Subaltern Voices in International Law

Role and Contribution of Indigenous Representatives in the Creation of the United Nations Declaration of the Rights of Indigenous Peoples

Frederike Peters
0922927
MA International Relations, track International Studies
Leiden University
Supervisor: dr. S. Valdivia Rivera
Leiden, 5 July 2017

Image*:*

"20 December 2006 - Sixty-first session of the General Assembly, United Nations Headquarters, New York: general view of the meeting, at which the report of the Human Rights Council containing the United Nations Declaration on the Rights of Indigenous Peoples was considered."

Source: http://legal.un.org/avl/ha/ga_61-295/ga_61-295.html

Table of Contents

Introduction……..……..…...5

1. The Subaltern, International Law and Norm Dynamics: a Theoretical Approach ……....7
1.1 Indigenous peoples as the Subaltern……..7
1.2 International law and indigenous rights……...…….…….9
1.3 The dynamics of international norms……..……11

2. The Creation of the UNDRIP……..12
2.1 International indigenous advocacy……...……12
2.2 The UN Declaration of the Rights of Indigenous Peoples……...14

3. Unequal Power Relations and Indigenous Contributions in the UNDRIP: a Discourse Analysis……...…….…17
3.1 Agency: Unequal power relations in the discourse of the UNDRIP…….…….……..……..…..17
3.2 Indigenous contributions to the UNDRIP……...…….……20

Conclusion…….…….23

Bibliography…….……..25

Introduction

In 2007 the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly of the UN. Its purpose was to better protect the rights of indigenous peoples around the world, by establishing basic norms - mainly human rights supplemented with some specific needs in the form of collective rights, like self-determination - for the treatment of these groups of people by the states they live in. It was the result of a process that had taken 25 years. Historically speaking, it was a big achievement for indigenous peoples to have their rights protected and their special needs recognized in international law - a system that traditionally protected European sovereign states and legitimized the suppression of the indigenous inhabitants of colonized territories. Also remarkable was the cooperation of indigenous organizations in the process of creating this declaration: large numbers of representatives of indigenous organizations were granted access to the meetings where the UNDRIP was written. For 'Subaltern' people – that is, underprivileged, non-Western people – like indigenous peoples, being able to influence jurisprudence at a globally powerful but, mainly, Western dominated institution like the United Nations is a momentous but rare accomplishment that deserves a closer look. It would be useful to know what the actual role and contribution of indigenous representatives during the writing process has been. This could shed light on the question whether Subaltern people were in this case really able to breach their underprivileged outsider position, and if they did, how other Subaltern groups can also give expression to their needs in the international political arena. To this end, this thesis will answer the question: ***How does the process of creating new international norms regarding indigenous peoples' rights work in the UN and are indigenous peoples themselves heard in this context?***

To understand the position of indigenous peoples in international law and the changing of ideas and laws concerning them, theoretical work of different authors about the concept of the Subaltern, about international law and about the dynamics of international norms is applied. The first chapter discusses these theories. To answer the research question above, it is necessary to know how the UNDRIP was created, who took part in this and what decisions were made: the process. This is discussed in the second chapter. But to determine whether indigenous peoples actually had a voice in the writing process and in the text of the UNDRIP in the sense that Gayatri Spivak means when she asks “can the Subaltern speak?”, original research was conducted that is discussed in chapter three. Firstly, the reports of the discussions at the commissions were the UNDRIP was created were analysed to gain insight into the role of indigenous organizations that were present. Secondly a discourse analysis was conducted of the text of the UNDRIP and the text of an earlier version of the UNDRIP. Analysing the discourse of a document can help see through the language that is used and debunk the power relations and structures that lie behind it. Underlying this approach is the theoretical assumption that discourse, used here in the meaning of social interaction in the form of language, is productive: it produces representations of reality which are not value-free or objective, but add meaning to facts (Hansen, 2014, p.172). When these representations are

used over and over again, this specific representation of reality becomes 'naturalized', and is no longer questioned (Neumann, 2009, p. 61). This productive function of discourse also means that discourse defines who can speak and act (Milliken, 1999, p. 229). The analysis of the UNDRIP shows what representations and, especially, normalizations are to be found in the UNDRIP and what dynamics they reveal. Also the power relations between the actors that are mentioned in the text – the indigenous peoples, states and the UN itself – become clear. Finally, the norm of self-determination as it has been codified in the UNDRIP has been analysed. This norm was the most important part of the UNDRIP for the indigenous organizations present at the writing process, and is therefore used as a means to see what influence indigenous representatives had on the UNDRIP.

Chapter 1. The Subaltern, International Law and Norm Dynamics: a Theoretical Approach

This thesis focuses on the creation of the UNDRIP and analyses the role indigenous peoples themselves play in this process. In this first chapter the conceptualization of the three important concepts that will be used in this analysis is discussed: the Subaltern, international law and norm dynamics. The concept of the Subaltern provides a helpful lens through which to look at the position of indigenous peoples in today's world, while the discourse of international law firmly keeps a Western system and language in place in which indigenous peoples have to find their voice. The goal of making their voice heard and having their demands codified as rights, can be understood as the process of creating a new international norm.

1.1 Indigenous people as the Subaltern

The underprivileged position of non-Western populations around the world has been theorized extensively by postcolonial and critical theorists. A concept that cannot be missed when studying postcolonialism is the *Subaltern,* a word first used in this context by Antonio Gramsci and later brought to academic attention by a collective of academics known as the Subaltern Studies Group (Sylvester, 2014, p. 188; Gandhi, 1998, p. 1). This collective, working in India in the 1980s, wanted to increase both the knowledge about and the influence of Subaltern people – generally meaning people in an underprivileged position, oppressed, subordinated or of inferior rank or class, especially in the non-West – by focusing on their stories and issues (Sylvester, 2014, p. 188-189; Gandhi, 1998, p. 1). One member of the Subaltern Studies Group, Gayatri Spivak, went on to raise the question whether the Subaltern can speak, focussing on how the Subaltern can take part in a discussion within a Western framework in which he himself is always at a disadvantage. This Western framework extends outside of the academic world to international politics and law as well. The United Nations itself is arguably built on the framework of Western political thought as an originally Western institution. Western political thought exists of political, legal and social theory based on specific assumptions and values that originate in Western culture (Ivison, Patton & Sanders, 2000, p. 2; Pahuja, 2013, p. 46), like economic growth, development, modernity, individuality, or globalization, that are constituted as universal in Western discourse. The international political and legal system as it exists now, is a framework based on these values. Because of this specific framework, the international system creates inequality between the West and the non-West, because the non-West does not share or meet, in equal form, these specific values. As Sundhya Pahuja argues, the international system promises equality to the 'other' in the non-West through development and the pursuit of the right, 'universal' values (2013, p. 3, 63). The

act of universalizing the Western political framework therefore creates a leading position for the West as well as an inescapable inferior, dependent and disadvantaged position for the non-West (2013, p. 48).

Spivak explains how this process of subordination works within Western discourses. She describes how the Subaltern, by speaking, would only confirm and strengthen his subordinate position, because the Subaltern would speak within a paradigm constructed by European knowledge and norms that is itself obsessed with preserving the dominant position of the European/Western subject. Indeed, this Western framework was made to promote Western economic interests (Spivak, 1987, p. 271). The Western subject makes it look like he has no geopolitical agenda, but at the same time he commits *epistemic violence*: he determines the narrative of reality and makes his version the normative one (p. 281). While Spivak considers the Subaltern voice to be inaccessible outside his own cultural (and epistemological) space, Robbie Shilliam and others have another approach, one that leaves more room to study the actual impact of Subaltern voices in political or academic discourse. Shilliam recognizes the fact that the non-Western subject is at risk of not being taken seriously because its knowledge is seen as 'traditional' and 'context sensitive', as opposed to Western thought, which is considered to be context-free and universal (2011, p. 13). Therefore John Briggs and Joanne Sharp argue (although they are very critical) that non-Western voices can exist and be heard within international academia or politics, but this cannot happen within a Western framework and therefore, Western thought must loose its universal position (Briggs and Sharp, 2004, p. 662). This means that Western academic knowledge must lose its universal position as the only 'real', 'scientific' thought and become just one voice in the discussion (Shilliam, 2011, p. 4; Briggs and Sharp, 2004, p. 662).

To sum up, Spivak argues that the Subaltern cannot truly be heard in a Western context, while Shilliam and others advocate an equal exchange of ideas within a neutral framework, as to avoid translation into such a Western context. Problematic is the fact that in general, in any discussion with other voices, the process that leads to decisions that are made and ideas that are used, might be opaque and disguising the powerful position Western thought continually occupies (Briggs & Sharp, 2004, p. 664,667). It is this decision making process, the discussion between Western and non-Western voices and the power processes that are working within the discourse, that will be uncovered in this thesis to see whether a real exchange is taking place and whether the Subaltern is really heard. By applying the concept of the Subaltern to indigenous peoples, we can conceptualize their struggle for indigenous rights as an attempt by Subaltern voices to speak and be heard. Moreover, they are trying to do this within the Western framework by translating their ideas and demands into Western concepts (Ivison, Patton & Sanders, 2000, p. 36), namely, applying the language of human rights to their struggle. This is a difficult task, and it raises Spivak's question if the Subaltern can truly be heard.

1.2 International law and indigenous rights

In international law, where there is no standard law or central judicial authority, codification of norms happens often in declarations of the UN. In the UNDRIP, basic human rights as well as specific needs of indigenous peoples are codified as entitlements, things they can claim they are due to receive. This means indigenous interests are translated into universal international laws. There are some things that are an obstacle for indigenous people to trust in and acknowledge the jurisdiction of international law. First of all, international law has European origins and has been universalized and used to normalize other societies since (Lâm, 2009, p. 589; Pahuja, 2013, p. 46; Anghie, 2004, p. 4-6). The history of international law however is more complicated than that. The colonial era has been a pivotal moment in its conception and the relationship between European states and non-European colonies shaped many of its doctrines (Anghie, 2004, p. 3). For example, the central doctrine of sovereignty gave European states the right to claim territories and govern them and the peoples on them without having to answer to any higher authority. Later, when many colonies became ('Third World') states, the same sovereignty principle was used to legitimize the repression of minorities and separatist movements, that sprung up because many of the new states consisted of large territories that were occupied by many different peoples and cultures (Anghie, 2004, p. 207). This makes international law seem foremost an imperial force and makes its legitimacy at least questionable in the eyes of many indigenous peoples (Ivison, Patton & Sanders, 2000, p. 3; Pulitano, 2012, p. 6). However, as Sundhya Pahuja argues, international law has a dual quality to it: it once was a tool to keep colonial and imperial authority in place, but now it has turned into a tool to accomplish change and fight for rights as well (Pahuja, 2013, p. 1-2). This means the same judicial system that first endorsed dispossession of lands, now contains norms that actually benefit the fight of indigenous peoples for self-government and other rights (Anaya, 2003, p. 184). Participating in the international arena however, means to submit to the rules that are in place. Fighting for indigenous rights at the international level may, in the words of Jerome Levi and Bartholomew Dean, “signal a willingness to concede the autonomy of Subaltern groups to the power and adjudication of larger, dominant polities” (2003, p. 2). This is similar to Spivak's point that the Subaltern cannot genuinely speak and be heard within the framework he must endorse to be able to speak in the first place. In the case of the participation of indigenous representatives in the process that created the UNDRIP, indigenous peoples already subjected themselves to the rule of international law and endorsed the position of the UN as authoritative international institution.

The dominant framework in which indigenous rights are understood, is the framework of human rights. The attention of the UN to human rights has been absolutely crucial to the development and formulation of rights of indigenous peoples (Keal, 2003, p. 121). The most obvious reason for separate rights for indigenous peoples that are not the same as general human rights, is the argument that some rights that are essential to indigenous peoples are collective, not individual rights. The most important example is the right of self-determination, that is in turn essential to the preservation of the cultural identity of indigenous peoples (Keal, 2003, p. 137). Another reason for specific indigenous rights is the fact that, in the case of land rights, the general distributive justice applied to distributing land puts indigenous people at a disadvantage because in the case of land it often is not just a 'fair share' they claim, but a very particular share: a piece of

land that has been sacred to them for a long time (Ivison, Patton & Sanders, 2000, p. 10). Now this land is part of a sovereign state that denies their claim to it. Sovereignty was the basis of colonialism and is what indigenous peoples lost under colonial international law (Alfred, 2001, p. 26). Indigenous peoples are now advocating for a kind of restitution in the form of self-determination. States find this demand problematic because sovereignty has always been an exclusive property of the nation state and granting it to peoples within the state, would challenge the state system (Keal, 2003, p. 114). This is why for indigenous peoples the state system is problematic, as it cannot grant them actual self-determination; according to Taiaiake Alfred accepting the small measures of self-government or “tribal sovereignty” that is offered them by some states, would only mean they endorse the domination of the state's legal framework and therefore affirm their own subjected position (2001, p. 30); a similar point to that of Spivak.

1.3 The dynamics of international norms

The UNDRIP can be seen as the codification of new international norms. Martha Finnemore and Kathryn Sikkink's theoretical work on norm dynamics gives insight into the life cycle of international norms and the factors that influence the changes in internationally accepted norms (Finnemore & Sikkink, 1998). Norms, generally defined as “a standard of appropriate behaviour for actors with a given identity” (1998, p. 891) are important inter-subjective standards within a community (of people, or of states for example) that have, in the words of Finnemore and Sikkink “a quality of oughtness”. This means they articulate what is considered appropriate behaviour and often are so internalized that following them is taken for granted while breaking them might result in wide disapproval or even outrage within the given community (p. 891-892). Examples of international norms are the sovereignty principle, considered a basic property of the nation state and taken for granted in most international dealings between states, or human rights, which have a strong moral character by portraying how basic conditions for human life ought to be. An important concept in Finnemore and Sikkink's norm dynamics theory is that of the norm entrepreneur: the agent or agents that bring an issue to attention and advocate for solving it by adopting a new norm. In the process of proposing a new norm, the norm entrepreneur often uses new language or interpretations of the issue to 'frame' it in a new way (p. 897); an example is the abolition of slavery, for which its proponents reframed the keeping of slaves as a dehumanizing practice and no longer viewed slaves as property but as human beings. The 'life cycle' that Finnemore and Sikkink formulated to explain the coming and going of international norms, starts with the stage of norm emergence, in which norm entrepreneurs – individuals, organizations or states – try to persuade a 'critical mass' of states (which are the actors in the field of international norms) to adopt a new norm (p. 895). Once a critical mass of states is socialized by the initially leading states and convinced of the new norm, a 'norm cascade', the second stage, takes place in which state after state becomes a follower of the new norm. In many cases norms reach this point by becoming institutionalized in international law (p. 900). The third stage then consist of 'internalization' when such a big part of the population (of states) is convinced of the new norm that it is no longer subject of debate and is generally taken for granted (p. 895). In the context of international law, new norms are codified as conventions or declarations that are adopted and signed by states. Consensus on the values or norms on which these laws are based is vitally important, because there is no means of coercion if a law is broken. The process of 'norm growing' in international institutions like the United Nations is therefore a slow but important process, because the agreement of the actors (states) on the norm that lies behind a law, is the only guarantee that it will be followed (Lâm, 2009, p. 591-592). The international debate on indigenous issues can be approached as such a norm growing process. Indigenous activists who try to improve the situation of their peoples, act as norm entrepreneurs in an international forum where states are the actors who have to agree on and act in accordance with norms.

Chapter 2. The Creation of the UNDRIP

In this chapter, the question of how the process of creating new international norms regarding indigenous peoples' rights works, will be answered. The history of the process of creating the UNDRIP will be discussed using the conceptual tools from the first chapter. In the process of creating the UNDRIP indigenous representatives participated alongside state representatives in the annual meetings of the drafting commissions. In the final years of the Working Group on the Draft Declaration a norm cascade took place and the norms codified in the UNDRIP gained enough support to be adopted by the General Assembly.

2.1 International indigenous advocacy

When European settlers started to colonize large parts of the world, newly found territories already inhabited by indigenous peoples were occupied by European conquerors who used international law, laws they among themselves agreed upon, to ratify and legitimize their claim. Sovereign statehood was exclusively granted to European imperial powers and the indigenous inhabitants of the colonized territories did not have any rights within this system of international law of which they were no members (Keal, 2003, p. 84; Pulitano, 2012, p. 13). This left them powerless and without any official status, as well as without any claim (within European international law) to the lands they lived on. The descendants of the original inhabitants of colonial territories who still form a distinct minority in their current nation, are now called indigenous. It is their cultural, linguistic and often also political uniqueness that leads them to fight for special rights in addition to general human rights: indigenous rights, that protect the preservation of their culture, and especially the right of self-determination. Indigenous peoples are to be found on all continents and they obviously have very different histories and different current situations. Nonetheless much of their experiences since their colonization and especially their dealings with European powers show parallels and therefore they are often categorized together as 'indigenous peoples' and their histories are told in one account by many academic writers (see for example Keal, 2003, Bodley, 2015 and Niezen, 2003).

Outside of the state, indigenous peoples lacked any international legal personality for a long time (Sanders, 1998, p. 73). Yet, changing international norms of treatment of indigenous peoples by states, was their best hope. When the League of Nations was formed in 1919, some indigenous leaders, who can be called pioneer norm entrepreneurs, tried to gain international attention and a voice in international affairs by petitioning the League of Nations, but as there was no acknowledgement of minority rights in the Covenant of the League, their appeal was rejected and their voiceless position reaffirmed (p. 73). As Finnemore and Sikkink argue, a norm might have to 'fit' within existing normative frameworks to gain appreciation (1998, p. 908), and indigenous needs

were not acknowledged in the state-centered discourse of the League. To be heard in (Western) international institutions like the League of Nations and its successor, the United Nations, the right way of 'framing' indigenous issues needed to be found by the norm entrepreneurs: by engaging the norms already held by international actors, the indigenous cause might be helped by translating it into familiar terms for the Western states. Previous protests had sounded too much like decolonization or self-determination for minorities, topics too sensitive at the time (and a threat to the sovereignty of nation states) (Sanders, 1998, p. 75). Finally in the 1960s an entrance into the international arena was found by the lawyer and staff member of the UN Centre for Human Rights Augusto Willemsen Diaz, who worked on issues of racial discrimination and used that language to address indigenous issues. The work of Willemsen Diaz did get indigenous peoples on the agenda of the United Nations: the Economic and Social Council (ECOSOC) found the subject important enough to request a study on discrimination against indigenous populations in 1971 (p. 75).

There was another way to frame indigenous issues, which led to some attention for indigenous people earlier on from the International Labour Organization. The ILO looked into the situation of indigenous workers since 1921 (Xanthaki, 2007, p. 49). Here working indigenous people were treated as a disadvantaged part of the working population whose position required attention. In 1953 the ILO drew up the Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (Convention 107). This convention was quite thorough in the range of rights it granted to indigenous workers, but its tone was rather assimilationist, in line with the norm of worldwide development of the time (Lâm, 2009, p. 601; Xanthaki, 2007, p. 49). The Convention attempted to bring indigenous peoples out of isolation and develop them, a goal that disregarded the wishes of the indigenous peoples concerned and did not allow for their cultural distinctiveness and the fact that they might have different needs from the population at large (Xanthaki, 2007, p. 51). There was no attention to the voices of indigenous peoples themselves. Indigenous ways of life were regarded as obstructing progress, and assimilation into the dominant culture through development projects, was seen as the solution to the disadvantaged position of indigenous peoples. By 1989 changes in the perception of indigenous peoples, as well as the growing indigenous advocacy within the UN that is described in other parts of this chapter, had led to a new Convention, No. 169, in which the distinct cultures, languages and institutions of indigenous peoples were recognized and the goal of assimilation was dropped (Xanthaki, 2007, p. 69; Morgan, 2011, p. 9). The top-down, state-centered approach to development had since Convention 107 changed into the belief that all people subject to a development project should be consulted and indigenous people should be granted some control over their way of life (Xanthaki, 2007, p. 69). Instead of designing a solution for the problems of the Subaltern and imposing it without consent, now for the first time the actual Subaltern subject became central to the international discussion. In the Convention this is visible in a stronger emphasis on rights, including group rights, and in self-identification as a fundamental criterion for determining who are meant by 'indigenous peoples'.

2.2 The UN Declaration of the Rights of Indigenous Peoples

Between 1981 and 1983 the results of the study on discrimination of indigenous peoples authorized by the ECOSOC, were published by Special Rapporteur José R. Martínez Cobo (Morgan, 2011, p. 10). In these reports, self-determination was mentioned as a basic precondition for a full exercise of their fundamental rights (p. 11). Also, Martínez Cobo provided a working description of indigenous peoples, that included as criteria a link with ancestral lands, a distinct ethnic identity different from the current dominant society and a determination to preserve their social and cultural institutions for future generations, amongst other things (Lâm, 2009, p. 599-600). The discourse around indigenous peoples and their issues in international fora had by this time clearly changed from focus on the voiceless Subaltern who is discriminated and must be developed, to a focus on a vocal activist Subaltern, ready to defend his rights and demanding self-determination in matters of government, lifestyle and culture. The need for new international norms regarding the treatment of indigenous peoples by the states they lived in, finally gained attention from international actors. As a result of the Cobo report - and to meet the growing international advocacy of indigenous NGOs - ECOSOC formed the UN Working Group on Indigenous Populations (WGIP), a sub-group of the UN Sub-Commission on the Prevention of Discrimination and Protection of Minorities (the Sub-Commission).

The WGIP consisted of five rotating state-appointed human right experts (members of the Sub-Commission) and met annually in Geneva from 1982 onwards (Morgan, 2011, p. 11; Lâm, 2009, p. 601). In 1985 the WGIP decided to start drafting what became the United Nations Declaration of the Rights of Indigenous Peoples, in accordance with their mandate to formulate standards for state-indigenous peoples relations (Morgan, 2011, p. 10-11). Thus the process of formulating new norms began, and the first stage of the norm cycle, norm emergence, had begun. The Working Group opened its doors to state representatives as well as several organizations and bodies to participate equally in the annual meetings, most importantly to indigenous organizations, with or without UN accreditation (Morgan, 2011, p. 11-12; Lâm, 2009, p. 601). Indigenous representatives gladly took this unprecedented opportunity (Lâm, 2009, p. 601) to address the Working Group and influence the Declaration in this early stage (Morgan, 2011, p. 12). In the first session in 1982, fourteen indigenous organizations were present at the annual session and in 1993, the year in which a first completed Draft Declaration was produced, 127 indigenous organizations were present at the annual session (Sub-Commission, 1982, p. 3-4; 1993, p. 5-6). Among these were organizations from all continents, like the Aboriginal Law Center, Federación Provincial Indígena Aymara, Ka Lahui Hawaii, and the Southern Sudan Group (1993, p. 5-6). Unfortunately the reports of the annual sessions of the WGIP have not always preserved their individual contributions to the meetings[1]. However, what has been recorded is that representatives of indigenous organizations expressed their wish for special standards for indigenous peoples to protect them from forced assimilation and integration into the dominant culture within their state, and especially new standards regarding self-determination and their claims to land and resources to protect them from dispossession of these (Daes, 2011, p. 17,20). Also, indigenous representatives asked for the

1 See for example the commission report from 1993, which uses phrases like “many representatives of indigenous peoples” (Sub-Commission, 1993, p. 20) or “a number of representatives of indigenous peoples [...]” (p. 18). The same is true for Chairperson-Rapporteur Erica-Irene Daes' later account of the proceedings (Daes, 2011).

inclusion of the right of compensation for past losses and deprivations (p. 29). In 1993 a Draft Declaration (DD) was completed which included many demands of indigenous activists (Lâm, 2009, p. 602) and was quite revolutionary, according to some commentators, in its content (Morgan, 2011, p. 12).

Two aspects of the DD were significant. Firstly, the WGIP soon decided, following the wishes of indigenous peoples themselves, to change 'populations' to 'peoples' (Lâm, 2009, p. 603), a term that recognizes the special character of the community and group identity of the indigenous peoples (Morgan, 2011, p. 9; Xanthaki, 2007, p. 70). The term 'peoples' has a significance in international law that is strongly linked with self-determination, which had made it too controversial before. Now, however, the DD contained in Article 3 the right of self-determination for indigenous peoples, the most important part of the Declaration for indigenous representatives (Xanthaki, 2007, p. 109) and the most threatening part of it, to states. However, the DD also seemed to limit self-determination to self-government: “Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy or self-government in matters relating to...” (Lâm, 2009, p. 604). Nonetheless, in combination with Article 42, that states that the rights in the Declaration are minimum standards, it can also be read as defining just one minimal form of self-determination (Morgan, 2011, p. 12). The DD was then sent to the Commission on Human Rights, which established the Working Group on the Draft Declaration (WGDD), as it has been known since, in 1995 (p. 13).

The WGDD met annually from 1995 to 2006 in Geneva and consisted of representatives of the member states of its parent body, the Commission on Human Rights (CHR) (ohchr.org). Its sole purpose was to elaborate the Draft Declaration, and prepare it for consideration by the General Assembly (ohchr.org). The (state-representing) members of the WGDD attempted to limit the influence of indigenous organizations by imposing stricter limits to the participation of NGOs in the commission meetings than the WGIP had had (Lâm, 2009, p. 602). It seemed therefore that the Subaltern voice in the proceedings would be mostly lost and indigenous activists were concerned the Draft Declaration would be changed at the expense of indigenous peoples (Morgan, 2001, p. 13). However, after insistent lobbying by indigenous delegates, a procedure was agreed upon by the CHR to grant indigenous organizations without the needed consultative status with the ECOSOC, access to the meetings as well (ohchr.org; Morgan 2011, p. 13). Many representatives of indigenous organizations from all continents were present thereafter, for example the Aboriginal and Torres Strait Islander Commission, Baha’i International Community, the Indigenous World Association and the World Council of Indigenous Peoples at the 1995 annual session (CHR, 1996a, p.3-4).

In this new Working Group, the two decisive issues that had already been dealt with at length in the WGIP came back on the table: the usage of the term 'peoples' and the inclusion of the right of self-determination in the Declaration. Both issues concern concepts ('peoples' and 'self-determination') that have controversial positions in discourses of international law. 'Peoples' have the right of self-determination according to the UN Charter, and 'self-determination' comes dangerously close to secession and breach of state sovereignty in the eyes of some states. In 1996 nine states in the WGDD had fundamental objections to self-determination for indigenous peoples, while five others said only to accept the principle as long as the territorial integrity of states would be explicitly protected (Morgan, 2011, p. 14). For indigenous peoples, both the usage of the term 'peoples' and the right of self-determination were vital elements of the UNDRIP (CHR, 1996a, p.9; 1999a, p.4). The concept 'peoples' is needed as the subject of collective rights, because these cannot

be granted to an individual, only to a group. Indigenous peoples see themselves as historically distinctive peoples, denied any voice in international discourse and robbed of all their rights for a long time, and because of this their representatives felt that they could only be respected as equals in international law when they were granted the same position as other peoples of the world. Besides, only self-determination would actually grant indigenous peoples any real international legal personality and therefore access to international fora (Lâm, 2009, p. 607).

After much discussion in the years that followed most states gradually came around to the principle of self-determination (Morgan, 2011, p. 14). The 3rd Article on self-determination stayed in the Declaration (as did the term 'peoples'), but Article 3 was in the Final Draft followed by Article 4 which states the right of indigenous peoples to autonomy in matters relating to internal affairs. This causes some haziness as to whether this is meant as the only interpretation of the principle of self-determination of Article 3, but indigenous representatives accepted it to ensure the support of the state representatives (Lâm, 2009, p. 609). The Human Rights Council (which had by now replaced the Commission on Human Rights) adopted the proposed text and submitted it to the General Assembly (GA) in 2006. Indigenous representatives from now on did not have any formal access to the proceedings any more (Lâm, 2009, p. 602). Permanent Representative of the Philippines Hilario G Davide Jr. conducted further consultations with the states that wanted amendments to the UNDRIP, like the US and Australia, and a group of African states (Morgan, 2011, p. 16). Mainly to satisfy the African states, there was a new provision added as Article 46(1), which stated very clearly that nothing from the Declaration may be interpreted as giving the right to impair the territorial integrity of sovereign states (p. 18). Maivân Clech Lâm rightly points out how this successful attempt at redrafting the Declaration to fit state interests was conveniently done at a moment when the indigenous beneficiaries of the Declaration no longer had a voice in the proceedings (2009, p. 614). However, for the norms of indigenous rights in the UNDRIP a tipping point was reached and a critical mass of convinced states led to Finnemore and Sikkink's norm cascade: the indigenous rights in the UNDRIP gained enough followers to become institutionalized. The United Nations Declaration of the Rights of Indigenous Peoples was adopted by the General Assembly on 3 September 2007.

Chapter 3. Unequal Power Relations and Indigenous Contributions in the UNDRIP: a Discourse Analysis

In the previous chapter the process of creation of the UNDRIP was discussed. This gave some insight into the position and influence of indigenous peoples in this process. What exactly has been their contribution with respect to the content of the UNDRIP and what position indigenous peoples have in the final text of the UNDRIP, will be the subject of this chapter. To find an answer to these questions, the discourse of the UNDRIP itself is explored. Two questions are leading in this: whether or not indigenous peoples have agency (an empowered position to speak and/or act from) in the language of the UNDRIP, and whether or not their most important demand, the right of self-determination, was granted them in this Declaration. For this a discourse analysis of the final version of the UNDRIP that was adopted by the General Assembly in 2007 was conducted. To gain more insight into the changes over time in the UNDRIP with regard to self-determination, different articles on self-determination have been compared with their version from the 1994 Draft Declaration. All reports of the WGDD of its eleven annual sessions, from 1995 till 2005, have been analysed to find what is recorded about the contributions of indigenous representatives during the sessions of the commission. The results of this are used to provide context to the discourse analysis. This chapter continues in two parts: first the position of indigenous peoples and the power relations between the actors in the UNDRIP are discussed to reveal whether indigenous peoples, as the Subaltern, have agency and are heard in this discourse. Secondly the norm of self-determination as it is laid down in the UNDRIP and the contribution of the indigenous representatives regarding this norm is analysed.

3.1 Agency: Unequal power relations in the discourse of the UNDRIP

Analysing the discourse of the UNDRIP can help us grasp what place and position indigenous peoples have in this document. The United Nations is the framework in which the UNDRIP has meaning, along with other declarations like the Universal Declaration of Human Rights. Because states recognize the UN as institution that has moral authority and can declare new norms, they are prepared to agree on a legislative document like the UNDRIP in meetings of commissions of the UN and adopt the final declaration in the General Assembly. The moral weight of the UNDRIP is declared to be “a standard of achievement to be pursued...”, (2007 p.3) which at the same time implies the UN has the authority to determine such a standard. Not only does the UN claim this moral authority, but it also claims universality for its norms. In the discourse of the UNDRIP the UN reconstitutes this universality. The UNDRIP refers to several other UN documents (literally, or more covertly by reusing some of its language) as authoritative sources and standards of norms,

most importantly the UN Charter and the Universal Declaration of Human Rights. The factual tone of the sentence "Affirming that indigenous peoples are equal to all other peoples" (GA, 2007, p. 1) and the words "the inherent rights of indigenous peoples..." *naturalize* the equality of peoples and the idea that human rights are a natural, "inherent" thing gives them the air of facts. The importance or "urgent need" to respect human rights, the very frequent usage of the word "right(s)" and even "inherent rights" when spoken of the needs or entitlements of indigenous peoples (GA, 2007, p. 2) all stress the importance and the universality of the norms the UN advocates. Throughout the UNDRIP, the 'language of human rights', or dominant human rights discourse, is used and these rights are reconstituted as natural, as in the following preambular paragraph:

"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," (GA, 2007, p. 3)

Here the compliance with UN norms is formulated and presented as the natural result of giving indigenous peoples their rights. The norms that are mentioned (human rights, justice, democracy, non-discrimination) are considered natural and universal. The normative authority of the UN and the universality of its norms (at least, their universal position in the discourse of UN documents) is something the indigenous organizations that helped create the UNDRIP, conformed to or complied with when they decided to contribute to the UNDRIP. This means, they agreed to participate in this framework in which (Western) human rights norms are taken for granted, like in the preambular paragraph above. This is a choice they made to gain influence and a voice at the UN, but it also means they had to adopt the language of human rights and accept UN norms and values as well as submit to the power of the institutions of the UN and the states. The irony is that the instrument that is created to protect indigenous culture and self-determination is therefore limiting their freedom too. This also clarifies the positions of the UN and sovereign states on the one hand and indigenous peoples on the other: the first party grants the second one its rights, which makes the first one the one in power, and it uses that power to strongly advice the second party what to do with those rights. Among these granted rights are many rights emphasizing the agency, freedom and self-determination of indigenous peoples. But, strikingly, what choices indigenous peoples should make when using their freedom, is already decided and spelled out by the UN: they should cooperate with the state and follow the norms that are mentioned. The compliance of indigenous representatives to the UN and its norms seem to deny indigenous peoples real agency.

The absence of real agency for indigenous peoples becomes even more apparent when looking at the literal text of many articles. While states have an active position in many articles of the Declaration, indigenous peoples are presented as the passive recipients of a right. Eighteen of the 46 articles[2] exist of a part where a right of indigenous peoples is stated, followed by a part which mentions the action states will take to ensure this right[3]. In these articles indigenous peoples are only direct or indirect object to the actions that are (to be) taken. When looking at the grammatical structure of the used sentences, it stands out that in Articles 21 and 22 where indigenous people in a

2 These articles are 8, 11-19, 21, 22, 24, 26, 29, 31, 32 and 36.

3 Or some variation of this, for example Articles 18 and 19 which deal with the same subject, where 18 states the right and 19 the part states play.

disadvantaged position (women, elders, disabled people etc.) are mentioned, these people are not even subject (or object) of the sentence. Their passive, powerless position seems to be stressed even more. Most articles in the UNDRIP are meant to give indigenous peoples a stronger social and political position and more influence on their own lives, but the framing of these rights in the form of an action on part of the state takes the initiative away from them and therefore robs them of the promised agency. Also, in several passages where indigenous peoples are promised real control, this is followed by an obsolete articulation of what this new power should lead to, like:

"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,"
(GA, 2007, p. 2)

Again, like earlier, a strong advice is given for what to do with the control that is given to indigenous peoples. Self-determination is considered to benefit indigenous peoples, as long as they follow Western norms like development.

What can be concluded about the agency of these actors from the analysis of the discourse of the UNDRIP, is that the pervasiveness of the language of human rights and the legislative power of the UN reconstitute and reformulate the powerful position of the UN and especially the nation states by propagating Western norms. Indigenous peoples have a very passive position in the text and are in some articles told what to do with their freedom, namely, to follow Western norms. Indigenous peoples, in the form of their representation by indigenous organizations at the UN, are subjected to these norms since they agreed to corroborate and contribute to the UNDRIP. This means they gave up some of their freedoms to have their rights protected by the UN. By endorsing the Western framework of the UN they affirm their own subjected position in it, as Spivak argued before.

3.2 Indigenous contributions to the UNDRIP

What exactly did indigenous representatives contribute to the content of the UNDRIP? What was their opinion on the articles of the UNDRIP and what demands did they bring to the commission sessions? In the annual session reports of the WGDD (1994-2006) the representatives of indigenous organizations seem to speak with one voice fairly often, or at least, they have been recorded in the reports this way. In six of the eleven reports there is no mention at all or only very few mentions of individual indigenous organizations (or their representatives) in the minutes of the discussions (CHR, 1996a; CHR, 2002-2006). Indigenous representatives are mostly mentioned as "all representatives", "some representatives" or just "indigenous representatives" (see for example CHR, 2002, p.8-9; CHR, 2003, p.11). In the report of the first session of 1995 no mention was made at all of individual indigenous contributions (CHR, 1996a). In the following year, an indigenous representative read a statement, agreed upon by the caucus of indigenous peoples, that asked for an immediate adoption by the commission of the Draft Declaration of 1994 without change as a statement of minimum standards (CHR, 1996b, p.5). The report continues:

"Furthermore, he requested that there be a plenary consensus on a change of the internal rules of procedure guiding the working group specifically providing for the equal and full participation of indigenous peoples in its deliberations, including full participation as partners in the decision-making authority of the working group. Inherent in this request was the recognition that the report of the working group must be produced with the full involvement and consent of indigenous peoples."
(CHR, 1996b, p.5)

It seems the indigenous organizations wanted to give a strong signal of dissatisfaction with both the extent to which the commission paid heed to the contribution of indigenous representatives and with the production of the reports of the commission in which they, as stated above, are often silent or only mentioned as a group. Appreciation of their statement was stated by government representatives and the Chairperson-Rapporteur in the following discussion, but many state representatives objected to the adoption of the Draft Declaration as minimum standards and as the same demands return in the 1997 report in many individual formulations, there is no indication that that demand was met by the WGDD (CHR, 1997, p.5-6). In the report of that and the following four years, more individual contributions are recorded, especially in the report of the 1999 session (CHR, 1999). However, it is striking that in the last four annual session reports, attention to indigenous contributions is again limited to summarized contributions of "some" or "all" indigenous representatives and no, or only one or two individual mentions (CHR, 2003-2006).

What does become clear from the contributions of indigenous representatives that are recorded, is that self-determination was the crucial part of the UNDRIP for indigenous peoples (Xanthaki 109; CHR, 1999a, p.6-7). At the same time, this was the most difficult part of the UNDRIP to agree with for states, because giving indigenous peoples control would mean loss of control for states. Comparison of the Draft Declaration made by the WGIP in 1994 and the final version of the UNDRIP shows that the norm of self-determination was part of the UNDRIP from an

early stage (as Article 3) in almost unchanged wording. The report of the 1996 annual session recorded that "all indigenous organizations opposed the inclusion of any limitation or qualification of article 3" (CHR, 1996b, p.11). For states self-determination is problematic as it comes dangerously close to sovereignty, and that is a property of nation states alone. Indigenous representatives at the WGDD however considered self-determination an inherent right, and

"some indigenous organizations stated that a balance between the right of self-determination of indigenous peoples and the territorial and political unity and integrity of States would result from the recognition and respect of that right to self-determination."
(CHR, 1996, p.11)

In other words, granting indigenous peoples self-determination would be a gesture of mutual trust that would result in a stronger integrity of the state, not a breach of it. Unfortunately for the indigenous organizations, the state representatives did not agree. Comparison of the Draft Declaration and the final version of the UNDRIP shows that the interpretation of self-determination has been renegotiated and has been limited by the addition of other articles, namely Articles 4 and 46 (Sub-Commission, 1994, p.5 and GA, 2007, p.4,11). Article 4 was Article 31 in the Draft Declaration of 1994. In this original version, the article states the right to autonomy or self-government, and calls this "a specific form of exercising their right to self-determination". In the final version of the UNDRIP, this article is moved to be the article following Article 3 about self-determination, and the wording is now:

"*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."
(GA, 2007, p. 4)

The change from "a specific form of self-determination" to "in exercising their right of self-determination" is important, because the first version implies that self-government is just one form of self-determination, while the second one seems to imply self-determination has to be interpreted as self-government, and not otherwise. Therefore this change, together with the movement of this article from 31 to 4 (behind the self-determination article, Article 3) could be seen as limiting self-determination to self-government. Article 46 also was changed to prevent a too liberal interpretation of self-determination, by including an explicit part protecting the sovereignty of states. This article, when it still was Article 45 in 1994, only stated that the content of the Declaration could not be interpreted to legitimize any act contrary to the Charter of the UN (Sub-Commission, 1994, p. 15). The final version of the article, which is much more elaborate, adds amongst other things, that nothing in the Declaration can be

"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."
(GA, 2007, p. 11)

All these changes in Articles 4 and 46 have constrained the extent of the norm of self-determination for indigenous peoples. Self-determination has been given to indigenous peoples, but not without strong limitations on its interpretation. More changes in the articles have been made to emphasize or protect the sovereign position of states. In Articles 37 and 38 parts were removed that could be interpreted as impairing the sovereignty of states, namely the possibility that international bodies settle disputes between states and indigenous peoples, and the obligation for states to include indigenous rights in national legislation. Also removed was a preambular paragraph from the 1994 version which stated that indigenous peoples have the right to freely determine their relationships with States (Sub-Commission, 1994, p. 4). This seems to be replaced, in terms of content, by the preambular paragraph quoted earlier, stating that the UNDRIP should lead to harmonious relations between states and indigenous peoples.

In the strong institutional framework of states, based on the norm of state sovereignty, unconditional self-determination for indigenous peoples is very problematic. Indigenous representatives must have expected that and must have been aware of the fact that the Declaration they helped create, was to be signed and implemented by states who would not so easily undermine their own stability with it. Also, by agreeing to work within the framework of international law to protect their rights, their freedom would also be limited in the sense that they would have to accept and adopt the concepts and norms of international law, like the power of states and sovereignty; norms that once were used to subjugate them. The indigenous writer Taiaiake Alfred, already mentioned in the first chapter, talks about the problem that treaties between indigenous peoples and states pose for indigenous peoples: sovereignty was the basis of colonialism, and indigenous peoples can only subjugate themselves more to the power of the state by striking a deal to get partial self-determination. However, the indigenous representatives both at the WGIP and the WGDD fought very hard for unlimited self-determination. At the end of the annual session in 2005, self-determination was one of the issues on which there was still no consensus in the WGDD. Chairperson-Rapporteur Luis Enrique Chávez decided to submit to the Human Rights Council his own proposal on the last outstanding issues (Morgan, 2011, 15). As discussed in the second chapter, there followed more negotiations between state representatives at the General Assembly. Indigenous organizations had no access to or say in the proceedings any more at this stage, and the final decisions on the exact interpretation of self-determination in the UNDRIP were taken by states. The end result was therefore never agreed upon by the indigenous representatives at the WGDD. Indigenous peoples were, in this sense, ultimately silenced after all.

Conclusion

How did the process of creating the UNDRIP work and have indigenous peoples really been heard in it? Has their influence paid off in the form of self-determination as a new codified norm? As was shown in chapter two, the need for new international norms for the treatment of indigenous peoples led to the creation of two commissions within the UN that subsequently worked on the UNDRIP as a means of codifying these new norms. These expert-composed and state-composed commissions reluctantly allowed for access for indigenous organizations, who were allowed to contribute to the discussions. However, as became clear in chapter three, their mentioning in the reports of the annual meetings is often unspecific and their demands of more influence in the process as well as unlimited self-determination in the UNDRIP have not been met. The last decisions made on certain issues, among which self-determination, were made at a stage where indigenous organizations had no longer access to the proceedings: the Subaltern was again reduced to a passive object of the norms of international law. Indigenous peoples have mainly gained a stronger reformulation of their human rights within the limits the UN framework sets. Self-determination without limitations on its interpretation, as demanded by indigenous organizations during the writing process, was not granted. The position of indigenous peoples as the Subaltern has not improved by their contribution to the UNDRIP nor by the articles of the UNDRIP itself. Indigenous representatives did speak and did contribute to the UNDRIP, but they could only do so by adopting the discourse of Western norms and accept the authority and power of states and the UN over them. This has reconfirmed and reinforced by their subjection to the authority of Western institutions and norms. International law had indeed functioned in the ambiguous way Sundhya Pahuja described: it has given the Subaltern rights, but within a system that was originally designed to subjugate him and it has subjected him once more to the power of this system. In Spivak's words, the Subaltern only confirms his voiceless position by trying to speak, because he speaks in a Western paradigm that is built to protect Western interests. In terms of norm dynamics, the existing framework of norms was so strongly institutionalized that the new norms of rights for indigenous peoples could only be acceptable to the critical mass of states when they were made to fit into existing international law.

Can Subaltern people really breach their underprivileged position within the Western framework? This is very difficult. With Western thought in a universalized position, indigenous contributions will have to be framed to fit well with Western values or they will be ignored. As Briggs and Sharp argued, in a neutral framework where Western thought is just one voice in the discussion and not considered universal, indigenous voices might have a more equal position and be heard more easily. However, within the UN this is not possible. The framework of international law will not make it possible to change that system itself. Indigenous organizations can get access to meetings, but this does not mean they get to change the system from within. They have the choice to play a role within the system as it is, or stay outside of it. Which should they choose? What works for Subaltern groups that want to defend their interests internationally? As indigenous peoples have shown with the creation of the UNDRIP, even from the difficult position of the Subaltern within the

framework of international law, it is still possible to act as norm entrepreneur and have new norms institutionalized, even when the institutionalized norms are not as radical as was hoped. This will not change their position as the Subaltern, but can help to promote some of their interests in international law. Now, at least, there is a Declaration to fall back on when indigenous peoples experience violation of their rights. The Declaration might act as a mediator between Subaltern people whose voice is easily lost in political discourses, and the powerful institutions that have the agency to influence their lot but do not hear them. With the UNDRIP indigenous peoples have a tool to make Western powers listen: a tool from the West's own tool kit. Raising their voices at the UN, choosing to subject themselves to the system no matter their subjugated position, achieved at least this for indigenous peoples. Other Subaltern groups may take heart from that.

Bibliography

Alfred, T. (2001). From Sovereignty to Freedom: Towards an Indigenous Political Discourse. *Indigenous Affairs* 3(01), 22-35 (publication of International Working Group of Indigenous Affairs). http://www.iwgia.org/iwgia_files_publications_files/IA_3-01.pdf Accessed 11 June 2016.

Anghie, A. (2004). *Imperialism, Sovereignty and the Making of International Law.* Cambridge: Cambridge University Press.

Anaya, J. (2003). *International Law and Indigenous Peoples*. Aldershot: Ashgate/Dartmouth.

Briggs, J. & Sharp, J. (2004). Indigenous Knowledges and Development: A Postcolonial Caution. *Third World Quarterly* 25(4), 661-676. http://www.jstor.org/stable/3993739 Accessed 11 June 2016.

Bodley, J. (2015). *Victims of Progress* (5th ed.). New York: Rowman & Littlefield.

Daes, E-I. (2011). The UN Declaration on the Rights of Indigenous Peoples: Background and Appraisal. In: Allan, S. & Xanthaki, A. (Eds.). *Reflections on the UN Declaration on the Rights of Indigenous Peoples*. Oxford and Portland: Hart Publishing.

Finnemore, M. & Sikkink, K. (1998). International Norm Dynamics and Political Change. *International Organization* 52(4), 887– 917. DOI: https://doi.org/10.1162/002081898550789 Accessed 6-6-2017.

Gandhi, L. (1998). *Postcolonial Theory. A Critical Introduction*. Crows Nest, NSW, Australia: Allen & Unwin.

Hansen, L. (2014). Post-Structuralism. In: Baylis, J., Smith, S. & Owens, P. *The Globalization of World Politics. An introduction to international relations.* Oxford: Oxford University Press.

Ivison, D., Patton, P., & Sanders, W., (Eds.). (2000). *Political Theory and the Rights of Indigenous Peoples.* Cambridge: Cambridge University Press.

Keal, P. (2003). *European Conquest and the Rights of Indigenous Peoples. The Moral Backwardness of International Society.* Cambridge: Cambridge University Press.

Lâm, M.C. (2009). We, the [Indigenous] Peoples of the United Nations. In: Morin, J.-Y., Yee, S. & McWhinney, E. (2009). *Multiculturalism and International Law: Essays in Honour of Edward McWhinney*. Leiden: Brill.

Milliken, J. (1999). The Study of Discourse in International Relations: A Critique of Research and Methods. *European Journal of International Relations* 5(2), 225-54. DOI: 10.1177/1354066199005002003 Accessed 6-6-2017.

Morgan, R. (2011). *Transforming Law and Institution Indigenous Peoples, the United Nations and Human Rights*. Farnham: Ashgate Publishing Ltd.

Neumann, I.B. (2009). Discourse Analysis. In: Klotz, A. & Prakash, D., (Eds.). *Qualitative Methods in International Relations.* Basingstoke & New York: Palgrave MacMillan.

Niezen, R. (2003). *The Origins of Indigenism. Human Rights and the Politics of Identity.* Los Angeles: The University of California Press.

Office of the UN High Commissioner on Human Rights. *Working Group on the draft declaration on the rights of indigenous peoples.* http://www.ohchr.org/EN/Issues/IPeoples/Pages/WGDraftDeclaration.aspx Accessed 6-6-2017.

Pahuja, S. (2013). *Decolonizing International Law Development, Economic Growth and the Politics of Universality.* Cambridge: Cambridge University Press.

Pulitano, E. (2012). *Indigenous Rights in the Age of the UN Declaration.* Cambridge and New York: Cambridge University Press.

Sanders, D. (1998). The Legacy of Deskaheh: Indigenous Peoples as International Actors. In: Price Cohen, C., (ed.). *The Human Rights of Indigenous Peoples.* Ardsley, New York: Transnational Publishers.

Shilliam, R. (ed.). 2011. *International Relations and Non-Western Thought. Imperialism, colonialism and investigations of global modernity.* New York: Routledge.

Spivak, G. (1987). Can the Subaltern Speak. In: Nelson, C. (ed.). *Marxism and the Interpretation of Culture.* Chicago: University of Illinois Press.

Sylvester, C. (2014). Post-colonialism. In: Baylis, J., Smith, S. & Owens, P. *The Globalization of World Politics. An introduction to international relations.* Oxford: Oxford University Press.

UN Commission on Human Rights (CHR). (1996a). “Report of the Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995”. 4 January 1996. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G96/100/99/PDF/G9610099.pdf?OpenElement Accessed 12-6-2017.[4]

UN Commission on Human Rights (CHR). (1996b). “Report of the Working Group established in accordance with Commission on Human Rights resolution 1995/32”. 10 December 1996. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G96/143/84/PDF/G9614384.pdf?OpenElement Accessed 12-6-2017.

UN Commission on Human Rights (CHR). (1997). “Report of the working group established in accordance with Commission on Human Rights resolution 1995/32.” 15 December 1997. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G97/144/87/PDF/G9714487.pdf?OpenElement Accessed 12-6-2017.

UN Commission on Human Rights (CHR). (1999a). “Report of the working group established in accordance with Commission on Human Rights resolution 1995/32.” 20 January 1999. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/102/90/PDF/G9910290.pdf?OpenElement Accessed 12-6-2017.

UN Commission on Human Rights (CHR). (1999b). “Report of the working group established in accordance with Commission on Human Rights resolution 1995/32.” 6 December 1999. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G99/162/19/PDF/G9916219.pdf?OpenElement Accessed 3-7-2017.

UN Commission on Human Rights (CHR). (2001). “Report of the working group established in accordance with Commission on Human Rights resolution 1995/32.” 6 February 2001. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G01/109/06/PDF/G0110906.pdf?OpenElement Accessed 3-7-2017.

UN Commission on Human Rights (CHR). (2002). *“Report of the working group established in accordance with Commission on Human Rights resolution 1995/32”*. 6 March 2002. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G02/112/76/PDF/G0211276.pdf?OpenElement Accessed 12-6-2017.

UN Commission on Human Rights (CHR). (2003). *“Report of the working group established in accordance with Commission on Human Rights resolution 1995/32”*. 6 January 2003. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/100/81/PDF/G0310081.pdf?OpenElement Accessed 3-7-2017.

4 This entry and the following ten entries are the reports of the annual sessions of the WGDD. Because the sessions were held near the end of the year, some years the report was published the following year. The year mentioned here is the publication year of the report, therefore, some years count two reports and others none.

UN Commission on Human Rights (CHR). (2004). *"Report of the working group established in accordance with Commission on Human Rights resolution 1995/32"*. 7 January 2004. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G04/100/88/PDF/G0410088.pdf?OpenElement Accessed 3-7-2017.

UN Commission on Human Rights (CHR). (2005). *"Report of the working group established in accordance with Commission on Human Rights resolution 1995/32"*. 28 February 2005. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/113/65/PDF/G0511365.pdf?OpenElement Accessed 3-7-2017.

UN Commission on Human Rights (CHR). (2006). *"Report of the working group established in accordance with Commission on Human Rights resolution 1995/32"*. 22 March 2006. https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/119/46/PDF/G0611946.pdf?OpenElement Accessed 3-7-2017.

UN General Assembly (GA). (2007). *Resolution 61/295, "United Nations Declaration on the Rights of Indigenous Peoples* ." 13 September 2007. http://www.un.org/GA/search/view_doc.asp?symbol=A/RES/61/295 Accessed 6-6-2017.

UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission). (1982). *"Report of the Working Group on Indigenous Populations on its first session."* 25 August 1982. http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.4/Sub.2/1982/33 Accessed 6-6-2017.

UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission). (1985). *"Report of the Working Group on Indigenous Populations on its fourth session."* 27 August 1985. http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.4/Sub.2/1985/22 Accessed 6-6-2017.

UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission). (1993). *"Report of the Working Group on Indigenous Populations on its eleventh session."* 23 August 1993. http://www.un.org/ga/search/view_doc.asp?symbol=E/CN.4/Sub.2/1993/29 Accessed 6-6-2017.

UN Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission). (1994). *Resolution 1994/45, "Draft United Nations Declaration on the Rights of Indigenous Peoples.*" 26 August 1994. http://ap.ohchr.org/documents/E/SUBCOM/resolutions/E-CN_4-SUB_2-RES-1994-45.doc Accessed 6-6-2017.

Xanthaki, A. (2007). *Indigenous Rights and United Nations Standards. Self-Determination, Culture and Land.* Cambridge: Cambridge University Press.