOs has been very crucial for indigenous peoples in the UPR process. These are thus very important actors working for the benefit of indigenous peoples, especially in the UPR.

The interaction of actors such as states, NGOs, and the UN within the UPR has made it an important mechanism in the eyes of indigenous peoples. All three actors are important when it comes to taking up the case of indigenous peoples. Sometimes when states do not take into account the existence of indigenous peoples in their national reports, this omission is compensated by the OHCHR report which gives a factual account of the ground situation in reality. Among these three actors, it is the NGOs who play crucial role, without which the entire UPR process would be scuttled as far as indigenous peoples are concerned.

The interaction of these three actors has also led to some challenges in the working of the UPR, in relation to indigenous peoples. Even though NGOs are regarded as important parts of the process, it is an irrefutable fact that UPR is a state-dominated process. And this dominance of states in the UPR is not regarded as too healthy for indigenous peoples. This is because acceptance or rejection of recommendations takes place on the will of the states. Also, the implementation of the recommendations is to be done by the states, of course with support from the NGO sector, but the decision-making power rests with the states. This dominance of the states as an actor in the UPR process is itself a challenge which needs to be tackled. This state dominance of the process has had a negative impact for the indigenous peoples as a whole. This is because states refuse to acknowledge the presence and problems faced by indigenous peoples on their territories. Exclusion of NGOs from the interactive dialogue phase also hurts the indigenous cause.

The interaction between local and international NGOs in the domain of the UPR is also a big challenge as far as indigenous peoples are concerned. The UPR mandates for local, authentic information which is usually garnered by local organisations. However local NGOs often find it difficult to reach the international level in Geneva. Therefore contact with international NGOs is a must for these local NGOs. However, too much dominance of international NGOs could also render the process inefficient because often international NGOs have their own agendas behind supporting a particular cause. International NGOs in most cases do not have the local knowledge about the situation of human rights and can lead to misinterpretation of information in the UPR process. For example, the local NGOs of Tuvalu Islands, with little experience of handling the UPR process, aligned with international NGOs. These local NGOs which wanted to highlight the issues of indigenous peoples in the report were asked to instead highlight the problem of climate change by the International NGOs. Therefore, the local-international nexus is not always appropriate. Therefore it is imperative for local NGOs to be adequately represented by international NGOs but not dominated by the latter.

A comparison of the two cycles of UPR reveals that indigenous peoples' issues and concerns were raised more effectively in the second cycle than the first. This could be because the actors engaged in the process of UPR, during the first cycle, were new to the process and therefore lack of information could be a reason for the UPR not being involved in the issues of indigenous peoples. By the time of the second cycle, all actors such as states, NGOs, the UN bureaucracy were accustomed with the UPR procedure. Also, the first cycle had generated some information on indigenous peoples through the reports compiled by OHCHR and the stakeholder submissions. Therefore, it became easier to follow-up on this information and this could be a reason for the second cycle to be more active as far as indigenous peoples were concerned.

In spite of the inherent limitations and challenges in the working of the UPR, the UPR process has indeed been a deliberative force for good, especially for indigenous peoples. Even though many times the UPR has failed indigenous peoples by not taking up their cases due to state behaviour and so on, there has been active mobilisation at the international level on questions of indigenous peoples owing to discussions in the UPR. Though it would be too soon to call UPR a success for indigenous peoples, it cannot really be deemed a failure as well. The limitations of

state dominance and inadvertent delays have to be worked out in order for the UPR to be a positive force for indigenous peoples in the future.

The research questions, on which this study is based, are answered in the four chapters that deal with norms and standards and specific mechanisms on indigenous peoples. The second chapter seeks to answer the first question on how the interface among UN, states and non-state actors have affected the norm creation for indigenous peoples. The emergence of the international indigenous peoples' movement was a consequence of large-scale mobilisation of indigenous peoples through local organisations and national liberation societies. The indigenous peoples' movement reached the United Nations in the 1970s, after which intense interaction happened among the indigenous peoples from all parts of the world and the UN bureaucracy. Intense interaction between UN bureaucracy, states and indigenous peoples' representatives and NGOs in the 1980s resulted in the revision of ILO's Convention No 107 which was later adopted as Convention No 189. The interaction among states, UN and non-state actors was a factor in the formulation of other norms and standards such as the draft declaration which was adopted as the UNDRIP, and the most recent Nagoya Protocol. The provisions enshrined in various treaties and conventions led to according the indigenous peoples the rights such as the right to self-determination, the right to culture, language, preservation of traditional knowledge, right to a clean environment and right to participation. These been inserted in various treaties and conventions as well as interpreted as applicable to indigenous peoples as a result of immense interactions among these actors.

The fourth chapter answers the second question on how the equal representation of indigenous peoples and states in the Permanent Forum affects its working. The Permanent Forum is composed of an equal number of states and indigenous peoples- eight state representatives and eight indigenous peoples' representatives. This equality in the composition of the Forum has been beneficial to indigenous peoples mostly. This is because all decisions in the Forum are supposed to be taken by consensus. Equality of states and indigenous peoples in the Forum means that decisions which are not acceptable to indigenous peoples are not coerced on them by states. However, there have been instances where this equal representation has also negatively affected the functioning of the Forum by causing unwarranted delays because of the principle of consensus.

The fifth chapter answers the third question about the assistance provided by NGOs and other non-state actors to the Special Rapporteur in his/her mandated functions. NGOs and other non-state actors such as local organisations, national human rights institutions are crucial for the successful working of the Special Rapporteur. NGOs provide input to the Special Rapporteur at every step of his/her functions. NGOs provide secondary information to the Special Rapporteur about the actual human rights condition of indigenous peoples which the Special Rapporteur includes in the annual reports. Also based on this important information, the Special Rapporteur decides to undertake a country-visit. The Special Rapporteur also seeks assistance from NGOs while preparing thematic studies. When Special Rapporteur undertakes country-visits, NGOs are often the first resource persons who the Special Rapporteur engages with. In some instances, as happened in the Philippines, NGOs and local indigenous peoples' organisations make a travel itinerary for the Special Rapporteur detailing the areas that need to be visited, the indigenous communities who should be contacted and have an interaction with the Special Rapporteur. The country reports prepared by the Special Rapporteur after undertaking the country visit also solicit further information from NGOs. Lastly, NGOs perform a very important function of sending communications or complaints to the Special Rapporteur on behalf of the indigenous peoples. Therefore, Special Rapporteur is assisted by NGOs at every step of carrying out his/her mandated functions.

The sixth chapter provides an answer to the fourth question about the importance of shadow reports of NGOs for indigenous peoples in the UPR process. NGOs provide shadow reports which are the alternate pieces of information submitted at the OHCHR. These shadow reports constitute important information on the actual situation of human rights in reality, which most of the time is missing from the national reports submitted by states. Therefore, these shadow reports are very important at the international level. For indigenous peoples, these shadow reports are very important because most often the violation of their rights is not accounted in the states' reports. The reports submitted by the NGOs, then become the only source of real information available on these indigenous peoples. Therefore, shadow reports are indispensable for the survival of these indigenous peoples.

The fifth question is answered in all the three chapters which discuss specifically the mechanisms. This question is about the internal and external factors

affecting the working of these institutional mechanisms. The mechanisms on indigenous peoples are mostly affected by the internal factors or challenges. For example, mechanisms such as Working Group, Permanent Forum and Special Rapporteur are negatively affected by many internal challenges such as low hierarchy within UN, lack of funding, lack of mechanisms which could effectively follow-up on the recommendations made by these mechanisms. In the case of Permanent Forum, temporal and spatial limitations have also had a negative impact on its working. The UPR, in the case of indigenous peoples, is limited because it is reviewed by member-states only which is an internal challenge. The fact that it is totally up to the states whether to accept recommendations or not is something which is not favourable to indigenous peoples. The external factors or challenges which have had an effect on the working of these mechanisms are the challenges which arise due to the interaction of various actors in the working of these mechanisms. For example, the hostility between states and NGOs is an external factor which sometimes hampers the working of the Special Rapporteur. This hostility is also a factor for the delays caused by the functioning of the Permanent Forum. The external factors could be a reason for the dissolution of the Working Group. These factors such as the fear among the states about the popularity of the Working Group, along with the fact that other mechanisms such as the Forum and Special Rapporteur existed for indigenous peoples, could be enumerated as factors which caused the dissolution of the Working Group.

The study confirms the first hypothesis i.e. 'Despite the Permanent Forum symbolising equal representation of indigenous peoples and states, the states continue to dominate over indigenous peoples by stalling effective follow-up of its recommendations'. Even though indigenous peoples have made efforts to assert their authority and presence in the Forum by emphasising their cultural distinctiveness, the truth remains that states have remained dominant in the Permanent Forum.

The study confirms the second hypothesis i.e. 'The reluctance of states to cooperate with the Special Rapporteur has made the role of non-state actors the central in effective functioning of this mechanism'. It is because of the uncertainty that states have shown towards engaging with the Special Rapporteur, that non-state actors particularly local NGOs and indigenous peoples' organisations took the lead in dealing with this mechanism at all levels. This study is replete with examples which

show that the diffident attitude of the states is largely responsible for the non-state actors becoming more active.

The study confirms the third hypothesis i.e. 'The interaction between United Nations mechanisms and NGOs ripens mutual benefit in terms of legitimacy for the former and international visibility for the latter'. The interaction between these actors has benefitted them mutually giving a kind of legitimacy to the UN and a certain level of international visibility, particularly to local NGOs and indigenous peoples' organisations.

The United Nations is the only organisation that has not only formulated norms and standards for indigenous peoples but also established institutional mechanisms for the benefit of these indigenous peoples. These norms and standards were formulated after an intense exchange of ideas among three sets of actors- the states, UN bureaucracy, and non-state actors particularly NGOs, think tanks, epistemic communities and so on. This assessment provides that all three sets of actors have played an important role in the working of one or more of these institutional mechanisms. These actors have also interacted continuously in the working of the institutional mechanisms. In the case of the Working Group on Indigenous Populations, it was the UN bureaucracy and indigenous peoples' organisations and NGOs which had played the most important role in making the mechanism function effectively. The states were not as active in this mechanism as they had been in other UN mechanisms. In the case of Permanent Forum on Indigenous Issues, all three actors have played important roles. While UN bureaucracy played an important role in the establishment of the Forum, states and NGOs took the lead in carrying out the mandate of the Forum. As far as the Special Rapporteur is concerned, the states and NGOs were important actors for the mechanism to work effectively. The bureaucracy had more or less a passive role. In the case of the UPR, the UN bureaucracy and NGOs have played important roles, in relation to indigenous peoples. Here the states have not played much of a role in the case of indigenous peoples.

Indigenous peoples have a troubled history with excessive marginalisation and exploitation that they continue to face in their states and at the international level. The attempts to internationalise their issues since 1970s were important to highlight their

problems at the international stage. Today, after more than three decades of their international movement, efforts have to be made to attempt to implement their rights in their states at the domestic level. Establishment of international institutions has been a positive step as a means to address the issues and challenges faced by indigenous peoples. However, these institutions are not free from limitations. These have limitations in terms of funding, lack of staff, lack of implementation power and so on. Moreover, the actors who work within these institutions also have limitations in their exercise of power. Thus, whereas new norms and standards can be formulated by NGOs, epistemic communities, UN bureaucracy; the implementation of these norms still depends on the will of the states. This research has attempted to analyse the interaction of these actors in the working of select important mechanisms with a view to understand the lacuna in their interaction. There is still ample opportunity for researchers to conduct future research on the efficacy of other mechanisms which could not be a part of this research, for example the Expert Mechanism. Another starting point could be the interaction between these mechanisms, for example the Permanent Forum and the Expert Mechanism. This research has made an attempt to analyse the working of UPR in relation to indigenous peoples. This research effort could be extended to include the third cycle of the UPR and make a comparative assessment of the UPR in relation to indigenous peoples.

Annexure I: United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,

Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Recognizing also the urgent need to respect and promote the rights of indigenous peoples affirmed in treaties, agreements and other constructive arrangements with States,

Welcoming the fact that indigenous peoples are organizing them-selves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and com-munities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under inter-national instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in inter-national law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional

particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

Article 1
Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights4 and international human rights law.

Article 2
Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

Article 3
Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4
Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Article 5
Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

Article 6
Every indigenous individual has the right to a nationality.

Article 7
1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person.
2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

Article 8
1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.
2. States shall provide effective mechanisms for prevention of, and redress for:
a) any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

b) any action which has the aim or effect of dispossessing them of their lands, territories or resources;
c) any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;
d) any form of forced assimilation or integration;
e) any form of propaganda designed to incite racial or ethnic discrimination directed against them.

Article 9
Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

Article 10
Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 11
1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.
Article 12
1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

Article 13
1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.
2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.
3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.
2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.
2. States shall in consultation and cooperation with indigenous peoples take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.
3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free,

prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.
2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or other-wise used or acquired.
2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.
2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status of monetary compensation or other appropriate redress.

Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.
2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.
3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.
2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

Article 31

1. Indigenous Peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literature, design, sports, traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions.
2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.
2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures

Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.
2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.
2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

Article 38

States, in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

Article 43

The rights recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.
2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law.

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