Indigenous-state relations in the UN: establishing the indigenous forum

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Received November 2005

ABSTRACT. The UN Permanent Forum on Indigenous Issues (PFII) was established on 31 July 2000 and held its first session at UN Headquarters in New York in May 2002. The result of decades of development, the forum signified an official opening of the UN to indigenous peoples' participation alongside that of states. This article analyses the discussions on the establishment of the PFII and the role of indigenous peoples as political actors in those discussions. A focus of particular interest is the contradiction between state sovereignty and indigenous self-determination. In examining the establishment process, the analysis draws on scholarship dealing with norms, institutions, organisation and legitimacy. The themes and frames used by indigenous peoples that are significant in state-indigenous relations and that have had an effect on the forum are indigenousness, self-determination, rights and recognition. These show how the relationship between state sovereignty and indigenous self-determination underlay the establishment discussions and their outcome. The materials for the article comprise the transcripts of the establishment negotiations, interventions of state and indigenous representatives, as well as literature on the political participation of indigenous peoples, international law and the UN system and indigenous peoples. The discussions are analysed textually. The article claims that, although the UN is a state-dominated organisation, indigenous peoples are nevertheless able to affect international cooperation. This is an INDIPO project paper (Tennberg 2006).

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Introduction

The focus of this article is the United Nations (UN) Permanent Forum on Indigenous Issues (PFII) and its establishment. Indigenous peoples participate actively and increasingly in different UN activities and meetings and there is currently a great deal of discussion within the UN about indigenous peoples and new instruments supporting their rights. The issue of indigenous peoples and their rights has figured in the work of the UN system for decades, recent examples being the Second Decade of the World's Indigenous Peoples, which started in January 2005, and the discussions on the Draft Declaration on the Rights of Indigenous Peoples. These efforts indicate that the possibilities of indigenous peoples to participate and be purposive actors in the UN are current issues in the debates between indigenous peoples' organisations and the representatives of states.

The state-centric UN system and indigenous peoples

The UN system is based on the existence of nation-states and their sovereignty. States make up the membership of the UN and are the main actors in the organisation. However, the number of non-state actors, for example, non-governmental organisations (NGOs), and the significance of their role has increased in the UN as well as in other international arenas (Stavenhagen 2005: 22).

The political participation of indigenous peoples is often a difficult issue for states. Indigenous peoples demand self-determination and collective rights in addition to basic individual human rights (Corbett 1996: 40; Brantenberg and Minde 1995: 4). These demands are often seen as posing a threat to the principles of state sovereignty and territorial and political integrity (Lâm 1992: 13–14). Indigenous peoples have traditionally found themselves in a marginal position in domestic and international politics. They have similar historical experiences and common problems today, among these colonisation and loss of lands, but may otherwise differ greatly. Whereas states have often considered the demands of indigenous peoples for self-determination and collective rights disturbing, the UN has developed better to accommodate NGOs, including indigenous NGOs. In fact, NGOs are now an essential part of the work of the UN. They are seen as increasing the accountability and legitimacy of the organisation's work. Moreover, they provide it with information, hold state actors accountable for their decisions, and use different strategies for influencing the states and the organisation itself.

Since becoming aware of their common issues, indigenous peoples have formed their own NGOs and dense international networks. They often cooperate when participating in international arenas. With the presence of indigenous representatives and with their agency in the UN and in other arenas, the situation, demands and rights of indigenous peoples have been put on the agenda. The UN now recognises that protecting the rights of indigenous peoples requires special measures, as illustrated by the Draft Declaration on the Rights of Indigenous Peoples. Even though the declaration will not be legally binding on states when adopted, it will be significant in terms of customary international law.

https://doi.org/10.1017/S0032247406005493 Published online by Cambridge University Press

Materials and aims

The article has three aims: the first is to present the developments leading to the establishment of the PFII, the second to discuss the debates during that process, and the third to analyse the outcome of the process. The materials used comprise the transcripts of the sessions in which the establishment of the PFII was discussed, interventions made by representatives of indigenous peoples and states, and UN reports on the progress of the working groups. These were studied using textual analysis. The indigenous delegates cited here are nordic and references made to indigenous participation include mainly Arctic indigenous groups. These groups are interesting because they have been very active and in the forefront in the international indigenous movement. The research also draws on literature dealing with political participation (of indigenous peoples) and the justifications for it, literature defining the central concepts, and information about indigenous peoples in the UN. Other materials consulted include scholarship on political participation and international law dealing with the right to political participation, minorities, indigenous peoples and human rights.

The analysis seeks to determine how the principles of state sovereignty and indigenous self-determination affected the discussions leading up to the establishment of the PFII and how indigenous peoples and states defended and justified their points of view. By analysing the discussions and their outcome, the article attempts to ascertain what type of forum was envisaged and how state-indigenous relations influenced the result. The conclusion is that although the UN is largely controlled by states, which make the final decisions, and although conflicts between state sovereignty and indigenous self-determination create difficulties for the agency of indigenous peoples in the UN, indigenous NGOs as actors *are* able to influence and put pressure on other actors in the organisation.

International norms, institutions and change

Scholarship on international norms, institutions, legitimacy and organisations is useful for analysing the issue area of this article. The institution of particular significance here is state sovereignty that changes and takes new forms. The rules and norms of state-indigenous relations are changing as the rules that constitute institutions change. The focal organisation here is the UN: it is an arena where the new rules of international cooperation are discussed and where indigenous peoples act to promote indigenous self-determination as a new norm in international politics.

Finnemore notes that international organisations like the UN are arenas where the actions and responsibilities of states are discussed. She adds that such organisations act as forums in which people argue concerning what states should do (Finnemore 1996, 34). The UN is a focal point for state-indigenous relations internationally. It is the main organisation where new norms and rules about state responsibilities and actions pertaining to indigenous peoples are discussed. It is also the arena where indigenous peoples, as actors, strive to promote new norms in international politics, such as indigenous self-determination.

Finnemore defines norms as shared expectations about appropriate behaviour held by a community of actors. She gives the example of the norm of statehood as the legitimate political unit in international politics. Most scholars have considered a state to be a natural and inevitable fact and have not treated it as a socially constructed and historically contingent entity (Finnemore 1996: 22–23). If the norm is that the state is the only legitimate international political actor, it excludes all other actors, such as indigenous NGOs, from any analysis and does not give them any significance.

According to Finnemore, norms are intersubjective, which prompts discussion of them among actors. Norms can be used by actors to justify their actions or to persuade others to act in a particular way (Finnemore 1996: 24). A dynamic emerges and thus an opportunity for a change in norms. The focal issue is how a new norm becomes commonly accepted in cooperation and how it achieves legitimacy. Indigenous self-determination is discussed in the UN and used by indigenous peoples to justify their opinions and actions. It is also becoming a more commonly accepted principle in international arenas.

Social institutions are constantly contested. Normative tensions that go unresolved later become a mobilising force for questioning these institutions and their legitimacy. This is a political process marked by competing values of what is good and appropriate in collective life (Finnemore 1996: 135). As political actors, indigenous organisations are contesting institutions such as state sovereignty and state rule in indigenous areas. They are framing these old institutions, considered the legitimate units in international politics, as illegitimate ones.

Indigenous NGOs and networks as actors can be seen in Finnemore's and Sikkink's (1998) terms as norm entrepreneurs and norm platforms that actively try to build norms. According to Florini, a norm is a legitimate behavioural claim. Norms are obeyed because they are considered legitimate (Florini 1996: 364–365). New norms can become legitimate when they cohere with prevailing norms. Florini continues that most prevailing norms exist in international law; that is new norms must be conceived of as extensions of that law or as necessary changes in it. Many international negotiations centre around whether emerging norms are coherent with existing international law and are thus acceptable (Florini 1996: 376–377). Indigenous self-determination is one of the norms at issue in these negotiations, and indigenous organisations act as norm entrepreneurs to achieve recognition of the norm.

According to Hurd, legitimacy refers to 'the normative belief by an actor that a rule or institution ought to be obeyed' (Hurd 1999: 381). This is an actor's subjective perception of the institution, which can come from the content of the rule or how, and by whom, it was

https://doi.org/10.1017/S0032247406005493 Published online by Cambridge University Press

constituted. The perception is internalised by the actor and thus affects his or her behaviour and interests. Hurd is interested in the subjective feeling of a particular actor or set of actors about a rule's legitimacy, that is, situations in which a rule is considered legitimate by one actor or group of actors but not necessarily accepted by an outside actor or group of actors (Hurd 1999: 381). The legitimacy of state sovereignty, a basic international institution, is questioned by indigenous organisations acting as norm entrepreneurs and promoting indigenous self-determination. These organisations are changing the old rules of international politics, which recognizes the state as the only legitimate actor.

Actors can be understood here as norm entrepreneurs, a useful approach in the case of indigenous peoples' organisations. According to Finnemore and Sikkink, norm entrepreneurs and the organisational platforms from which they act are elements that are often present in the successful creation of new norms. Norm entrepreneurs engage in what social movement theorists call 'framing': they name and interpret issues and, in this way, draw attention to, or even create, them. Successful framing is coherent with common understandings and becomes accepted as a new way of talking about the issues. According to Barnett and Finnemore, frames are used by actors to interpret events and problems, to mobilise action and to suggest solutions to problems. Thus, events are only made meaningful by the actors that compete in giving their meanings to them. This process creates limits on what is acceptable action (Finnemore and Sikkink 1998: 896–897; Barnett and Finnemore 2004: 33). Indigenous organisations frame the assertion of state sovereignty as unacceptable and do so in ways that make the assertion seem illegitimate.

Norm platforms are organisational platforms used by norm entrepreneurs to promote and create norms. Many NGOs and their international networks, for example, those promoting human rights and indigenous rights, emerge for the purpose of promoting a particular norm. The established international organisations in which norm entrepreneurs work, such as the UN, have purposes other than promoting a single norm, which can shape the content of the body of norms that the organisations promote (Finnemore and Sikkink 1998: 899). Indigenous NGOs working in the UN system must deal with an organisation created by sovereign states that constitute the membership of the organisation. The negotiations on indigenous issues, for example, self-determination, reflect a constant balancing between the basic principles of the institution of state sovereignty and indigenous self-determination, the latter promoted by indigenous NGOs acting as norm entrepreneurs.

Norm entrepreneurs and their organisations have to secure the support of states for their norms. In other words, they have to include norm socialisation on their agenda. Different organisational platforms provide different environments in which the norm entrepreneurs may do this. The UN, for example, can exert leverage on relatively weak states in order to make them accept norms. International organisations such as the UN act to promote goals that are considered good and appropriate, for example, human rights. This work gives the organisations a certain authority and they may then use the resulting credibility to promote other values. Moreover, as bureaucracies, international organisations appear more legitimate than selfish states. International organisations thus have a measure of authority that states cannot achieve (Finnemore and Sikkink 1998: 900; Barnett and Finnemore 2004: 5).

NGO networks and intergovernmental organisations that work with more powerful states cannot force them to accept a norm. Norm entrepreneurs have to persuade, to make something considered natural or appropriate be seen as wrong. This often involves distributing information and facts that support their claims (Finnemore and Sikkink 1998: 900).

UN developments and indigenous peoples

Indigenous peoples have made attempts to get their positions heard in international arenas for decades, first in the League of Nations and then in the UN system. Due to the efforts of indigenous leaders and NGOs, and changed international circumstances, indigenous issues have been placed on the UN agenda.

Changes in the UN circumstances

As early as the 1920s, indigenous leaders attempted to have their cases heard in the League of Nations but these efforts were unsuccessful. The situation of indigenous peoples was considered to fall within the internal affairs of the states in which they lived and thus could not be dealt with in the League. After the Second World War, the UN was established and more favorable circumstances emerged for the promotion of indigenous peoples' rights. Niezen notes some aspects of that era that created more favorable conditions. To begin with, the international community was more receptive to the protection of minorities because of the struggle against fascism. In 1948, the Universal Declaration of Human Rights was adopted, followed by the Covenants on Economic, Social and Cultural Rights and on Civil and Political rights. The UN Charter and its human rights instruments brought about a change in the scope of international law for units other than states. In addition, the decolonisation process and the principles of self-determination promoted circumstances under which these principles carried over to the human rights agenda and created justifications that could be used to promote the self-determination of indigenous peoples. What is more, the influence of the civil rights movement in the United States in the 1960s was felt in the formation of indigenous groups and networks. These groups were able to send representatives to international meetings to raise awareness of human right violations against indigenous peoples. Finally, according to Niezen, the rise of NGOs, and especially indigenous NGOs, has been impressive

https://doi.org/10.1017/S0032247406005493 Published online by Cambridge University Press

(Niezen 2003: 40–43). These developments show that indigenous representatives and NGOs have been able to take advantage of opportunities that open up in the political system.

In the 1950s, the International Labour Organization (ILO) became the first international institution to deal with indigenous issues. However, it is limited with regard to the issues it can handle. In the UN, issues concerning indigenous peoples have been discussed since the 1970s. In 1977, indigenous peoples were allowed directly to address the UN at the International NGO Conference on Discrimination against Indigenous Populations in the Americas, an event that brought together NGOs and indigenous peoples from fifteen countries. One significant outcome of the conference was the coordination that developed between different indigenous peoples in formulating their demands: the peoples have used it in subsequent meetings (Nagara 2003a: 23; Nagara 2003b: 24; García-Alix 2003: 49).

Another development in the 1970s was a major study conducted in the UN on the situation of indigenous peoples, the study of the problem of discrimination against indigenous populations, also known as the Martinez Cobo Report. Following this study and the 1977 Conference on Discrimination against Indigenous Populations, the Working Group on Indigenous Populations (WGIP) was established in 1982. The WGIP later became an arena that brought together hundreds of indigenous NGOs and finalised the Draft Declaration on the Rights of Indigenous Peoples. The WGIP is very receptive to NGO participation: any indigenous person or NGO can participate in its sessions. This model of open participation has been used since in the UN in other bodies dealing with indigenous issues and was adopted by the PFII.

The Martinez Cobo report carried out by the UN in the 1970s found that the mechanisms dealing with indigenous peoples in the UN were inadequate. The research underscored the need to discuss the establishment of a permanent body dealing with indigenous issues. It was noted that the UN mechanisms at the time did not adequately take into account the special circumstances, needs and interests of indigenous peoples and that indigenous peoples had no influence over issues of concern to them.

Increase in the number of indigenous NGOs

The number of indigenous organisations and networks and the communications between indigenous organisations increased in the 1960s and 1970s. Indigenous peoples were organising and this process was growing at national and regional levels. This development marked the starting point of international lobbying efforts by indigenous peoples, especially in the United Nations (García-Alix, 2003: 47).

Nation-states have had to accept NGOs, including indigenous NGOs, as actors in international relations. According to Niezen, more impressive than the growth in the number of indigenous NGOs is the fact that the organisations have increased in number in an environment that was not responsive to their demands and participation earlier. International NGOs are more effective than domestic ones. They do not have economic leverage but have indirect influence that is achieved through lobbying those who have power (Niezen 2003: 40). By framing old institutions in new ways, such as by questioning the legitimacy of state sovereignty in their areas, indigenous organisations persuade and influence other actors. In so acting as norm entrepreneurs in international arenas, indigenous organisations are changing traditional state-centric international politics and its basic institutions to encompass different actors.

The Sami Council, established in 1956, is an example of indigenous peoples' participation in international forums. The Council has members from Finland, Sweden, Norway and Russia, has NGO status in the UN Economic and Social Council (ECOSOC) and cooperates with other indigenous peoples' organisations. The Sami Council has participated in the work of the UN since the 1980s (Machado 1994, 74) and has also participated in the work of the Arctic Council as a permanent participant. Another active Arctic indigenous organisation is the Inuit Circumpolar Conference (ICC), which cooperates extensively with the Sami Council on Arctic issues in the Arctic Council and in the UN. The Russian Association of Indigenous Peoples of the North, Siberia and the Far East (RAIPON) is also active in Arctic and global arenas and cooperates with the ICC and Sami Council. At present, the ICC and RAIPON have representatives who are members of the PFII, which is likely to increase these organisations' interest and activities in the forum. The first chair of the PFII was a Sami, Ole-Henrik Magga, which had an impact on the number of Sami representatives and NGOs attending the first round of the forum's sessions and increased the visibility of the Sami in the UN.

Many indigenous peoples still have their own governments, and establishing NGOs does not fit in with their self-government history and demands for self-determination. However, as only sovereign states can be members of the UN, the only option for indigenous peoples to participate in the organisation is through NGOs. Being an NGO is one of the prerequisites for achieving consultative status in ECOSOC. A second requirement is a permanent headquarters, a condition that many indigenous NGOs cannot meet. The often complicated and lengthy process of attaining consultative status in ECOSOC has contributed to the open model of participation in the WGIP and later also in the PFII.

After the Second World War and with the creation of the UN and its human rights instruments, there emerged a more receptive climate for the participation of indigenous peoples and the promotion of their rights. Indigenous leaders and NGOs have been able to take advantage of the structural opportunities that have opened up. Since the 1970s, indigenous peoples' organisations have participated increasingly in the UN. They have formed networks with other NGOs and organisations that have

https://doi.org/10.1017/S0032247406005493 Published online by Cambridge University Press

similar causes and expertise on matters important to them. Indigenous NGOs have been able to put indigenous issues on the UN agenda and, in this way, have created opportunities for fuller and more active participation in the organisation. Thus, indigenous NGOs have made the UN system more inclusive of their participation and agency. In addition, studies and conferences organised by the UN have promoted the participation of indigenous NGOs and helped put indigenous issues onto the agenda. The WGIP has been especially important in bringing indigenous NGOs together and forming networks.

After decades, participation of indigenous peoples in the UN led to the establishment of the PFII. This was intended to be a forum where indigenous peoples, representatives of states, and the UN could discuss issues and problems related to indigenous peoples. Due to its extensive mandate, the PFII could deal with issues in a more versatile and comprehensive manner than a body with a narrower mandate. The PFII was considered to be necessary because the existing mechanisms dealing with indigenous peoples were inadequate

The discussions on the establishment of the Permanent Forum on Indigenous Issues

The establishment of the Permanent Forum was not straightforward or easy. The conflict between state sovereignty and indigenous self-determination complicated the discussions. The basic claim of indigenous peoples to self-determination has traditionally been seen as threatening state sovereignty.

Following a recommendation in the 1993 Vienna Declaration and Programme of Action approved by the World Conference on Human Rights, international meetings were organised on the establishment of a permanent forum for indigenous peoples at the UN. These meetings were attended by representatives of indigenous NGOs and by government representatives. Workshops were held in Copenhagen in 1995, in Santiago, Chile, in 1997, and in Geneva in 1999 and 2000. Especially at the first two of these meetings some states questioned the proposed establishment of the forum on the grounds that UN could not necessarily afford a new body and that it was not clear whether the forum was a real priority. However, in 1999, at an intersessional *ad hoc* working group meeting, the Chair said, 'no governmental delegation [has] expressed formal opposition to the establishment of a Permanent Forum for indigenous peoples within the UN system' (Niezen 2003: 47).

The following sections analyse the discussions on the establishment of the PFII with particular reference to the relationship between state sovereignty and indigenous self-determination. This relationship is illustrated in many themes that emerged during the establishment process where indigenous actors challenged old, basic rules of international politics (state sovereignty) and participated in a process to change these (demands for indigenous self-determination). These themes have significance for the possibilities of indigenous peoples to be actors in the UN and for the composition and workings of the PFII. The themes also formed frames through which indigenous actors, as norm entrepreneurs, viewed and articulated their problems, making their situations seem illegitimate and suggesting solutions to the problems and illegitimate situations. Thus, the indigenous peoples gave their own meaning to the relationship between state sovereignty and indigenous self-determination. The salient themes/frames were indigenousness, self-determination, recognition and rights. In these issues, representatives of indigenous peoples' organisations and states had different opinions and interpretations, which were discussed at length. These highlight the difficulties of balancing the rights of states as sovereign actors in international politics and the increasingly recognised rights of indigenous peoples.

Is a definition of indigenousness needed?

One central question in state-indigenous relations in national and international arenas has been whether or not to define which the indigenous peoples are and, if a definition is needed, how it should be formulated. Achieving a definition that would cover all the indigenous peoples of the world has proved to be extremely difficult.

Indigenous peoples are generally of the view that a definition coming from the governments is unacceptable. Some indigenous statements framed the definition issue such that it appeared as an attempt by governments to limit the number of peoples who could benefit from their indigenous status.

In the establishment discussions, indigenous peoples opposed creation of a limiting and exact definition of indigenous peoples. Such a definition would violate the peoples' right of self-determination and their right to decide for themselves who they are without any definitions coming from outside. There was also debate about why indigenous peoples, of all the other peoples of the world, should be defined.

States also debated to a certain extent whether it was possible to consider establishing the PFII without a precise and universal definition of indigenous peoples. According to a statement by the Sami Council, states that demand a definition of indigenous peoples are trying to make it their right to judge who the 'real' indigenous peoples are. The Sami Council stated that indigenous peoples do not see any reason why they, of all the peoples of the world, have to be defined. Most of the states dealing with indigenous issues see the question of definition from their own national constitutional and historical framework and do not deal with these questions as issues having a universal character. According to the Sami Council, it should be easy to identify indigenous peoples without a definition by using criteria that are adequate to decide if an individual or a community is indigenous. These criteria are historical continuity, self-identification and group membership. Any discussion of a definition should take place in the Permanent Forum and thus a definition could not be a prerequisite for establishing the forum (International Indigenous Meetings 1999).

https://doi.org/10.1017/S0032247406005493 Published online by Cambridge University Press

State representatives did not generally demand a definition of indigenous peoples at the international level. The existing working definitions were thus regarded as adequate, at least for the present. The need for national definitions was considered greater. States referred to the diversity of indigenous peoples and the consequent difficulty, even impossibility, of a universal definition. An exception to this was the group of Asian states, which demanded a proper definition. This demand was backed by a statement that a proper definition would protect the rights of 'real' indigenous peoples. This opinion contrasts sharply with the statement of the Sami Council referred to above that states should not decide who the 'real' indigenous peoples are. The question is one of who has the power to create these definitions. Indigenous peoples resist definitions made by states and many consider attempts to define them as reflections of colonialism. Indigenous peoples have seen the definitions of and criteria set for indigenousness as threats that would prevent the realisation of their rights.

Demands for self-determination

Self-determination is the central demand of the international indigenous movement. Traditionally, states have been cautious with regard to this demand, as it has been considered a threat to the political unity and territorial integrity of the state. In other words, it has been seen as posing a threat to the basic principles of the nation-state. However, indigenous peoples generally do not demand full independence from the states in which they live (Lâm 2004: 141).

Although it was agreed in working groups that the use of the terms 'peoples' and 'people' did not imply acceptance of either term, the representatives of the United States had difficulties with them. The United States used the term 'indigenous groups' instead of 'indigenous peoples', a choice reflecting the idea that indigenous peoples are like any other minority groups, which are not considered peoples and do not have the rights of peoples, for example, self-determination. States did not want to use the term 'peoples' because it was seen as referring to self-determination and sovereignty over natural resources. Thus, the United States did not recognize a special status for indigenous peoples. The issue of the 's' in 'peoples' came up when the future status of indigenous representatives in the PFII was being discussed.

Many statements reflected the generally positive attitude of states towards the establishment of the PFII. The principle of equal participation and the status of the forum was a different matter. If the PFII was to be a discussion forum that would not have any real power, the governments took a positive view of equal participation by indigenous peoples with states. A joint statement by the Sami Council and ICC expressed their view that some governments were not ready to see indigenous peoples' representatives in a position equal to that of state representatives: 'We have come to a point where most governments are convinced of having a UN body that concerns itself with indigenous peoples' issues. However, we also sense a reluctance on the part of some governments to invite indigenous peoples into such a forum on an equal footing with and with the same voting powers as state governments' (Dahl 1997).

The Nordic states were very positive towards giving indigenous peoples the right to vote: 'The Nordic countries strongly support the establishment of a permanent forum for indigenous people in the United Nations. . . The forum should have an equal number of government and indigenous representatives, both groups with the right to vote' (Kleist 1997).

However, the statement refers to 'people' instead of 'peoples' and does not say anything about the status and powers of the proposed forum in the UN system.

Indigenous peoples stated that self-determination would be the only solution to their problems. They demanded equal status with the governments. The power to decide on issues concerning them was also a common demand, reflected in a statement by the Norwegian Sami Parliament: 'The Samis, in common with other indigenous peoples, have claimed and will claim that the right of self-determination also applies to indigenous peoples. . . The right to self-determination will give the Samis a collective right to decide their own future in all spheres of life. . . and it will also give them recognition of their right to make decisions concerning their own culture, social life and area' (Pavall 1997).

The cautious attitude of states with regard to the membership and influence of the forum showed that they did not consider indigenous peoples to be equal participants. The governments often seemed troubled by the extent of the rights and authority that the indigenous peoples could have and where their demands would end. The changes were considered threatening, because they could lead to a result that was not hoped for and a development that could not be stopped. Uncertainty on the part of many governments could be seen as a 'wait and see' attitude. They did not want to express their final position on the establishment of the forum. Many times the reason given for this lack of final position towards the establishment was, for example, the lack of a definition of 'indigenous peoples', that is who would be the peoples participating in the forum. Sometimes governments saw the entire process to be such an unprecedented case that consideration was emphasised.

The statements of indigenous peoples included a historical framework. They revealed the historical relationship between indigenous peoples and states under which another people was subjected to colonialism and discrimination. Thus, indigenous peoples often referred to a history that had led to their marginal position and to their being shut out of decision-making. Indigenous peoples want to be actors in their own right and they resist control by states. The statements of indigenous peoples often emphasised the ability of indigenous peoples to represent themselves and manage their own affairs. The statements included accounts of the colonial politics of the states

https://doi.org/10.1017/S0032247406005493 Published online by Cambridge University Press

that had taken away indigenous peoples' possibilities to affect their own lives. This 'politics of shaming' figured frequently in the statements made by the indigenous peoples.

Demands for recognition

The establishment negotiations also included issues of recognition or lack of recognition. Recognising indigenousness/indigenous peoples was difficult, especially for some Asian states. Many times the arguments were heard that all the citizens of a state were indigenous or that no indigenous peoples existed.

The concept of indigenousness refers to original settlement, that is, that some group inhabited an area before others. This includes a view of the state as colonialist. Indigenous peoples demand to be recognized as indigenous peoples and not just minorities. This recognition gives them a special status that other minorities do not have. When a state refuses to recognise its indigenous peoples, it also refuses to grant them any special rights. Then again, recognition does not necessarily guarantee any special rights or tell much about how the state treats its indigenous peoples.

States are aware that indigenous peoples demand certain rights and that this has consequences for the state itself. Some states are not ready to recognise the special status originating from indigenousness or the rights that follow from that status: such recognition is seen as violating the principle of state sovereignty and as a threat to the unity, both political and territorial, of the state. Concern for the unity of the state is especially great in countries with large indigenous populations. Indigenous peoples are also often assumed to exist only in western colonial states. Thus, if a state does not recognize its indigenous peoples, it does not have indigenous peoples and does not have to deal with the consequences of recognition, for example, special collective rights. States uphold unity and an individual orientation as their principle, making the demand of indigenous peoples for collective recognition difficult.

The statements of indigenous representatives in the establishment discussions used the recognition framework to convince other actors that they did not have full human rights because they were not recognised. Indigenous peoples' demand for the recognition of a special indigenous status was prompted by the threat that if they were not so recognised by the states, they would be treated as just another minority. Indigenous peoples see themselves as reclaiming their status as nations, whereas states view the peoples' position as a new demand. Indigenous peoples demand collective recognition: individual recognition is not adequate.

The indigenous peoples stated that they felt as if they were being shut out of decision-making and wanted to take their place back, reflecting the idea that they were independent peoples before being subjected to colonialism. Indigenous peoples want to be recognized as separate peoples in their own right and as peoples that enjoy the same rights as all other peoples, especially the right of self-determination.

Demands for rights

Another theme that arose in the establishment discussions was the recognition of the collective rights of indigenous peoples. Indigenous peoples claim that they have special rights because they are indigenous. It is now widely accepted that minority rights are not sufficient to protect indigenous peoples and there is a need for rights that go further. This is often problematic for states, since these rights would include rights to land and have a collective aspect, thus potentially compromising state sovereignty.

Indigenous peoples demand the recognition of their collective rights, a demand shared by all indigenous peoples. The rights frame emphasises that the principle of collective rights is vital for the survival of indigenous peoples. If indigenous peoples cannot enjoy their rights collectively, their individual rights also cannot be enjoyed. In the discussions, the indigenous peoples stated that indigenous rights should not be merely an extension of minority rights. The forum was envisaged as overseeing the realisation of the rights of indigenous peoples.

Some indigenous peoples stated that they wanted the forum to bring solutions to injustices that had taken place. Here, again, the historical framework is important. The peoples considered it important to have a constructive dialogue with governments, which they viewed as being responsible for the existing situations. Thus, indigenous peoples are in a situation that they have not themselves created. Injustices have occurred and governments are responsible for them. The correction of these injustices will be possible if indigenous peoples are given the chance to influence their own destiny and participate fully. Indigenous peoples do not see this as a new right but as the restoration of an old one. The discussion of correcting injustices focussed on states' resources, territories and the important principles of equality and unity of the state. States may view such demands as threats.

States did not mention much about rights in their statements. They were aware of their existence but there were also some dissenting voices that referred pointedly to the problems of recognition and self-determination. Equal individual rights for all had been considered adequate. Along with the demand for the recognition of cultural distinctiveness has come a demand for real equality, that is, that there is a need for collective rights for certain groups and states have to take special measures to protect these groups and their rights. That means special rights for special groups, in this case indigenous peoples. States see this as destabilising their unity. They seem to be threatened by not knowing how far these rights will eventually go and if this development can be stopped once it has started.

The Permanent Forum on Indigenous Issues

After years of discussion, the Economic and Social Council approved the establishment of the Permanent

https://doi.org/10.1017/S0032247406005493 Published online by Cambridge University Press

Forum on Indigenous Issues in July 2000 (García-Alix 2003: 60–61).

The PFII is a subsidiary body of ECOSOC, making it a high-level body within the UN system, on the same administrative level as the High Commission on Human Rights, although it does not have as much power. This makes the forum more visible in the system than if it were situated at a lower level (Niezen 2003: 170). ECOSOC is the appropriate place for the forum because indigenous issues for the most part fall under its broad mandate.

The mandate of the forum includes indigenous peoples' issues connected with economic and social development, culture, environment, education, health and human rights. Unlike the Working Group on Indigenous Populations, the forum does not have a mandate to develop human rights norms. The task of the forum is to prepare and disseminate information, raise awareness and develop cooperation mainly in the UN system.

The forum has 16 representatives, who act as independent experts. Governments appoint eight members, and the President of ECOSOC appoints eight members from the indigenous peoples' organisations after consultation with them. Governments would not have agreed to establish a forum with an indigenous majority. Due to opposition voiced by indigenous peoples and thus concern for the forum's legitimacy and credibility, states could also not be in the majority. Indigenous peoples' organisations, states, UN bodies, governmental and non-governmental organisations may participate in the forum as observers. Organisations of indigenous peoples may participate as observers in the meetings of the forum in accordance with the procedures that are applied in the Working Group on Indigenous Populations. The working group is open to all indigenous organisations, regardless of their consultative status with the ECOSOC. Chairman Magga said, 'We are working now to have them [indigenous groups] come not only to describe the situation but to come up with recommendations', pointing out that indigenous groups' requests would be included in the PFII's reports and they would be conveyed to the appropriate UN agencies (Nagara 2003a: 23). The forum is an opportunity for indigenous NGOs to present their recommendations for action in the areas falling within its mandate. The process that Chairman Magga described also shows that indigenous NGOs are increasingly not only participants but also purposive actors in the UN system.

Arctic indigenous peoples' organisations, especially the ICC and Sami Council, participate actively in the work of the PFII. The visibility and active participation of the Sami was enhanced by Magga's election, to be in the chair for the first three sessions of the forum. RAIPON, too, has been increasingly active and this can be expected to continue, as its first vice-president was elected to the present round of members of the forum. The president of the ICC is also a member of the forum.

The PFII has some unique features. It is a high-level body, established at the same level in the UN system as the Commission on Human Rights. This is the highest level at which a body can be established in the UN without constitutional reform (Nagara 2003a: 21). The forum is the only body within the UN system that deals solely with indigenous issues. With the establishment of the forum, indigenous peoples have become members of a UN body and can thus help set the forum's agenda and affect its outcomes. This is an unprecedented development in the work of the UN, although the PFII did not become all that indigenous NGOs were striving for.

Conclusions

The establishment process of the PFII brought out common themes of indigenous-state relations and indigenous peoples as political actors. These themes have been, and continue to be, central in indigenous-state relations, often making them problematic for both states and indigenous peoples. The themes, demands of indigenous peoples for self-determination, collective rights, recognition and self-definition, often cause concern among governments about the territorial and political unity of the state. These themes are also frameworks through which indigenous actors represent their views and demands in order to persuade states and other actors.

The contradiction between state sovereignty and indigenous self-determination was evident in the establishment process. Indigenous representatives framed problems such that the existing situation would seem illegitimate. They questioned the institution of state sovereignty and its legitimacy and, as norm entrepreneurs, sought to promote the norm of indigenous self-determination.

Indigenous peoples emphasised their demands for a forum that would have decision-making power. Indigenous peoples demanded equal participation and the ability to decide their own affairs. The self-determination and recognition frameworks were used to persuade other actors that, without equal participation by indigenous peoples' representatives in the forum alongside states, the forum would be illegitimate.

The weak power of the PFII was a disappointment for indigenous peoples as they were seeking a forum with decision-making power and with power to solve conflicts. Nevertheless, indigenous NGOs have access to the UN and a chance to influence states and UN bodies. Indigenous NGOs have been active as political actors in the process and many of them are very professional and experienced in the UN system. During the process of establishing the forum, indigenous peoples had their voices heard and were active in organising their own meetings and participating in the UN working groups. This reflects the demand that indigenous peoples want to be and are able to be purposive actors. The institution of state sovereignty has changed such that other actors, for example, indigenous NGOs, may be accepted into international politics, at least to some extent. States and organisations formed by states cannot remain completely uninfluenced by these NGOs, which act as norm entrepreneurs. With the establishment of the forum,

https://doi.org/10.1017/S0032247406005493 Published online by Cambridge University Press

the UN has become more open as an organisation to the participation of indigenous peoples.

The members of the forum participate as independent experts, a lesser role than that sought by the indigenous NGOs. They had to give up some of the forum's influence in order to achieve an equal position with the representatives of states. The most difficult points for states were the recognition of collective rights and self-determination, which indigenous actors emphasised during the establishment process. These demands often made state representatives uneasy about their possible consequences for the political and territorial unity of sovereign states. Issues of recognition and self-determination underlay the discussion of the forum's composition and the place of the indigenous peoples in the forum.

Analysis of the establishment negotiations showed that the states were generally content with the forum. During the negotiations, there were signs that the more powerful the forum would be, the less willing states would be to share their power in it. States are the members and final decision-makers in the UN and they did not want to compromise their power by giving the forum powers to make decisions or to resolve conflicts. Although the forum's mandate is quite broad and deals with important issues, the issues are acceptable to states: they are not very delicate or 'high-level' issues. In many instances, the institution of state sovereignty was still stronger than the emerging norm of indigenous self-determination. However, without indigenous actors in the negotiation process, the forum would probably be very different from what it is now, reflecting the sovereignty of the UN member states in a stronger way.

The structure of the UN played a part in the establishment process, setting limits as well as creating possibilities. Indigenous peoples demanded a position in the forum equal to that of the states. Because only members of the UN, that is, states, can form a governmental body, the forum became an expert body. One of the ways in which the UN system proved flexible was that the open model of participation for indigenous peoples was used in the establishment discussions. It was adopted as the model of participation for the forum as well. Normally, only NGOs with consultative status can participate in the work of the UN. Since no binding criteria for the definition of indigenous peoples exist and there are only a limited number of indigenous NGOs with consultative status, it was decided that every interested indigenous NGO would be allowed to participate. The large number of indigenous NGOs participating in the sessions of the PFII in the years following its establishment has shown that there is a great interest in the forum.

The UN is an organisation formed by states and this affects the ways in which it works. Accordingly, if indigenous peoples want to have influence in the UN, they will have, somehow, to adopt its procedures. Many indigenous NGOs have become very skilful in the working methods at the UN. However, there has been criticism because a state-centric forum like the UN cannot promote indigenous interests. Indigenous representatives can also be seen as becoming estranged from their own communities and thus not being competent to represent their peoples.

The UN is a system formed by states, and criticism by indigenous peoples in this matter is reasonable. In the negotiations for the establishment of the PFII, many indigenous peoples' representatives seemed worried about having to conform to foreign values and principles. On the other hand, the participation of indigenous peoples has already produced some positive results that would not have occurred without their involvement. While it is likely that indigenous peoples will have to make compromises when acting in a system formed by states, the forum nevertheless represents an example of organisational change in what has been a state-centric organisation. The establishment of the forum at a high level and providing for the participation of indigenous representatives on an equal footing with states' representatives shows that the rules of cooperation in the UN are changing, however slow this change might be.

The conflict between state sovereignty and indigenous self-determination was evident at many points in the establishment negotiations. It was clear that states were not ready to establish a forum with decision-making powers and at the same time welcome indigenous representatives as equal actors in that forum. Nevertheless, the PFII, as established, is a high-level body in which the state and indigenous representatives participate as equals. The conflict between state sovereignty and indigenous self-determination led to an outcome that must be considered a compromise. The states were not able totally to dominate the establishment process. The influence of indigenous actors as norm entrepreneurs in the process and the increasing international recognition of the situation of indigenous peoples and their rights had an impact on the result.

The PFII as established was surely a disappointment to indigenous peoples with respect to many issues. It does not have decision-making power or power to solve conflicts and its name does not include the words 'indigenous peoples.' However, the high level of the forum in the UN system, the equal status of indigenous and state representatives in it and its openness to indigenous NGOs are unprecedented achievements in a global state-controlled organisation. Internationally, the significance of the PFII is that indigenous peoples have been officially 'let in' to use their voices in this international organisation. This illustrates changes in the old rules of international politics and in the determination of which are the legitimate political actors.

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