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# **Nothing About Us Without Us**

**Access for Indigenous Peoples  
to the United Nations  
and Perceptions of Legitimacy**

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# Nothing About Us Without Us

Access for Indigenous Peoples to the United Nations and Perceptions of Legitimacy

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## Abbreviations

AIPP	Asia Indigenous Peoples Pact
APOs	Affected Persons' Organizations
CANZUS	Canada, Australia, New Zealand and the United States
CAOI	Coordinadora Andina de Organizaciones Indígenas
CBD	Convention on Biological Diversity
CEPAL	Economic Commission for Latin America and the Caribbean
CERD	Committee for the Elimination of all Forms of Racial Discrimination
CFS	Committee on World Food Security
CHR	Commission on Human Rights
CLOCSAS	Confederation of Community Organizations for Water Services and Sanitation
CMA	Congrès Mondial Amazigh
COICA	Coordinadora de Organizaciones Indígenas de la Cuenca Amazónica
CSO	Civil society organization
DESA	Department of Economic and Social Affairs
docip	Center for Documentation, Research and Information
ECOSOC	Economic and Social Council
EMRIP/ Expert Mechanism	Expert Mechanism on the Human Rights of Indigenous Peoples
EU	European Union
FAO	Food and Agricultural Organization
FIMI	Federación Internacional de Mujeres Indígenas/ International Indigenous Women's Forum
GA	General Assembly
GFATM/ Global Fund	Global Fund to Fight Aids, Tuberculosis and Malaria
GIZ	Gesellschaft für Internationale Zusammenarbeit/ German Corporation for International Cooperation
HRC	Human Rights Council
IASG	Inter-Agency Support Group (on Indigenous peoples)
ICC	Inuit Circumpolar Council

IFAD	International Fund for Agricultural Development
IGC	Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (of WIPO)
IITC	International Indigenous Treaty Council
ILO	International Labour Organization
INGO	International Non-Governmental Organization
IO	International Organization
IOM	International Organization for Migration
IPACC	Indigenous Peoples of Africa Co-ordinating Committee
IPO	Indigenous Peoples' Organization
IPs	Indigenous Peoples
IWGIA	International Work Group for Indigenous Affairs
KKF	Khmers Kampuchea-Krom Federation
NGO	Non-governmental organization
NHRI	National Human Rights Institution
NSA	Non-state actor
OECD-DAC	Development Assistance Committee of the Organization for Economic Co-Operation and Development
OHCHR	Office of the High Commissioner of Human Rights
PAHO	Pan-American Health Organization (regional branch of WHO)
PFII/ Permanent Forum	Permanent Forum on Indigenous Issues
RAIPON	Russian Association of Indigenous Peoples of the North
REDD	Reducing Emissions from Deforestation and Forest Degradation in developing countries (UNFCCC related mechanism)
SDI	Slum/Shack Dwellers International
SRIP, Special Rapporteur	Special Rapporteur on the Rights of Indigenous Peoples
UN	United Nations
UN HABITAT	UN Human Settlements Program
UN Women	UN entity for the empowerment of women
UNAIDS	Joint United Nations Program on HIV/AIDS
UNCED	UN Conference on Environment and Development
UNDP	UN Development Program
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
UNEP	UN Environment Program

UNESCO	UN Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNFPA	UN Population Fund
UNICEF	UN Children's Fund
UNISDR	UN Office for Disaster Risk Reduction
UNITAID	Global health facility to finance innovations in diagnosis and treatment of serious illnesses
UNITAR	United Nations Institute for Training and Research
UNPO	Unrepresented Nations and Peoples Organization
UPR	Universal Periodic Review
US	United States
VFIP/ Voluntary Fund	Voluntary Fund for Indigenous Peoples
WCIP	High-level plenary meeting to be known as World Conference on Indigenous Peoples
WG8j	Working Group on Article 8j of the CBD
WGDD	Working Group to elaborate a draft declaration on the rights of Indigenous peoples
WGIP	Working Group on Indigenous Populations
WHO	World Health Organization
WIEGO	Women in the Informal Economy Globalizing and Organizing
WIPO	World Intellectual Property Organization
WSIS	UN World Summit on the Information Society

# *Introduction*

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## *The Plight of Indigenous Peoples in Global Politics*

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“Indigenous peoples have been marginalized, discriminated against and ignored; but we have not lost heart, struggling for many decades until September 2007, when the United Nations Declaration on the Rights of Indigenous Peoples was finally adopted by this apex world body. It was a historic milestone and a triumph for justice and human dignity. The challenge now remains to implement the provisions of the Declaration by closing the gap between theory and practice, between inspiration and reality, between commitment and implementation and between politics and good faith and sincerity. [...] I believe that the process leading up to the World Conference has demonstrated that Indigenous Peoples make important contributions to the work of the United Nations. We are reliable partners that engage in the work of the United Nations, and we do so in good faith, and expect the same in return from States and the United Nations.”

With the above words Aili Keskitalo, President of the Sami Parliament of Norway, addressed the opening meeting of the United Nations (UN) High-Level Plenary Meeting to be known as World Conference on Indigenous Peoples (WCIP) (UN General Assembly 2014a: 11-12). The WCIP marks the most recent culmination of a long process by which Indigenous peoples (IPs) have fought for and finally gained a voice in global politics. In this regard, Indigenous peoples (as other affected actors) have claimed: “Nothing about us without us”<sup>1</sup>.

After decades during which Indigenous affairs were considered to be at the sole responsibility of states, over the course of the past forty years Indigenous peoples have increasingly engaged in activism at the UN level and have become appreciated interlocutors for the UN system (SPFII 2009: 7). They do so against the backdrop of the existential problems many of them are encountering in their daily lives. Living

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<sup>1</sup> For example at the 16<sup>th</sup> session of the PFII 2017, see the short summary of the closing meeting at <https://www.un.org/development/desa/dspd/2017/05/05/unpfii16-concludes/>, accessed 24.01.2019.

conditions of the distinct Indigenous groups on all continents certainly vary considerably, but the threats they are facing show many similarities (Coates 2006: 274). Although there has been some progress as regards the establishment of legal mechanisms protecting Indigenous rights, new forms of legislation or constitutional reforms in many cases do not lead to policy changes at the practical, everyday level, and precarious living conditions in many cases have not improved accordingly. In fact, the long-term head of the Indigenous peoples and minorities program at the Office of the UN High Commissioner for Human Rights, Julian Burger (2019: 3), recently noted:

“there has been no respite from the violations of human rights experienced by indigenous peoples in their legitimate struggles to protect their lands, resources, livelihoods and cultures. Indeed, what is notable is that there may even have been increases in violence against indigenous peoples”.

Thus, IPs all around the world face severe disadvantages in comparison to the average population.<sup>2</sup> For example, a recent newspaper article about the Oglala Lakota tribe living on the Pine Ridge reservation in South Dakota, United States (US), reports that about two out of three inhabitants of the reservation are addicted to alcohol; drug abuse becomes ever more frequent; half the adult population above 40 years suffers from diabetes; one out of three children dies during birth; suicide rates are about four times higher than for the average US population; every second family has incomes under the poverty line; and eight out of ten adults are unemployed (Langer 5.09.2018).

The depletion of natural resources found on Indigenous territories is another major issue, and numerous conflicts have arisen between states, multinational corporations and IPs in the context of resource extraction projects on or in the immediate neighborhood of Indigenous territories (Sawyer & Gomez 2012). Moreover, these activities often go along with the expropriation and privatization of Indigenous lands. Similarly, major infrastructure works such as the construction of huge dams or the establishment of national parks and protected areas are still being carried out without prior consultation of original inhabitants. A recent example in this regard is the construction of the Dakota Access Pipeline in North Dakota, USA. One part of the pipeline crosses underneath a water reservoir of the Missouri close to the Standing Rock

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<sup>2</sup> As specific data on Indigenous peoples in many cases is not being collected, exact statistics are often not available. A very extensive effort to bring together the current state of knowledge on the situation of Indigenous peoples has been realised in the report on the “State of the World’s Indigenous Peoples”, compiled under the overview of the Secretariat of the Permanent Forum on Indigenous Issues (SPFII 2009).



Sioux reservation. The local Indigenous population considers the pipeline to threaten sacred sites and fears that drinking water could be polluted. In spite of strong protest and opposition, President Trump signed an executive order which allowed finalizing the pipeline project (Gambino 10.03.2017). Moreover, major infrastructure projects, environmental degradation as well as the dumping of toxic waste in Indigenous territories time and again lead to the displacement of Indigenous groups. These evictions represent a serious threat for Indigenous cultures because Indigenous ways of life are closely linked to their ancestral territories. At the same time, and unlike in earlier periods, nowadays there mostly remain no alternative areas to which IPs can retreat, making displacement especially threatening (Maiguashca 1994: 361).

Where Indigenous communities seek to counter these developments resorting to social mobilization, their protest is often criminalized, and Indigenous human rights defenders suffer a high risk of violent attacks.<sup>3</sup> In fact, a drastic escalation of acts of violence against Indigenous activists has been observed, including i. a. judicial harassment, arbitrary arrests, enforced disappearances, and extrajudicial killings (Special Rapporteur on the Rights of Indigenous Peoples 2018). A particularly well-known case is the murdering of Lenca activist Berta Cáceres from Honduras in 2016 tied to her engagement against the construction of the hydroelectric dam Agua Zarca. Both high executives of Desa, the company the dam was licensed to, as well as officials of the Honduran military are currently under trial for their alleged involvement in the homicide (Reischke 17.09.2018). Thus, IPs continue to constitute a particularly vulnerable group of human society; Indigenous women and children, as well as Indigenous people living in urban areas often face particularly bad living conditions. In other words, „[f]or most IPs, survival is a major challenge in a world that has systematically denied them the means and thus the right to existence as such“ (Stavenhagen 2005: 18).

I have experienced some of the threats Indigenous communities are facing myself. For more than 15 years, I have been a regular visitor to Ukupseni, an Indigenous community in Kuna Yala/ Panama. Malnutrition, adolescent pregnancy, school dropout and drug

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<sup>3</sup> Not only Indigenous peoples and their organizations are increasingly targets of repression. In recent years, civil society activists in large parts of the world have experienced “shrinking spaces” for their engagement such as by being controlled, intimidated, detained or even murdered. However, small Indigenous organizations are among those who may experience specific dangers in this context due to a lack of international attention (CIVICUS and Brot für die Welt 2019: 5-7).

addiction are among the widespread problems that the community has to deal with. Moreover, the village is located on a small coral island just above sea level (as are many of the other Kuna villages), and inundations have become more and more frequent due to rising sea levels. Kuna villagers are already developing plans for a retreat to higher situated areas of the main land. Still, many Kuna are well aware of the fact that they constitute a positive example for many of their fellow Indigenous peoples, given the high degree of regional autonomy that they enjoy.

It is primarily their will to survive as ethnically and culturally distinct peoples in spite of the above mentioned problems which has brought IPs to the stage of world politics.<sup>4</sup> Especially since the late 1960s, they have formed organizations that drew increasing attention to demands for continued survival as distinct communities and shortly afterwards began addressing their demands to the UN level (Dahl 2012: 22-23). Indigenous peoples have formed a transnational movement which has claimed and gained space at the UN, emerging as a political force to count with, and loudly demanding participation rights when it comes to issues affecting them. They have thus become one of the most vocal and dynamic movements by non-state actors targeting the UN (SPFII 2009: 1). Despite their limited power and resources, IPs have therefore been considered “among the most effective political strategists on the contemporary national and international scenes” (Niezen 2003: 16).

As one result of Indigenous activism at the UN, IPs have secured broad participation rights within the UN system. A number of institutions have been created that deal exclusively with affairs related to Indigenous peoples and have specific provisions for Indigenous participation. The Permanent Forum on Indigenous Issues (PFII) brings together members nominated by IPs and by governments on an equal footing. The Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) mainly consists of members of Indigenous origin. The UN Declaration on the Rights of Indigenous Peoples which has been adopted by the General Assembly in September 2007 is unique regarding the extent to which those who are expected to benefit from it have been involved in the drafting process (Muehlebach 2003: 248). A number of UN agencies, programs and funds such as the International Fund for Agricultural Development (IFAD)

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<sup>4</sup> Many activists, however, are aware that UN meetings only constitute one possible form and level of activism. Thus, UN activism is often combined with other activities taking place at the national and local level (Thies 2006).

and the Convention on Biological Diversity (CBD) have also introduced special mechanisms to enable Indigenous participation.

However, the inclusion of affected actors into global governance arrangements as it occurs in Indigenous affairs is not an isolated phenomenon. On the contrary, over the past years a number of international organizations (IOs) have opted for introducing participation rights for affected persons' organizations (APOs) such as in the area of food security governance and disability rights. This development is, similarly as the trend towards the inclusion of non-state actors more broadly, seen as a response to legitimation deficits of IOs (Sändig et al. 2019). Including the voices of most marginalized and vulnerable actors has been interpreted as an effort to create institutional settings which are more reflective of and responsive to those directly affected by global policy-making, thus increasing the democratic legitimacy of both the procedures and output of global institutions. Thus, it has been argued that

“this progressive form of involvement of ‘affected’ segments of the population organized in social movements can increase the perceived legitimacy of its authority configuration through more ‘inclusiveness’” (Bernstorff 2018).

Whether offering access opportunities to APOs can in fact fulfill these hopes and add to the legitimacy of global policy-making, however, remains an open question. So far, positive effects on legitimacy have rather been assumed than systematically researched. Taking UN Indigenous-specific mechanisms as its empirical case, this study therefore aims at adding to the discussion surrounding the effects of access opportunities for affected actors on legitimacy. The dissertation's objective is thus twofold: first, it aims at building a theoretically solid framework for analyzing legitimacy and the effects of participation by affected actors. This includes an analysis of the causal mechanisms that link access opportunities for affected actors and institutional legitimacy. Secondly, it aims at analyzing, at the empirical level, how successful the PFII and EMRIP have been in building legitimacy among their constituencies. By tracing important factors that lead to perceptions of legitimacy, it moreover aims to uncover important information regarding challenges and success factors for creating and maintaining the legitimacy of institutions that count with APO participation.

I sincerely hope that those engaged in Indigenous issues at the global level, including Indigenous representatives and activists of non-governmental organizations, government officials and staff of international organizations will find inspiration and thought-provoking insights helpful for their work in this dissertation. For those who

have not come across the topic so far, I hope to pique their curiosity for a struggle that is still ignored by large parts of society and scholars alike.

# *Chapter 1*

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## *Affectedness, Indigenous Participation at the UN, and Legitimacy*

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A recent focus of scholarly attention has been to determine the effects of non-state actor (NSA) participation on the legitimacy of global policy-making and its results. Empirical studies point to a rather weak link between NSA participation and institutional legitimacy. At the same time, the emerging literature on the participation of affected actors is dominated by the assumption that their participation increases the legitimacy of global policy-making. This dissertation thus addresses the puzzle whether participation by organizations and movements of affected actors with strong links to local populations can live up to the high expectations based on it, showing more positive results on legitimacy than participation by other non-state actors.

The trend towards the inclusion of affected actors into global policy-making can also be observed with regard to Indigenous issues. During the 20<sup>th</sup> century, an evolution has taken place from the straightforward assertion by states that Indigenous issues constituted an issue of national concern outside the competencies of international organizations to the creation of governance arrangements in the ambit of the UN that include Indigenous actors, such as the Permanent Forum on Indigenous Issues, which assembles equal numbers of Indigenous and governmental members. Tennant (1994: 1) argued already 25 years ago that “participation is now the hinge on which the whole political field of indigenous peoples and international institutions turns”. While Indigenous peoples have secured participation rights in many international institutions, the United Nations have become the main organizational locus where discussions on the

evolution of standards pertaining to Indigenous peoples as well as on activities to improve their living conditions take place. Today, the UN has become “a focal point for indigenous-state relations internationally” (Lindroth 2006: 240).

In this chapter, I outline that we still know very little about the effects of participation of affected actors in global policy-making, and I highlight how as one example of this phenomenon Indigenous peoples have gained increasing participation rights in UN governance mechanisms over the course of the last decades. There is a considerable gap between the assumption that APO participation contributes to the legitimacy of global policy-making and empirical evidence for this claim. In a first step, I will describe the empirical changes that led to the creation of a growing number of institutions which offer participation rights to a wide range of actors, including to organizations and movements of affected populations. Following a short definition of what is meant by the term “Indigenous peoples” I will then provide an overview on the growing involvement of IPs in the UN context, and the increase of participation opportunities that are provided to them. I will deal with the presumed effects of NSA participation more generally, and of affected actors more specifically, on the overall legitimacy of global institutions, and lay out my research question and design. The chapter concludes with some remarks on the limits of the dissertation.

At the beginning, definitions of several key terms are required. I use the term ‘non-state actor’ to describe a broad variety of actors other than states and their sub-units that engage in policy-making, such as (but not limited to) peoples’ movements, non-governmental organizations, philanthropic foundations, corporations, business associations, labor unions, and religious groups. In contrast, the terms ‘civil society’ or ‘civil society organization’ (CSO) exclude those actors involved in for-profit activities.<sup>5</sup> The term ‘non-governmental organization’ (NGO) is used in an even more constricted sense to apply only to formally constituted organizations which provide services or engage in advocacy for a common good or public interest. Following Hale and Held, the term ‘transnational’ is used to describe “activities, institutions, actors or processes that cross at least one national border, *especially* when actors other than national

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<sup>5</sup> I am, however, aware about the fact that the distinction between for-profit and not for-profit is blurry, as there are peoples’ movements of p. ex. small farmers which besides promoting visions such as food sovereignty also represent the economic interests of their members; and business associations which are formally constituted as not for-profit organizations but primarily represent business economic interests (McKeon 2009: 14).

governments are involved”, and in contrast to ‘international’ which denominates state-to-state interactions (Hale & Held 2011: 15, italics in the original).

## **1.1 A trend towards the participation of affected actors in global governance**

### **1.1.1 Towards pluralist global governance**

Several scholars have argued that we are currently witnessing a profound change towards more pluralist forms of policy-making at the global level in which opportunities for the participation of non-state actors have been significantly expanded. Thus, it has been argued that “a redefinition of the relationship between civil society and international organizations is under way and the concept of participation seems to be at the core of the process” (Rebasti 2008: 38). Tallberg and colleagues (2013: 5) speak about a “transnational turn in global governance”. Willetts (2000: 192) similarly argues that the United Nations are being converted “from a world of interstate diplomacy to one of pluralist global governance at the policymaking level.”

Taking a closer look at the history of policy-making at the global level, the decades after the end of World War II were characterized by a move from an independent pursuit of government goals by states towards intergovernmental cooperation. Two factors led to the increasing readiness of states to govern through international organizations and regimes (Brühl & Rittberger 2001: 6–7): First, the experiences of the economic depression of the 1930s, the Second World War as well as the Cold War and Decolonization enhanced their willingness and capability to incur cooperation agreements with other states. Second, as a result of extending exchanges and transactions across borders, interdependence intensified and decreased the capacity of individual states to tackle problems on their own. As a consequence, states began to create a growing number of intergovernmental organizations and regimes to facilitate cooperation between their executive branches. Through these new institutions, governance was exercised by multiple governments which acted together in the search for solutions to global challenges. Although in some instances organizations enabled non-state actors to obtain consultative status, the UN’s Economic and Social Council

(ECOSOC) being the most prominent example, at large non-state actors were kept away from collective problem solving (Rittberger et al. 2008: 16).<sup>6</sup>

Especially since the 1970s, however, non-state actors began to grow stronger. Global social movements gathered momentum in a broad range of issues such as women's rights, the environment and disarmament. In the meantime, multinational corporations gained economic power and strived for a more political role. Four major structural changes empowered new types of actors: deepening globalization, including the spread of global challenges, an economic agenda focusing on privatization and deregulation, the availability of new technologies especially in the area of communications, and the end of the Cold War all contributed to the rise of non-state actors (Avant et al. 2010: 4–6). Still, the relationship between public and private actors was, at first, dominated by confrontation (Martens 2007: 11), and most NSA influence on decision-making could only be retraced to informal engagement with state representatives. This form of interaction between state and non-state actors began to change from around 1990 onwards (Tallberg et al. 2013; Zürn 2018). Since then, a trend towards an increasingly formalized participation of non-state actors can be observed which encompasses several dimensions: First, the number and diversity of actors engaging in global policy-making has increased. Second, new and highly varied institutional forms of governance through which NSAs participate have been created. Last but not least, by tendency access for NSAs is now linked to more far-reaching participation rights, although these rights remain highly variable.

With regard to the types of participating non-state actors, on the one hand more and more NGOs are active in global politics, and claim participation rights in increasingly diverse fields of activity (Rebasti 2008: 26). Thus, numbers of NGOs accredited under ECOSOC consultative status have more than quintupled from 928 in 1992 (Hemmati & Dodds 2002: 28) to 5,083 in September 2016.<sup>7</sup> At the same time, the background of the

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<sup>6</sup> Nonetheless, a number of cooperation projects between state and non-state institutions were created earlier. The International Union for the Conservation of Nature was founded in 1948, bringing together states and non-governmental organizations (see <https://www.iucn.org/about/iucn-brief-history>, accessed 24.01.2019). Other examples include the UN Food and Agriculture Organization's Industry Cooperative Programme (1966-78) and the Consultative Group on International Agricultural Research (founded in 1971) (Martens 2007: 12). However, these early initiatives mostly remained singular experiences and did not result in a comprehensive trend towards non-state actor involvement.

<sup>7</sup> See list of NGOs with ECOSOC consultative status on <http://undocs.org/E/2016/INF/5> (accessed 24.01.2019).



newly accredited NGOs generally is more diverse, counting with more nationally and regionally rooted organizations (Brühl 2010: 190). On the other hand, partnerships with a broader scope of non-state actors have been promoted. Agenda 21 explicitly advocated a strengthening of nine so-called 'major groups' – among them constituencies as diverse as Indigenous peoples, workers and trade unions, and the scientific community – to make development sustainable. Cutler et al. (1999b: 4) argue that our time is characterized by an increased significance of management of global affairs by economic actors. Former UN Secretary General Kofi Annan personally engaged in encouraging participation by business actors (Martens 2007: 14–15).

As the numbers of non-state actors involved in participation arrangements at the global level have multiplied, the diversity of cooperation schemes has skyrocketed. Since the 1990s, most IOs have opted for introducing some form of cooperation with non-state actors. The results of systematic studies of cooperation arrangements (Steffek & Nanz 2008; Tallberg et al. 2013) suggest that nowadays almost all international organizations provide for some form of cooperation mechanism for NSAs. Apart from the participation of non-state actors within IOs, state and non-state actors have joined forces and created new institutions and partnerships. Thus, a great variance in institutional design can be observed (Koenig-Archibugi & Zürn 2006; Rebasti 2008: 46–62).

Governance arrangements between state and non-state actors vary greatly from rather loose cooperation to membership and participation in decision-making (Rittberger et al. 2008). At the same time, the growing number of these cooperation arrangements goes along with an increased importance of mechanisms for private self-regulation (Cutler et al. 1999a; Bull et al. 2004). These mechanisms beyond interstate cooperation have been labeled as “new modes of governance” (Koenig-Archibugi & Zürn 2006; Héritier & Rhodes 2010). The broad spectrum of possible constellations of cooperation arrangements also shows that the transition from public to public-private to private governance is gradual. In other words, with regard to the participating actors, modes of governance may be located on a continuum from purely public to public-private to purely private cooperation. This implies that these new governance mechanisms do not substitute more traditional forms of interstate cooperation, but rather supplement them. This has also resulted in the development of complex and partially overlapping institutions within one issue area which are not necessarily coherent (Hale & Held 2011: 11–12).

Others have pointed to the enduring limits of extended NSA participation in global governance. First, within the universe of NSAs, not all get to participate equally. In most cases there is a clear bias towards cooperating with bigger, well-funded NGOs or industry and business associations, resulting in a tendency to exclude organizations representing marginalized populations from developing countries (Kissling & Steffek 2008: 213). Similarly, research on NSA participation at Conferences of the Parties of the UNFCCC and the CBD has found that allowing for broad NSA actor participation results in dominance of few resource-rich NSAs, whereas the voices of organizations representing local communities or even women remain marginalized in the process (Uhre 2013: 162–163).

Additionally, rights provided to NSAs differ remarkably depending on the subject matter an international organization deals with. For instance, with regard to human rights, civil society participation is significantly more extensive in the detection of human rights violations than in the connected processes of policy-making. Similarly, whereas participation rights remain restricted in classic military alliances, security issues seem to be more open to non-state actor involvement when it comes to peace-building (Steffek & Nanz 2008: 21–24). Generally, NSA participation is strongest with regard to policy monitoring and enforcement, more limited with regard to the agenda setting, policy formulation or implementation stages of the policy-making process, and least favorable in decision-making (Tallberg et al. 2013: 255). Access opportunities for NSAs also can vary considerably across different bodies even within one and the same IO (ibid.: 56).

Moreover, the trend towards increased civil society participation has also known setbacks. For example, the UN General Assembly decided in 1994 not to recognize any further NGO as observer (Willetts 2000: 197). The recommendations of the Cardoso Report, an expert panel report issued in 2004 which dealt with strengthening the relationships between the UN, civil society and the private sector both politically and financially “played no role at all” in the negotiations on UN reform in 2005 (Martens 2007: 17–18).

Despite these enduring limitations to NSA participation, nowadays non-state actors contribute to the identification of problems, to the development of solutions, as well as to the implementation of decisions. A broad variety of institutional forms exists through

which non-state actors assume governing functions. Global policy-making thus increasingly resembles “a complex web of relationships among different authorities, accomplishing different tasks and dependent on one another for outcomes” (Avant et al. 2010: 4, see also Grande & Pauly 2005: 287).

### **1.1.2 Affected actors in global governance**

In this context, in recent years there seems to be an increasing trend to directly involve affected populations in the transnational arena.<sup>8</sup> A key event in this regard was the Rio Conference 1992; Agenda 21, which was adopted as its program of action, recognizes nine societal groups with special relevance to achieve sustainable development, the so-called major groups, namely Women, Children and Youth, Indigenous Peoples, NGOs, Local Authorities, Workers and Trade Unions, Business and Industry, Scientific and Technological Community, and Farmers. Thus, the Agenda 21 explicitly recognizes that significant sectors of society form constituencies of their own, independent of the existence of NGOs which claim to represent their interests (Hasl 2019).

Since then, an ever increasing number of grassroots movements has emerged capable to represent themselves and to engage in global policy-making, and who attempt to shape policy-making on issues directly affecting them and their communities (Batliwala 2002: 408; Dupuits & Pflieger 2017: §18). As organizations and movements with direct and strong ties to local communities, they empower disenfranchised local populations and bring their voices into global policy-making. A growing involvement of these organizations of affected populations can be observed in an increasing number of policy fields. APOs include membership-based organizations and local grassroots NGOs as well as the networks and movements they form, many of whom come from the Global South.

Thus, marginalized and otherwise disempowered people have organized around a growing number of issues and identities. Women in the Informal Economy Globalizing and Organizing (WIEGO) is a network of grassroots organizations, scholars and professionals seeking to give voice and visibility to the female working poor.<sup>9</sup> The movement has become very effective in putting the issue of informal employment on

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<sup>8</sup> However, the idea of involving affected segments of society in global policy-making is not a recent invention; the International Labour Organization (ILO), which was created in 1919, already featured a tripartite composition which brought together representatives from governments, employers, and trade unions (Hasl 2019).

<sup>9</sup> <http://www.wiego.org/wiego/what-we-do>, accessed 24.01.2019.

global agendas, and also engages in monitoring and implementation of policies (Batliwala 2002: 401–402). Similarly, Slum/Shack Dwellers International (SDI) has formed as a network of community-based organizations of the urban poor in 32 countries across Africa, Asia and Latin America.<sup>10</sup> While it includes some NGO partners, these are restricted to a secondary, supporting role. SDI has been successful in lobbying for an increased role of slum dwellers in urban infrastructure and resettlement projects and has become a partner for international organizations such as the UN Human Settlements Program (UN HABITAT) (ibid.: 403–404). In the area of water governance, the Confederation of Community Organizations for Water Services and Sanitation (CLOCSAS) has emerged as a regional network of Latin American grassroots organizations which is involved in the development of multi-stakeholder partnerships (Dupuits & Pflieger 2017). Similarly, sweatshop workers have organized to improve their working conditions, grassroots organizations of working children have emerged to claim rights and recognition, and sex workers have formed the Network of Sex Work Projects (Hahn & Holzscheiter 2013). Indigenous peoples, in turn, have built a strong movement and are now engaging in a variety of policy fields, including i. a. the governance of climate change at the UN Framework Convention on Climate Change (UNFCCC), participation in global agriculture governance at IFAD and the Food and Agricultural Organization (FAO), as well as involvement in negotiations about intellectual property rights regarding traditional knowledge at the World Intellectual Property Organization (WIPO).

These diverse actors have several features in common which allow us to describe them as affected persons' organizations. First, they are characterized by a high degree of vulnerability to the issue at stake (Batliwala 2002: 396; Sändig et al. 2019), and they organize with the intent to express and defend their concerns and shape policies to their favor. Most importantly, APOs are created by and composed of individuals from the affected communities in a process of self-empowerment (Batliwala 2002: 405). Therefore, the personnel of APOs possess local knowledge, cultural understandings and lived experience with regard to the problem at hand (Sändig et al. 2019). While they often are volunteer-based, comparatively small organizations with limited budgets (Uvin 1995: 496), they have also formed broader, powerful networks (Dupuits &

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<sup>10</sup> <http://knowyourcity.info/who-is-sdi/about-us/>, accessed 24.01.2019.

Pflieger 2017). Ideally, other members of the affected communities consider APO leaders as legitimate spokespersons, and can hold them accountable for their actions (Banks et al. 2015).

Grassroots organizations of affected people are often characterized in relationship and contrast to those (mostly international) NGOs who advocate on behalf of marginalized groups and disadvantaged others,<sup>11</sup> and APO involvement in global policy-making is often presented as an alternative and supplement to the participation of international NGOs (INGOs). One important reason for this is that the respective INGOs are mostly based in the Global North (Brühl 2010: 192). However, even when southern-based NGOs get to participate in global policy-making, they often represent southern elites rather than marginalized populations within their own countries (ibid.: 193). Moreover, third-party advocacy NGOs are mainly accountable to donors, in contrast to APOs that are accountable to local populations (Banks et al. 2015). Additionally, self-empowerment is a constitutive element of APOs, whereas INGOs acting on behalf of others tend to portray these groups as disempowered victims (Batliwala 2002: 405).

Links between both types of organizations have varied in the past. It has been highlighted that INGO in some cases can be important lobbying partners for APOs (Uvin 1995: 503). The boomerang model (Keck & Sikkink 1998) describes how local actors network with INGOs in order to take local concerns to the global level. INGOs can also function as important supporters of organizations of affected people by providing resources and other forms of support (Banks et al. 2015: 713–715). For example, in the area of agricultural governance Annette Schramm and Jan Sändig (2019) have observed the existence of “affectedness alliances” in which INGOs chiefly act as supporters of APOs. However, others have outlined that INGOs in terms of preferences, goals and strategies time and again have been unrepresentative of the grassroots populations in whose name they proclaim to speak (Batliwala 2002: 396-398; Hahn & Holzscheiter 2013). Others have aired concerns about co-optation or a risk to lose tight connections

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<sup>11</sup> However, in reality the distinction between NGOs and APOs may not always be clear-cut: Some grassroots organizations are formally constituted as NGOs. Thus, it is important to understand that NGO in this context does not refer to all those organizations formally constituted as NGOs, but in a more limited way to intermediary organizations that engage in advocacy or delivering service to the (supposed) benefit of marginalized third actors. Thus, the main distinction between NGOs and APOs here is that the former act on behalf of disenfranchised others, whereas the latter are constituted of marginalized actors and raise their own voices. More precisely, we should therefore talk about “third-party advocacy NGOs” in this context.

to grassroots when APOs engage too closely with INGOs (Uvin 1995: 505). At the same time, INGOs and APOs differ with regard to resources and thus also with regard to power and opportunities to impact on global policy-making (Batliwala 2002: 397–398; Hasenclever & Narr 2019).

Thus, in some issue areas traditionally dominated by northern NGOs, APOs now bring in alternative voices, new perspectives and local experiences (Sändig et al. 2019). For example, in global agriculture governance, La Vía Campesina as a global movement of peasant and small farmers presented itself as an alternative to the (now dissolved) International Federation of Agricultural Producers which was more oriented towards farmers from the Global North and had for decades represented the farmers' voice within international organizations (Borras Jr 2008: 260).<sup>12</sup> In global environmental governance “Southern-based movements and organizations like Via Campesina, Third World Network, and Focus on the Global South and their grassroots Northern allies [...] now compete with professionalized NGO advocates to demand that the communities most affected speak for themselves” (Reitan & Gibson 2012: 399). Generally, it has been argued that APOs are actively “challenging the rights of nongrassroots organizations to lead and represent them” (Batliwala 2002: 400).

The growth of strong grassroots movements has been met by a shift of international organizations towards the direct inclusion of APOs.<sup>13</sup> Thus, it has been suggested that decision-makers at the global level increasingly act according to the principle that those affected by a particular global challenge should be directly – without the mediation of NGOs - involved in developing solutions to it (Sändig et al. 2019). In fact, there are a growing number of cases in which APOs have been provided with official roles in global policy-making. The Global Fund to Fight AIDS, Tuberculosis and Malaria (GFATM) describes itself as a partnership between UN agencies, governments, civil society, the private sector and affected communities, and its Board includes representatives of the latter as members with voting rights.<sup>14</sup> Organizations of persons with disabilities were strongly involved in the negotiations of the UN's Convention on the Rights of Persons

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<sup>12</sup> The International Federation of Agricultural Producers was subsequently re-founded as World Farmers Organization. Thanks to Annette Schramm for this point.

<sup>13</sup> The shift towards the growing inclusion of APO voices also is reflected in a changing terminology in the UN context. Whereas until the mid-1990s, UN documents and reports predominantly referred to NGOs, since then the broader term civil society is generally preferred which encompasses peoples' movements and other actors (McKeon 2009: 13).

<sup>14</sup> <https://www.theglobalfund.org/en/overview/>, accessed 24.012019.

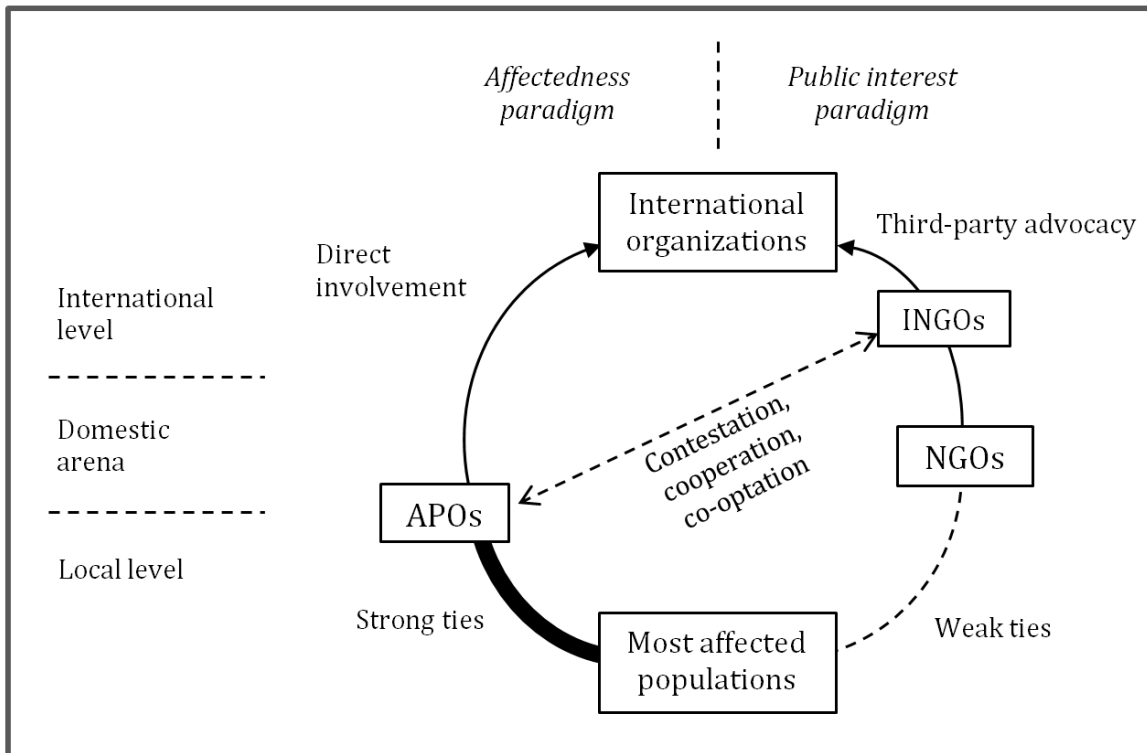
with Disabilities (Lord et al. 2010). The International Fund for Agricultural Development has established a Farmer's Forum as an ongoing tripartite process of consultation and dialogue involving organizations of peasant farmers, governments and IFAD itself (McKeon 2009: 155); building on this experience, IFAD has more recently also established an Indigenous Peoples' Forum which met for the first time in 2013.<sup>15</sup> The stipulations of the FAO's Committee on World Food Security (CFS) are especially far-reaching, as since its reform in 2009 it explicitly prioritizes participation by grassroots movements and community-based organizations (Brem-Wilson 2017). The Permanent Forum on Indigenous Issues, in turn, consists of members nominated by states and by Indigenous peoples, whereas NGOs and other Indigenous organizations might participate as observers (see below).

At the same time, APO participation does not replace NGO involvement at the global level. Instead, transnational institutions involve both types of actors in varying ways and hierarchies. Markus Hasl (2019) distinguishes between three different ways in which NGO and APO participation co-exist in transnational institutions: the subordination, parity, and priority model. He explains that in some institutions such as UNAIDS, affected persons are involved indirectly by encouraging the NGO constituency to include affected persons among their representatives (subordination model). Other institutions, for example the Global Fund or UNITAID, allow for the parallel participation of NGO and APO delegations, thus enabling APOs to participate independently (parity model). In turn, APO participation is strongest in those organizations which prioritize their participation over the involvement of NGOs, such as in the CFS or the Arctic Council<sup>16</sup> (priority model). Thus, we can observe the growing relevance of an "affectedness paradigm" in global policy-making which puts emphasis on the participation of organizations consisting of and led by affected persons and which increasingly complements the more traditional "public interest paradigm" characterized by NGO advocacy (ibid., see Figure 1).

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<sup>15</sup> <https://www.ifad.org/web/guest/indigenous-peoples-forum>, accessed 24.01.2019.

<sup>16</sup> The Arctic Council is an intergovernmental forum which promotes cooperation between Arctic states and local Indigenous peoples. Six organizations representing Arctic Indigenous peoples have a status of Permanent Participants within the Council. See <https://arctic-council.org/en/about-us>, accessed 02.02.2020



**Figure 1: Participation by APOs in global policy-making. Source: Sändig et al. (2019).**

Still, there have also been limitations to the trend towards the inclusion of APOs. In a survey of UN bodies and organizations, McKeon (2009: 130–131) finds that less than half of the respondents report medium or high success in reaching out to social movements and grassroots organizations, and argues that the UN’s capacity to relate with this type of actor remains weak. Hahn and Holzscheiter (2013: 503) suggest that in comparison to NGOs which often count with long lasting and well established relationships with IOs, some APOs still encounter severe obstacles to get access to international venues and policy-making. Moreover, openness to affected actors does not seem to have occurred equally across all policy fields (Sändig et al. 2019).

If the affectedness paradigm has become a driver for the relations between IOs and civil society, what exactly does it mean to be affected, and how does affectedness translate into participation rights? From a scholarly viewpoint, affectedness may be conceptualized in many different ways (Sändig et al. 2019). For example, Carol Gould (2014: 203, see also Hasl 2019) suggests that participation rights emerge when people’s abilities to fulfill their basic human rights are concerned. Patrick Toussaint (2019) has suggested conceptualizing affectedness in the area of climate governance by the degree of risk to suffer from the adverse impacts of climate change. These suggestions distinguish affected populations from general society by the vulnerability of their living



conditions to external influence and impact. However, in this context it remains a challenge to draw a line between those “sufficiently” affected to gain participation rights, and those not (Sändig et al. 2019).

While these are relevant criteria which could serve to evaluate which actors *should* be participating in a certain institution, many IOs have already opened their doors to groups of local people or communities that they consider to be affected by their action, and therefore act on an operationalized understanding of affectedness. In practice, APOs calling for participation rights in the transnational arena often do so by claiming to be affected by a particular project, policy or organization, suggesting that affectedness is socially constructed in an exchange and dialogue between grassroots organizations and policy-makers (Sändig et al. 2019).

While the engagement of non-state actors generally and affected actors more specifically has risen in global governance, Indigenous peoples as one particularly vulnerable group have increased their voice and visibility especially at the UN level. It has even been claimed that the “participation of indigenous peoples in international law and policy making is especially profound, exceeding that of NSAs generally” (Charters 2010: 219). In the following section, I will check up on this assumption.

## **1.2 The increase of Indigenous participation in the UN System**

How did Indigenous participation in the UN system evolve? By highlighting the changes that have taken place in the course of the 20<sup>th</sup> century with regard to the United Nation’s approach to the participation of Indigenous peoples, I will show that Indigenous peoples have indeed, similar to other affected actors, increased their role in global governance. Before I start, I will provide a short overview on the conflicts as regards a definition of the term ‘Indigenous peoples’.

### **1.2.1 Becoming Indigenous**

Although the term *Indigenous* easily evokes colorful images of brave warriors with plumes, as a political concept Indigeneity is not as easy to grapple with. The first ones to use a common category to denominate the first peoples of the American continent with a common term were European colonizers; in contrast, single groups generally did not perceive diverse local cultures to have much in common and rather used to denominate

themselves as people or human beings, in contrast to outsiders or 'barbarians' (Brysk 2000: 57). In fact – and in contrast to prevalent stereotypes - differences between those people now self-identifying as Indigenous are striking, both with regard to ethnological criteria, degree of political mobilization, level of economic development and modern political and economic orientations (Levi & Maybury-Lewis 2012). Indigenous peoples live on all continents; the term brings together peoples as diverse as the Sami in Northern Europe, Maori from New Zealand, Kuna from Panama, Pygmies from Central Africa, and the so-called scheduled tribes from India. In this context, Indigeneity as a concept uniting all these different peoples is a comparatively recent invention. In other words, "indigenous identity reveals itself to be a quintessentially modern phenomenon" (Niezen 2003: xii).

Depending on the criteria of definition, it is estimated that today roughly about 375 to 400 million Indigenous individuals are living throughout the world (Coates 2006: 275). Groups from the Americas were the first ones to organize under the common banner of Indigeneity at the UN; they were soon joined by groups from New Zealand, Australia, as well as Saami from Europe. Asian groups joined the movement in the mid-1980s, while African groups took until the 1990s to enter the stage of the UN. Peoples from the Russian Federation were the last to join the movement (Muehlebach 2001: 420). This growth of the Indigenous movement was a sign of the attractiveness of the concept, which resonated with donor support and increased the legitimacy of claims made by individual groups (Hodgson 2002a: 1088). It also to some degree reflected the growing importance that the United Nations gave to the concept. Thus, the UN itself has been instrumental in the development of a pan-Indigenous identity (Niezen 2003: 9). In short, over the last decades marginalized and disenfranchised groups from all corners of the world increasingly began to claim Indigenous identity and became Indigenous in a process of collective empowerment (Levi & Maybury-Lewis 2012: 75); under the Indigenous label, their leaders assemble in international meetings to share experiences and pursue collective strategies. The term thus constitutes the basis for mobilization of local activities and transnational networks, but also for the drafting of standards, and for special politics of national and international institutions.

The globalization of the Indigenous movement, however, also impacted on the concept of Indigeneity, evidencing the malleability of the concept. Thus, 'traditional' Indigenous peoples from the Americas, New Zealand and Australia derive their Indigeneity from

being the first inhabitants of the territories they live in, and regularly frame their struggle in the context of unfinished decolonization. In turn, in Africa and Asia, Indigeneity is claimed by ethnic minorities who have experienced marginalization by the state, and claims reside to a much lesser degree on priority in time (Hodgson 2002b: 1042). Jeffrey Sissons (2005: 16–18) even argues that two distinct movements have been united under the concept of Indigeneity: With the advent of African and Asian groups to the UN, the focus of Indigeneity has shifted towards primitiveness and closeness to nature. However, it has also been pointed to that there are strong elements which unite the Indigenous movement across all continents. Thus, identifying as Indigenous is a positioning based on a common experience of subjugation and assimilation by the states in which they live, bound by the common goal of achieving self-determination as peoples (Niezen 2003: 91–93). Indigenous delegates at the UN themselves often highlight the many parallels and common experiences that they discover between groups from all parts of the world. Still, it has to be kept in mind that Indigenous identity only in rare cases has spread to the grassroots level. In contrast, “Indigenous identity is invoked by a minority of educated leaders in any given society, by an intelligentsia” (ibid.: 11).

Regardless the decades of international activities concerning Indigenous peoples, until today no formal definition of the term Indigenous exists. In this context, it is especially the fact that international law does more and more concede Indigenous peoples legal claims to traditional territories and specific rights which makes the question whether a group is considered as Indigenous or not politically and judicially relevant (Kingsbury 1999: 336–337). This is why many states that have IPs living on their territory argue that any further development of international norms regarding Indigenous peoples should be tied to a concrete definition of the beneficiaries (Corntassel 2003: 76). Many Indigenous peoples, however, defend that a formal definition of the term is not necessary. They consider the demand for a definition to be an expression of bureaucratic (as opposed to Indigenous) ways of thinking. Indigenous identity as other elements of identity is subject to change (ibid.). Others opine that because of the plurality and great variety of the world’s Indigenous peoples it is impossible to come to an adequate definition: „[T]he concept of ‚indigenous‘ is not capable of a precise, inclusive definition which can be applied in the same manner to all regions of the world“ (Daes 1996: 5).

The most commonly cited definition goes back to the 'Study on the Problem of Discrimination against Indigenous Populations' by Martínez Cobo, prepared on behalf of the Sub-Commission on Prevention of Discrimination and Protection of Minorities:

"Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems. [...] On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and is recognized and accepted by these populations as one of its members (acceptance by the group). This preserves for these communities the sovereign right and power to decide who belongs to them, without external interference" (Martínez Cobo 1987: 379-382).

ECOSOC has proclaimed its approval of this definition, and has advocated its publication and broad dissemination. Sometimes it is even referred to as 'the UN-Definition'. Formally, however, this is not correct; the Cobo definition might however be called an "accepted understanding" (Davis 2008: 443).

Many authors advocate for a flexible definition with a list of possible criteria to be checked in each single case, thus accounting for the variety of specific cases. In practice, most definitions of Indigeneity recur to the following four main elements: priority in time, cultural distinctiveness, self-identification, and non-dominance (Levi & Maybury-Lewis 2012: 87). Any criterion should not be treated as a strict requirement for a classification as Indigenous, but rather as a guideline (Daes 1996; Kingsbury 1999). Thus, Indigeneity has been considered as a "polithetic class": while there is a set of criteria typical of Indigenous peoples, no single criterion is shared by all groups, nor does any single group possess all features (Levi & Maybury-Lewis 2012: 89). In practice, participation in UN institutions dealing with Indigenous issues relies on self-identification as Indigenous, whereas Indigenous organizations collectively are given the responsibility to draw attention to improper assertions of the right to participate (Daes 1996). Similarly, when this study makes reference to Indigenous peoples, it refers to those groups which self-identify as such.

### **1.2.2 Antecedents**

Indigenous peoples have considered international fora as adequate venues for furthering their rights since long ago. For example, Haudenosaunee Chief Deskaheh

travelled to Geneva as early as 1923/ 24 to present his peoples' plight before the League of Nations. But although some states sympathized with his cause and his visit drew considerable attention, he was not allowed to present his case at an official meeting, being considered a purely internal matter between Canada and its Indigenous population.<sup>17</sup>

In the post-war years, the idea that Indigenous peoples constituted distinct groups within their states was generally rejected, as states were claiming that IPs had been acculturated into mainstream society. Where cultural difference was not denied, it was considered as a transitory phase on the way towards assimilation and emancipation. International organizations' policies thus were aimed at "help[ing] indigenous peoples develop out of their miserable lives and into the modern world" (Tennant 1994: 10; see also Muehlebach 2001: 419).<sup>18</sup> Some Indigenous delegations filed complaints related to the violations of their human rights at the newly created United Nations, but without success (Lepage 1994: 7-9; Sanders 1998: 74).

However, the responsiveness of IOs towards Indigenous peoples began to change gradually. While – as outlined above – the complaints and appeals by Indigenous groups were not new, the international standing of ethnic minorities changed, and eventually contributed to a greater recognition of the rights and aspirations of IPs by the international system. The Convention on the Elimination of all Forms of Racial Discrimination (CERD), entered into force 1969, and the two UN covenants on Civil and Political Rights and on Economic and Social Rights respectively, which were adopted in 1966, were expression of this new concern and political atmosphere. Ronald Niezen (2003: 40-42) enumerates four aspects which eventually led to a greater openness of the international system towards the claims of Indigenous peoples in the post-war era and turned Indigenous issues into a topic to be dealt with internationally: First, the

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<sup>17</sup> For an account of this journey and other Indigenous initiatives in the pre-war era, see Costa (2006b), Lepage (1994) or Niezen (2003: 31-36). Deskaheh's early appeals still constitute a mark of reference for Indigenous activists. For example, Anishinaabekwe activist and scholar Leanne Simpson (2006) has entitled a scientific contribution on Indigenous participation in global governance "The legacy of Deskaheh".

<sup>18</sup> The ILO became the most active IO in Indigenous issues in the post-war years. In 1957, it was the first international organisation to adopt a convention (No. 107) "concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations". While the convention was moulded by the assimilative ideas typical of the time in which it was written, it also recognised a number of important rights, especially land rights, of Indigenous peoples, thus representing a milestone in the recognition of Indigenous rights (Costa 2006a: 70-71; Minde 2007: 12).

struggle against fascism had demonstrated the importance of the protection of minorities and of efforts against discrimination by the international community. Second, European colonialism ended; this led to a rise in awareness about the plurality of forms of cultural suppression and political hegemony. Third, an Indigenous middle class developed and facilitated the formation of a pan-Indigenous identity. And last but not least, with the transition to democratic regimes in many countries room was given to the rise of civil society. As a consequence, an impressive number of CSOs emerged – Indigenous groups as well as support groups in western countries.

In 1971, ECOSOC requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities to prepare a Study on the Problem of Discrimination against Indigenous Populations. It was originally issued as a series of partial reports, and compiled extensive data on the situation of Indigenous peoples. The process of data gathering from states and IPs made the UN in Geneva and its Human Rights Secretariat a center for dealing with Indigenous affairs internationally. Therefore, the drafting process today is considered as having been a “key to the development of relations between the United Nations and indigenous peoples” (Stamatopoulou 1994: 67).

Furthermore, representatives of Indigenous peoples mainly from the US started to bring their claims to the UN arena, through their participation in two conferences organized by the Special NGO Committee on Human Rights in the context of the UN Decade for Action to Combat Racism and Racial Discrimination (1973-1982). In 1977, a conference in Geneva dealt with the discrimination of Indigenous populations in the Americas.<sup>19</sup> This conference is often considered to have been the beginning of direct activity of the Indigenous movement within the context of the UN (Lawlor 2003: 358; Dunbar-Ortiz 2006: 64). In 1981, another International NGO Conference on Indigenous Peoples and the Land took place. The report found that dispossession of lands and assimilation policies were key causes for Indigenous misery, and recommended the restoration of lands and agrarian reforms (Niezen 2003: 45).

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<sup>19</sup> For a personal account on the events, see the description by one of the participants, Robert T. Coulter (1992).

### 1.2.3 Increasing involvement

In 1982, lobbying efforts by Indigenous peoples, in combination with support by UN staff and by Northern European states, led to the creation of a Working Group on Indigenous Populations (WGIP) at the lowest level of the UN hierarchy (Lüdert 2016: 180–190). The WGIP was a sub organ of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, which by turn was subordinated to the Human Rights Commission. Its two-fold mandate included the annual review of recent developments pertaining to the promotion and protection of human rights and fundamental freedoms of Indigenous peoples, as well as the development of international standards regarding the human rights of Indigenous peoples (UN ECOSOC 1982). The Working Group on Indigenous Populations was composed of five independent human rights experts of the Sub-Commission representing the five regional groupings of the UN.<sup>20</sup> During its first session, the WGIP decided on rules of procedure which allowed for the participation of Indigenous organizations regardless of their formal status with ECOSOC<sup>21</sup> in what has been called a “revolutionary” move and “pioneering process” (Morgan 2011: 111). The establishment of a UN Voluntary Fund for Indigenous Populations (VFIP, Voluntary Fund) in 1985, which financially supported Indigenous participants of the working group sessions, further facilitated and enhanced Indigenous involvement (Dreher 1995: 39–40).<sup>22</sup> This made the WGIP the body with the largest attendance by NSAs – and even more so of APOs – within the UN system. During

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<sup>20</sup> The five regional groupings of states normally used at the United Nations are: Africa; Asia; Eastern Europe; Latin America and the Caribbean; and Western Europe and Other States (which includes the US, Canada, New Zealand and Australia). While the experts of Western Europe, Eastern Europe and Latin America are considered to have been very active, the Asian and African experts were not very interested in Indigenous issues. This was possibly due to the fact that many of them came from countries which argued that they did not have Indigenous populations (Minde 2007: 26).

<sup>21</sup> During the first years of the WGIP’s existence, some states threatened to discontinue the practice; this however never materialized (Stamatopoulou 1994: 68). It is considered to have been one of the success factors for the WGIP.

<sup>22</sup> The Voluntary Fund provides financial assistance to representatives of Indigenous communities and organizations in order to enable their participation in the deliberations of the Working Group (and nowadays in a number of other meetings). From 1995-2004, around 560 Indigenous delegates benefited from monetary support to attend WGIP sessions. However, critics highlight that due to financial constraints only a small number of eligible applications can be supported (Corntassel 2007: 155). The Voluntary Fund is administered by a Board of Trustees, which is made up by five experts on Indigenous issues. Remarkably, one of the experts has to be a representative of a widely recognized organization of Indigenous peoples. Hence, the Fund constitutes the first UN entity which explicitly required membership by an Indigenous person. In practice, this provision on Indigenous membership has even been exceeded. Currently, for the period 2018-2020, all members of the Board are Indigenous persons. For information on the Voluntary Fund see <http://www.ohchr.org/EN/Issues/IPeoples/IPeoplesFund/Pages/IPeoplesFundIndex.aspx>, accessed 24.01.2019.

the 1980s, its sessions already attracted more participants than those of any other human rights body (Sanders 1989: 408–410); in 2004 numbers of registered observers had risen to over 1000 (Corntassel 2007: 153). The elaboration of an international instrument on Indigenous rights, namely the Draft Declaration on the Rights of Indigenous Peoples, soon became the main task of the Working Group (Barsh 1986: 372–373), and its compilation has been considered as its most important success (García-Alix 2003: 51). It has been argued that the participation rights Indigenous groups secured in the WGIP “validated the voices of indigenous peoples”, thus constituting a status quo behind which UN institutions couldn’t fall back anymore (Lâm 2000: 82).

The 1990s were characterized by an increasing interest of the UN system in Indigenous issues. Taking up an idea that had surged at the Working Group on Indigenous Populations, the General Assembly (GA) declared 1993 International Year for the World’s Indigenous People under the motto “A New Partnership”. The goal of the International Year was to improve international cooperation for the solution of problems faced by IPs, through their enhanced participation in the planning, implementation and evaluation of activities (UN General Assembly 1990). Following recommendations made at the World Conference on Human Rights in Vienna, the GA proclaimed the years 1995-2004 an Indigenous Decade themed “Indigenous People: Partnership in Action” which continued to work for the achievement of the goals that had been set out for the international year. Governments and the UN system were invited to mainstream Indigenous issues in their activities, and to develop specific programs to benefit Indigenous peoples (UN General Assembly 1996b). While the Decade has been accused as purely symbolic by some, referring especially to the non-adoption of a Declaration on the Rights of Indigenous Peoples (Corntassel 2007), others have pointed to achievements such as the creation of a Permanent Forum on Indigenous Issues or a Special Rapporteur (see below for a discussion of both) or the launch of the Indigenous Fellowship Program, a human rights training course for Indigenous Fellows by the Office of the High Commissioner of Human Rights (OHCHR) (Morgan 2011: 28). The work initiated was continued in a consecutive Second International Decade (2005-2014).

A review of existing mechanisms, procedures and programs concerning Indigenous issues carried out in 1996 found that even when UN bodies carried out activities



concerning Indigenous peoples, these remained largely unknown to IPs. Aside from the WGIP, few bodies ever scheduled regular meetings on Indigenous affairs, had relevant policy guidelines<sup>23</sup> or offered participation opportunities on a regular basis for Indigenous representatives (UN General Assembly 1996a). Nevertheless, the number of fora in which IPs actively participated began to increase during the 1990s. This included their presence at the big World Conferences of the 1990s, most prominently at the 1992 UN Conference on Environment and Development (UNCED) in Rio de Janeiro and the 1993 World Conference on Human Rights in Vienna. Moreover, Indigenous organizations, especially those with ECOSOC consultative status, increasingly made use of the human rights mechanisms of the United Nations, namely the Commission on Human Rights (which covered Indigenous issues as a separate agenda item from 1996 onwards), the Human Rights Committee, and CERD (García-Alix 2003: 37–42).

As one of the most important processes during these years, Indigenous organizations also engaged in the Intersessional Working Group to elaborate a draft declaration on the rights of Indigenous peoples (WGDD) (UN ECOSOC 1995).<sup>24</sup> In the process of elaboration, the WGDD was supposed to take into account the draft prepared by the WGIP. Participation in the WGDD was open to all states which were members of the Commission of Human Rights (CHR). To enable Indigenous participation at WGDD sessions, the CHR established a fast-track accreditation process for Indigenous peoples' organizations (IPOs) without consultative status with ECOSOC.<sup>25</sup> Through this process, over 100 IPOs participated in the drafting of the declaration. Beyond gaining access, Indigenous peoples also succeeded in re-negotiating working methods, so as to require consensus by all the participants (including the Indigenous ones) for the adoption of articles (Morgan 2011: 112). Thus, Indigenous involvement at the WGDD has been praised as facilitating “unprecedented levels of inclusiveness and participation, allowing not only for the extensive input of indigenous perspectives as to the content of their rights but also some degree of control over decision-making” (Morgan 2011: 41). In 2007, the Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the

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<sup>23</sup> World Bank operational directive 4.20 and ILO Conventions 107 and 169 constituted exceptions.

<sup>24</sup> For an Indigenous perspective on the work of the WGDD and Indigenous participation in it, see Åhrén (2007).

<sup>25</sup> This was considered particularly important as in 1995 only 12 Indigenous organizations held ECOSOC consultative status (Morgan 2011: 112).

General Assembly with 143 states in favour, 4 against and 11 abstentions.<sup>26</sup> The final document, although a compromise, codifies the minimum standards that IPs had insisted upon (Burger 2019: 1). It has even been argued that the Declaration strongly reflects an Indigenous point of view (Morgan 2011: 1).

#### 1.2.4 The new millennium

In the years since the turn of the millennium, Indigenous issues have been mainstreamed in the UN system. A number of institutions have been created to deal exclusively with Indigenous issues; Indigenous membership has become a regular fact in these institutions; and many UN specialized agencies have initiated or intensified their involvement with Indigenous peoples.<sup>27</sup>

Since 2001, the Commission on Human Rights (since 2006 the Human Rights Council, HRC) has regularly named, for periods of three years, Special Rapporteurs on the situation of human rights and fundamental freedoms of Indigenous people (SRIP).<sup>28</sup> The Special Rapporteur is mandated to gather, request, receive and exchange information and communications on the violations of human rights and fundamental freedoms of Indigenous peoples. Importantly, and unlike the WGIP, he may investigate specific complaints received by Indigenous peoples (Morgan 2011: 29). The Special Rapporteur is also authorized to formulate recommendations and proposals to prevent and remedy rights violations, and, since 2007, to develop a regular dialogue with all relevant actors, as well as to promote the UN Declaration on the Rights of Indigenous Peoples (UN Commission on Human Rights 2001; UN HRC 2007a). Currently, the mandate is held by Victoria Tauli-Corpuz, an Indigenous activist from the Philippines.

Following recommendations by the Working Group on the Permanent Forum and the CHR, a Permanent Forum on Indigenous Issues (PFII) was created and convened for the first time at UN headquarters in New York in 2002.<sup>29</sup> Located at a higher position in the UN system than previous bodies dedicated to Indigenous issues, the PFII is a subsidiary

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<sup>26</sup> The CANZUS group (Canada, Australia, New Zealand, and Australia) voted against the Declaration. However, these governments all adopted the Declaration in the subsequent years.

<sup>27</sup> An abbreviated version of this section has fed into Hasenclever & Narr (2019).

<sup>28</sup> Since 2010, the SRIP is named Special Rapporteur on the Rights of Indigenous Peoples.

<sup>29</sup> The creation of the PFII was preceded by a process to consider proposals for the possible establishment of a permanent forum for Indigenous peoples within the UN system, in which IPs equally had been involved (Henriksen 1999; García-Alix 2003: 60–61).

organ of ECOSOC and serves as an advisory body to ECOSOC and other UN institutions. Its broad mandate stipulates that it shall discuss Indigenous issues relating to economic and social development, culture, the environment, education, health and human rights. It is entitled to raise awareness and promote the integration and coordination of UN activities relating to Indigenous peoples, as well as to prepare and disseminate related information (UN ECOSOC 2000). The PFII is composed of 16 members serving in their personal capacity as independent experts. Whilst eight members are nominated by governments and elected by ECOSOC, the other eight are appointed by ECOSOC's president following broad consultations with IPOs. The nomination of the Indigenous members follows seven socio-cultural regions defined by Indigenous peoples themselves. The establishment of the forum is considered as an important step towards the recognition of Indigenous peoples in the UN system, as their representatives for the first time gain official status (Ströbele-Gregor 2004: 23; Davis 2005; Morgan 2007: 278). Its first chairperson, Ole Henrik Magga, has described it as "symbolizing a new kind of partnership between indigenous peoples and governments" (cited in Morgan 2011: 30). Like in the WGIP, participation with observer status at sessions of the Permanent Forum is open to states, IPOs and advocacy NGOs, international organizations as well as academics, and these actors make use of this opportunity in broad numbers: For the 2015 annual session, over 2.200 participants had registered (Sapignoli 2017: 89).

Moreover, in 2008 an Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) was created as a sub-organ of the Human Rights Council to continue the work of the WGIP.<sup>30</sup> The Mechanism is mandated to provide the HRC with thematic expertise on the rights of Indigenous peoples. To accomplish its mandate, it focuses on studies and researched-based advice and may suggest proposals to the Council; it may not, however, adopt resolutions or decisions. The Expert Mechanism consists of independent members who act in their personal capacity (UN HRC 2007b). As an important difference to the WGIP, "in the selection and appointment process, due regard be given to experts of

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<sup>30</sup> The Expert Mechanism substituted the Working Group on Indigenous Populations, which had been disestablished in 2006 together with the Human Rights Commission as one of its subordinated bodies. The WGIP's further existence had already been called into question after concluding its version of the draft declaration. Some actors argued that with completing the draft, the WGIP had concluded its mandate. Indigenous peoples challenged this point of view and successfully lobbied for the continuation of its work. The issue resurfaced again with the establishment of the Permanent Forum. These recurrent attempts to abolish the Working Group might be an indicator for the strong opposition it continued to face by some states.

indigenous origin” (ibid.). Moreover, a broad range of actors can participate at sessions as observers, ranging from states to IPOs, from UN mechanisms, bodies, funds and programs to IOs, from regional and national human rights mechanisms to academics and experts as well as NGOs. Created in 2007, it has recently undergone a review process. As an important new element of its reviewed mandate, EMRIP now can, upon request, assist member states with the implementation of Indigenous rights. Moreover, the number of its members has been increased from five to seven (UN HRC 2016).

A growing number of UN bodies and other IOs show interest in Indigenous issues and have adopted policies on IPs or carry out specific programs targeted at them. Rising numbers of IOs are actively involved in sessions of the Permanent Forum. An ‘Inter-Agency Support Group’ (IASG) has been created that meets twice a year to coordinate UN policies on Indigenous issues. As of 2015, 42 UN programs, departments and agencies and IOs participated in this group.<sup>31</sup> Martens (2007: 51) attributes the growing engagement of the UN system with Indigenous issues to the establishment of the PFII.

However, the degree to which IOs offer participation opportunities to Indigenous peoples differs widely. Arrangements range from no exchange with Indigenous organizations (for example at the World Trade Organization) to sporadic consultation (such as the World Health Organization’s (WHO) 1998 Forum on Indigenous Peoples and Health) to a systematic and proactive involvement in policy-making. In this regard, the most far-reaching arrangements are found within the CBD’s Working Group on Article 8j (WG8j), WIPO’s Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), as well as IFAD’s Indigenous Peoples Forum. Within the UN Framework Convention on Climate Change (UNFCCC), the establishment of a Local Communities and Indigenous Peoples platform is currently being operationalized.<sup>32</sup>

In 2010, the General Assembly decided to hold, in 2014, a high-level plenary meeting to be called World Conference on Indigenous Peoples (WCIP) “in order to share perspectives and best practices on the realization of the rights of Indigenous peoples, including to pursue the objectives of the United Nations Declaration on the Rights of

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<sup>31</sup> <https://www.un.org/development/desa/indigenouspeoples/about-us/inter-agency-support-group.html>, accessed 24.01.2019.

<sup>32</sup> <https://unfccc.int/news/countries-give-voice-to-indigenous-peoples-through-new-platform>, accessed 24.01.2019.

indigenous Peoples” (UN General Assembly 2010). A member state representative and an Indigenous-nominated representative were appointed by the President of the General Assembly to facilitate discussions on the modalities of the World Conference. As to the support NGO International Work Group on Indigenous Affairs (IWGIA), “[t]his decision represented a historical step forward in the UN recognition of indigenous peoples’ right to fully participate in UN decision-making processes”.<sup>33</sup>

Date	Institution	Participation rights for IPs
1982-2006	Working Group on Indigenous Populations	Participation as observers
1995-2006	Working Group on the Draft Declaration	Participation as observers
2001 (first session)	WIPO Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore	Participation as observers
2001	Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous People	one individual; currently an Indigenous person but no formal requirement for Indigeneity
2002 (first session)	Permanent Forum on Indigenous Issues	8 Indigenous members, 8 government nominated members; additionally, Indigenous participation as observers
2002	CBD Working Group on Article 8(j)	Participation as observers
2007	Expert Mechanism on the Rights of Indigenous Peoples	Selection process of members specifically considers persons of Indigenous origin; additionally, participation as observers
2013 (first session)	IFAD Indigenous Peoples’ Forum	Steering committee includes a majority of Indigenous members; additionally, participation as observers possible
2014 (singular event)	High-level plenary meeting of the General Assembly to be called World Conference on Indigenous Peoples	Participation as observers, Co-Chairs of discussions, advisors in the preparation of the Outcome Document

**Table 1: Major mechanisms and institutions dealing with Indigenous issues within the broader UN system, and access opportunities for Indigenous peoples. Source: author’s elaborations.**

During the WCIP itself, select Indigenous peoples’ representatives spoke at the opening ceremony, and co-chaired discussions together with state representatives. Moreover, two Indigenous advisors (alongside two from states) supported the President in preparing the outcome document of the World Conference. This outcome document contains three important provisions with regard to Indigenous participation in the UN

<sup>33</sup> <https://www.iwgia.org/en/focus/global-governance/1950-risk-of-serious-setback-for-indigenous-participati>, accessed 24.01.2019. IWGIA also reports that the nomination of an Indigenous facilitator encountered strong resistance by some states. At the same time, some Indigenous organizations rejected the World Conference process as a whole, stating that Indigenous positions had not been taken into account sufficiently, and called for a cancellation of the World Conference, see for example <http://www.oweakuinternational.org/blog-updates--press-release/position-on-the-so-called.html>, accessed 24.01.2019.

system: first, a review of existing mechanisms on Indigenous peoples, especially the EMRIP, in order to improve them; second, the development of a system-wide action plan to ensure coherence of UN bodies in addressing Indigenous rights; and third, consideration of ways to enable the participation of Indigenous peoples in meetings of UN bodies on issues affecting them (UN General Assembly 2014b). Consequentially, the President of the General Assembly is currently undertaking consultations regarding the participatory status of Indigenous peoples at the United Nations. He has appointed two Indigenous experts, alongside with two government representatives, to assist him in this regard. As peoples seeking self-determination, Indigenous peoples claim to be entitled to a presence in their own right in the international arena, rather than as a segment of civil society (Tramontana 2012). While several open questions remain,<sup>34</sup> the General Assembly plans to take up the topic again during its 75<sup>th</sup> session in 2020 (UN General Assembly 2017).

In sum, Indigenous actors are now an established presence at the UN and their participation seems to have reached a point at which it is not questioned anymore. Institutions in the UN system which deal directly with Indigenous issues regularly provide for Indigenous membership. In other institutions, IPs have been involved as observers with consultative status. It can be said that there is

“an ethos of indigenous peoples’ participation in UN parlance and practice, not only in the context of indigenous specific organs such as the PFII and the EMRIP but also in the mechanisms with a wider relevance to multiple ‘stakeholder’ interests [...]. [T]he right of indigenous peoples to participate in decision-making concerning them [...] is now a relatively well-established norm in international law” (Morgan 2011: 113).

In fact, multiple factors are outstanding with regard to Indigenous participation in the UN system. First, Indigenous participation in the WGIP started before the participation of affected actors gained momentum more generally. Second, it is far-reaching both with regard to participation rights, including Indigenous membership in the PFII, and with regard to substance, as it comprised the negotiation of standards, namely with regard to UNDRIP. Third, Indigenous participation is fairly encompassing: New institutions have been created that deal specifically with Indigenous issues. At the same time, IPs nowadays are active participants in many UN bodies and programs. Moreover, it is intended to enhance Indigenous participation more generally by creating a separate IPO

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<sup>34</sup> For a compilation of views in the discussions, see the respective report to the General Assembly (UN General Assembly 2016).

status at the UN. And fourth, participation modalities reflect an Indigenous world view insofar as Indigenous participation at the PFII and EMRIP is enabled independent of NGO structure or status, and membership follows seven socio-cultural regions defined by IPs. Moreover, to enable Indigenous participation in the WGIP, rules for non-state actor participation were bended to create institutional mechanisms that significantly deviated from all previous arrangements; these were transformations unique in the UN history (Muehlebach 2003: 249). Thus, Indigenous participation at the UN in fact is particularly strong compared to other categories of NSAs and APOs. The introduction of further participation opportunities as well as the creation of institutions which offer membership rights to Indigenous peoples however coincide chronologically with the more general developments. In short, the growing inclusion of Indigenous actors into UN institutions constitutes a salient example of the more general trend of NSA participation generally, and APO participation more specifically, in global governance.

### **1.3 Access for affected actors and legitimacy**

The increased role of non-state actors in global politics has generated much scholarly interest and debate both with regard to why it occurs, and with regard to its effects. Regarding the latter, one central question which scholars seek to answer is whether access for NSAs is making global governance more effective and legitimate. Access in this context refers to the formal institutional structures and mechanisms which IOs offer to APOs and other NSAs in order to engage with them on a continuous basis (Tallberg et al. 2013: 8). Access opportunities enable the participation by NSAs in global policy-making, and thus are assumed to improve the legitimacy of global governance. Recent research has addressed this relationship between NSA access and legitimacy from both normative and empirical perspectives (see Chapter two). While those taking a normative approach to legitimacy argue convincingly for the participation of NSAs, the capacity of existing arrangements for NSA access to fulfill normative requirements seems less clear. In turn, those scholars who have approached legitimacy from an empirical viewpoint have suggested that broad access opportunities for NSAs in an institution have a limited potential to improve perceptions of legitimacy of the respective institution at best. Both strands of research will be presented in more detail in the following.

### 1.3.1 Scholarship taking normative perspectives on legitimacy

From a normative perspective on legitimacy, scholars have argued that democratic legitimacy at the global level cannot rest on the same foundations as at the national level. Therefore, alternative models such as global stakeholder democracy or polycentric democracy have been developed (Bäckstrand 2006; Dingwerth 2007; Macdonald 2008; Archibugi et al. 2012). These conceptions of global democracy commonly assume that for transnational governance initiatives to be legitimate, all stakeholders – i.e. actors affected by the institution’s actions – need to be able to participate in decision-making. In other words, there is a growing consensus among these scholars that meaningful NSA participation is indispensable for legitimate transnational policy-making (Tallberg & Uhlin 2012: 210; Fraundorfer 2015: 337). Similarly, Dingwerth and Weise (2012) argue that we are currently witnessing the rise of a new norm of legitimate governance beyond the state which complements older governance norms relying on state consent and which implies a need to involve representatives of affected interests through appropriately inclusive, transparent and accountable procedures.

However, empirical evidence pointing to the ability of NSA involvement to fulfill these normative criteria remains inconclusive. Generally both the “promises and the pitfalls” of NSA participation in transnational policy-making have been highlighted (Bexell et al. 2010). Several factors seem to be decisive in this context: First, access rights can range from rather passive observer and consultation rights to voting and decision-making rights. In practice, however, meaningful access for NSAs which includes decision-making rights still seems to be the exception rather than the rule (Tallberg & Uhlin 2012: 217). Moreover, the ability of affected actors to hold decision-makers accountable also strongly varies (Schäferhoff et al. 2009: 468). Additionally, tensions and trade-offs between different dimensions of legitimacy such as transparency and deliberation seem to exist (Bexell et al. 2010: 95–96). However, Abbott and Gartner (2012: 25–30) find that in terms of legitimacy, institutions in global health governance which count with innovative measures of civil society participation (such as the Global Fund) outperform similar institutions in global environmental governance which restrict participation opportunities for civil society. In other words, access for NSA actors does not automatically make governance arrangements more legitimate, and the concrete participation arrangements and institutional design need to be taken into consideration



when evaluating the legitimacy impact of NSA involvement (Schäferhoff et al. 2009: 469).

Moreover, it has been assumed that the democratic credentials or legitimacy scores of participating actors strongly impact on the legitimacy of an institution. A typical normative statement in this regard is the following: “CSOs which participate directly in global policy making need to have democratic legitimacy if the policy making should be deemed more democratic as a result of their involvement” (Tallberg & Uhlin 2012: 220–221). NSAs are not legitimated by or accountable to a *demos*. Therefore, they need to rely on other criteria of legitimacy. In recent years, an entire strand of research has developed which aims at measuring the democratic quality and legitimacy of NSAs (Bexell et al. 2010; Steffek & Hahn 2010). The basic insight by this literature is that NSAs can be democratic (and thus their participation may enhance the legitimacy of new modes of governance), but not all of them are.

One important condition of success in this regard seems to be involvement of those directly affected. It has been assumed that legitimacy is generated if all those who are affected by a decision may provide input to the decision-making process (Schäferhoff et al. 2009: 466). Others have argued that legitimacy may be strengthened specifically in those cases in which groups normally underrepresented at the national level are actively integrated into decision-making structures (Martens 2007: 33). In reality, however, many partnerships between state and non-state actors seem to have lacked precisely this input by local communities.

Based on a literature review, Schäferhoff et al. (2009: 468; see also Bexell et al. 2010: 87) argue that affected actors are underrepresented in most partnerships. The authors find that both resource constraints and power imbalances may hamper the quality of participation in partnerships, especially with regard to participants from the South. Similarly, with regard to the United Nations it has been argued that “[w]hat are missing are the voices of those most affected by the inequities of current global governance” (McKeon 2009: 174). Problems of democratic legitimacy may even be aggravated as representatives of non-state organizations generally are not elected, and some NGOs tend to be self-selected and elite-driven. Moreover, as NSAs which get to participate are mostly based in the western world, there are concerns that their participation might actually further the North-South divide (Raines 2003; Börzel & Risse 2005: 211–212;

Tallberg & Uhlin 2012: 216). Thus, it has been observed that partnerships “reproduce precisely the power relationships and asymmetries that exist in the international system” (Martens 2007: 41).

### 1.3.2 Scholarship based on sociological variants of legitimacy

Recently, sociological variants of legitimacy in global governance are receiving increased attention. In these studies, scholars do not ask whether transnational initiatives confirm to a set of pre-defined criteria of democratic legitimacy, but instead focus on whether concerned actors or stakeholders *perceive* an institution to be legitimate. Contrary to what one would expect, these studies suggest that the link between NSA participation opportunities in IOs and perceptions of institutional legitimacy is weak at best. Thus, recent studies have found that the legitimacy of IOs as perceived by citizens is rather based on the capacity to generate benefits for states and societies or in the general confidence in political institutions than in the representation of citizens’ interests within it or in the evaluation of procedures as democratic (Dellmuth & Tallberg 2015; Ecker-Ehrhardt 2015). Similarly, Nasiritousi and colleagues (2016) show that instrumental views following neocorporatist and (to a somewhat lesser extent) neo-functionalist rationales dominate actors’ perceptions of why NSAs should be included in global policy-making processes. In other words, participants in these processes highlight as reasons for their involvement that NSAs have important stakes in decisions that are being made and bring in specific expertise and information, rather than pinpointing the stronger representation of marginalized views in global policy-making.

In turn, Agné et al. (2015) have in a large-n survey analyzed experiences and perceptions of democratic legitimacy by stakeholder organizations involved in global and regional IOs and have found that increased participation opportunities for NSAs do not result in beliefs of higher democratic legitimacy. The authors suggest two possible explanations for this paradoxical outcome: First, the absent impact of participation opportunities on perceptions of legitimacy might reflect the limited power of stakeholder organizations in global policy-making. In other words, participating stakeholder organizations realize that their impact on outcomes within IOs is minimal at best, as the proceedings remain profoundly shaped by the decisions taken by states (Agné et al. 2015: 485). In fact, it has been shown that even within the UN World Summit on the Information Society, where NGO participation was particularly strong, its

influence on outcomes was only marginal (Dany 2014). Second, the lacking effect of opportunities for NSA participation on democratic legitimacy might result from the awareness among participating NSAs of the distortions and imbalances with regard to their own representativeness (Agné et al. 2015: 485). This second assumption resonates with the findings presented above suggesting that the participation of non-state actors in global governance is severely distorted towards more resource-rich western NGOs, while it has by tendency excluded southern grassroots voices.

In short, independent of whether scholars take normative or sociological perspectives on legitimacy, they have identified the lack of participation by marginalized actors as one limitation of existing access arrangements for NSAs. At the same time, a number of scholars have assumed that the participation by affected actors through their own organizations might enhance legitimacy and democratize global policy-making. For example, Batliwala (2002: 396) argues that due to their strong roots in local communities “transnational grassroots movements manifest an important force for democratizing global society’s structure, agendas, and strategies”. Sändig and colleagues (2019) suggest that by strengthening the agency of marginalized populations with lived experience with regard to the issue at stake, bringing in their distinct policy proposals and thus enriching policy-debates, the inclusion of APOs promises to make global policy-making more legitimate. Looking at empirical examples, both the CFS and Unitaid<sup>35</sup> have been described as encouraging experiments of global democracy, i. a. with a view to the enhanced opportunities for participation and representation of affected populations within them (Fraundorfer 2015).

#### **1.4 Research question**

As shown above, a number of recent studies are rather skeptical with regard to the potential of current NSA participation to enhance the legitimacy of global governance. At the same time, the assumption prevails that institutions counting with strong participation by APOs might be more apt to close legitimacy gaps in global policy-making. Existing arrangements for NSA participation differ considerably with regard to

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<sup>35</sup> Unitaid is a hosted partnership of the WHO whose main area of work is the investment in projects which strengthen the prevention, diagnosis and treatment of AIDS, tuberculosis and Malaria. Its Executive Board includes representatives of states, communities living with the diseases, NGOs, private foundations, and the WHO, see <https://unitaid.org/about-us/#en>, accessed 4.12.2018.

the degree to which they include the voices of those directly affected by their policies. Moreover, different types of NSAs vary with regard to their democratic credentials (Bexell et al. 2010: 97), and APOs supposedly enjoy a comparatively high degree of legitimacy. Thus, it has been suggested that both IOs and policymakers within them consider APOs as more legitimate than their NGO counterparts (Batliwala 2002: 407).

However, as shown above many existing governance arrangements seem to precisely suffer from a lack of inclusion of these actors. Following the recommendation that research “should concentrate on mechanisms where state and non-state actors come together to promote the human rights of those people most affected by the structural injustice of the current global system” (Fraundorfer 2015: 363), this dissertation zooms in on governance mechanisms which specifically focus on giving a voice to previously disenfranchised actors. It addresses the puzzle whether participation by organizations and movements of affected actors can live up to the high expectations based on it and increase the legitimacy of global institutions. Thus, this study aims to contribute to the ongoing discussion on the conditions under which cooperation arrangements between state and non-state actors can be legitimate governance tools. In contrast to other research on the subject, this study explicitly does not restrict research on perceptions of legitimacy to those actors who gain a voice, namely APOs. Instead, it looks at the broader set of constituencies required to cooperate in the respective institutions to turn APO participation into a success. In other words, I assume that access opportunities for affected actors do not only affect perceptions of legitimacy held by the very same APOs, but also by delegates from states and IOs that are supposed to work together with them within transnational institutions.

More specifically, I will look at Indigenous peoples as one group of affected actors which have gained particularly far-reaching participation rights. While a growing body of literature addresses the involvement of Indigenous peoples in the UN, this literature has mostly tried to explain the rise and success of the Indigenous movement (Brysk 2000; Muehlebach 2001; Niezen 2003; Morgan 2011) and the strategies Indigenous activists employ (Wallbott 2014). Some authors have been primarily concerned with the functioning and working of the Indigenous space within the UN (Dahl 2012; Sapignoli 2017). Others have analyzed the emerging Indigenous rights regime and the resulting challenges for states which have often reacted with resistance (Koivurova 2008; Lightfoot 2016). Again others have highlighted the limitations of Indigenous

participation in the UN, interpreting Indigenous inclusion in global institutions as a form of colonialism in a new disguise which continues to appease, subjugate and control IPs, and have therefore sometimes argued for Indigenous empowerment and mobilization on their own terms outside of the UN (Simpson 2006; Corntassel 2007; Bellier 2013; Lindroth & Sinevaara-Niskanen 2018). However, these studies have mostly researched Indigenous involvement in the UN as an isolated phenomenon rather than as one instance of a broader trend towards pluralist global governance and the inclusion of marginalized voices.<sup>36</sup> Moreover, questions about legitimacy remain largely unaddressed. About 25 years ago, it has been argued that

“[p]articipation by indigenous peoples is not only important to indigenous peoples, it has also become important to international institutions. [...] [I]t is a fundamental axiom that *the greater the participation by indigenous peoples in an institutional process, the more legitimate are the process and its results*” (Tennant 1994: 49, italics in the original).

My dissertation project scrutinizes on this assumption. It asks whether the establishment of institutions at the UN in the field of Indigenous issues which explicitly include Indigenous voices has in fact contributed to a high degree of legitimacy of these institutions. More specifically, it asks whether extensive access for Indigenous actors as those most affected by these institutions in fact makes the actors involved – such as representatives of Indigenous organizations, state delegates, and staff of IOs – consider these institutions as strongly legitimate.<sup>37</sup> In addition, I enquire what drives participants from states, IOs, and Indigenous organizations to support or oppose institutions in which Indigenous peoples participate, and how they form opinions regarding institutional legitimacy. My main research question thus is:

**To what extent does access for Indigenous actors in Indigenous-specific UN organizations result in institutional legitimacy in the sense that these institutions are perceived as legitimate by the participating actors?**

This main question is broken down into several sub-questions:

- What access opportunities do UN Indigenous-specific mechanisms offer to Indigenous peoples, and to what degree are they perceived as legitimate by the participating actors (Chapter four)?

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<sup>36</sup> Notable exceptions are Sargent (2012), who has compared activism by Indigenous and minority networks at the UN, and Lüdert (2016) who has compared the Indigenous and decolonization movements.

<sup>37</sup> In Chapter two, I explain why I focus on the involved actors instead of looking at the “governed” population more broadly, i.e. Indigenous peoples at the grassroots level.

- How do access opportunities for organizations of Indigenous peoples translate into de facto participation, and which factors condition it (Chapter five)?
- What are the effects of this participation, and through which mechanisms is participation linked to perceptions of legitimacy (Chapter six)?

The aim of the dissertation is thus threefold:

- to analyze the legitimacy of UN institutions in the area of Indigenous affairs as perceived by their participants;
- to contribute to the understanding of those processes that shape which actors get to participate when access opportunities are given to APOs;
- to probe the plausibility of hypotheses about causal connections between the participation of affected actors and perceptions of institutional legitimacy.

## 1.5 Research design

Above, I have shown that while current scholarship is rather skeptical regarding the general potential of NSA access to increase institutional legitimacy, it has been assumed that APO access has more positive effects on the legitimacy of global policy-making. However, empirical research to scrutinize on this assumption is still scarce. Conducting such research with regard to UN institutions dealing with Indigenous issues is the goal of my dissertation project. In this context, I will take an empirical perspective on legitimacy, i.e. I look at whether participants of UN Indigenous-specific mechanisms perceive them to be legitimate. In the following chapters, I will therefore first develop an analytical framework which deals with the task of measuring participants' perceptions of legitimacy regarding concrete institutions. For this, I rely on an analysis of discursive legitimation, building on a methodology developed by Schneider and colleagues for the analysis of the legitimacy of states (Schneider et al. 2007; Schneider et al. 2010; Schmidtke & Schneider 2012), and which I adapt to make it applicable to transnational governance. Additionally, I also look at participation patterns of constituencies to complement the findings and get more solid results regarding institutional legitimacy. Subsequently, I develop a typology for distinguishing between two different modes of APO access, namely open access as observers, and inclusive access as members of an institution, and operationalize them to distinguish between different degrees of access. Based on a literature review, I then deduce hypotheses regarding the connection

between APO access and perceptions of legitimacy, and outline several mechanisms that explore the possible connection between APO participation and legitimacy perceptions. In the empirical parts of the dissertation, I use the data generated from research to scrutinize on these assumptions and refine them inductively.

At this point, however, some general remarks on the basic choices with regard to the research design of my dissertation are needed.<sup>38</sup> To be able to answer the research question outlined above, a number of methodological choices have been made. They concern the basic approach to the topic and the case selection; the collection of data on the two variables; and the establishment of causality between both variables.

As regards the basic approach, I have opted for a single case study, namely participation by Indigenous peoples in UN Indigenous-specific institutions, as the most appropriate way to probe the plausibility of the hypotheses (as described in Chapter three). Given that the data collection and analysis of a big number of actors on their perceptions of legitimacy required intensive study, it was necessary to constrict the number of researched cases. In-depth case studies outplay their specific strength when the researcher aims to uncover causal mechanisms linking dependent and independent variable (Blatter et al. 2007: 133–135), i.e. *how* the participation by affected actors impacts on legitimacy. Moreover, conducting research on Indigenous peoples as an outsider required building some basic trust, as a growing number of Indigenous activists reject being objects of study, claiming more active roles for themselves. All this required focusing on one case instead of on a number of cases. Given that some large-n studies already exist which might serve to put results on legitimacy into a broader perspective, the advantage of greater explanatory richness within one case under these circumstances outweighs the disadvantages connected to limited generalizability when focusing on one case only.

What is more, access for Indigenous peoples in UN Indigenous-specific mechanisms is specifically suitable to answer the questions posed in this dissertation. As argued in the second section of this Chapter, the participation of affected actors is strong with regard to Indigenous issues at the UN. Both the Permanent Forum and the Expert Mechanism offer far-reaching access rights to Indigenous organizations, and IPOs broadly make use

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<sup>38</sup> A more detailed description of the methodological choices made throughout the research process of the dissertation is provided in the Appendix.

of these opportunities. Moreover, IPs claim to have even stronger moral grounds for participation than other affected actors (see Chapter five). Additionally, Indigenous participation within the UN started over three decades ago, suggesting that it is firmly institutionalized and eventual difficulties we will be able to observe are not just teething troubles, but reflect more structural issues. Choosing Indigenous access to the UN as my case to study has the additional advantage that it allows for in-case comparison. There are two institutions dealing with Indigenous issues, namely the PFII and EMRIP, which slightly differ with regard to the Indigenous actors which participate in them, and with regard to the access they offer to IPs.<sup>39</sup> Moreover, both institutions offer two modes of IP access, namely participation as observers and participation as expert members, and my research will track the distinct effects of both these access modes by employing process-tracing to establish causality.

The main methods for data collection in qualitative research are interviews, observation and content analysis. To allow for a higher validity of results, I have opted for a triangulation of methods and have applied all three methods in this dissertation. Data had to be collected to (a) measure perceptions of legitimacy, to (b) analyze Indigenous presence through access opportunities offered, and to (c) establish causal connections between IPO participation and perceptions of legitimacy.

To analyze perceptions of legitimacy, public statements from all relevant participant groups made during sessions have been selected for content analysis, including Indigenous organizations, UN specialized agencies, governments of states with Indigenous populations, and relevant donors. Additionally, to allow for greater validity of results, I analyzed indicators regarding the behavior of participants, namely their attendance at and engagement in and between sessions. The respective information has mostly been gathered from official UN documents. To analyze Indigenous presence at the PFII and EMRIP, I also mainly relied on data available in UN documents. Additional information regarding the participating IPOs was gathered from the websites of IPOs.

Moreover, interviews were a valuable tool for gaining additional insights into both Indigenous self-representation at the UN and into how causal connections are working.

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<sup>39</sup> In fact, with the Special Rapporteur a third Indigenous-specific mechanism exists within the UN. In the context of this dissertation, the SRIP was not taken analysed because it is a mandate hold by one person and formally there is no need to be Indigenous to be nominated to it.



Since I was primarily interested in the perceptions of relevant constituencies regarding legitimacy, the most appropriate method to gather data in this regard was directly asking them for their explanatory account of institutional legitimacy. Moreover, as I was specifically interested in how causal connections are working, interviews seemed the more adequate methodological tool as compared to questionnaires. For interviews, I relied on those actors directly involved in the respective institution. I have conducted 37 in-depth interviews with members and observers of the respective institutions, including Indigenous representatives, staff from UN agencies, state officials, NGOs, and staff of the UN secretariat. These interviews have mainly been conducted between March 2008 and April 2009. A number of interviews, especially those focusing on the Expert Mechanism, have been conducted in a second round of interviews in 2017. Most interviews were conducted during a stay in New York while a Permanent Forum session was ongoing, and in Geneva during a session of the Expert Mechanism.<sup>40</sup> However, possible interview partners used to be very busy during the sessions. Therefore, I also used sessions to establish contacts and conducted a number of telephone interviews afterwards as a practical alternative.

A third method for data collection is observation. I have attended both sessions of PFII and EMRIP. Attendance of these events proved highly important to get a feeling of the atmosphere reigning in them and learn about the many important side-processes taking place parallel to and around the official meetings. Observations made during the sessions have been noted down in a field research diary, and these notes have enriched and put into a broader perspective the information obtained in interviews. However, the high costs for travel and accommodation in New York and Geneva limited the number of sessions I have been able to attend (one session of the PFII, two sessions of the EMRIP). Sessions of the PFII, and since recently also of EMRIP are publicly screened by UN Web-TV. To some degree, I have therefore also relied on these screenings, and although they are limited to the official proceedings of the sessions, they proved to be a valuable additional source of information.

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<sup>40</sup> Some interviews were also conducted during a training event for Latin American Indigenous activists with regard to the CBD in Panama City.

## 1.6 Outlook: scope of the dissertation and content

This dissertation deals with the effects of access opportunities for one particular type of non-state actors, namely APOs, in one specific issue area, namely Indigenous issues, and one organizational setting, namely the core United Nations. In this context, it aims at doing some groundwork for a theory which can explain the impact of APO access on perceptions of legitimacy in global policy-making.

However, as with any piece of research, there are some limitations worth noting. This most importantly concerns the generalizability of the case study. As a single case study, it is necessarily unrepresentative of wider populations (George & Bennett 2005: 32). However, as outlined above, a number of reasons added to the eligibility of Indigenous access to UN institutions as a particularly interesting case.<sup>41</sup> With regard to the data collected, it would surely have been worthwhile to attend more sessions of the PFII and EMRIP in order to get into the issue more deeply, create deeper confidence and maybe get access to even more intimate information. However, mainly due to financial constraints, this was beyond the scope of this dissertation. Moreover, one major limitation consists in the fact that it has been practically impossible to conduct interviews with those actors most critical about Indigenous participation at the UN, as these actors abstain from participating in sessions of the PFII and EMRIP. Especially with regard to states, only supportive states were willing to be interviewed, whereas others declined my request or (even more frequently) did not reply to it. I therefore had to rely on asking other participants to explain the absence of these actors as a proxy. Notwithstanding these limitations, the study will hopefully offer some valuable information regarding how access for Indigenous actors to UN Indigenous-specific institutions impacts on perceptions of legitimacy.

The dissertation proceeds as follows. In Chapters two and three, I will elaborate on the theoretical model for my research. Chapter two deals with the dependent variable of this study, namely perceived legitimacy. It asks what legitimacy in global governance is, and highlights differences and similarities between empirical and normative approaches to legitimacy. Opting for an empirical approach in the context of this dissertation, the chapter then proceeds in developing a model which operationalizes transnational

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<sup>41</sup> Further information on the case selection can be found in the Appendix.

legitimacy and highlights how different degrees of legitimacy may be assigned to specific institutions. Chapter three is concerned with the theoretical framework needed to understand the effects of APO access on legitimacy. I will define the independent variable of this dissertation, APO access. Moreover, I will specify my hypothesis about the connection between APO access and legitimacy, and identify a number of causal mechanisms that possibly connect the two variables.

In Chapters four to six, I will turn to the empirical analysis of access for Indigenous peoples to the UN and perceptions of legitimacy. Chapter four analyzes access structures for IPs at both the PFII and EMRIP, and relates this to perceptions of legitimacy of relevant constituencies. It finds that deep and broad access for IPs does not translate into specifically high perceptions of legitimacy. The chapter therefore points to the necessity of analyzing access opportunities for IPs within a broader context of other dimensions of institutional design, as these factors together determine the influence of IPs within policy-making on issues affecting them, and perceptions of legitimacy rather seem to be connected to influence than solely to access. Chapter five then takes a close look at how access opportunities relate to concrete participation by IPOs. It describes which IPOs are present at sessions of the PFII and EMRIP and looks at some of the most visible actors within the movement. Subsequently, the chapter identifies a number of significant condition variables that impact on which IPOs can access the United Nations, including the availability of resources and capacities, allies, and state policies towards Indigenous peoples. It argues that while claims regarding (a lack of) moral authority of IPOs are regularly brought forward in connection with perceptions of legitimacy, all participating actors should assume a responsibility in helping IPOs to overcome challenges to their participation and strengthening legitimate Indigenous participation.

Chapter six dwells upon the causal relationship between Indigenous participation and perceptions of legitimacy and outlays the mechanisms at work. It highlights that different mechanisms are at play which build upon divergent ideas about the main benefits and prospects of access for Indigenous actors. Moreover, it points to attitudes towards other constituencies which range from supportive to hostile as one factor which shapes interaction especially between states and Indigenous peoples in Indigenous-specific UN institutions, and impacts on perceptions of legitimacy. The Conclusion then sums up the main arguments of the dissertation and finishes by outlining some implications both for policy and for further research. Lastly, the Appendix presents the

methodological questions that had to be tackled during the research process in greater detail. While knowledge about the detailed methodological choices is not essential to understanding the results of this study, the Appendix serves to make the research process more transparent and reproducible.

In sum, this dissertation finds that in spite of particularly high degrees of open and inclusive access for IPOs, both the PFII and EMRIP only count with medium degrees of legitimacy. In part, this can be explained by the effect of two condition variables which constrain Indigenous participation at the UN, namely institutional leverage and the resources and capabilities of IPOs. While institutional leverage shapes *how* IPO access translates into the possibility to shape policies, the resources and capabilities of IPOs determine *who* de facto gets a say within the UN even when access modalities are very favorable for APOs. At the same time, I show how different expectations regarding IPO participation at the UN and enduring skeptical attitudes towards cooperation by some actors constitute a complicated environment for UN institutions in the area of Indigenous affairs to maneuver, which might turn it impossible for them to ultimately satisfy all interests. These results suggest that APO access is no silver bullet to strengthen institutional legitimacy. This is not to say that APO access cannot contribute to positive perceptions of legitimacy at all, but to highlight that it only does so under certain conditions.

## *Chapter 2*

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# *Legitimacy and Legitimation Beyond the State*

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As one consequence of increasing density of governance beyond the state, recent years have witnessed a growing interest in legitimacy and questions related to it by both the academia and the broader public (Hurrelmann et al. 2007b: 1). From a normative perspective, it has been argued that recent changes in the architecture of global governance have led to a democratic deficit; others, in turn, have taken the proliferation of global protest movements as an indicator for reduced acceptance of the current world order by a broader public. Thus, the discussion surrounding the legitimacy of global governance has so far mostly been led against the backdrop of its perceived deficiencies (Steffek 2003: 249).<sup>42</sup>

At the same time, due to its multifaceted and dynamic nature as well as its conceptual ambiguity, legitimacy has been considered as an “essentially contested concept”, in other words, we lack a general accepted standard use of the term (Hurrelmann et al. 2007a). As a consequence, “a number of theoretical and methodological issues regarding the concept of legitimacy, and notably its application to post-national governance, remain contested” (Hurrelmann et al. 2007b: 2). This is not to say that research on legitimacy is impossible, but that researchers applying the concept need to carefully develop a convincing framework for analysis. This will be the task for this chapter.

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<sup>42</sup> Contrary to this mainstream argument, Moravcsik (2004) argues with a view to the European Union that when assessed with regard to real-world criteria (and not with regard to ideal standards), one cannot diagnose a general legitimacy crisis of IOs.

## 2.1 Approaching legitimacy

### 2.1.1 What is legitimacy?

As stated above, legitimacy is a hotly debated concept in political science which is, due to its fuzziness, difficult to define and even more difficult to measure. This first part of the chapter will therefore serve to bring forward some basic facts about the concept of legitimacy in general and of legitimacy beyond the state more specifically. In the political realm, legitimacy is intrinsically linked to the exercise of authority. Authority is considered as legitimate insofar as there is consent by the relevant audience, and it is exercised according to the pertinent norms and values of its constituency. Hence, legitimacy comprises the moral aspect of power relationships: “[w]here power is acquired and exercised according to justifiable rules, and with evidence of consent, we call it rightful or legitimate” (Beetham 1991: 3).

This characterization of legitimacy has three important implications: first, it implies that legitimacy is an essentially normative concept. Authority is only legitimate to the extent that it is backed by norms and values, meaning that it needs to be justifiable on moral grounds. This implies that individual self-interest cannot confer legitimacy to an institution. “When we speak of an institution commanding legitimacy, therefore, we are saying that there is a generalized perception that its normative precepts are rightful, that they warrant respect and compliance for more than self-interested reasons, for reasons of their normative standing” (Reus-Smit 2007: 159).<sup>43</sup> Second, these values must be collective: the relevant community needs to accept the authority and show evidence of consent. Norms, rules and principles need to be socially endorsed in order to turn them into yardsticks for legitimacy (ibid.). Third, legitimacy as such is not observable, as it is not an objective ‘property’ of an object or action. Instead, it refers to a social phenomenon which embodies a degree of judgement: Legitimacy depends on the degree of congruence between the characteristics of a certain institution and collectively held norms about the rightfulness of a political order. Thus, any analysis of legitimacy

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<sup>43</sup> However, Suchman (1995: 577–584), whose definition of legitimacy has been broadly absorbed in IR research on empirical legitimacy, refers to pragmatic legitimacy which is based on self-interest; moral legitimacy which is based on a positive normative evaluation of an institution; and cognitive legitimacy based on the perception of an institution as taken for granted. In contrast, I share Mulligan’s (2006: 366) position who argues that “an explanation in terms of rational calculating actors, in which any moral claim is irrelevant [...] is one in which the term legitimacy seems out of place”.

consists in an assessment of congruence between the pertinent collective norms and values and specific institutional features.

Recent scholarly interest in the concept of legitimacy has resulted in a broadening of its scope of application (Nullmeier et al. 2012: 12–13). Whereas in earlier years the concept was considered to be related only to the justifiability of political communities and regimes, nowadays practically all actors and policies are considered to be in need for legitimacy. For example, a rich literature discusses the legitimacy of international NGOs (Beisheim 2005; Steffek & Hahn 2010; Banks et al. 2015). The widening of the concept has even transcended the boundaries of the political sphere: corporations and other economic actors are increasingly under public pressure to justify their decisions and strategies (Fuchs et al. 2010).

Legitimacy is considered as important because it increases the disposition of those subordinate to an authority relationship to obey, and is thus one possible source of compliance in addition to self-interest, i.e. cost-benefit calculations, and coercion, i.e. fear of sanctions (Hurd 1999). This implies that legitimacy adds to the ability of the powerful to achieve their goals (Beetham 1991: 28). This is especially important in global governance given the strong voluntary element in rule following beyond the state (Steffek 2003: 260). It has been argued that self-interest and coercion as well as legitimacy are at play when actors evaluate global governance mechanisms. While strategic behavior dominates during the initial phases, later on norm generation begins to occur, and legitimacy becomes more and more important for the actors' behavior (Bernstein & Cashore 2007).

Legitimacy is not an all-or-nothing affair, but a matter of degree: "Legitimacy may be eroded, contested or incomplete; and judgements about it are usually judgements about degree, rather than all-or-nothing" (Beetham 1991: 20). As legitimacy is a qualitative concept, levels of legitimacy can best be imagined as a continuum ranging from the 'low legitimacy' to 'high legitimacy'.

### **2.1.2 Normative and empirical approaches to legitimacy**

There have been two fundamentally different approaches to legitimacy in scientific research, namely those with a normative-prescriptive and those with an empirical-descriptive focus. Depending on the research interest, a scholar might ask whether a

certain order, institution, rule or actor is consistent with a set of appropriate criteria of legitimacy established *ex ante*; she might in turn also examine whether a certain community considers a certain order, institution, rule or actor to be legitimate, and which are the prevalent criteria of acceptability. Hence, while a scholar interested in normative questions asks under which conditions governance deserves to be considered legitimate, a scholar focusing on empirical aspects enquires why those persons subject to a governance arrangement accept and support it in reality (Steffek 2003: 253). Depending on the approach chosen, research strategies thus vary considerably. Therefore, in the next step empirical and normative approaches will be presented and compared.

When taking a normative approach, the social scientist in a first step establishes and defends a set of criteria of legitimacy as a normative benchmark, and then applies them to the political order, institution or authority she intends to evaluate. As a result, a scholar makes normative statements about the overall quality of the evaluated object (Hurrelmann et al. 2007b: 3); the adjective 'legitimate' is applied to the object of evaluation if it concords with the pre-established rules and principles. In this regard, moral principles taken to evaluate a certain institution often embody a generalizing claim to universal validity as it is assumed that any rational person would have to agree to them upon rational and informed reflection (Beetham 1991: 5). Other scholars have suggested that normative approaches to legitimacy need to take the historical context and social structure into account. This approach argues that the needs and beliefs of societies change, which should be reflected in legitimacy assessments. In short, for a scholar employing a normative approach to legitimacy, the tasks consists in a) philosophically deducing normative sound criteria that either claim universal validity or relevance for the respective context and b) assessing whether a certain institution or political order is consistent with these criteria. Disputes over legitimacy thus may be characterized by different interpretations on what constitutes adequate criteria of evaluation, or by disputes of whether an object conforms to some type of standard.

In research on empirical legitimacy, on the contrary, the social scientist does not establish normative criteria of what constitutes legitimate governance *ex ante*, but makes the prevalent norms of the relevant community the benchmark for legitimacy evaluation. She analyses which criteria of acceptability are used by real-world actors, and how. Legitimacy is thus conceptualized as a social fact (Steffek 2003: 253).



Empirical work on legitimacy often draws on the work of Max Weber (1947: 122) who famously understood legitimacy as *Legitimitätsglaube* (belief in legitimacy). Hence, when taking an empirical approach, the objects of study are perceptions of the rightfulness of a political order. A certain order, institution or authority is deemed legitimate if the members of the relevant constituency perceive it to be rightful and justifiable according to their (individual) perceptions and judgements. Thus, a scholar taking an empirical approach to legitimacy has to a) observe individual expressions of legitimacy and b) aggregate them to come to conclusions as regards the legitimacy of the relevant order, institution or authority.

However, the difficulty consists in observing and measuring expressions of legitimacy. Scholars interested in empirical legitimacy have sometimes equated it with the terms support or acceptance and compliance. Although they include legitimacy, these concepts are broader. On the one hand, the support or acceptance of a political order can be based either on legitimacy (i.e. normative evaluations) or on other types of assessment such as rational calculations of self-interest or prudence in face of coercion. These mechanisms, though, only lead to the acceptance of authority in the presence of incentives or threats (Steffek 2003: 254). On the other hand, compliance is what results from support and legitimacy. It has been argued that compliance is more durable if underpinned by moral reasons, i.e. legitimacy (Beetham 1991: 28). Hence, empirical legitimacy is a specific type of reason for acceptance or support, and compliance is the empirical phenomenon that we can observe. From the simple observation of compliance we thus cannot conclude that rule addressees hold legitimacy beliefs (Steffek 2003: 254–255). Nonetheless, it has to be admitted that in empirical research acceptance and legitimacy are often difficult to distinguish, and in the end interpretation may rely on the researcher (Hurrelmann et al. 2007b: 7–8). Disputes over legitimacy in this context thus may be characterized by different positions regarding the interpretation of legitimacy expressions.

Another mayor difficulty with regard to empirical legitimacy concerns the fact that we can only observe legitimation by individual actors, based on *individual* evaluations of the institutional features of the legitimated object. However, legitimacy concerns the accordance between institutional features and *collectively* held norms and values. Thus, to make any conclusion as regards the legitimacy of a specific institution, the researcher must aggregate individual perceptions and evaluations.

In a nutshell, there are two different research strategies for determining legitimacy (see Table 2). On the one hand, a scholar might through philosophical reasoning deduce the criteria that *should* be relevant to an assessment of the legitimacy of a specific object. He then poses his individual perceptions of justifiability at the center of his research. However, this approach often entails the claim in that the norms which are deduced by philosophical reasoning are shared (or should be shared) by a relevant constituency. On the other hand, a scholar may base his legitimacy research on individual beliefs and perceptions of legitimacy by members of the relevant constituency to find out which are the criteria that are in fact used to assess the legitimacy of a specific object. Their individual opinions are aggregated to allow for conclusions regarding the overall legitimacy of an institution.

Approach to legitimacy	Focus of research	Research strategy	Collective element of legitimacy is taken into account through...
Normative-prescriptive	Individually deduced norms	Philosophical reasoning	Context-sensitivity or claim of universal validity
Empirical-descriptive	Perceptions by members of the constituency	Observation of legitimacy expressions	Aggregation of individual perceptions

**Table 2: Comparison between normative and empirical approaches to legitimacy. Source: author’s elaboration.**

However, I argue together with Brassett and Tsingou (2011: 5) that “a stark distinction between normative and sociological legitimacy is no more than an analytical device”. Political philosophers who work on normative legitimacy do themselves take part in societal legitimation, and they may contribute with their arguments to the (de)legitimation of authority. Normative scientific discourse can be understood as part of a legitimation process that influences empirical legitimacy (Føllesdal 2007: 220). The distinction between normative and empirical approaches thus points to the fact that “social scientists, or other political actors, can be both authors and observers of legitimacy evaluations” (Barker 2007: 20–21; see also Hurrelmann et al. 2007b: 3). Moreover, one might assume that the reasons of communities for accepting an institution, actor or a rule as legitimate probably overlap to a significant degree with those normative arguments and justifications that highlight why these institutions, actors or rules deserve morally grounded support (Bernstein 2011: 20). In other words, empirical legitimacy and normative convincing reasons stand in a close relationship to

each other. Therefore, results obtained by one research strategy may serve to counter-check and complement results obtained by the other approach.<sup>44</sup>

### 2.1.3 Legitimacy in global governance

Whereas legitimacy is already difficult to capture and handle with regard to the nation state, it becomes even more blurred when applied to the transnational sphere. For example, from a normative perspective on legitimacy, the question of what constitutes the adequate criteria against which the legitimacy of global policy-making has to be assessed has been far from uncontroversial. Today many political scientists see a strong linkage between legitimacy and democracy. According to a common argument, legitimacy requires democracy because it is the central principle in contemporary politics that legitimates authority (Westle 1989: 22; Bernstein 2011). However, it is an open debate whether democracy is best served by strengthening the sovereignty of states, or by enhancing citizen participation in global policy-making.

Traditionally, states have been considered to be the only source of legitimate global rule-making (Held & Koenig-Archibugi 2004). As regards this point of view, global governance is legitimate in so far as states – as the constitutive entities of the international system – decide about and control global politics. Options for strengthening the legitimacy of international governance therefore could include greater transparency of international organizations towards governments as regards their operations and decision-making, as well as enhanced accountability, participation, and fairness among states (Woods 1999: 41). However, it has also been argued that cooperation and delegation by states could only confer legitimacy to international governance to the extent that states are democratic and that consent is on-going. What is more, even under these conditions ongoing consent by rights-respecting democratic states might be not sufficient to guarantee legitimacy, given that governments are accountable only to their own citizens, and not to those affected by their decisions (Buchanan & Keohane 2006: 412–416).

Another group of authors suggests that ultimately, legitimacy may only be granted by individual citizens. Self-determination should be realized at the global level through

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<sup>44</sup> For example, an empirical approach to legitimacy might ask whether philosophically deduced norms are in fact held by relevant stakeholders. In turn, a normative work might ask whether empirically held criteria of acceptability are in fact convincing from a normative point of view.

enhanced possibilities for participation, for example through regional parliaments such as the European parliament, referenda, or the opening up of IOs to enhanced public scrutiny and agenda-setting as well as accountability (Held 2003: 476–477). It is in this context that the establishment of participation mechanisms for non-state actors is being discussed as a way to increase the legitimacy of global governance. For example, Dingwerth (2007) proposes a set of criteria for evaluating the legitimacy of private global governance mechanisms deduced from theories of democracy beyond the state. He suggests that participation, inclusiveness, democratic control, and discursive practice are important elements for evaluating the legitimacy of transnational governance arrangements, and concludes that private transnational governance may at least be as legitimate as international rule-making by states.

Others have suggested that governance arrangements beyond the state might have to be evaluated according to other, substantive criteria than according to their democratic potential. For example, with regard to the European Union (EU), some scholars have argued that non-majoritarian and post-parliamentary standards and models of accountability may be appropriate (Føllesdal 2007: 221). While a group of authors warns that any application of criteria distinct from those used to evaluate the legitimacy of states might lead to a weakening of democratic standards (Hurrelmann et al. 2007b), others argue that the domestic analogy is misleading given that relationships of international domination fundamentally differ from domination exercised by the state over its citizens (Steffek 2003: 259). Again others have integrated different approaches into a complex normative standard of legitimacy in global governance; in this view, legitimacy requires ongoing consent by democratic states, the fulfillment of substantive legitimacy criteria including respect for basic human rights, comparative benefits, and institutional integrity; and lastly, the enabling of continued informed and principled contestation and critical revision of activities by civil society actors (Buchanan & Keohane 2006). It thus becomes clear that, depending on the general premises a researcher makes, she may convincingly argue for very different criteria of legitimacy.

Moreover, it has also been suggested from a normative point of view that legitimacy requirements may vary according to the specific circumstances and over time. There might be topics and policy areas which are especially prone to broad cooperation, while in other issue areas more restricted circles of participants could be legitimate. For example, it has been pointed out that in technical issues such as telecommunication,

decision-making of smaller groups of experts might seem suitable, while other more political issues require broader participation (Tamm Hallström & Boström 2010: 5–6). Additionally, it has also been argued that different legitimacy standards apply to organizations according to the stage of the policy process in which they are active and their respective activities (Beisheim & Dingwerth 2010: 94–95; Erman 2018). What is more, it has been suggested that normative yardsticks of global policy-making are currently undergoing a process of change. Whereas traditionally legitimacy was conceived as being the result of uncoerced interaction between sovereign states, nowadays new norms are on the rise putting emphasis on criteria such as inclusiveness, transparency, accountability, and deliberation (Clark 2007: 209-210; Dingwerth et al. 2015).

In turn, for scholars taking an empirical approach to legitimacy the relevant question is on which (morally justifiable) grounds constituencies accept and support transnational institutions. Generally, the fact that we can observe expressions of compliance and support towards inter- and transnational institutions has been taken as an indicator for the relevance of legitimacy at the global level (Steffek 2003: 257). Moreover, Ian Hurd (1999) argues that there is no plausible reason why legitimacy as one of the mechanisms of social control (the other two being coercion and self-interest) should not exist internationally, when its relevance is admitted for national political systems. In this regard, recent research suggests that the bunch of governance beyond the state neither counts with strong democratic legitimacy nor suffers from severe legitimacy crisis, but is characterized by more ambivalent “precarious legitimacies”; these are characterized by the parallel and often contradictory justification and criticism of different layers and elements of the respective institution by various individuals and constituencies (Nullmeier et al. 2010). However, it has also been argued that individual transnational institutions especially in the area of global health governance enjoy solid legitimacy (Huckel Schneider 2009). Generally, it has been suggested that concrete legitimacy requirements of policy-making beyond the state vary between different forms of governance and issue areas as the respective values and norms of constituencies differ, and are currently subject to change (Bernstein 2011: 41-42).

Thus, both strands of research on normative and empirical legitimacy of global policy-making suggest that legitimacy beyond the state is by tendency unstable and in a process of transformation. At the same time, new norms of legitimacy and criteria for

moral acceptability beyond those depending on state sovereignty are in the process of gaining broader acceptance. However, the concrete degrees of legitimacy of real-world transnational institutions seem to depend on the exact conditions and institutional features of global policy-making, and the current scientific discussion – including this dissertation – intends to specify these conditions which shape legitimacy.

In this dissertation, I opt for an empirical approach to legitimacy. This is mainly due to my main research interest: While it has been argued from a normative point of view that the participation by movements and organizations of affected peoples strengthens the legitimacy of global policy-making, I ask empirically whether it has in fact led to higher morally grounded acceptance as perceived by pertinent constituencies. In other words, I ask whether the good normative reasons that exist for justifying APO participation are in fact shared by relevant actors in the field. Additionally, empirical approaches have the advantage of being able to capture the dynamics of legitimacy creation and to disclose potential disputes over legitimacy. Thus, empirical research might not only assign a degree of legitimacy to an institution, but is able to highlight different preferences and evaluation yardstick of various constituencies.

## **2.2 Observing legitimacy**

Now that I have presented the concept on legitimacy that I rely on and argued for using an empirical approach for answering my research question, the next section will serve to operationalize the concept.

### **2.2.1 Methods to observe empirical legitimacy**

Three different methods have been used to measure empirical legitimacy: public opinion research (the attitudinal dimension), the observation of affirmative political action or contention (the behavioral dimension), and analysis of public communication (the communicative dimension). These methods should be considered as complementary rather than competing as each of these methods has its particular strengths and weaknesses (Schmidtke & Schneider 2012: 229).

Public opinion research has been broadly used during the last decades as a tool for analyzing the legitimacy of western democracies. It submerges into legitimacy beliefs through surveys that ask citizens about their support for a political regime and their

evaluation of authorities.<sup>45</sup> It is assumed that support derives from the individual evaluation of greater or lesser difference between the norms and demands of citizens, and the perceived reality (Westle 2007: 115). In this perspective, support, and more specifically legitimacy, is conceptualized as a quantitatively measurable attribute of political orders or institutions, and is operationalized as the aggregate of individual responses to survey questions (Schneider et al. 2010: 20). Apart from measuring legitimacy attitudes, public opinion research also tries to shed light on motives and criteria for them (Westle 2007: 115). It has been applied in regularly conducted official public opinion surveys such as the Eurobarometer (Schneider et al. 2010: 19).

Probably its biggest advantage is that indicators are easy to quantify; results take the form of numbers which renders possible a comparison of legitimacy attitudes between countries, between different societal groups, or at different points of time. Thus, over the years research has generated an abundance of highly reliable data on individual legitimacy beliefs especially as regards the democracies of the Western world (Schneider et al. 2010: 19). However, the attitudinal approach also has some shortcomings. As regards the operationalization of the method, it is highly complex to differentiate between genuine legitimacy convictions and more specific output-oriented attitudes and evaluations of day-to-day politics. As a result, studies have often confounded these two variables (Westle 1989). Apart from questions of operationalization, the public survey method does not rely on natural data, i.e. real-world legitimation, but collects data in a decontextualized encounter between the interviewer and the respondent that is “far removed from the actual practices that underpin the legitimation of political systems” (Schneider et al. 2010: 24). A typical questionnaire preselects certain objects and criteria for legitimacy beliefs which respondents are asked to evaluate; this obscures the fact that some people may not hold genuine legitimacy beliefs at all, and impedes the detection of unexpected legitimacy criteria as well as the consideration of the concrete phrasing and justification of legitimacy beliefs (ibid.: 22).

A second method which has been broadly used is the study of political action. From this perspective, legitimacy is socially constructed through actions of consent, while it may

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<sup>45</sup> For an overview over conceptualizations and the operationalization of political support, as well as problems concerning its measurement and interpretation see Westle (2007).

equally be weakened through dissent. Various forms of conventional and unconventional behavior as well as political rituals qualify as indicators of legitimacy. Thus, voting or paying taxes, lobbying and obeying the law – “the normal actions of citizens” – or rather choosing not to do these things might be interpreted as indicators of legitimacy or of the challenging and withdrawal of legitimacy respectively (Barker 2007: 32). Moreover, the repertoires of contention of social movements such as demonstrations or other forms of manifest protest and unconventional collective action should be taken into consideration as indicators (Haunss 2007: 171). One advantage of this approach is that many of the respective indicators are easy to observe and even quantifiable (Schneider et al. 2010: 25).

However, behavioral indicators of legitimacy are often ambivalent. It is highly difficult to separate legitimacy from coercion and self-interest, as the observable results, namely compliance, are identical (Hurd 1999: 390). Thus, political action might be triggered by completely different motivations which may not be tied to normative criteria, i.e. legitimacy evaluations at all. Moreover, one cannot assign an unequivocally legitimating or delegitimizing character to most forms of political action or contention. For instance, abstention from voting might be interpreted as an indicator for a legitimacy deficit of a certain government, but also as the positive evaluation that all possible candidates equally satisfy one’s preferences (Schneider et al. 2010: 28–29). The decline of the European referendum by French voters in 2005 has been interpreted not only as a sign of missing legitimacy, but also as evidence of strong European citizenship (Barker 2007: 31). Moreover, observing political action fails to tell us which specific elements of political orders are the objects of (de-)legitimation. However, it may be very relevant to know whether actual dissatisfaction is tied to a specific event or decision, or whether it refers to the functioning of an institution at a more general level (Schneider et al. 2010: 27). An analysis of political behavior thus seems especially promising when actions are accompanied by discursive strategies, such as in many mobilizations by social movements. When social movements verbally frame their actions, they often use legitimation and delegitimation to make their point (Haunss 2007: 169). These discursive strategies allow for a better interpretation of actions.

More recently, growing attention has been paid to the communicative dimension of legitimacy as a third method to study empirical legitimacy. This research strategy focusses on the role of public communication in the creation and maintenance of



legitimacy. The underlying assumption is that legitimacy is essentially a linguistic phenomenon; in other words, legitimacy is constructed through legitimation discourses (Schneider et al. 2010: 32). In the same vein, Steffek (2003: 263) states: “‘Reasoning’ or ‘giving reasons’ is the communicative process that legitimates governance.” The discourse perspective highlights discursive interaction between the rulers and the ruled as an expression of legitimacy, thus strengthening a relational understanding of legitimacy. Moreover, it is argued that in any legitimation discourse a set of arguments and interpretations exists on which individuals draw in forming their own legitimacy beliefs, and to which they contribute (Schneider et al. 2010: 35). Collective norms and individual perceptions thus mutually constitute each other. Research allows considering the social context in which statements are made. Thus, i. a. discursive coalitions which bring forward similar arguments and discursive elites which dominate legitimation discourses may be identified (ibid.: 34).

The main disadvantages of this approach are a result of its comparatively recent development. Public communication analysis is a comparatively intricate endeavor for which no standard procedures exist so far. This results in a lack of comparable data (Schmidtke & Schneider 2012: 237–238). The necessary sampling of texts also confronts the researcher with challenges regarding representativeness and generalizability (ibid.: 238). Additionally, it has been argued that discourse analysis fails in distinguishing between strategic and moral arguing. In some cases, the motive for engaging in discursive delegitimation may lie in general dissatisfaction or in a conscious utilitarian assessment of what furthers one’s interests, rather than in notions about what is just and fair (Mulligan 2006: 366–367). Two reasons weaken this last critique: first, (de-)legitimation, to be successful, must appeal and allude to collective norms. Independent of the underlying motivations, legitimation statements thus tell us about collective normative benchmarks. Second, as argued above, legitimation confers legitimacy. This remains true as long as the motivations behind legitimation statements are not openly challenged as amoral, which in turn would make it easy for the researcher to detect them. Thus, the “‘giving of reasons’ is an important political act, notwithstanding the fact that such statements might be disingenuous” (Hurd 1999: 391).

In this dissertation, I have opted for a combination of analyzing public communication and behavior. Both methods look at processes of legitimation – understood as actions of seeking and granting legitimacy in authority relationships – as they take place in the real

world. Legitimation has the advantage that – in contrast to legitimacy – it can be observed (Schmidtke & Schneider 2012), and it allows for insights into *how* legitimacy is being constructed. Legitimation comes in two forms: discourse and action. I argue that we only get a complete picture of legitimation when we take into account both dimensions. Both methods complement each other, and the results gained from one method may serve to countercheck results obtained from the other, thus allowing for more solid conclusions. For example, to detect whether constituencies are only paying lip service, it might be interesting to also analyze their actions. While this might be too time-consuming in other projects, it seems fairly viable when researching the legitimacy of a limited number of institutions. In other words, what I plan to do is to “connect the discursive level of verbal claims and argumentations with the interactional level of [...] mobilizations” (Haunss 2007: 162).

In turn, I abstain from (additionally) relying on public opinion research mainly for practical reasons: On the one hand, public opinion research has been developed in the context of legitimacy research on the political systems of nation states, especially in pluralist democracies; and only in very few cases has it been transferred to the global sphere (Huckel Schneider 2009: 149). Thus, research cannot rely on data which is generated by other institutions such as the Eurobarometer by the European Commission. Moreover, it is a quite different task to assess the legitimacy of transnational institutions. The field-tested survey questions and indicators do not work in this case, and developing indicators and a questionnaire would have been time-consuming and complex. At the same time, due to the specific context in which data would have been generated, it would not have been easily comparable to existing data sets. Moreover, as in any case I conducted interviews with central representatives of the field which also allowed some insight into attitudes (see Appendix), the expected limited additional insights of a full-fledged opinion survey did not seem to warrant the extra effort.

### **2.2.2 Observing legitimacy through legitimation**

As I rely on legitimation, the following paragraphs serve to highlight the relationship between legitimacy and legitimation. I understand legitimation as purposeful attempts of seeking and granting legitimacy in authority relationships. Legitimation is important because it can confer legitimacy, while delegitimation might weaken it. As highlighted

above, legitimation takes place through behavior and speech acts. On the one hand, political actions may be forms of (de)legitimation. For example, typical modern legitimation procedures through which authority may be legitimated are elections or other participation mechanisms (Beetham 1991: 12). On the other hand, (de)legitimation may also take the form of discourse: “Actors establish their legitimacy through the rhetorical construction of self-images and the public justification of priorities and practices, and other actors contest or endorse the representations through similar rhetorical processes” (Reus-Smit 2007: 163). Hence, legitimation is essential to the cultivation and maintenance of an institution’s legitimacy. In this regard, an institution’s legitimacy is only established and maintained when its structures, procedures and results resonate with the normative expectations of their constituencies. At the same time, the respective norms, rules and principles that provide the grounds for legitimacy are constantly challenged and reconstructed through acts of legitimation. Through legitimation processes, the respective constituencies might internalize new norms and reconceive their attitudes accordingly. Legitimacy is thus socially constructed. This also implies that it is not a stable institutional feature, but may vary over time. The central question thus becomes how legitimacy is (re-)constructed, transformed, maintained or eroded (Beetham 1991: 103; Tamm Hallström & Boström 2010: 160).

Political actors engage in practices of legitimation because they seek legitimacy for themselves and their preferred institutions. Similarly, actors might engage in de-legitimation of the institutions that do not fit their norms and values. The purposeful and conscious engagement of these actors in creating, securing, criticizing or destroying institutional legitimacy has been described as politics of legitimation (Geis et al. 2012). Hence, legitimation is characterized by actors seeking to justify or challenge institutional designs, interests, or practices; these justifications and challenges constitute legitimacy claims (Reus-Smit 2007: 159). Legitimation occurs from below when the ruled regularly assess the authority to which they are subject; from above when the powerful engage in legitimating themselves; and horizontally by actors who are not a direct target of a legitimacy claim such as by a competitor organization in the same policy field (Bexell 2014: 292).

When actors evaluate institutions and engage in legitimation, they make reference to very different institutional principles and characteristics. Each institution thus has its

very specific legitimation resources (Nullmeier et al. 2012: 19) on which constituencies draw. These are specific institutional elements which can be related to institutional performance (output-legitimacy), processes (input-legitimacy), or substantive values (such as respect for human rights). In turn, the normative values highlighted in the respective context might differ considerably. Affectedness as a participation criterion in this context can be understood as an input-related legitimation resource.

However, who creates and constructs organizational legitimacy? Generally, those constituencies who are affected by institutional decisions are often considered relevant actors in conferring legitimacy to an institution. Thus, it has been argued that “[w]here one needs legitimacy will depend [...] upon where one seeks to act, and the relevant constituency will be determined by that realm of political action” (Reus-Smit 2007: 164; see also Tamm Hallström & Boström 2010: 25; Bernstein 2011: 19). Empirically we can observe that nowadays an ever broader set of legitimating constituencies including member states, relevant donors, civil society, other international organizations, expert communities, the media etc. engages in challenging and justifying international organizations, resulting in very diverse audiences for the legitimacy communication by these institutions (Dingwerth et al. 2015).

However, it has been suggested that empirically not all constituencies might be equally important in the construction of legitimacy. Instead, there might be different layers or groups within the legitimacy granting population which need to be ranked by the intensity of their interactions with the pertaining institution. For example, with regard to what he calls non-state market-driven governance systems at the international level, Cashore (2002: 522-512) distinguishes between immediate and general audiences. While the former consist of those organizations with a direct stake in the policies and procedures of the governance system and their cooperation is needed in its day-to-day work, the latter are made up by those groups with a less direct role and mainly become relevant in the context of long-term durability of organizational legitimacy.<sup>46</sup> It has also been argued that some constituencies such as the media or public elites might be

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<sup>46</sup> In a similar vein, it has been suggested with regard to the legitimacy of states that the immediate audience – those who are required to directly collaborate with the rulers, which in the modern state often are the state bureaucracy and its coercive forces – is more important in granting legitimacy than the general population. The general audience only indirectly affects the legitimacy of the respective institution through the effects their values and actions have on the immediate audience. However, in the long run the state cannot be immunised from an erosion of regime legitimacy in the eyes of the general population (Beetham 1991: 32–33).

specifically relevant due to their role in shaping public legitimation processes (Schmidtke & Schneider 2012: 238).

At the same time, it has been pointed out that legitimating constituencies do not exist independently of the specific institution whose legitimacy is being discussed, but are being created in a process which involves both the making of legitimacy claims by governing bodies, and the justification of and challenges to these claims by the targeted audiences or other actor groups (Bexell 2014: 297). This requires that actor groups functionally need to be able to engage in legitimation. In this regard, Jonathan Symons (2011) argues that a broader set of criteria determines which groups become relevant for creating, maintaining or challenging institutional legitimacy. While he concurs that institutional impact on actor groups is relevant, he suggests that perceiving an institution as important and salient as well as the means and willingness of constituencies to organize and engage in legitimation are equally important. This implies that diffuse constituencies are less likely to engage in (de)legitimation.

These arguments suggest that for research on empirical legitimacy, it is most promising to look at the immediate audience of an institution. In the specific case of UN Indigenous affairs, I suggest that it is especially promising to look at those constituencies that participate as members and observers in Indigenous-specific UN institutions. These actors directly cooperate with both the PFII and EMRIP, and are important participants at sessions. Therefore, they are especially important in granting legitimacy to the respective institution. Moreover, through their accounts about the proceedings to the organizations they belong to, these individuals impact on the formation of legitimacy beliefs of a broader audience. Lastly, they form determinate constituencies which are organized and able to engage in legitimation.

In this context, it is also important to remember that legitimating constituencies are highly diverse, and thus might have different or even contradictory preferences and demands towards an institution (Dingwerth et al. 2015). Conflict is not only to be expected between, but to some degree even within certain constituencies, which may form sub-constituencies according to common identities (such as between Northern and Southern NGOs). Actors engage in disputes about what constitutes normatively appropriate political regimes, actors, and decisions. More specifically, conflicts may arise regarding the normative yardsticks against which the appropriateness of concrete

institutions or policies has to be evaluated. This is due to the fact that legitimacy may have many foundations, meaning that different normative values might be highlighted by different actors, for example when evaluating a certain order with regard to effectiveness or with regard to its democratic qualities. On the other hand, conflicts may also arise regarding the concrete meaning of these normative yardsticks, as many of them are characterized by a high degree of indeterminacy (Dingwerth & Weise 2012: 101–102). In this regard, it is very probable that different individuals or actor groups hold distinct norms and consequentially might place different priorities on different aspects (Cashore 2002: 511), which might result in distinct evaluations about an institution's legitimacy. "Establishing legitimacy can therefore be characterized as a *continuous* and *intensive* negotiation and framing struggle among stakeholders that do not necessarily share the same perceptions and interpretations" (Tamm Hallström & Boström 2010: 160, emphasis in the original). Global institutions seeking legitimacy will thus very likely be confronted with the necessity to accommodate conflicting expectations (Scholte 2011: 113). Moreover, with the increasing diversity of participants in pluralist global governance, the potential for conflict and tensions arising from diverging interests will presumably even be enhanced (Bexell 2014: 297).

In short, observing legitimacy through legitimation means focusing on the processes through which legitimacy is constructed. It implies looking at the conscious acts of several constituencies who engage in possibly competing accounts about institutional legitimacy, and might draw on different legitimation resources. Observing legitimacy through legitimation also means highlighting it as a dynamic process rather than as a stable institutional feature. In other words, the focus of the analysis is not "is there legitimation?" or "is this system legitimate?" but rather "what kind of legitimation, by whom, in what variety of ways, and what variety of roles?" (Barker 2007: 33). Still, while an analysis of legitimation processes is highly interesting as such and is becoming a research field of its own, these instances of legitimation also allow for more general inferences about the legitimacy of an institution. The remainder of this chapter will highlight how I will proceed to do this.

## 2.3 Assigning a degree of legitimacy to an institution

The central questions to be answered in this section are: Which legitimization acts are going to be taken into account? And how can we make inferences regarding a degree of legitimacy from single legitimization acts? Therefore, the following passages will deal with the collection and interpretation of data with regard to communicative and behavioral legitimization, as well as the definition of thresholds between degrees of legitimacy.

### 2.3.1 Analyzing public communication

To analyze public communication, in a first step relevant legitimacy related communication has to be identified. I will first determine from which actors legitimization will be taken into account and argue for a set of criteria which serves to select texts by these actors. I will then highlight how legitimization statements will be identified in the selected texts, and suggest how these instances of legitimization might serve as indicators for a specific degree of legitimacy.

I have argued above that one should specifically look at the actors directly involved – members of Indigenous organizations and nations, state delegates, and staff of IOs and NGOs – for an analysis of legitimization. In this regard, Schneider et al. (2010: 38–39) mention parliamentary debates, party manifestos and press conferences as possible interesting sources for texts containing legitimization.<sup>47</sup> Transferred to my object of study

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<sup>47</sup> The other two sources which the authors mention are newspaper articles and academic discourse (Schneider et al. 2010: 38–39). The authors themselves rely on quality press newspaper articles; they point to the relevance of the media in legitimization discourses by arguing that “the voices and claims that might be prominent in more limited spheres of communication must be successfully fed into – or taken up by – the media to reach and influence the wider public” (ibid.: 39). However, ordinary newspapers report on Indigenous issues at the United Nations only under very exceptional circumstances. For example, a query at the digital archives of the online version of the New York Times found only seven results for the search term “Permanent Forum on Indigenous Issues” (nytimes.com, query realized at 04.02.2017). Given that the Permanent Forum meets in New York each year, this was the quality press newspaper I supposed would probably have most results. Another option would have been to rely on specific Indigenous newspapers. While there are in fact a couple of Indigenous newspapers such as the Native American Times (USA), or Koori Mail (Australia) which address the entire Indigenous population of a country, even these newspapers do not report on UN institutions dealing with Indigenous issues on a regular basis. For example, a search on Native American Times found only 9 results to the search term “Permanent Forum on Indigenous Issues” (query realized at 04.02.2017). Other smaller newspapers often do not reach beyond specific communities. Some do not have digital archives or a search option on the Internet page, so data was not easily accessible even where newspapers existed. Moreover, it seems difficult to judge the impact some of these papers have as regards numbers of readers etc. Therefore, building my research on Indigenous newspapers did not seem to be a viable option for research. What is more, the scarce picking up by newspapers suggests that questions about the legitimacy of more specific UN bodies only reach a broader public under very exceptional circumstances.

this corresponds to analyzing statements made during sessions, strategy papers and other official documents by participants, or press statements. I suggest that in the context of this study it is most promising to look at statements made during sessions by states, IOs, Indigenous nations and organizations, as well as by members of the respective institutions.<sup>48</sup> One advantage of relying on these documents is their availability. The Swiss NGO docip (Center for Documentation, Research and Information) maintains an online archive<sup>49</sup> in which statements made during sessions are compiled. This contrasts with the availability of strategy papers and similar documents, because many IPOs do not publish official strategies or reports on their activities even if they have a website. In the same vein, for many development states no strategies regarding Indigenous peoples could be found. Even where such documents exist and contain references to Indigenous participation at the UN, they are often made for a longer period of years and therefore contain very little specific information; moreover they are highly diverse in form and difficult to compare. Similarly, there are no regular press statements by participants, except for official UN press conferences and press releases. However, these contain little specific information regarding different positions of constituencies.

Schneider and colleagues (2010: 61) explain that legitimization discourses are often tied to specific events, policies, or actors. In the course of these debates, positive and negative evaluations become more frequent, and it becomes very probable that opinions related to the issue at stake contain legitimization statements (Schneider et al. 2010: 62). In this context, they speak of legitimacy attention cycles which generally pass through five subsequent stages: (1) a prelegitimation stage before an issue attracts attention, (2) a discovery stage during which legitimacy evaluations become more frequent; (3) a

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Another option the authors suggest would be to rely on the academic discourse on legitimacy (Schneider et al. 2010: 38). An introduction into the discussion surrounding the legitimacy of participation by affected actors can be found in Chapter one. However, as I have argued there, the academic discussion is inconclusive as regards the impact of APO participation on legitimacy. Moreover, existing academic research on Indigenous participation in the ambit of the UN so far does tell us little about its legitimacy. Nevertheless, academic literature on the PFII and EMRIP was taken into account to counter-check and complement results.

<sup>48</sup> This however meant that texts were left out from organizations or states that do not participate in UN institutions on Indigenous peoples – including those who abstain from participation because they question the legitimacy of the respective institutions. In other words, this sampling strategy missed out opinions of those who more radically challenge the legitimacy of the PFII or EMRIP. Taking into account behavioural indicators will to some degree compensate for this limitation.

<sup>49</sup> <https://www.docip.org/en/our-services-solutions/documentation-center/>, accessed 25.01.2019. Statements from PFII sessions are also available at the UN PaperSmart website at <https://papersmart.unmeetings.org/>, accessed 25.01.2019.



reflection stage when legitimacy issues are debated in a more analytical way; (4) a stage of decline when the legitimacy issue at stake is either resolved (p. ex. via reform) or when the debate turns to other issues; and (5) a postlegitimation stage when the debate ends (Schneider et al. 2010: 66–67). While the discovery stage of a legitimacy problem is mostly associated with burgeoning delegitimation, (re)legitimation often gains ground (but needs not) during the reflection stage (ibid.: 64).

Following this approach, I suggest focusing the analysis on specific events for which intense legitimacy-related discourses can be expected. Both the Expert Mechanism and the Permanent Forum recently undertook a review of their mandate and their functioning, respectively. The debate surrounding these processes seemed to be a valuable source of data, as any review of an institution will contain references to its perceived strengths and weaknesses. While reform is being discussed, it can be assumed that the debate with regard to both institutions was at least in stage 3 (reflection) or 4 (decline). Institutional reform is a form of legitimation politics, which is often characterized by legitimacy conflicts (Nullmeier et al. 2012: 25). This means that many of the respective statements will probably contain legitimacy evaluations. In other words, focusing on a time-frame in which institutional reform was at stake provides an opportunity for selecting most relevant texts. For my analysis of legitimacy, I thus selected statements made by participants during sessions which focused on institutional reform.<sup>50</sup>

In the selected texts, the researcher then has to identify those phrases which contain legitimation. Thus, all sentences have to be selected that fulfill several criteria: First, statements must contain a positive or negative evaluation. Second, they must be tied to some sort of explanation or justification of that evaluation. And third, they have to be generalized, i.e. not directed towards the day-to-day functioning of the respective institution (Schneider et al. 2010: 42–43). These more specific phrases, when stakeholders tie the perceived deficiencies of an institution to specific actors, occurrences or policies are not taken into account because legitimacy evaluations of an institution to some extent transcend specific occurrences or adverse acts (Suchman 1995: 574). In other words, citizens may maintain their general legitimacy evaluations

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<sup>50</sup> More specific information regarding the sampling strategy can be found in the Appendix to this dissertation.

of an institution for a while even if unsatisfied with specific decisions or individual mandate holders, as long as the policies generally remain consistent with the underlying values and objectives (Føllesdal 2007: 220).<sup>51</sup> Thus, in a first step all legitimation statements will have to be identified and their gist captured in a formalized way (Schneider et al. 2010: 42). For an example of discursive legitimation described with the help of such legitimation grammar, see Table 3.

<i>Original text:</i> I would like to express our full support to the Permanent Forum which plays a key role in promoting respect for indigenous peoples' rights (Nordic States 22.05.2015).		
<i>Legitimation statement:</i>		
<b>Legitimation object</b>	<b>Evaluation</b>	<b>Legitimation pattern</b>
The Permanent Forum on Indigenous Issues	is legitimate	because it is a key actor in the promotion of IP rights

**Table 3: An example of discursive legitimation. Source: adapted from Schneider et al. (2010: 43).**

Still, it remains an open question “*how much* rhetorical support would constitute enough” (Hurd 1999: 391, emphasis in the original) for an institution to be considered (scarcely, on average, or highly) legitimate. Thus, in the following I will identify indicators which will allow us to assign degrees of legitimacy to specific institutions.

The first indicator is the relative distribution of positive and negative statements. Legitimacy-related communication is generally characterized by an exchange of legitimating and de-legitimizing positions with relative balanced distributions of both (Schneider et al. 2010: 69). In other words, both the mere fact that legitimacy is an issue of debate and the incidence of some delegitimation acts have to be considered as normal rather than problematic (Schneider et al. 2010: 69). Thus, more or less equal shares of legitimation and delegitimation indicate a medium degree of legitimacy, as this is what we should typically observe. In the case of high legitimacy, one should observe high proportions, i.e. more than two thirds of legitimating statements; whereas less than one third of legitimating statements indicate a low legitimacy level. In other words, only a clear preponderance of legitimation or delegitimation may be interpreted as an indicator for noticeably high or low legitimacy levels (ibid.).

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<sup>51</sup> These types of evaluations only become relevant for institutional legitimacy when legitimating audiences regularly consider that decisions or mandate holders are not justified and start to see the fault in the general structures of the institution which do not assure that the right decisions are made, or that the right actors occupy positions.

Second, I will take into account the precise objects to which legitimacy evaluations refer (Schneider et al. 2010: 84–85). The basic idea is that one can speak of a *hierarchy of legitimation objects*; the significance of (de-)legitimation acts grows when one moves from the lower to the higher object categories (ibid.: 81–83). The least consequential objects for institutional legitimacy are evaluations of groups of actors. While assessments of individual participants are not considered as relevant for legitimacy (see above), this differs when actors are assessed collectively because of the systemic element contained: If for example Indigenous caucuses are deemed illegitimate, this seriously undermines Indigenous participation in global fora. However, importance for legitimacy is limited because changes in this regard are possible without changing the basic features of the respective institution (Schneider et al. 2010: 83). I argue that the working methods of an institution are of similar consequence for institutional legitimacy, as they represent a regular element, but can be changed without requiring a change in the foundational document of the institution.

More important for legitimacy are the core institutional structures. This refers to legitimation directed in a general way towards the procedures of the institution. Concerning Indigenous-specific UN institutions, such legitimation objects may include the general structures and procedures of decision-making such as membership and observer status; the way members are selected; the general form of reports or the form of output. Third, at an even more general level, (de-)legitimation may concern the political institution as a whole (Schneider et al. 2010: 82–83). This contains speech acts that refer to an institution in its totality; in other words, they do not refer to single features of an institution, but represent the final evaluation of the institution as a whole. Even more strongly, (de)legitimation of the principles and norms on which an institution is founded affect the legitimacy of a particular institution ‘from above’ (ibid.: 82). This refers to the question of what characterizes governance beyond the state as proper, just and rightful. With regard to the empirical case of this study, this may include the question whether Indigenous actors are justified to participate in governance arrangements beyond the state, and to what extent they should enjoy participation rights. This type of legitimation is most significant, because it is closely linked to the justification of the very existence of an institution. In other words, those who critique the norms on which an institution has been created put into doubt its very foundations.

Objects of legitimation	Examples from UN Indigenous-specific institutions
(1) regime principles	Self-determination/ Indigenous participation Affectedness Indigenous issues as a global challenge Indigenesness
(2) Institution as a whole	PFII/ EMRIP
(3) Institutional structures	Mandate Composition Competence Placement in UN hierarchy
(4) Specific features: Groups of actors/ working methods	Members Indigenous caucuses Way in which the mandate is being carried out, such as speaking preference for caucuses

**Table 4: Objects of legitimation: Aggregate categories and examples for UN institutions dealing with Indigenous issues. Source: author's compilation.**

Schneider et al. (2010: 84–85) point out that both legitimation and delegitimation might be focused on very few objects, or dispersed among many. They argue that it is “hardly possible to decide *a priori* whether the concentration of legitimacy evaluations on just a few objects is any ‘better’ or ‘worse’ for the stability of a regime’s legitimacy than a dispersal of references” (ibid.: 84). However, when taking into account the hierarchy of legitimation objects as outlined above, it is nevertheless possible to substantiate this indicator.<sup>52</sup> The higher the level to which legitimation and delegitimation are addressed, the more they have to be taken into account. Thus, an institution which is often criticized with regard to specific occurrences nonetheless might be more legitimate than an institution that is evaluated negatively rather infrequently, but with regard to its foundational principles. Hence, if legitimacy is high, we should expect legitimation to be focused on higher levels or to be dispersed, whereas delegitimation should be shifting between different objects or be restricted to lower levels. If there is a regime principle to which legitimation frequently refers, one might even speak of a “legitimacy anchor” (Schneider et al. 2010: 85). On the other hand, if legitimacy is low, legitimation should be focused on lower levels, whereas delegitimation would be spread across all levels, or be concentrated on the higher ones.

Third, as here I am interested in institutions whose core principle is participation by affected actors, I will take into account the concentration or dispersal of positive and negative evaluations with regard to the different participating constituencies. I argue that cooperation from all constituencies is needed for these institutions to function

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<sup>52</sup> This specification also works well with regard to the examples Schneider et al. (2010: 85) outline in their text.

properly. Thus, for an institution to be classified as highly legitimate, it must enjoy broad support by all central constituencies. In turn, we should typically observe positive evaluations by actors from each group with single more critical voices in cases of medium legitimacy. If however one or several groups clearly repudiate an institution, the overall legitimacy will be rated as low. Table 5 provides an overview over degrees of legitimacy and the respective indicators.

Degree of legitimacy	Distribution of positive/negative evaluations	Objects of legitimation: concentration and dispersal	Constituencies
low	Less than one third of legitimation statements	Legitimation dispersed or restricted to lower levels; delegitimation encompassing or focused on higher levels	One or several constituencies clearly disapprove of the institution
medium (“normal”)	More or less equal shares of legitimation and delegitimation	No clear, unequivocal trend observable; Both legitimation and delegitimation focused or dispersed on similar levels	Support by all constituencies but single critical voices
high	More than two thirds of legitimation statements	Delegitimation dispersed or restricted to lower levels; legitimation encompassing or focused on higher levels and/or existence of a legitimacy anchor	Broad support by all constituencies

**Table 5: Public Communication: Degree of legitimacy and indicators. Source: author’s elaboration.**

### 2.3.2 Analyzing political behavior

To determine a degree of legitimacy, I suggest looking at behavioral indicators in addition to statements. There might be important insights gained from the analysis of behavior, given that what is said during the sessions is just one part of what is happening, and might not be the only important part. For example, participants might use the scenery provided by an institution for lobbying, networking etc. In other words, attendance might be important even if no statement is delivered. Moreover, the United Nations are a space of diplomacy. Therefore, with regard to the Permanent Forum, it has been suggested that the “words expressed from the floor [...] do not always say what people mean” (Sapignoli 2017: 101). In this regard, indicators related to behavior might serve to put into context what is being said.<sup>53</sup>

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<sup>53</sup> However, it is necessary to remind the reader that the interpretation of actions is always difficult, making political behaviour a more interpretive indicator of legitimacy. This is even truer for “non-behaviour” (i.e. refraining from doing something), which may be triggered by a variety of reasons. Therefore, both dimensions of legitimation will have to be interpreted in conjunction.

Generally, indicators for analyzing political behavior have been developed to determine the stability of political systems and therefore are not useful in the context of this study. Therefore, indicators have to be developed which are more suitable for transnational institutions.<sup>54</sup> In this regard, I suggest that it is particularly interesting to look at participation patterns which can be split up into two indicators, namely attendance to sessions, which captures how many stakeholders participate; and what I call engagement, which captures the activities connected to participation. Thus, the first indicator is attention to sessions. Here, legitimacy scores depend on how many stakeholders attend sessions at all, and on how participation evolves over time. In this context, it is also highly valuable to ask whether there are relevant organizations and groups that voluntarily and consciously abstain from participation. In turn, engagement as the second indicator captures how participants make use of the rights and opportunities of access, for example by delivering statements or organizing side-events. Depending on each constituency, supportive engagement will necessarily vary as opportunities for engagement vary. However, it may include application for membership, organization of side-events and/or sending high-level participants. Moreover, engagement also includes reactions to recommendations and other demands by institutions such as by delivering written reports or other input on request. As no central enforcement agency exists on the global level, rule following has a strong voluntary element and therefore is an especially valuable indicator for institutional legitimacy. Moreover, Huckel Schneider (2009: 117) points to the participation in concurring institutions or even the creation of alternative fora for action as a delegitimizing strategy by participants.

Especially CSOs might also engage with an institution by practicing forms of non-conventional collective action, i.e. activities outside established channels for participation such as publishing and distributing pamphlets, direct confrontations, strikes, vigils and others. It has been argued that taking into account this type of actions by social movements is especially promising for legitimacy research (Haunss 2007: 171). As this type of actions probably will take place only under comparatively extreme

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<sup>54</sup> Huckel Schneider (2009: 108–122) proposes to analyze reactions by stakeholders to claims that institutions in the field of global health governance make on them such as by making use of participation opportunities. Her research is particularly interesting for my work as she is also analyzes transnational institutions with diverse membership. While she does not systemize actions as indicators of legitimacy or measure degrees of legitimacy, her analysis may serve as a first point of orientation where one might look.

circumstances, especially open protests might indicate low legitimacy levels. Lastly, as argued above with regard to legitimation statements, degrees of legitimacy also depend on the shares of participants from each constituency which show supportive behavior. This indicator thus takes into account how (lack of) supportive behavior is distributed within and between the different constituencies.

Thus, one may speak of a high degree of legitimacy if members of the relevant constituencies participate in high and/or growing numbers. In addition to delivering regular statements they provide active support for the institution, such as by sending powerful and prestigious participants, applying for board membership, organizing side-events, or providing financial support. Another form of support that stakeholders may show is reacting positively to claims made by the institution, such as by the alignment of policies as a reaction to recommendations of the respective institution (Huckel Schneider 2009: 108). Moreover, for an institution to be classified as highly legitimate, it must enjoy broad support by IPOs, states and IOs.

A medium degree of legitimacy would require that there is significant but not necessarily broad participation which remains more or less constant over time. Additionally, actors at least to some degree need to use participation opportunities they are given such as by delivering regular statements or responding to institutional demands on some occasions. The institution should also enjoy support by all constituencies, whereas single actors within the groups could show deviant behavior.

In the case of low legitimacy, we should be able to observe that important actors from all constituencies abstain from participation, and that total numbers of participating actors are comparatively low and/ or shrinking over time. Moreover, we should observe either no or very limited forms of engagement, and/or maybe even forms of unconventional political action such as protests. If constituencies prefer other institutions in the same policy field (if these exist), or if they even try to establish alternative policy initiatives this will be considered as a sign of low legitimacy. Additionally, if one or several constituencies do not show supportive behavior at all, the overall legitimacy will be rated as low. Table 6 below summarizes indicators of legitimacy with regard to political behavior.

Degree of legitimacy	Attendance to sessions	Engagement and alignment of policies	Stakeholder groups
<b>Low</b>	Abstention from participation by important actors within all constituencies; comparatively low numbers of participants; and/ or participation shrinking over time	No to very little engagement apart from occasional statements; or participation in/ creation of concurring initiatives; no alignment of policies; forms of non-conventional collective action/ protest (NGOs/ IPOs)	One or several constituencies clearly disapprove of the institution
<b>Medium "normal"</b>	Medium participation; more or less constant participation over time	Routine engagement, such as regularly delivering statements at sessions; other engagement limited to rare occasions; some & mixed reactions to recommendations	General support by all constituencies but individual unsupportive actors
<b>High</b>	High numbers of participants; growing participation over time	Outstanding, regular engagement including between sessions, such as by application for board membership, organization of side-events, sending high-level participants and/or financial support for Voluntary Fund; alignment of policies	Broad support by all constituencies

**Table 6: Political behavior and degrees of legitimacy. Source: author's elaboration.**

Summing up, this dissertation aims at establishing degrees of legitimacy by combining different methods of legitimacy research and using a variety of corresponding indicators.<sup>55</sup> Different sources of information will be used to establish and measure institutional legitimacy in accordance with the methods outlined above. The detailed methodological issues about the choice and analysis of documents for analyzing public communication as well as about the collection of information on political behavior will be explained in detail in the Appendix. A caveat is necessary: conceptual rigor and the definition of indicators cannot obscure the fact that there remains an interpretative element in the classification of legitimacy into different degrees. As legitimacy is concerned with evaluations, opinions etc., it is difficult to establish clear criteria for thresholds. However, the model developed above will help us to guide our analysis and will constitute a basis on which to justify classifications.

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<sup>55</sup> Although it has been developed with a view to UN institutions dealing with Indigenous issues, this analytical framework should be adaptable to other institutions offering participation rights to affected actors.



## 2.4 Summary

I have started this chapter with the observation that the concept of legitimacy is highly elusive, and that current IR research uses the term with very different connotations. As one solution to conceptual ambiguity, I have opted for a clear focus on empirical legitimacy and proposed to focus on processes of legitimation. This allows insights into the specific dynamics that shape legitimacy. I have then argued for a combination of methods to obtain reliable results in my analysis of legitimation and argued for a set of specific indicators.

While assigning degrees of legitimacy to specific institutions is a difficult task, connecting (degrees of) legitimacy to certain explanatory factors may be even more complicated. Access for affected actors is often mentioned as one out of multiple variables that impact on degrees of legitimacy. However, few authors have thoroughly reflected about differences in access modes, especially with regard to access as observers as compared to access as members of an institution. Thus, we will first have to specify in which ways access may differ before predicting possible effects on legitimacy. Moreover, due to the lack of established theories in this field of research, we know little about possible causal links between access for affected actors and degrees of legitimacy. Thus, additional theoretical efforts are needed in this regard. These two tasks will be at the heart of the following chapter.

## *Chapter 3*

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# *It is Taking Part that Counts? The Affectedness Paradigm and Legitimacy*

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While research on the participation of affected persons' organizations in governance beyond the state is only in its beginning, it is in fact generally assumed that it is taking part that counts: the provision of access opportunities to affected actors has been propagated as a way to enhance institutional legitimacy. This seems to be particularly true in the field of Indigenous issues, where Indigenous peoples have long been marginalized in decision-making on issues impacting on their living conditions. On the other hand, a number of more critical arguments regarding the effects of non-state actor participation more broadly have also been brought forward and caution against too optimistic appraisals of NSA participation.

In the following, I will therefore review the existing literature in order to identify assumptions about causal mechanisms that link access for APOs and legitimacy. I will proceed as follows: in a first step, I will highlight access opportunities for affected actors as one important source of legitimacy. Subsequently, I will distinguish between open and inclusive access to IOs as two basic modes of APO access and operationalize these to allow for assigning degrees of open and inclusive access to concrete institutions. The third section theorizes about the connection between access modes of affected actors and legitimacy, while the concluding part of the chapter outlines possible mechanisms linking both variables.

### 3.1 Access and other sources of legitimacy

Political science commonly assumes that legitimacy has many sources. Thus, multiple explanatory factors might account for variation in institutional legitimacy. However, genuinely empirical research which maps sources of legitimacy is rather scarce (Schneider et al. 2010: 102). Therefore, in this section I will explain why I have chosen to analyze the effects of access for APOs as one among other important explanatory factors for institutional legitimacy.

Based on Scharpf (1999: 6–12), studies on the sources or foundations of legitimacy often distinguish between input- and output-related criteria. Input-related criteria put emphasis on ‘government by the people’, that is, on institutional structures that enable participation and consensus. Output-related criteria, in turn, highlight problem-solving and effectiveness of an institution, and are referred to as ‘government for the people’.<sup>56</sup> Empirical studies have brought down this broad distinction into a more fine-grained list of criteria relevant for institutional legitimacy. For example, in her study on Global Health Institutions, Carmen Huckel-Schneider (2009: 75–86) distinguishes between the role of public actors, participation opportunities, fairness of processes and indirect participation opportunities based on transparency and accountability with regard to ‘government by the people’. In turn, she enumerates institutional purpose, problem-solving capacity, institutional approach, effectiveness and efficacy as well as efficiency as possible components or criteria of ‘government for the people’. In a study on the legitimacy of western democracies, Schneider et al. (2010: 112) even distinguish between 23 different elements on which legitimacy may be grounded.

Furthermore, it has also been assumed that perceptions which individuals hold regarding the legitimacy of global institutions might be linked to the experiences these individuals make in the domestic context, although it remains unclear how exactly domestic experiences of democracy impact on the evaluation of IOs. For example, Dellmuth and Tallberg (2015: 470–471) argue that for most people, IOs are distant organizations about which they know little; therefore, when forming opinions about them, citizens draw on experiences gathered with regard to national political

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<sup>56</sup> Zürn (1998) has added ‘throughput’ legitimacy to this distinction, highlighting right process as an important element. However, empirically structures and procedures are closely intertwined, as specific structures often go along with specific working procedures. Therefore, it is not always possible to clearly distinguish throughput- from input-related criteria (Schneider et al. 2010: 110).

institutions and to some degree extend these attitudes to the global level when evaluating IOs instead of forming genuine opinions about them. In contrast, other research has suggested that in comparison to actors from democratic states, those actors which experience weak democracy in the domestic context value the representativeness and accountability of IOs more positively as a counterbalance to repression experienced in the domestic context (Agné et al. 2015: 482–483).

If sources of legitimacy are thus highly complex, why is it rewarding to single out the effects of access? First, studies on social psychology suggest that individuals value the possibility of input more than output-related criteria: “a focus on outcomes [...] is too limited a basis for understanding how citizens evaluate political leaders and the political system. In making such evaluations, citizens focus heavily on issues of fairness, especially procedural fairness” (Lind & Tyler 1988: 161–162). Secondly, as highlighted in Chapter one, the growing incorporation of affected actors into global governance is one of the major transformations that one can observe with regard to the governance architecture. Therefore, it is empirically relevant to understand the consequences of these transformations. Thirdly, it is often assumed that participation impacts on many of the other legitimacy-related criteria. As shown further below in this chapter, participation is assumed to impact on elements such as transparency, deliberation, and effectiveness. And last but not least, the design of participation structures may be purposely designed – so knowing more about its effects as well as possible constraints may help to design and create institutions with more solid legitimacy and improve transnational governance (Hale & Held 2011: 4).

At the same time, however, it has to be kept in mind that others factors are equally relevant for institutional legitimacy. Therefore, in this dissertation process-tracing will be used to assure that observed degrees of legitimacy are in fact related to participation by APOs. Still, the impact of these other factors might reduce the generalizability of results to other policy fields and to institutions with other tasks.

## 3.2 Affectedness and access to international organizations

### 3.2.1 Conceptualizing access modes for APOs

As outlined in Chapter one, the past decades have witnessed an increasing involvement of non-state actors in global policy-making generally, and of APOs more specifically. However, there seems to be no standard model regarding the participation of NSAs; in contrast, a diversity of cooperation schemes can be observed. Therefore, corresponding research highlights that “‘involvement’ can mean very different things” (Fransen & Kolk 2007: 670). In this sense, an increasing number of studies (Boström 2006; Rittberger et al. 2008; Tallberg et al. 2013) have pointed to the importance of distinguishing between different degrees or qualities with regard to the participation of NSAs in global policy-making. The most coherent and elaborated concept for analyzing the plethora of forms of access of transnational actors to IOs stems from Jonas Tallberg and his colleagues (2013). Building on their work, I will outline my own approach to access and highlight why I additionally distinguish between open and inclusive access modes.

First, following Tallberg and colleagues (2013: 25), I use the term *access* to denominate the institutional design features which enable participation by organizations of affected people. In other words, access refers to the institutional structures which regulate the interaction between an IO and APOs (or other NSAs). In contrast, when I refer to *participation*, this describes how APOs de facto take advantage of existing structures for involvement. The term participation thus is used to describe concrete engagement of APOs through the access structures which are granted to them.

Access has a quantitative and a qualitative dimension (Brühl 2005: 272; Dingwerth 2007: 38–43; Tallberg et al. 2013: 26–27). Its qualitative dimension captures the type of rights which actors are entitled to exercise (depth of access). In turn, the quantitative dimension refers to who can obtain access (range of access). This distinction is highly relevant in practice, as in fact in many cases we observe high degrees of qualitative access for transnational actors in combination with a low degree of quantitative access, and vice versa (Tallberg et al. 2013: 96).<sup>57</sup>

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<sup>57</sup> In fact, Tallberg and colleagues (2013: 27–28) employ two additional dimensions of access, namely the codification of access, which refers to the level at which access is regulated (and thus to the difficulty to revoke access rights), and the permanence of access, which captures whether access is permanent or only

The qualitative dimension of access has often been conceptualized as a continuum. For example, Tallberg and colleagues (2013: 62–63) operate with a scale reaching from 0 (no rights) to 4 (autonomous involvement, p. ex. as full members) to categorize depth of access. I suggest that at least for the purpose of this study, one needs to further distinguish between open and inclusive access modes for affected people and their organizations. I speak of open access when APOs obtain participation rights as observers, but membership and the right to vote in governing institutions remain restricted to (governmental) members of the institution. In turn, I speak of inclusive access<sup>58</sup> when rights obtained for affected actors include decision-making rights or membership in an institution on a (more or less) equal footing with member states.

In this regard, I assume that both forms of access might have different effects on legitimacy. In other words, I presume that inclusive access is not just a stronger version of open access, but might have different functions.<sup>59</sup> For example, as will be argued below, very high numbers of affected actors with decision-making rights might lead to less effective outcomes or stalemate, whereas broad participation might be less risky when affected actors only give input to the proceedings. Moreover, empirically some institutions such as the PFII combine open and inclusive access features. Similarly, the Global Fund to Fight AIDS, Tuberculosis and Malaria has a Board which brings together different constituencies, and additionally counts with a Global Partnership Forum held every two years which brings together higher numbers of stakeholder representatives (Brown 2010: 525). This co-existence of open and inclusive access features in one institution suggests that both access options might have different functions, as otherwise it would make no sense that they exist in parallel.

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occurs ad hoc. While both dimensions certainly bear relevance in many cases, they were not taken into account in the context of this study because UN Indigenous-specific institutions do not vary in this regard. Therefore, I assumed that I would not be able to observe the effect of these dimensions on institutional legitimacy in my case study. Given that the concept of access used in this study already distinguishes between open and inclusive modes, and qualitative and quantitative dimensions, I did not want to unnecessarily complicate the concept. However, it might be worthwhile to scrutinize on the effects of codification and permanence of access on legitimacy in further studies.

<sup>58</sup> The term ‘inclusive’ is used following the concept of inclusiveness used by Rittberger et al. (2008: 18), who consider NSA membership as one defining feature of inclusive institutions. However, for them and a number of other authors, inclusiveness also implies the involvement of various types of institutional stakeholders within one institution (Boström 2006; Dingwerth 2007; Fransen and Kolk 2007), whereas here it specifies a specific type of access for NSAs, namely as members.

<sup>59</sup> The assumption that open access is not just a weaker version of inclusive access also resonates with normative approaches which have argued that open and inclusive access modes have to be evaluated differently as regards their legitimacy (Steffek 2008; Erman 2018).

### 3.2.2 Degrees of open and inclusive access

As outlined above, I assume that open and inclusive forms of access differ with regard to their effects on legitimacy. However, both concepts again encompass a variety of cooperation arrangements reaching from very weak to strong forms. Therefore, in the following section I will elaborate on open and inclusive access with regard to their quantitative and qualitative dimensions, and how these can be used to differentiate between different degrees of access.

The quantitative dimension of open access refers to the share of activists and organizations of affected people who may obtain participation rights. In other words, this dimension captures whether all potentially interested affected actors are in fact endowed with participation rights. To distinguish between different degrees of quantitative open access, one therefore needs to look at accreditation procedures as well as at existing selection criteria which APOs need to comply with to be eligible for participation (Tallberg et al. 2013: 63). Moreover, it has to be taken into consideration that many APOs encounter specific challenges with regard to their resources and ability to mobilize. Therefore, APOs often remain underrepresented in institutions which allow for NSA participation, as global inequalities are often rather reproduced than countered by them (Raines 2003). Thus, an additional indicator for quantitative openness is the existence of institutional mechanisms for the empowerment of APOs such as travel subsidies or training courses (Steffek & Nanz 2008: 12). Quantitative open access is low when the admission policy by the institution is restricted, for example by explicitly naming certain actors for participation.<sup>60</sup> It is medium, in contrast, when selection criteria by an institution are demanding and gaining access includes passing through comprehensive accreditation procedures that require extensive documentation about the activities or goals of APOs, which potentially excludes many of them. In turn, quantitative open access is high when accreditation procedures and selection criteria for APOs are rather a formality, and in practice all interested activists and organizations can gain access. Moreover, for quantitative open access to qualify as high, an institution needs to purposely reach out to its most marginalized constituencies.

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<sup>60</sup> Another example of a low degree of quantitative open access is when interacting NSAs are created by the respective IO, such as in the case of the United Nations Educational, Scientific and Cultural Organization (UNESCO) where many associated NGOs have been created by UNESCO itself (Martens 2001).

The qualitative dimension of open access covers the rights connected to participation that APOs may obtain. In this regard, I distinguish between three degrees of qualitative open access: It is low when APOs are reduced to a passive role as recipients of information, but are not allowed to provide input. Any meaningful consultation needs some forum for an exchange of views or an articulation of interests. Therefore, a medium degree of qualitative open access is reached when an organization holds special meetings for consultation of APOs, but keeps them outside formal meetings. This leaves them uninformed about the proceedings and on-going discussions between members. A high degree is characterized by active and direct access to formal meetings, including the right to speak at sessions (see Tallberg et al. 2013: 62).<sup>61</sup>

	quantitative dimension: range of access		qualitative dimension: depth of access	
Open access	low	restrictive accreditation procedures and selection criteria p. ex. by naming certain actors	low	Passive participation: APOs as recipients of information/ silent observers
	medium	Comprehensive selection criteria and accreditation procedures	medium	interaction in special meetings
	high	No or only formal admission policy and selection criteria; mechanisms of empowerment	high	Active and direct access including allowance to speak at official meetings

**Table 7: Degrees of open access and corresponding indicators. Source: adapted from Tallberg et al. (2013: 62–64).**

With regard to inclusive access, its quantitative dimension captures who can become a member of the respective institution. This includes both the number of individual actors which can function as members and represent affected people in an institution as compared to the total number of members; and the autonomy of affected constituencies in selecting who is going to represent them within an institution. Thus, I suggest that quantitative inclusive access of APOs is low when only a single actor representing

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<sup>61</sup> Both the right to attend and the right to speak in political meetings can be further divided into several sub-categories (Brühl 2005: 272–274). Non-state actors may be allowed to observe meetings from a separated room such as a balcony, or they may be admitted into the conference room, which gives them the opportunity to move freely between state delegates and lobby them. With regard to an entitlement to speak, there are differences of whether statements can be made only at specific moments of the negotiations or during the whole process, and whether stakeholders can make individual statements or only common statements of certain groups are admitted. However, I argue that the categorization proposed in this study captures the main differences, and that a more fine-grained distinction is unnecessary for its purpose.



affected people obtains membership.<sup>62</sup> In turn, it is medium when APOs make up a significant share of members, but these members either are selected by the institution and/or participate as individual expert members, as this suggest that links to the constituency are comparatively weak. Quantitative inclusive access is high when APO members constitute an important group within the total membership in terms of numbers, when variance between APO members accounts for differences within the constituency, and when they are selected by the constituency itself.

The qualitative dimension of inclusive access, by contrast, refers to the power of APOs in an institution. Power can be measured in absolute terms by looking at formal rights in the policy-making process, as proposed by Rittberger et al. (2008: 18–19). According to this approach, a high degree of inclusiveness is dependent on decision-making rights; this is considered the most important part of the policy-making process, and the part that non-state actors so far have been excluded from. The right to vote in governing bodies is used as the indicator to determine whether actors have decision-making rights. I argue that an additional dimension of power concerns the distribution of rights between members and their weight in an institution. This means taking into account whether participation rights in an institution are balanced between different actors.<sup>63</sup> In this regard, imbalances might be the result of weighted voting rights or exclusive veto rights of some actors. I argue that for qualitative inclusive access, power is relevant both in absolute and in relative terms. Thus, qualitative inclusive access is low when APOs obtain membership rights, but without gaining corresponding voting rights;<sup>64</sup> it is medium when the distribution of decision-making rights clearly discriminates against APOs; and it is high if APOs participate in decision-making on a more or less equal footing. Table 8 summarizes the indicators of inclusive access identified above, specified with regard to their quantitative and qualitative dimensions.

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<sup>62</sup> For example, within the Global Fund’s Board out of twenty voting members only one is an APO representative, see [https://www.theglobalfund.org/media/2935/board\\_globalfundboard\\_operatingprocedures\\_en.pdf?u=636679305610000000](https://www.theglobalfund.org/media/2935/board_globalfundboard_operatingprocedures_en.pdf?u=636679305610000000), accessed 29.01.2019.

<sup>63</sup> This is similar to what Brinkerhoff et al. (2011: 4) have called mutuality with regard to public-private partnerships. However, mutuality not only captures the relative power of participant groups, but also implies a “joint commitment to the partnership’s goals”. This is something not taken into account here as it is no institutional feature that can be purposely designed.

<sup>64</sup> This is for example the case at UNAIDS, whose Board does include five members from NGOs and APOs, but voting rights remain restricted to the governmental members, see <http://www.unaids.org/en/whoweare/pcb>, accessed 29.01.2019.

	quantitative dimension: range of access		qualitative dimension: depth of access	
<b>Inclusive access</b>	low	One member which is supposed to represent all APOs in an issue area	low	membership without voting rights for APOs
	medium	Several APO members, elaborate selection process by institution	medium	exclusive veto rights/ weighted voting rights etc. which discriminate against APOs
	high	Several APO members which represent differences within the constituency, selected by APOs themselves	high	APOs have equal voting rights

**Table 8: Degrees of inclusive access and indicators. Source: author’s elaborations.**

In contrast to Tallberg et al. (2013: 66–67), I purposely abstain from combining quantitative and qualitative elements of access into a composite index of access. Instead, I assume that both the quantitative and the qualitative dimensions of participation may impact on legitimacy in different ways. Thus, existing assumptions regarding the connection between APO access and legitimacy will have to be reviewed as regards the dimension of access to which they implicitly refer, as this is generally not specified. This task will be undertaken in the following.

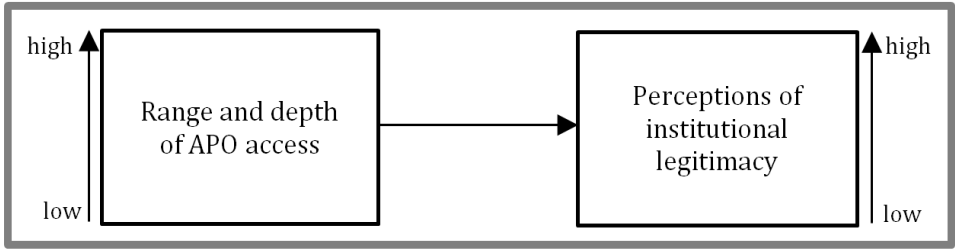
**3.3 The connection between access modes and legitimacy**

As shown above, access for APOs in its most general understanding means that an institution possesses mechanisms through which activists and organizations of affected actors may provide input into the policy process. These mechanisms may differ strongly as regards the rights they bestow upon stakeholders, and as regards the number of organizations to which they offer access. In the following, I will explore how access modes may impact on perceptions of legitimacy, and which role the different modes and degrees of access play in this regard.

To begin with, the inclusion of APOs has been propagated as a means to increase the legitimacy of global policy-making. There are basically two strands of arguments brought forward to underline the potential positive impacts of APO participation. The first one builds on improved procedures. The positions of those directly affected by global policies are considered to have high moral authority as they are authentic and based on lived experience; their inclusion thus may enhance the legitimacy of governance (Sändig et al. 2019). The moral authority of these voices is especially strong in contrast to the alternative participation by international NGOs speaking on behalf of

marginalized populations, because INGOs have been criticized as being more strongly oriented towards donor-constituencies than towards affected publics (Banks et al. 2015). These arguments also resonate with normative principles related to stakeholder democracy which suggest that those affected by global policy-making should have a say in it. The second strand of arguments builds on improved outcomes when those who are affected are enabled to participate in decision-making regarding issues that directly impact on their lives. APOs bring in new perspectives and alternative accounts which previously were not taken into account in global policy-making; this enriches policy debates. The underlying supposition is that the inclusion of previously marginalized positions leads to different outcomes which are more adequate to address the challenges faced by marginalized constituencies. As a concrete example, in the case of the UN Committee on World Food Security (CFS), civil society (and its most important representative La Vía Campesina) is said to have brought in new ideas into policy-making, shaped important debates, and impacted on key outcomes (Brem-Wilson 2017: 319).

These positive expectations regarding the institutionalized access of APOs in a certain way echo the hopes connected to cooperation between state and non-state actors more generally in the earlier literature on the subject (see p. ex. Reinicke et al. 2000: 181–182). At the same time, by specifically focusing on those most affected, APO inclusion brings in actors which in processes that focus on NSA participation more generally tend to be underrepresented, thereby enhancing institutional legitimacy. While the respective arguments neither distinguish explicitly between open and inclusive access modes nor between quantitative and qualitative aspects of access, the underlying assumption generally seems to be that the broader and deeper access, the better the institution will score with regard to legitimacy. My basic initial hypothesis is thus: *the deeper and broader APO access, the higher the degree of legitimacy of the respective institution is likely to be.*



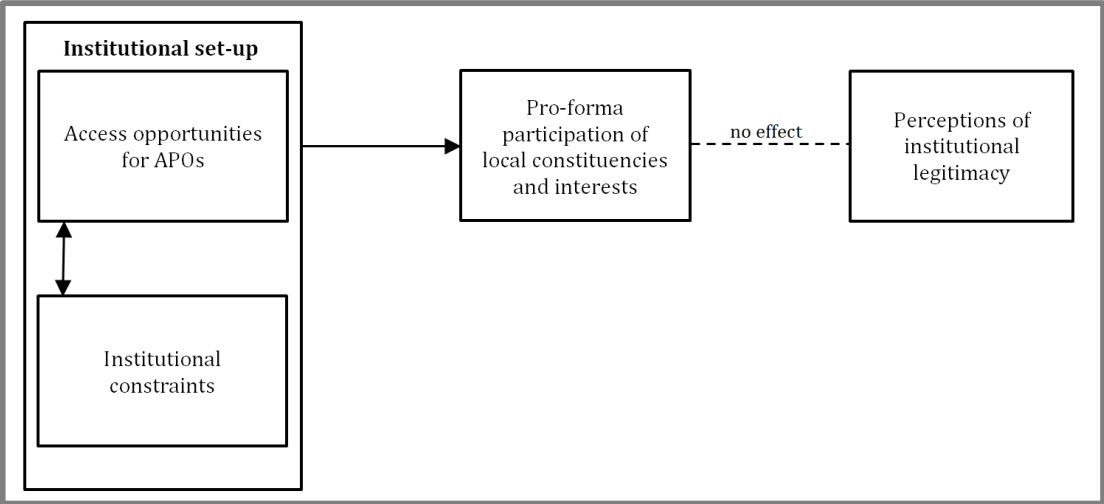
**Figure 2: Basic initial hypothesis. Source: author’s elaborations.**

However, recent research has found that the inclusion of NSAs as such does not enhance perceptions of democratic legitimacy (Agné et al. 2015). In other words, evaluations of non-state participants regarding the democratic qualities of the respective institution do not differ significantly according to the degree of access of the respective NSAs in it. Agné and his colleagues (ibid.: 485) suggest as one possible explanation for their observation that access for NSAs might in reality rather resemble pro-forma inclusion without any real ability to effectively change the course of proceedings, while states retain power for themselves. In fact, in the case of business-driven governance initiatives, civil society actors are regularly included in order to enhance institutional legitimacy, while their influence is purposely kept low (Fransen 2011). Moreover, Charlotte Dany (2014) has shown that in the case of the UN World Summit on the Information Society (WSIS), CSO influence was limited to comparatively irrelevant issues, and restricted to a select number of CSO participants. She highlights the general framing of the issue as expressed in the basic institutional agenda as well as the competencies of the body to which NSAs have access as two important external structural constraints which impeded NGO influence at the WSIS (ibid.: 428–429). Thus, she argues that access opportunities for NSAs remain heavily constrained by governance structures which are determined by states (ibid.: 433). In other words, this research suggests that access opportunities do not translate into de facto influence for NSAs. Due to their limited effect on outcomes, participants do not change their legitimacy perceptions. This also means that the institutional set-up as a whole – and of which access opportunities are only one dimension – determines the effects of participation on perceptions of legitimacy. While this research deals with non-state actors more broadly and does not look specifically at APOs, it is highly probable that the corresponding arguments are valid also in the context of APO participation in global policy-making. In fact, the challenges faced by APOs to translate access into influence might even be bigger, as they tend to possess fewer resources than NGOs (Hasenclever & Narr 2019).

A second possible explanation for the lacking effects of NSA involvement on perceptions of legitimacy might be that participating NSAs themselves recognize distortions and imbalances in their representation (Agné et al. 2015: 485). In this regard, Hanegraaff and Poletti (2018) argue that NSA access to global institutions does not positively impact on perceptions of legitimacy because relevant NSAs represent national rather than global interests and constituencies. They suggest that one central precondition

underlying the different models of stakeholder democracy is the increasing involvement of NSAs that act with global frames of reference, thus contributing to the relevance of global deliberation and trans-border solidarity (ibid.: 372-373). At the same time, relying on a broad dataset of NSA engagement in key international fora, the authors show that the increase of NSA involvement in global policy-making has not necessarily strengthened the voices of this type of actor; instead, both globalization and the politicization of IOs have resulted in increased representation of NSAs defending national interests (Hanegraaff & Poletti 2018: 388). In other words, the authors argue that the involvement and representation of national interests is unproductive for perceptions of legitimacy: “greater stakeholder involvement may fail to produce greater perceptions of democratic legitimacy because it simply does not translate into an effective representation of global stakeholders” (ibid.: 389). This argumentation suggests that APO involvement, similar to the participation by national interests, does not strengthen perceptions of legitimacy because local rather than global constituencies are the relevant frame of reference for APOs.

Consequentially, the skeptical variant of the initial hypothesis suggests that APO access modes do not impact on perceptions of legitimacy (see Figure 3). The respective hypothesis is: *The degree of APO access is irrelevant for institutional legitimacy as perceived by participants, because access comes in combination with constraints in the institutional set-up, resulting in participation without real influence on the proceedings. Moreover, the focus on local rather than global interests and constituencies by APO participants does not contribute to the development of a truly global civil society as a precondition for legitimacy.*



**Figure 3: Skeptical hypothesis. Source: author’s elaborations.**

However, we observe that both the participation of NSAs more generally and of APOs in global policy-making is increasing (see Chapter one). It seems counter-intuitive that APOs should continue to invest time and other resources into their participation if they do not consider it to have an added value. In this regard, I argue that the argumentation brought forward by Hanegraaff and Poletti (2018) contains one significant gap: They take a *normative* justification for legitimate stakeholder democracy (namely the involvement of NSAs with a global frame of reference) as a reason to explain the absence of effects on *empirical* perceptions of legitimacy. However, to prove the validity of this argumentation it would be necessary to show that significant shares of constituencies de facto share the conviction that global as compared to domestic interests should be represented by NSAs in IOs, which is by no means self-evident. Instead, as outlined in Chapter one, there are also convincing normative reasons for the participation of locally rooted organizations of affected populations. Thus, I suggest that the imbalances in representation to which Agné and his colleagues (2015: 485) make reference could equally be a result of distortions such as a lack of involvement of Southern voices and APOs. This interpretation gains additional weight by the fact that respondents to the above-cited study rated the representation of affected constituencies lowest in comparison to other indicators of legitimacy (ibid.). In other words, APOs particularly bring in the voices of marginalized constituencies; it is precisely the closeness to local populations and living conditions in which the moral authority of APOs is grounded. In this regard, it has been argued that the inclusion of actors with high moral authority may increase the legitimacy of the process (Börzel & Risse 2005: 211; Tamm Hallström & Boström 2010: 145).

At the same time, the closeness of APOs to local populations may vary. Ideally, and in accordance with the transmission belt model developed by Steffek and Nanz (2008) with regard to CSOs more broadly, APOs act as transmission belts between local affected communities and IOs, gathering local concerns and feeding them into the policy process as well as collecting information from IOs and passing it on to local constituencies. However, the degree of formalization of the relationship between APOs and local constituencies – in the sense that the former are authorized by and accountable to the latter (Montanaro 2012) – may differ. In that sense, APOs (similar to other non-elected representatives) make claims for and about an intended constituency (Saward 2010), which those interacting with them at the global level may accept or challenge. In other

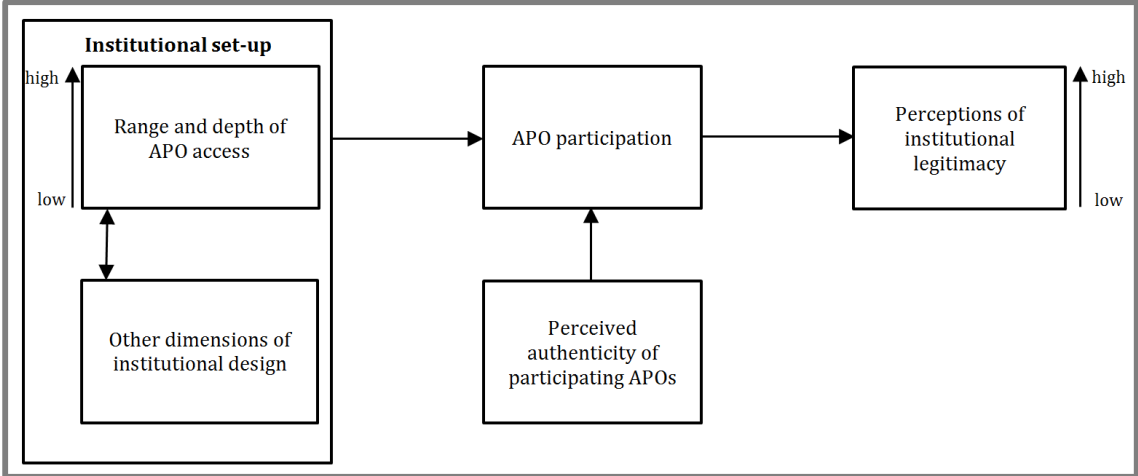
words, the authenticity and representativeness of those making representative claims (in this case APO participants) is constructed through acts of legitimation and delegitimation (Saward 2010: 153). In this context, it is also important to remember that being affected by a certain global policy also is a claim which APOs need to make in the first place (see Chapter One). Thus, I assume that the perceived authenticity and closeness to local constituencies is a variable which conditions the impact of APO access on perceptions of legitimacy.<sup>65</sup>

Second, the broader institutional design also impacts on APO participation. Formal access rules determine which NSAs can participate in an IO, and with which rights, and recent research has found that access to policy-making in fact is the single most important variable which impacts on NSA influence in IOs (Tallberg et al. 2018: 234). However, there are a number of other institutional characteristics which shape participation and condition how access translates into de facto influence. For example, Garrett W. Brown (2010) shows that apart from formal access modes, several other dimensions of institutional design can foster or diminish power asymmetries between participants. Josh Brem-Wilson (2017: 319) highlights that within the CFS with its far-reaching APO access rights, civil society participation is meaningful in the sense that it has not only introduced new aspects and concepts to the debates, but also impacted on outcomes. At the same time, he also points to the role of the respective session's chair in the implementation of APO participation (ibid.). In other words, while institutional design features other than access rights can diminish APO participation and influence, they need not. Thus, I assume that access opportunities in combination with other dimensions of institutional design shape APO participation, which in turn impacts on perceptions of legitimacy. In this context, I assume that increased depth of access positively impacts on perceptions of legitimacy, as it correlates with meaningful APO participation and influence. Similarly, I reckon that a high range of access positively impacts on perceptions of legitimacy, as this means that access opportunities are extended to all those APOs who are interested in engaging.

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<sup>65</sup> At the same time, evaluating the authenticity and closeness of this relationship is highly complicated. Local communities might not always have an opinion regarding specific issues in global policy-making; or there might be diverging opinions at the local level. Moreover, the actions and positions of representatives contribute to shaping what the represented wants in the first place (Kuyper et al. 2018: 10).

Thus, my initial hypothesis is: *The impact of degrees of access on perceptions of legitimacy is ambivalent. Access for APOs enables their concrete participation; this participation, however, is conditioned by the perceived authenticity of APO participants as well as the broader institutional setting. Only if APO participants are deemed representative and authentic, and the broader institutional set-up allows for meaningful APO participation, high(er) degrees of access for APOs will positively affect institutional legitimacy.*



**Figure 4: Initial hypothesis. Source: author’s elaborations.**

In short, the initial hypothesis suggests that open and inclusive access modes both can contribute to higher legitimacy scores. At the same time, the perceived authenticity of participating APOs as well as the broader institutional setting shape APO participation and may delimit perceptions of legitimacy. In order to gain a better understanding about this hypothesis and the causal mechanisms underlying the relationship between NSA participation and legitimacy, in the remainder of this chapter I will elaborate on the on the causal path that leads from access modes to legitimacy.

**3.4 Causal mechanisms linking access modes and legitimacy**

As outlined above, I assume that APO access – in combination with other dimensions of institutional design and conditioned by perceived authenticity of APOs – translates into concrete participation by APOs. The purpose of the following section is to identify various social mechanisms that describe in detail how APO participation subsequently may enhance the empirical legitimacy of institutions. The underlying idea of social mechanism-based explanations is to make visible, by providing a continuous chain of causal links, how through the actions and properties of relevant entities the outcome to



be explained was produced (Hedström & Ylikoski 2010: 50–51). Identifying causal mechanisms thus can play an important role in social sciences to distinguish causation from spurious correlation, and a social scientific explanation demands specification of the causal mechanisms to be fully satisfactory (ibid.: 54). Mechanisms neither rely on simple description, nor do they strive to detect universal social laws; instead, they constitute an intermediary level of analysis by focusing on observable regularities (Hedström & Swedberg 1998). The idea behind this section is to theorize about how APO access modes may be linked to empirical legitimacy. Following George and Bennett (2005), process-tracing will be used for testing and refining the mechanism-based explanations.

The talk of mechanisms is especially apt for an analysis of legitimacy, as legitimacy evaluations are made individually and therefore should vary between and to a certain degree also within the distinct constituencies. Carmen Huckel (2009: 73) has highlighted that actors engaged in institutions that allow for the participation of NSAs have different ideas about what makes these institutions legitimate. Similarly, it has been argued that “stakeholders have radically different expectations and yardsticks” (Tamm Hallström & Boström 2010: 160). Thus, whether a specific mechanism translates into legitimacy evaluations depends on the specific norms and values that an individual or a group holds, and the weight they give to different aspects of legitimacy. While some constituencies may value effective outcomes highest, others may prefer institutions with broad participation opportunities. Consequentially, while we can possibly observe regularities with regard to legitimacy evaluations, there might always be outlier cases that significantly deviate from prevailing evaluations of a specific institution. Thus, in the empirical part of this study, one also needs to explore in greater depth the precise value that different mechanisms have for different constituencies.

Several arguments in the literature identify causal mechanisms at work which link APO participation and perceptions of legitimacy. With regard to institutional procedures, three mechanisms may be identified that mirror the trichotomy of concepts of democracy, namely participatory democracy based on inclusion, representative democracy based on transparency and accountability, and deliberative democracy based

on the rationality of the debate (Bexell et al. 2010).<sup>66</sup> A fourth mechanism relies on improved effectiveness, i.e. better outcomes of the institution.

### 3.4.1 Inclusion

One of the arguments cited most frequently to explain the causal relationship between participation modes and legitimacy originally stems from social psychology. It presumes that individuals value participation per se. Thus, Verba (1961: 226) argues that “participation in a decision (or the perception of having participated) increases the degree to which followers support the decision.” Lind and Tyler (1988: 170–171) highlight that the opportunity to participate in decision-making enhances support for a political system: “The value that citizens attach to voice suggests that political allegiance is enhanced by allowing open argument about [...] policy. Allowing citizens to express their opinions and disagreements leads to feelings that fair process has occurred in decision-making, promoting diffuse support for the political system”. In this regard, access for APOs enables them to actively engage and participate in the proceedings of global institutions.

Findings from social psychology also suggest that it is especially the feeling that one’s opinion is taken into consideration which enhances institutional legitimacy: “the key to the effectiveness of voice in enhancing perceived fairness appears to be the judgement that citizens’ expressions are given due consideration” (Lind & Tyler 1988: 171). In other words, participants need to be able to openly express and defend their positions and opinions, and they need to perceive the process through which an institution comes to decisions as fair. While perceiving a process as fair does not necessarily mean that final outcomes need to completely reflect one’s position, it includes the perception that one’s participation makes a difference and is being taken into account.

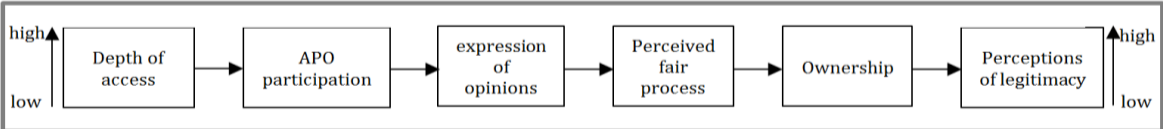
The causal mechanism which links participation and legitimacy is ownership (Beisheim & Dingwerth 2010: 79–81). Ownership refers to the emotional process of growing attached to an institution. As participants engage in an institution and repeatedly perceive institutional processes as fair, over time they consider themselves as “owners”

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<sup>66</sup> Thus, the empirical mechanisms identified reflect normative assumptions about the essentials of legitimate governance. As highlighted in Chapter two, normative approaches to legitimacy may represent a good starting point for empirical research when asking whether philosophically deduced norms are in fact held by relevant constituencies.

of the institutional process: “The logic is that participation in decisionmaking [...] gives people a sense of *ownership* in a project and a very real stake in its success” (Woods 1999: 43, emphasis in the original). In other words, participants increasingly identify with the institution and adopt it as their own. To the extent that APO participants are able to provide input to decision-making, they will develop ownership of the process and consequentially value the respective decisions and the institution itself. Moreover, there is a rational component in the development of ownership, which is linked to gathering information and being able to defend one’s interests (Beisheim & Dingwerth 2010: 80).

The notion of (local) ownership is closely linked to the participation of affected communities. Since the mid-1990s, it has become prominent in international development discourse, and in this context it is directly tied to the involvement and participation of the intended beneficiaries and other local stakeholders in the design and implementation of development initiatives; this is considered to enhance local support for the respective projects (Pouligny 2009: 6–9). Similarly, affected populations will support an institution and perceive it as legitimate when APO representatives or leaders with direct links to them participate in the institution and transmit their experiences to local constituencies.



**Figure 5: Hypothesis specified to fair process and ownership. Source: author’s elaborations.**

Beisheim and Dingwerth (2010: 79–80) argue that equal and fair rights of participation based on the representation of all interests on an equal (or at least morally justified) basis are necessary for developing ownership. This implies that open access modes may suffice to mobilize support for decisions and increase institutional legitimacy (Heiskanen 2001: 10) if they are perceived as morally justified. At the same time, the logic of this mechanism suggests that inclusive access modes will result in stronger ownership than open access modes, as members will have increased influence on decision-making as compared to observers.

In sum, the ownership-based mechanism posits that APO participants have interests which they seek to defend. They use the space gained through formal access

opportunities to express opinions and (dis)agreement. If they repeatedly experience the process through which decisions are made as fair, they will increasingly grow attached to the respective institution in the sense of developing ownership, and will consequentially generalize their support of the process, resulting in perceptions of the institution as a whole as legitimate (see Figure 5). The first hypothesis regarding the possible link between APO access modes and perceptions of legitimacy specified to fair process and ownership is thus:

*H.M1: The deeper access for APOs, the stronger perceptions of legitimacy will be. When APOs participate, they are enabled to defend their interests and thus perceive decision-making as fair and develop ownership. This results in enhanced perceptions of legitimacy.*

To test whether this mechanism is in fact relevant, one needs to look for evidence regarding each element of the mechanism. First of all, one might look for comments which highlight the importance and value of APO participation. Moreover, one should be able to show that APOs use participation opportunities to defend their interests and bring forward specific recommendations. As fair process is important, one might also look for statements which emphasize the general quality of process, or the perception that one's input was taken into consideration. Additionally, one might also look for evidence that reports or other types of output reflect significant deviating positions. The development of ownership by participants could be shown by the use of possessive determiners when referring to the respective institutions (f. ex. *our* PFII). Furthermore, as ownership develops over a relevant time-span, we should observe more positive legitimacy evaluations of long-time and experienced participants in contrast to relative newcomers. Moreover, I assume that this mechanism especially plays out with regard to APOs that gain participation rights. In contrast, governmental actors will probably take their own participation for granted. Therefore, we should be able to observe evidence for this mechanism mostly with regard to APO participants. Lastly, due to their increased influence on outcomes, evaluations of institutional legitimacy by members should be more positive than those by observers.

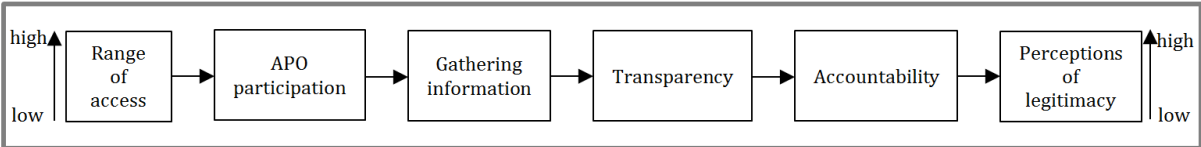
### **3.4.2 Transparency and accountability**

A second mechanism that connects APO participation and legitimacy is based on transparency and accountability. Transparency as such is considered a value by many

constituencies (Tamm Hallström & Boström 2010: 149). Additionally, transparency is considered a necessary prerequisite for accountability (Beisheim & Dingwerth 2010: 82). Accountability, in turn, is identified as a critical mechanism for assuring legitimacy: social orders are considered as legitimate to the extent that the rulers may be held accountable and controlled by the ruled (Risse 2006: 184). In the case of transnational governance institutions, the relevant accountability relationship is the one between the governing body of the institution and its constituencies, and NSA participation is suggested as a way to ensure accountability of decision-makers. In this regard, I argue that APO participation is specifically important, as it can enhance the accountability of global policy-making towards affected actors at the local level.

In this regard, the basic supposition is that access enables APOs to participate and thus enhances transparency, as APOs are enabled to collect information and pass it on to their constituencies. The information gathered allows stakeholders to better evaluate the performance of the institution as regards policies and commitments and to challenge it publicly in the case of defections. Options to hold international institutions accountable which are facilitated by transparency include legal redress, monitoring of commitments, and policy evaluations (Bexell et al. 2010: 88). Thus, constituencies may intervene and challenge an institution if it negatively impacts on their interests (Beisheim & Dingwerth 2010: 82).

However, the basic assumption is that transparency and accountability not only work as ex-post control for APOs but may also affect possible outcomes: Being under public scrutiny and having to explain and defend outcomes can work as a control factor which delimits options for decision-makers. This does not necessarily mean that decisions will completely reflect APO preferences, but that at least decision-makers need to defend and explain controversial decisions. Moreover, transparency by an institution also signals to its constituencies that there is nothing to hide, which might also increase trust in the institution (Beisheim & Dingwerth 2010: 82).



**Figure 6: Hypothesis specified to transparency and accountability. Source: author’s elaborations.**

To realize a transparent and accountable process, participation is not necessary (Beisheim & Dingwerth 2010: 82). However, in the case of participation, access to information provided by an institution will be complemented by information gathered during the process of participation. Moreover, the information gathered through one's participation will probably be considered as specifically trustworthy as it relies on personal experience. Thus, I assume that broad participation is necessary for this mechanism to function smoothly, whereas deep participation might be less relevant.<sup>67</sup>

Thus, the accountability-based mechanism assumes that when APOs (and other NSAs) gain access to IOs, they use the space offered for participation to gather relevant information on the proceedings. This automatically enhances the transparency of the process, as participants gain first-hand experiences of institutional procedures and outcomes. Due to this increased knowledge, they may more easily hold decision-makers accountable (see Figure 6). As a result, APOs perceive the institution to be legitimate. My second hypothesis regarding possible links between APO access modes and perceptions of legitimacy specified to transparency and accountability is thus:

*H.M2: The broader access for APOs, the stronger perceptions of legitimacy will be. When APOs get to participate, they can actively gather information. Consequentially, transparency is high and decision-makers can effectively be held accountable resulting in perceptions of high legitimacy by constituencies.*

In case this mechanism in fact bears relevance, we should be able to observe that information gathering is an important activity for participating APOs. For example, APOs (and other participants) might highlight increased knowledge about the content of reports, relevant discussions, or ongoing studies as one advantage connected to their participation. In turn, the institution is transparent if all relevant information is made accessible to the interested public, including statements made at sessions, (draft) reports etc. At the same time, if transparency is an important value for constituencies, we should be able to observe protests if closed meetings are scheduled. Additionally, one might look for the existence of institutional elements which lead to accountability such as internal review processes or databases of decisions to facilitate monitoring.

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<sup>67</sup> In the case of inclusive access, APO members become part of the decision-making process. In this case, they themselves need to be accountable to broader constituencies.

Moreover, I suppose that members would publicly explain and defend controversial outcomes to APO participants.

### **3.4.3 Deliberation, social learning and neutrality**

A third possibly relevant mechanism puts the quality of the process of will formation within institutions in focus. It relies on the assumption that access for APOs results in the interaction of actors from different constituencies on an equal footing. This creates repercussions on the style and forms of discussion and decision-making. As everyone has to agree to any possible decision, others have to be convinced by rational arguments. Arguments have to be formulated in a way which theoretically allows all participants to agree to them (Steffek 2003: 265). The micro-mechanism underlying this type of social steering involves learning and persuasion based on arguing (Risse 2006: 183). Each participant in the process presents her arguments and has to grapple with counter-arguments. During this process, new evidence and arguments may induce actors to redefine their preferences (Beisheim & Dingwerth 2010: 81). Ideally, this process leads to a reasoned consensus of which all participants are convinced instead of a bargained compromise which only reflects the relative power positions of participants. Thus, it has been argued that consensus decision-making in itself already adds to institutional legitimacy (Tamm Hallström & Boström 2010: 154–156).

These assumptions strongly build on theories of deliberative democracy. Deliberation refers to the process of how decisions are made, namely through a “process of public reasoning geared toward generating decisions or opinions about how to resolve shared problems” (Brown 2010: 513). In other words, deliberation is about the collective discussion of problems and finding of solutions in the public sphere. Deliberative theory presumes that the political space for deliberation must be inclusive in the sense that all actors affected by policy outcomes (or all relevant points of view) participate (Rosenberg 2007: 9). Given the past fallacies of third-party NGOs in representing affected populations (see Section 1.1.2), the direct participation by APOs thus should improve the deliberative quality of negotiation in transnational institutions. While ideal deliberation is demanding and difficult to institutionalize (Warren 2007: 276–277), it has been assumed that observing some deliberative elements can suffice to improve the process of decision-making (Beisheim & Dingwerth 2010: 81).

In the longer run, cooperative interaction between participants also has the potential to positively affect social relationships. Thus, Boström (2006: 356) argues that organizations in which different constituencies interact have the “ability to overcome particularistic interests and to enhance solidarity as well as to provide forms for exchange and mutual learning”. The argument is that repeated interaction over time between a wide range of actors can result in mutual trust and social learning, as well as in common expectations about proper behavior. This helps to solve conflicts and increases the participating actors’ willingness to find compromises.<sup>68</sup>

While the mechanisms of trust building and social learning affect the relationships between constituencies, sustained interaction also creates repercussions on the level of outcomes. If actors with different interests interact to come to common solutions, this will enhance perceptions of an institution as being neutral towards specific interests (Boström 2006). While this perspective acknowledges that each actor group may participate in an institution motivated by its specific interests, the balanced representation of different constituencies assures that no group can impose their views regarding an issue. As a consequence, the institution is perceived as being neutral to specific interests. In other words, the establishment of a balance of power is considered in itself as a source of credibility of the institution (Boström 2006: 355).

However, if one group comes to dominate decision-making, it is no longer assured that the process is steered towards finding effective solutions. Consequentially, institutional legitimacy will be jeopardized if one party becomes too dominant (Boström 2006: 356–358).<sup>69</sup> In this regard, even if decision-making rights are formally equal, differences in resources of participants may result in power imbalances and distort the quality of the process. For example, Brown (2010) has shown with regard to the Global Fund that the political and economic power of donor states led to a marginalization of other participants. Thus, due to the comparative weakness of APOs (Hasenclever & Narr

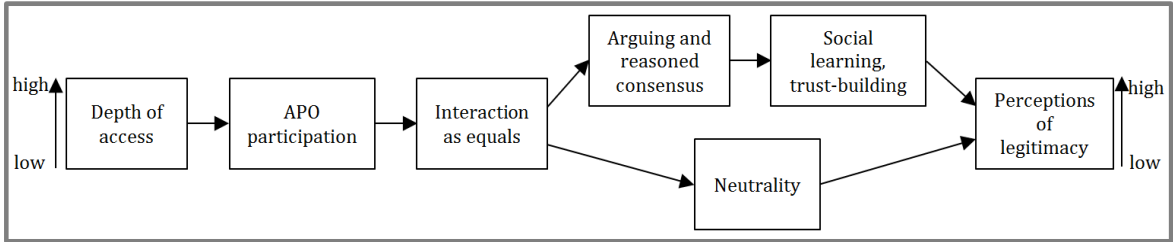
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<sup>68</sup> In this context, APOs also pass legitimacy-related information to local populations. This is especially relevant when legitimacy-related mechanisms take place at the individual level. For example, social learning is an individual experience. These experiences need to be passed on to a broader constituency or audience in order to become influential for a broader share of actors (Beisheim & Dingwerth 2010: 80).

<sup>69</sup> This concern is not restricted to the participation of presumably weak CSOs on an equal footing with stronger state actors. Tanja Börzel (2010) has pointed to the fact that when weak governments engage in institutionalized cooperation with non-state actors, they might be unable to resist private actor pressure to adopt policies that do not serve the public interest, or even lack the necessary information to judge what lies in the public interest. Thus, a lack of government capacity and power can equally result in a loss of credibility of the respective institution.



2019), this mechanism might be rather difficult to function properly in the case of APO participation. What is more, it relies on participation on an equal footing. The more equal participants of an institution are, the more the institution will be perceived as credible, and the higher the chance that deliberation might occur. At the same time, deliberation is more likely to occur in smaller groups (Papadopoulos & Warin 2007: 451). Thus, I assume that the depth of access is central with regard to the functioning of this mechanism and its impact on perceptions of legitimacy.



**Figure 7: Hypothesis specified to sustained interaction. Source: author’s elaborations.**

In sum, the mechanism assumes that when APOs gain deep access, different constituencies interact as equals. This, on the one hand, improves the decision-making process, as in the end the best argument prevails, and participants build dependable relationships among each other. On the other hand, it enhances interpretations of the institution as being impartial. Thus, perceptions of legitimacy are enhanced (see Figure 7). The third hypothesis regarding possible links between APO access modes and perceptions of legitimacy specified to interaction on an equal footing and the establishment of a power balance is thus:

*H.M3: The deeper access for APOs, the stronger perceptions of legitimacy will be. Through this access, APOs participate as equals with other participants. As a result, arguing and reasoned consensus prevails in deliberation and in the longer run leads to mutual trust between constituencies. Moreover, the institution will be perceived as impartial. This results in perceptions of high legitimacy by constituencies.*

Possible observable evidence of this mechanism could be the following: Regarding interaction on an equal footing or a power balance, one might look for specific institutional safeguards to ensure equal participation. Moreover, one might ask for perceptions of participants regarding equal opportunities to influence outcomes. If this mechanisms bears relevance, I assume that participants would highlight the open exchange of opinions and arguments and the space provided for discussion as one

advantage connected to their involvement. Regarding arguing and reasoned consensus, one could look for expressions of respect for alternative perspectives as well as for evidence of de facto change of positions: Do participants admit having gained new insights and alternative perspectives? Do they care about giving reasons and explain their positions? Do they value and praise consensus decision-making? In turn, the absence of clear bargaining, horse-trading, and open protest would also foster the perception that arguing and deliberation are at work. With a view to social learning, I expect that participants would report about an improvement of relationships between constituencies or the establishment of a collective identity. As trust develops over time, this should be especially the case with regard to long-term participants. Moreover, I will look for evaluations which praise the respective institution or its outcomes as impartial and neutral.

#### **3.4.4 Problem-solving capacity**

Apart from the mechanisms based on procedures, it has been argued that effectiveness<sup>70</sup> impacts on legitimacy. The basic line of argument is that APO participation impacts on effectiveness, which in turn impacts on perceived legitimacy. However, there are plausible arguments for both the assumption that enhanced participation increases effectiveness, and for the contrary assumption that it diminishes effectiveness.

On the one hand, it has been argued that APO participation results in functional benefits for institutions. The assumption that the bringing together of different constituencies and their resources in one institution enhances institutional effectiveness and legitimacy is a “basic rationale underlining the idea of inclusiveness” (Boström 2006: 354). Building on resource exchange theories,<sup>71</sup> the underlying idea is that different types of actors dispose of different types of resources to varying degrees. If different constituencies cooperate in one institution, this enhances its diversity, but also the resources it can dispose of. In this context, resources explicitly include material resources such as financial means, immaterial resources such as knowledge and power, but also symbolic

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<sup>70</sup> It is important to note that effectiveness does not mean “personal profit”. Legitimacy is based on moral evaluations, not on self-interest (see Chapter two). In other words, effectiveness is understood as the coming to solutions which constitute good options for society as a whole.

<sup>71</sup> The logic of functional demand and resource exchange theory have also become prominent candidates for explaining the emergence of participation arrangements (Rittberger 2008; Tallberg et al. 2013: 30–31).

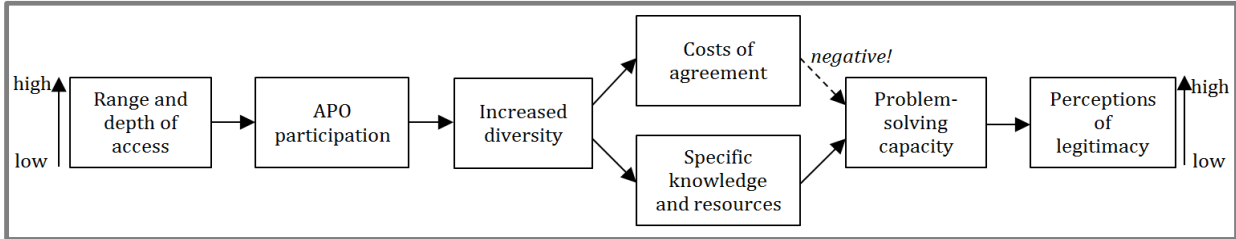
resources such as moral authority and credibility. Thus, states may provide funding and authoritative power; moreover, as being legitimized by popular consent, their recognition and participation may provide legitimacy to an institution. In turn, participating APOs might specifically contribute local knowledge based on lived experience and high degrees of authenticity. They often dispose of specific knowledge and expertise which they can feed into the policy-making process, and they may offer alternative and creative ways of addressing problems.

The pooling of these resources is considered to enhance legitimacy through better problem-solving capacity (Börzel & Risse 2005: 209). With regard to APO participation, effectiveness may be increased due to more adequate knowledge about local circumstances and a more effective realization of tasks. Information provided by APOs about the specific characteristics of the situation to be dealt with and about the needs of constituencies increases the probability of identifying common goals and coming to adequate solutions (Beisheim & Kaan 2010: 139). On the other hand, knowledge about the specific interests of constituencies facilitates the task of coming to decisions which the addressees are more likely to accept and support.

However, some authors have also assumed more negative effects to be at play. The basic line of argument is that higher numbers of participants may lead to rising costs of agreement (Börzel & Risse 2005: 210; Göbel 2009: Chapter 3). In other words, higher numbers of participants increase the number of points of view which are represented, making agreements more difficult (or even impossible) to reach. Moreover, negotiated agreements between different constituencies tend to be lowest common denominator solutions rather than optimal outcomes (Van de Kerkhof 2006: 282).

Both the range and depth of access impact on the functioning of this mechanism. The more diverse and heterogeneous participating APOs, the more specific local information will be available and can be taken into account. This seems specifically relevant in the context of APOs as local conditions may differ significantly. At the same time, costs of agreement rise when many actors participate, as significant time and space is needed to enable meetings with high numbers of participants. In turn, I assume that the effect of depth of access is more ambivalent. As long as APOs participate as observers through open access modalities, the specific conditions of their involvement in the institution probably will not significantly affect the costs of the decision-making process. However,

when APOs gain inclusive access and participate in decision-making, this can considerably enhance costs of agreement.



**Figure 8: Hypothesis specified to problem-solving capacity. Source: author’s elaborations.**

In short, I assume that the range and depth of access are central for institutional problem-solving capacity. APO access enhances the diversity of actors which are present in a given transnational institution. This contributes to rising costs of agreement; at the same time, it also feeds important local knowledge into the decision-making process (see Figure 8). The fourth hypothesis regarding possible links between APO access modes and perceptions of legitimacy specified to problem-solving capacity is thus:

*H.M4: The effect of the depth and range of access for APOs on perceptions of institutional legitimacy is ambivalent. When APOs participate and bring in specific local knowledge, this increases institutional problem-solving capacity and consequentially perceived legitimacy. At the same time, costs of agreement may also rise and negatively affect problem-solving capacity.*

Concerning observable evidence for this mechanism, one might look for systematic attempts to bring in different viewpoints and resources. This may include further differentiation within the APO constituency, but also attempts to bring in a broad variety of actors with different resources. For example, while Indigenous governmental organizations might dispose of strong moral authority, international Indigenous NGOs have expertise and long-term experience with regard to international activism, and grassroots organizations possess specific local knowledge. Participants should highlight increased local knowledge or other contributions by APOs as one important benefit of APO participation. Moreover, we should be able to observe positive evaluations of outcomes. With regard to possible costs of agreement, I will specifically look at comments regarding the difficulties in coming to decisions, and most notably those mentioning lowest common denominator solutions.

### 3.5 Refining hypotheses

In this section, the various hypotheses about the connection between participation modes and institutional legitimacy will be summarized. The main hypothesis of this dissertation argues that a positive relationship connects APO access and legitimacy perceptions. However, this relationship is dependent on the representativeness of APO participants and the general institutional design. This led to the basic hypothesis that *the impact of degrees of access on perceptions of legitimacy is ambivalent. Access for APOs enables their concrete participation; this participation, however, is conditioned by the perceived authenticity of APO participants as well as the broader institutional setting. Only if APO participants are deemed representative and authentic, and the broader institutional set-up allows for meaningful APO participation, high(er) degrees of access for APOs will positively affect institutional legitimacy.*

This hypothesis can be further specified as regards the several causal mechanisms that link participation – as enabled through access – and legitimacy. Four different mechanisms have been identified above; they vary with regard to whether they primarily depend on increased range or depth of access. Increasing the depth of access favors strong ownership resulting from the value that is given to participation itself. Moreover, it enhances the equality of participants and, consequentially, trust building and perceived neutrality of the respective institution. In turn, an increased range of access positively affects accountability, which is enabled by higher transparency when NSAs are allowed as participants to a process. At the same time, both the range and depth of access may lead to increased problem-solving capacity when actors from different societal sectors cooperate. However, this mechanism is the most ambivalent, as increased diversity of participation may also lead to rising costs of agreement. In sum, *if APO participants are deemed representative and the broader institutional set-up allows for meaningful APO participation, deep access for APOs will positively affect institutional legitimacy due to a higher degree of ownership by participants, trust building between them as well as perceptions of the institution as being neutral to specific interests. Moreover, in this case broad access for APOs results in high transparency and accountability of the institution vis-à-vis its constituencies, whereas broad and deep access can increase institutional problem-solving capacity, but may also contribute to rising costs of agreement.*

Which of the causal mechanisms appear empirically relevant, and which will provide most insight into the connection between the two variables APO access and perceptions of legitimacy will be subject to empirical investigation in the following chapters. Moreover, the empirical investigation will shed light on how the mechanisms outlined above are connected, and whether in practice trade-offs exist between the various mechanisms. The analysis will also specify in how far the hypotheses might need adaptation, or whether there are alternative hypotheses that have not been taken into account so far. In this regard, it is possible that different constituencies base their legitimacy evaluations on different mechanisms. It is also important to bear in mind that legitimacy evaluations will be made on the grounds of perceptions. In other words, the relevance of mechanisms for constituencies is not based on the de facto neutrality, transparency, effectiveness etc. of the institution, but the perceptions of participants about these issues.

Before scrutinizing the empirical relevance of the mechanisms outlined above in Chapter six, the following Chapter four will explore access modalities for Indigenous peoples at the PFII and EMRIP, as well as corresponding degrees of legitimacy.

## *Chapter 4*

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# *Indigenous Access to the UN and Perceptions of Legitimacy*

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After having outlined my theoretical framework, the remaining chapters focus on its application to a concrete case, namely Indigenous access to Indigenous-specific UN institutions. As outlined in Chapter one, Indigenous peoples have gained far-reaching access to the UN. With the Permanent Forum on Indigenous Issues and the Expert Mechanism on the Rights of Indigenous Peoples, two institutions have been created which explicitly deal with issues related to Indigenous peoples and their specific rights and necessities to survive as distinct peoples. Both institutions offer access opportunities to IPOs which those have broadly taken advantage of. The first questions to answer in this context, and the main focus of this chapter, are thus: What access modes do institutions dealing with Indigenous issues offer to Indigenous peoples and their organizations, and to what degree are these institutions perceived as legitimate by the participating actors?

To answer this question, the chapter proceeds as follows: I will start by providing some background information on the PFII as well as on the EMRIP. Subsequently, I elaborate on the specific access opportunities for Indigenous peoples in these institutions, and on their respective degrees of open and inclusive access. The next section of the chapter analyzes legitimation patterns regarding both institutions. I will look at both statements made in the context of recent sessions and at behavioral indicators to allow for inferences regarding the perceived legitimacy of PFII and EMRIP. Finally, I will also elaborate on the broader institutional setting to establish whether the resulting

institutional leverage in fact impacts on the relationship between access modes and perceptions of legitimacy.

Before starting this endeavor, I will shortly dwell into how affectedness is understood and constructed when it comes to Indigenous participation at the United Nations. This includes a look at how Indigenous affairs are being framed by the UN, as well as a discussion of differences between Indigenous peoples and other affected actors. This will help us to better understand commonalities, but also differences between IPs and other groups of affected actors in global policy-making. Most importantly, by invoking self-determination, IPs claim a *right* to participate on all issues that affect them.

#### **4.1 Global Indigenous Issues and Affectedness**

Obviously, all individuals and groups who define themselves as Indigenous may be considered as affected by institutions addressing Indigenous issues at the global level. The UN has created institutions to deal specifically with issues concerning Indigenous peoples, and now commonly understands Indigenous peoples as actors affected by its actions. Thus, the Declaration on the Rights of Indigenous Peoples states in its preamble that “the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples” (UN General Assembly 2007). However, it was by no means evident that Indigenous issues became framed as a global challenge to be dealt with in the context of the UN. This framing exercise consisted of at least two main re-interpretations of global understandings: It included the self-identification as Indigenous by groups of marginalized peoples, and meant that an issue which had previously been understood as an issue of domestic concern became considered as one of global importance (see Chapter one). In the following, I will show how affectedness of IPs is being conceptualized within the United Nations.

##### **4.1.1 Indigenous peoples as affected actors in the UN context**

Nowadays, there is a proliferate rhetoric of Indigenous peoples being affected by decisions taken at the UN level, such as in the process to enhance Indigenous participation in meetings “of relevant United Nations bodies on issues affecting them” (UN General Assembly 2017). Building on interviews conducted with individuals from all constituencies that engage in UN Indigenous affairs, this section outlines how



affectedness is understood and conceptualized in this context. There are mainly two strains of the argument which are often brought forward together: On the one hand, Indigenous peoples are portrayed as especially vulnerable; on the other hand, the specific contributions which Indigenous peoples can make with regard to the solution of global challenges are highlighted. I have traced one or both of these lines of reasoning in 24 out of 37 interviews conducted with interview partners from all constituencies.

First, Indigenous peoples are regularly referred to as the most marginalized and disadvantaged group within states, whose living conditions are worse than those of the average population. It is highlighted that in many cases, this marginalization of Indigenous peoples is a direct result of state policies. Moreover, Indigenous peoples are victims of projects such as resource extraction activities pushed for by both states and transnational corporations, and over which Indigenous peoples often have no or only limited control. Indigenous leaders in many cases cannot address the difficult situations that Indigenous communities face on their own. Moreover, a specific urgency entails the situation of Indigenous peoples, as they are in danger to disappear as distinct peoples.<sup>72</sup> Additionally, Indigenous peoples are portrayed as particularly affected by global challenges such as climate change. Interview partners argued that IPs are highly vulnerable in cases of environmental degradation, given that Indigenous lifestyles depend on their natural surroundings and cannot be changed easily due to the spiritual foundations of traditions. Moreover, Indigenous peoples are also often directly affected by global policies addressing these same global challenges, such as climate change mitigation, for example when they are evicted from their traditional territories for the realization of forest regeneration projects. All these arguments point to a specific marginalization of Indigenous peoples who are portrayed as victims, resulting in a special need for support and protection. In a similar vein, Lindroth (2011: 551–552) has found that within the PFII Indigenous peoples often present themselves and are defined by others as victims. She argues that this representation is a strategy to increase moral and political leverage.

Arguments highlighting the specific knowledge of which Indigenous peoples dispose were somewhat less frequent in my interviews, but still very important. Some interview

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<sup>72</sup> 8 interview partners specifically highlighted the inherent danger of Indigenous peoples to disappear as distinct peoples.

partners framed specific knowledge more generically as lived experience, in the sense that Indigenous peoples possess specific knowledge about local living conditions. This local knowledge is considered to be important in the context of designing policies to improve their situation and in the context of project implementation at the local level. More important in the interviews, however, were references to specific *Indigenous* knowledge of participants; in this view, Indigenous peoples are holders of invaluable ancestral knowledge. This included allusions to a specific Indigenous cosmology or spirituality from which others can learn. Not surprisingly, the element which was mentioned most often in this context was the role of Indigenous peoples as environmental stewards, which was valued by interview partners. This knowledge is depicted as helpful in finding solutions to address global challenges such as climate change. Moreover, consistently taking into account past and future generations or dealing with problems holistically were also mentioned as elements of a specifically Indigenous perspective. Lastly, some interview partners also highlighted the resilience of Indigenous peoples which have survived hundreds of years of colonization as something from which others can learn. The following citation by Patricia Espinosa, Executive Secretary of UNFCCC, is illustrative of this line of argumentation:

“Indigenous people must be part of the solution to climate change. This is because you have the traditional knowledge of your ancestors. The important value of that knowledge simply cannot—and must not—be understated. You are also essential in finding solutions today and in the future. The Paris Climate Change Agreement recognizes this. It recognizes your role in building a world that is resilient in the face of climate impacts.”<sup>73</sup>

In short, affectedness of Indigenous actors is often conceptualized on the one hand by their specific marginalization and vulnerability, on the other by the contributions they are expected to make to the solution of global challenges. In fact, both arguments often are brought forward together. This tension between being victim and actor at the very same time is one of the paradoxes that Indigenous peoples invariably face when they engage with the UN (Lindroth 2011: 551–552).

#### **4.1.2 Indigenous peoples as atypical affected actors**

There are many groups of affected actors which are especially vulnerable and potentially can make contributions to global policy-making – ranging from rural

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<sup>73</sup> Introduction to the Local Communities and Indigenous Peoples Platform, at <https://unfccc.int/10475>, accessed 29.01.2019.

populations more generally or family farmers to individuals living with certain diseases such as HIV. However, Indigenous peoples argue that they have stronger moral grounds to claims participation rights than other actor groups. Thus, especially in the interviews with Indigenous activists there were frequent references to specific Indigenous rights. In turn, this line of reasoning was not used at all by interview partners from states, and by those from IOs only infrequently.<sup>74</sup> In this regard, Indigenous peoples often present themselves as “rights-holders” rather than “stakeholders” at the international level. Similarly, it has been argued that Indigenous participation at the UN is driven by “a sense of unquestionable and irrefutable entitlement” (Charters 2010: 221).

Specific rights for Indigenous peoples are justified with reference to their historic precedence as “first peoples” or as a way to rectify the wrongs committed against them. Two issues were mentioned with frequency as inherent elements of these Indigenous rights: self-determination and territorial or land rights. These are considered to be the hard issues on which the realization of Indigenous rights hinges. Participation and self-representation in international forums is understood as one dimension of the more substantial claim to self-determination (Muehlebach 2003: 243, 248; Morgan 2011: 85). In this regard, the UN is praised as a forerunner with regard to Indigenous rights, as it started to discuss about them early and, importantly, codified Indigenous rights in the Declaration on the Rights of Indigenous Peoples. The creation of specific institutions for Indigenous peoples such as the PFII and EMRIP can also be interpreted as a recognition by the UN system of the specific role and status of Indigenous peoples as compared to other affected populations.

Several interview partners also highlighted the specific status of Indigenous peoples as peoples. Their status as peoples fundamentally distinguishes Indigenous peoples from NGOs whose activism is based on themes, whereas Indigenous activism is based in peoplehood and territorial belonging. Similarly, Tramontana (2012) argues that Indigenous representative institutions have special rights to participate in contrast to NGOs, whose participation is valued functionally given the benefits they bring to the process. Some IPOs do in fact share certain similarities with governmental authorities in that they are constituted by the (elected) leadership of a community, and engage in voicing community concerns and finding solutions to them (Bergeron 2010: 114).

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<sup>74</sup> In total, references to specific Indigenous rights were found in 19 interviews.

Therefore, it has been argued that the fact that Indigenous nations are classified together with NGOs constitutes a bizarre and unjust outcome, because “if nothing else, they represent peoples, not interest-based constituencies” (Koivurova & Heinämäki 2006: 102). Some Indigenous actors therefore argue that as peoples, Indigenous groups are equal to all other peoples and, importantly, “quasi-state powers” (Charters 2010: 227) which is why they should be represented at bodies such as the General Assembly. In the literature, the status of Indigenous peoples as peoples is also highlighted with references to treaties signed between colonizers and the original inhabitants of colonized territories, which confirm that in the early colonial context, colonizing powers considered Indigenous groups as peoples, and their own relationship with them as *international* (Niezen 2003: 29–30).

However, the position that Indigenous peoples are equal to states is generally not shared by governments. The debate whether Indigenous groups are peoples or not is highly contentious because international law recognizes the right of peoples to self-determination, which makes some states fear that Indigenous peoples could claim independent statehood (Niezen 2003: 25; Levi & Maybury-Lewis 2012: 104–105). While the UN now increasingly uses the term “peoples” when referring to Indigenous groups,<sup>75</sup> this language use is regularly accompanied by safeguard provisions such as Article 46/ 1 of UNDRIP, which guarantees the territorial integrity of states.<sup>76</sup> There seems to be significant opposition by some states to accept specific rights for Indigenous peoples in this regard. For example, in the discussions surrounding the creation of a specific status for Indigenous peoples to participate in the UN context, some states point to a “need for coherence and consistency in the treatment of non-State actors and their rights to participate in the United Nations” (UN General Assembly 2016: §15).

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<sup>75</sup> Names of relevant institutions at the UN level such as the Working Group on Indigenous Populations and of the Permanent Forum on Indigenous Issues avoided the term peoples. Indigenous peoples have fought for a change in language use, as they generally consider themselves as nations or peoples. As a result, the term ‘Indigenous peoples’ is now broadly used in the UN context. An example is the UN Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly in September 2007. The newly created mechanism dealing with Indigenous rights at the UN level, which met for the first time in 2008, is called Expert Mechanism on the Rights of Indigenous Peoples. The Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people was renamed, in September 2010, into Special Rapporteur on the Rights of Indigenous Peoples.

<sup>76</sup> A similar example is the CBD which adopted language on “Indigenous peoples and local communities” in 2014, but at the same time states that this language does not imply any change of legal obligations or rights. See Conference of the Parties Decision XII/12F, available at <https://www.cbd.int/decision/cop/default.shtml?id=13375>, accessed 29.01.2019.

In short, participation by IPs at the United Nations is not only framed with regard to a specific degree of marginalization, but also with regard to their status as peoples and historic precedence. However, whereas affectedness in the sense of vulnerability seems to be uncontroversial, the issue of Indigenous-specific rights to participation is not. While Indigenous peoples highlight their specific status and difference from other affected populations, especially states are much more reluctant in conceding a specific role to IPs compared to other groups of affected actors.

## **4.2 Background information on Indigenous-specific UN institutions**

Currently, there are two institutions within the core UN which explicitly and permanently offer access to IPOs, namely the PFII and EMRIP. As outlined in Chapter one, these are not the only institutions in which IPs participate: There are non-permanent participation opportunities, such as at the WCIP or in the negotiations regarding a permanent status for Indigenous peoples at the UN; some IPOs have obtained ECOSOC status and participate as NGOs in other UN bodies such as CERD or the HRC; and lastly, there are participation opportunities outside the core UN at several UN bodies, programs and organizations, such as at IFAD's Indigenous Peoples' Forum. However, here I will focus on the PFII and EMRIP. I assume that Indigenous participation in the other mentioned instances cannot easily be compared to PFII and EMRIP, due to non-permanence, a lacking focus on affectedness and specific access rights for IPs, and more specific thematic mandates respectively. Thus, when I talk about Indigenous participation at the core UN as my case study, I focus my research on the PFII and EMRIP as the two institutions within the core UN which offer permanent access rights to IPOs, and deal specifically with issues pertaining to IPs. I will start by providing some background information on both institutions. This specifically includes information regarding the reform and review processes that both bodies went through recently.

### **4.2.1 The Permanent Forum on Indigenous Issues**

The PFII is a subsidiary organ of ECOSOC and serves as an advisory body to the Council. The idea of creating a permanent forum for Indigenous peoples at the UN level had already been pronounced during the 1980s and was seriously considered for the first time on the UN agenda at the World Conference on Human Rights in Vienna in 1993 (Henriksen 1999: 13). The long years until its final establishment were marked by

contrary positions between Indigenous groups, between governments, as well as between Indigenous peoples and governments (García-Alix 2003: 61). Finally, the Commission on Human Rights created an ad hoc working group to elaborate and consider further proposals for the possible establishment of a permanent forum for Indigenous peoples within the UN system which elaborated a corresponding suggestion in 2000. Indigenous participation within the process was enabled through a specific accreditation procedure (Henriksen 1999: 15–16).

The PFII is composed of 16 members serving in their personal capacity as independent experts. All serve for a period of three years, with the possibility of re-election or reappointment for one further period. The current chair is Ms. Mariam Wallet Aboubakrine, a Tuareg from Mali. The PFII's mandate stipulates that it shall discuss Indigenous issues relating to economic and social development, culture, the environment, education, health and human rights. The Permanent Forum is entitled to provide expert advice and recommendations on Indigenous affairs to ECOSOC and other UN institutions and to raise awareness and prepare and disseminate related information. It is supposed to support the implementation of Indigenous rights and to improve the quality of UN programs regarding Indigenous peoples by raising the opportunities for Indigenous peoples to participate. It also performs important functions with regard to agenda-setting in that it has raised the visibility and prominence of Indigenous issues in the UN system and in international relations more generally. Moreover, it aims at coordinating activities of UN bodies and organs for Indigenous peoples.

Thus, formally the PFII in the first place is an interface between Indigenous peoples and the UN system. Most recommendations that the Forum makes are directed to UN agencies, programs, and funds. The importance of UN bodies for the work of the Forum is also shown by the fact that the Forum's agenda regularly includes the item "comprehensive dialogue with United Nations agencies and funds". In fact, the Forum has lobbied for an inclusion of Indigenous peoples as a category in projects and guidelines of UN institutions and for an increase in institutional funding targeted at IPs. To support and promote the mandate of the PFII within the United Nations system, an Inter-Agency Support Group (IASG) has been established. Its mandate was later expanded to include support to Indigenous-related mandates throughout the inter-governmental system. The IASG serves as an inter-agency coordination mechanism with

a view to facilitating comprehensive and coordinated responses to the PFII. Its chairmanship rotates annually.

At the same time, the PFII also is an important venue for interaction between IPs and states. Individuals nominated by states make up half of its membership. Moreover, delegations made up of government officials from states which count with Indigenous populations are important participants during sessions, reporting about recent developments regarding Indigenous rights in domestic contexts. A number of other states also engage during sessions, especially those with a focus on IPs in their development policies. PFII sessions include a dialogue between members of the PFII and states as one agenda item. PFII recommendations also regularly address UN member states.

The PFII holds a session each year for two consecutive weeks in April/May in New York at UN headquarters. The annual session is a large gathering of IPOs, government and agency delegates, academics, advocacy NGOs and other supporters of the Indigenous cause. These actors can register as observers to the meeting and actively participate by delivering statements, organizing side-events, or networking with other participants. Every second year, and alternating with review sessions, the Forum's sessions focus around a special theme; for example, in 2018 the special theme was "Indigenous peoples' collective rights to lands, territories and resources".<sup>77</sup> Moreover, sessions have regularly included meetings with a regional focus, as well as discussions about PFII studies and other ongoing themes and priorities. The discussion of these topics usually takes place as a series of interventions by registered observers and occasional comments by PFII members. Sessions also include dialogues with the Special Rapporteur on the Rights of Indigenous Peoples and the Chair of EMRIP, and closed meetings of the members. Apart from the official meetings, a number of important side-processes take place during sessions, such as the meetings of Indigenous thematic and regional caucuses (see Chapter five), side-events and unofficial meetings in the hallways and cafeterias.

However, the Permanent Forum is much more than its annual session. Between sessions the PFII's members carry out studies, organize expert group meetings on selected topics,

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<sup>77</sup> Since the adoption of the Declaration on the Rights of Indigenous Peoples, special themes have focused on specific articles of the Declaration and their application.

attend international meetings on Indigenous issues, and participate in country visits (Sapignoli 2017: 84). Moreover, the Permanent Forum's secretariat provides assistance and support, functions as a permanent instance which keeps contact to UN bodies and organs, and maintains a website<sup>78</sup> and social media channels to inform the interested public about recent developments regarding Indigenous peoples in the UN context and beyond. It also maintains a public database to keep track of the progress realized with regard to the recommendations made by the PFII.<sup>79</sup> Through its chair, the PFII reports its activities annually to ECOSOC and submits its recommendations for approval.

However, over the years concerns about the working methods of the Forum grew. During the 13<sup>th</sup> session in 2014, the then chair of the Permanent Forum, Dalee Sambo Dorough, announced in her opening statement that the Permanent Forum would undergo a review process. She stated that “a number of Forum members ha[d] been consistently concerned with our own methods of work and the need to become a much more effective mechanism within the UN system” and pointed to the necessity to “explore and initiate dramatic reform” (Sambo 2014). She then mentioned the areas on which reform efforts would focus: reduction of the number of recommendations made and of studies realized by Permanent Forum members; a focus on implementation in interactions with UN agencies and states; and a strengthening of the role of members (ibid.). During the PFII's 2016 session, a number of changes to the proceedings at sessions were implemented. A major change was the introduction of closed meetings with each of the major constituencies, namely states, UN agencies, and IPOs. Moreover, speaking rules were changed; meetings now were held partly as interactive dialogue, and partly with a speaker's list.

Although it is located within the state-based United Nations system, key features of the PFII show that it can be described as part of the shift away from intergovernmentalism towards transnational governance. This mainly concerns the composition of the Forum, made up of equal numbers of Indigenous members and members nominated by states. However, Indigenous access to the Permanent Forum is not restricted to membership. At sessions, participation by a broad spectrum of observers takes place, which by far outnumbers participation by members.

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<sup>78</sup> <https://www.un.org/development/desa/indigenousspeoples/>, accessed 29.01.2019.

<sup>79</sup> [https://esa.un.org/unpfidata/UNPFII\\_Recommendations\\_Database\\_list.asp](https://esa.un.org/unpfidata/UNPFII_Recommendations_Database_list.asp), accessed 29.01.2019.



#### 4.2.2 The Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples is a subsidiary body of the Human Rights Council. It was created in 2007 with the mandate to provide the Council with thematic expertise on Indigenous issues, mainly through studies and research-based advice. At its creation, the Expert Mechanism was composed of five independent experts from the five UN regional groups, similar to other subsidiary bodies or working groups of the Human Rights Council.<sup>80</sup> The selection and nomination process equals the process generally applied to fill vacancies for independent UN experts of the HRC. In other words, candidates may be nominated by a broad variety of actors or may apply themselves. The Consultative Group, formed by one member per regional group, then interviews shortlisted candidates and establishes a priority list. On these grounds, the President of the Council makes the final decision. However, the EMRIP mandate also stipulated that “in the selection and appointment process, the Council give due regard to experts of indigenous origin”. In practice, many of the past and actual mandate holders are and have been Indigenous persons. The Office of the United Nations High Commissioner for Human Rights (OHCHR) services the Expert Mechanism and provides technical and financial support.

The Expert Mechanism may be interpreted as a successor to the Working Group on Indigenous Populations (see Chapter one) which had been disestablished in 2006 together with the Human Rights Commission as one of its subordinated bodies (Morgan 2011: 32; Barume 2017b: 580). EMRIP continues some of its work. Each year, it elaborates a thematic study related to a specific right, such as on the promotion and protection of the rights of Indigenous peoples with respect to their cultural heritage (A/HRC/30/53). One important goal of studies is to divulgate good practices, and, by an ‘Advice’ contained in the study, provide guidance for the implementation of rights at the domestic level (Barume 2017b: 581). Studies are elaborated in an open and participatory manner, including through written contributions of stakeholders and expert workshops (ibid.). With regard to the study’s theme, until 2016 the Expert

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<sup>80</sup> For an overview on subsidiary bodies of the HRC, see <http://www.ohchr.org/EN/HRBodies/HRC/Pages/OtherSubBodies.aspx>, accessed 29.01.2019.

Mechanism proposed topics for studies to the Human Rights Council, but the latter took the final decision about what the study should deal with.<sup>81</sup>

Each year in July, the Expert Mechanism meets for five consecutive days at the UN premises in Geneva, at the Human Rights Council Chamber. These sessions from the beginning offered broad access to observers such as states, UN agencies, funds and programs, international organizations, national human rights institutions, academics, NGOs, and Indigenous peoples. Formally, participation regulations for IPOs are based on the procedures established with regard to the WGIP (see Section 1.2.3) and equal those at the Permanent Forum. However, fewer participants register as observers in comparison to numbers of attendants at the PFII.

During the first years of its existence, the discussions at sessions were focused on EMRIP studies including follow-up to anterior studies, as well as on the implementation of the Declaration on the Rights of Indigenous Peoples. In recent years, however, the Expert Mechanism has interpreted its mandate more dynamically, dealing with additional topics it considered of specific importance by, for instance, holding panel discussions or interactive dialogue sessions (Barume 2017b: 582). This included, for example, a discussion with representatives of National Human Rights Institutions (NHRIs) during the 2017 session. Similarly to the proceedings at the PFII, a number of parallel caucus meetings, side-events and informal meetings take place during sessions, which have gained importance on their own right.

During the past few years, the Expert Mechanism underwent a major review, following a decision at the World Conference on Indigenous Peoples in 2014 (UN General Assembly 2014b: §28). The review process included, inter alia, an expert workshop, organized by OHCHR, in which numerous actors participated in person or through written submissions. The governments of Mexico and Guatemala, as co-sponsors of the initiative at the HRC, took the lead in organizing consultations with Indigenous peoples and member states, and in developing a draft resolution. During this process, common positions could be achieved with regard to strengthening the Mechanism's operational

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<sup>81</sup> Some more sensitive topics the EMRIP considered relevant thus could not be dealt with, because there was no support for these within the Human Rights Council, which preferred themes that were less delicate for states. Thus, the first topic chosen by EMRIP after the mandate review, which provided the body with more independence from the HRC including with regard to the study topic, was “free, prior informed consent”, which had been considered as an important topic by EMRIP members for several years (comments from participants, notes from research diary, July 2017).

capacity and enriching its mandate with the ability to engage at the country level (Barume 2017b: 583).

In September 2016, the Human Rights Council adopted resolution 33/25, by which the mandate of the Expert Mechanism was amended; it now explicitly makes reference to the Declaration on the Rights of Indigenous Peoples. The new mandate is more detailed and contains several important new elements (Barume 2017b: 583–585): First, it may now decide on the theme of its study independently. Second, the EMRIP will now regularly report to the HRC on the overall human rights situation of Indigenous peoples, with a specific focus on good practices and lessons learned. Third, the expert mechanism is mandated to assist states in achieving the ends of the Declaration upon request. In this context, it may now provide technical advice to member states for the development of domestic legislation and for the implementation of recommendations made by treaty bodies or at the Universal Periodic Review (UPR). Fourth, the number of experts has been augmented from five to seven, and members are now selected on the basis of the seven Indigenous geo-cultural regions of the world. At the same time, during the selection process, individual expertise and gender balance now shall be taken into consideration in addition to Indigenous origin. Additionally, the new mandate also includes more resources. As one development in the context of the mandate review, EMRIP now explicitly encourages stronger cooperation with NHRIs, and has established a standing agenda item of its annual sessions called “dialogue with NHRIs”.

### **4.3 Indigenous access to PFII and EMRIP**

As outlined in the previous section, both PFII and EMRIP have established access procedures to assure the participation of Indigenous peoples and their organizations in the proceedings. In the following, I will elaborate in more detail on the access opportunities which are offered to IPs, and on the grounds of the theoretical framework elaborated in Chapter three assign degrees of open and inclusive access to PFII and EMRIP with regard to both qualitative and quantitative dimensions. This is realized by looking at official regulations for access and by additionally recurring to information gathered in the interviews to better understand how formal access rules play out in reality.

### 4.3.1 Indigenous access with observer status

Access rules for observers at the PFII and EMRIP are very similar. A broad range of actors participate as observers at sessions of both institutions. Registration is open to representatives of IPOs, NGOs (independent of their consultative status with ECOSOC) and academics. Moreover, representatives of member states and UN agencies, programs and funds as well as of other IOs take part in sessions of both bodies. A still limited number of representatives of National Human Rights Institutions also participate. Accreditation is relatively easy to obtain for applicants,<sup>82</sup> but requires access to the internet and computer literacy as it is conducted online. Indigenous representatives who would not be able to attend meetings without financial assistance may apply to the Voluntary Fund for a participation grant.<sup>83</sup> In the selection process, the Voluntary Fund takes into account the origin of activists to assure broad geographical representation, as well as the potential contribution of applicants to the work of PFII and EMRIP. Observer numbers at the PFII are very high compared to other UN institutions that allow for NSA engagement; in 2013, some 2300 observers attended the meeting (UN-NGLS 2013). Although access regulations are equal, numbers of participating observers at the EMRIP are significantly lower, amounting to several hundreds of participants. Despite this difference in numbers, I argue that quantitative open access at both PFII and EMRIP is high, as Indigenous access is unrestrained in both institutions.

Concerning qualitative openness, registered observers are not only allowed to attend the meeting, but can also make statements on the respective agenda items. While all observers are entitled to make interventions, IPOs take a very active role at sessions, and their statements take up a considerable amount of time at both the PFII and EMRIP. For most agenda items, there is a speakers' list on which individuals wishing to make an intervention have to register. When they are called, speakers generally have three minutes to deliver a statement. If a high number of speakers register for a certain

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<sup>82</sup> Obtaining observer status at the session as an academic observer involved submitting information on the research subject, some personal data as well as an official letter from university, and was easily accomplished.

<sup>83</sup> In 2018, the Voluntary Fund provided 35 grants for the 17<sup>th</sup> session of the PFII and 30 grants for the 11<sup>th</sup> session of EMRIP. See <http://www.ohchr.org/EN/Issues/IPeoples/IPeoplesFund/Pages/IPeopleFundLastsession.aspx>, accessed 29.01.2019.

agenda item, speaking time is shortened to two minutes.<sup>84</sup> This shows that a high effort is made to enable active participation by all observers. Moreover, registered observers are allowed to organize side-events which mostly take place during the lunch break and become part of an official schedule of side-events. With the UN ground pass that one obtains when registering as observer, one might move relatively freely within the UN premises, although one Indigenous interview partner highlighted that certain areas in New York remain accessible only to state representatives, whereas in Geneva IP representatives can move everywhere. In view of these regulations, I argue that qualitative open access is high at both the PFII and EMRIP.

	quantitative	qualitative
Open access	high Admissive accreditation policy and funding opportunity through Voluntary Fund	high Active access including right to speak on virtually all agenda items

**Table 9: Degrees of open access of the Permanent Forum and Expert Mechanism. Source: author’s elaboration.**

**4.3.2 Indigenous access through membership**

As outlined in Chapter three, I talk about inclusive access when APO representatives may become members of an institution which deals with issues specifically affecting them. Indigenous membership is a constitutive feature of both the PFII and EMRIP; however, while regulations for open access at both institutions are practically the same at both bodies, regulations for Indigenous membership differ to some extent. In the following, I will therefore elaborate on Indigenous membership at the PFII and EMRIP separately.

The PFII is the institution where IPs have gained most far-reaching rights. Its membership is made up by 16 individual experts. Whilst eight members are nominated by governments and elected by ECOSOC, the other eight are appointed by ECOSOC’s

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<sup>84</sup> At the tenth session of EMRIP, all registered speakers were called. The only persons who could not deliver their statements were those not in the room at the moment they were called. When the allotted time was not sufficient for a certain agenda item, that item was continued at a later time during the session. This is very different at the PFII, where time often is not sufficient for accommodating all speakers who wish to deliver a statement. There even have been complaints that states get more speaking time or are not interrupted by the session’s chair when exceeding speaking time (Lindroth 2011: 550). However, during recent sessions of the PFII and EMRIP, time limits for statements were equal for all observers, and no significant difference in the treatment of Indigenous and other observers could be observed in this regard.

president out of a list of Indigenous individuals nominated by IPOs.<sup>85</sup> Geographical representativeness is assured by a fix formula: government experts represent the five UN regions, while the remaining seats are occupied following the principle of rotation; for the appointment of Indigenous experts, seven socio-cultural Indigenous regions<sup>86</sup> have been defined, and the last seat rotates between the three regions where Indigenous peoples live in particularly high numbers, namely Africa, Asia and Latin America.

As nominations for Indigenous experts are made by IPs, they have some influence on who will become an Indigenous member to the PFII. Some Indigenous regions have been very effective in establishing their own processes to come up with nominations. For example, in the Arctic region, the Inuit and Sami peoples alternate in nominating one single candidate for membership, which effectively gives them control of the process. IPs from the Asian region organize comprehensive regional consultation processes to nominate a candidate which gets broad support from the entire region. Within other regions, particularly in South America, no such processes exist, resulting in high numbers of nominated candidates.<sup>87</sup> However, many Indigenous interview partners were worried that the selection process of members is not sufficiently transparent or aired suspicions about state influence.<sup>88</sup> This included complaints about a lack of importance of the CVs of candidates in the selection process or a veto position of states with regard to the appointment of candidates. These suspicions are nurtured by examples such as the recent appointment of Asian members to both PFII and EMRIP, as those candidates who had been nominated through broad Indigenous consultation processes were disregarded. It is possibly due to this discontent that IPOs that nominate

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<sup>85</sup> During the process of discussion on the possible features of a future Permanent Forum in the 1990s, the main issue was about giving a voice to IPs. Thus, most suggestions regarding the composition of the body envisaged Indigenous membership on an equal footing with state membership (García Alix 1999).

<sup>86</sup> Africa; Asia; Central and South America and the Caribbean; the Arctic; Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia; North America; and the Pacific.

<sup>87</sup> It has been suggested by one interview partner that Asian IPs have been successful in organizing regional processes because language functions as a barrier which excludes many potential participants. There are only a limited number of Indigenous individuals in Asia which speak English. Due to the reduced number of participants, there are also fewer conflicts. In comparison, many IPs in Latin America dominate Spanish.

<sup>88</sup> Nine interview partners explicitly mentioned state influence on the member selection process; another five interview partners highlighted the need for more coordination within regions so that fewer individuals get nominated, thus reducing the selection options for the ECOSOC president and increasing Indigenous control.

members to the PFII for the term 2020-2022 are now explicitly required to provide information on consultation which has taken place amongst IPs.<sup>89</sup>

Membership in the PFII is given to individual experts, not to representatives of an Indigenous constituency.<sup>90</sup> With regard to the PFII, interview partners highlighted that the fact that IPs are recognized as experts constitutes an important acknowledgement of their role within the UN. However, the status of an individual expert implies that members do not formally represent Indigenous constituencies or are accountable to them. This is a concern for some Indigenous participants given that the report of the PFII is being promoted as *the* position of IPs within the UN, and many IPs put pressure on members to act as their representatives. At the same time, some of the government appointed members have been (and currently are) state officials, which suggests that their role also not in all cases can be reduced to that of an independent expert.<sup>91</sup> Building on the framework developed in Chapter three, I argue that quantitative membership access is medium with a tendency to high as APO membership reflects differences within the Indigenous constituency; at the same time, the selection process of Indigenous members allows for some Indigenous influence, whereas the final decision about membership is made by others.

Moreover, all members of the PFII possess equal voting rights. Decisions are taken by consensus, which gives each member a veto position on decisions made by the Forum. As numbers of Indigenous and government-nominated members are also equal, all members participate in the Forum on an equal footing. Thus, I argue that qualitative inclusive access is high.

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<sup>89</sup> See call for nominations for membership of the PFII, available online at <https://www.un.org/development/desa/indigenouspeoples/news/call-for-nominations-2020.html>, accessed 29.01.2019.

<sup>90</sup> García-Alix (2003: 75) points out that the decision to give members the status of independent experts rather than representatives in the PFII was made due to the fact that governments aimed at avoiding any sign which could be interpreted as an official recognition of Indigenous groups as peoples.

<sup>91</sup> Of the current government-nominated members to the PFII, Brian Keane (USA) works as an adviser on Indigenous peoples' issues for the US development agency USAID; Aisa Mukabenova (Russian Federation) works for the Ministry of Foreign Affairs of the Russian Federation; and Zhang Xiaolan (China) has worked in Chinese foreign service for nearly three decades but has now retired. Dahl (2012: 53) explains that a number of states have been appointing experts to the PFII only when those completely shared the respective governments' perspectives.

	quantitative	qualitative
<b>Membership access</b>	medium to high Membership for individual experts; some Indigenous influence on selection process; Indigenous membership reflects socio-cultural regions	high Consensus decision-making; equal numbers of Indigenous and state-nominated members

**Table 10: Degrees of membership access to the PFII. Source: author's elaboration.**

Concerning EMRIP, since the recent reform process it has seven expert members, one from each of the seven Indigenous socio-cultural regions. The selection process follows the general rules applied to the selection of special procedures mandate holders.<sup>92</sup> Thus, contrary to the proceedings for nominations of members at the Permanent Forum, where half of the members are nominated by Indigenous peoples and the other half by member states, no such regulation exists in the case of EMRIP. Instead, members may put their names forward individually or may be proposed by NGOs, governments, National Human Rights Institutions, and others. The mandate, both in the old and in the new version, stipulates that persons of Indigenous origin shall be specifically taken into account in the selection process. Interestingly, while until 2014 practically only Indigenous persons were appointed to the Expert Mechanism, in the past years a number of non-Indigenous persons have been appointed.<sup>93</sup> As there are no clear nomination structures, links to eventual constituencies are considerably weaker, and the independence of experts becomes an even more prominent feature in comparison to the Permanent Forum.

As a result, some IPs feel that they lack control of the member selection process. Some Indigenous interview partners suspected that decisions about membership sometimes resembled political horse-trading rather than being based on the individual qualifications of candidates, while others complained about strong differences in the level of qualifications of selected members. One interview partner highlighted an element of coincidence in member selection processes, as decisions depend very much on who is President of the HRC at that time. As the nomination and selection procedures are the same as for other bodies reporting to the HRC, there is no formal role for internal

<sup>92</sup> Cf.

<https://www.ohchr.org/EN/HRBodies/HRC/SP/Pages/BasicInformationSelectionIndependentExperts.aspx>, accessed 29.01.2019.

<sup>93</sup> In the first group of mandate-holders (2008-2011), only the African member Catherine Odimba Combe was not Indigenous. In the following years, only Indigenous persons were appointed, so that for a couple of years, there were only Indigenous mandate holders in the Expert Mechanism. Since then, a number of non-Indigenous persons have been appointed (in 2015 Albert Barume, in 2016 Erika Yamada, and in 2017 Kristen Carpenter). As a result, among the current members three out of seven are non-Indigenous.



Indigenous coordination processes in the nomination procedures. Nonetheless, Indigenous peoples from Asia have realized nomination processes which included broad participation from throughout the continent to nominate a common candidate to EMRIP (similar to their nomination of a candidate to the PFII). Other IPs have aired frustration that their region is not able to come up with similar processes.

Expectations by Indigenous peoples regarding members of their regions have differed. Some Indigenous interview partners expressed the expectation that EMRIP members should act as representatives of Indigenous constituencies. However, others value the independence of experts due to the understanding that within the EMRIP and in contrast to the PFII, members are also more independent from governments. Another major issue with regard to EMRIP is the Indigeneity of members, and several of the Indigenous interview partners highlighted their expectation that a majority or even all EMRIP members should be of Indigenous origin.<sup>94</sup> One interview partner mentioned that Indigenous membership was the main positive distinction between EMRIP and its predecessor, the WGIP. It is thus easy to imagine that EMRIP will enjoy broad support by IPs only as long as a significant share of its members is Indigenous. With regard to membership, I argue that quantitative access is medium, given that membership structures to some degree reflect the diversity within the Indigenous constituency, but Indigenous impact on the selection process is clearly limited.

With regard to qualitative membership access, all members are formally equal. However, while the founding resolution “strongly recommends” that Indigenous candidates should be taken into consideration in the selection process, there is no requirement regarding a certain number of members to be of Indigenous origin. It is thus possible that only a minority of Indigenous experts could be appointed. Therefore, I argue that qualitative membership access is medium.

	quantitative	qualitative
<b>Membership access</b>	medium limited Indigenous influence on selection of members; membership reflects Indigenous socio-cultural regions	medium no regulation regarding number of Indigenous members; all members formally equal

**Table 11: Degrees of membership access to EMRIP. Source: author’s elaboration.**

<sup>94</sup> At the same time, others pointed out that expertise and dedication were even more important qualifications for membership.

Several details are worth highlighting with regard to this analysis of Indigenous access to the PFII and EMRIP. First, the EMRIP mandate puts emphasis on the Indigeneity of members without formally requiring it. The body thus constitutes an interesting variant regarding the inclusion of affected actors in the context of this dissertation, because it shows that the variety of institutional arrangements for the inclusion of IPOs (and affected actors generally) is in fact very broad. Moreover, it is conspicuous that both the PFII and EMRIP offer parallel access structures through both observer and member status for Indigenous peoples. This is further evidence of the assumption that participation as observers and participation as members may have different functions with regard to the inclusion of affected actors. Additionally, in both institutions members are included as individual experts rather than as representatives of a certain constituency. Thus, taking into account the formal status of APO members might be an important additional element to take into consideration when determining the depth of access,<sup>95</sup> and it will have to be analyzed in Chapter six how this expert status affects perceptions of legitimacy. Lastly, the observations connected to the selection process of Indigenous members show that formal regulations sometimes leave IPs some room to maneuver provided that they achieve a high level of internal coordination. At the same time, it also shows the malleability of official regulations regarding the requirement to take into account Indigenous consultation processes. Therefore, it might not always be sufficient to simply look at official access rules to determine the depth and range of access; instead, there is a need to also take into account, when possible, how these regulations are implemented.

#### **4.4 Perceptions of legitimacy of the PFII and EMRIP**

This section will explore perceptions of legitimacy of the relevant constituencies regarding Indigenous-specific UN institutions, namely the Permanent Forum and the Expert Mechanism. Both institutions will be analyzed subsequently. As outlined in Chapter two, I will rely on legitimation as expressed through both behavior and through

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<sup>95</sup> In fact, in most ECOSOC subsidiary bodies (such as functional and regional commissions and standing committees) membership is restricted to states. Moreover, there are a number of expert bodies composed of members serving in their personal capacity (including the PFII). Most non-state members to ECOSOC subsidiary bodies serve as individual experts in their personal capacity. There is, however, one additional category of “other related bodies” to ECOSOC, which includes different organs with more diverse membership, including the Program Coordinating Board of UNAIDS which includes NGO members (see <https://www.un.org/ecosoc/en/content/subsidiary-bodies-ecosoc>, accessed 29.01.2019).

statements of participants made during sessions to make inferences regarding perceptions of legitimacy.

Who are the relevant constituencies whose evaluations will be taken into account? In Chapter two I have suggested that it is especially promising to look at those constituencies that participate as members and observers in Indigenous-specific UN institutions. Due to the high numbers of observers at the PFII and EMRIP, further selection was necessary. Therefore, I specifically took into account those actors which participate in high numbers in sessions, and/or have big shares of recommendations and advice directed towards them.<sup>96</sup> Representatives of states (donor states and states with Indigenous populations), Indigenous peoples' organizations, and UN agencies, programs and funds were identified as the most important constituencies of the PFII. For EMRIP, NHRIs were taken into account additionally. For each constituency, I constructed a sample of organizations with specific relevance for dealing with Indigenous affairs globally. This enabled me to observe, apart from looking at constituencies as a whole, how actively central actors engage in UN Indigenous issues, or whether they even were absent. An entire list of states and organizations which were part of the respective samples as well as information on how the samples were constructed can be found in the Appendix.

#### **4.4.1 Legitimation of the Permanent Forum**

As outlined above, access through both open and inclusive modes is deep and broad for IPs at the PFII. In the following, I will explore whether perceptions of legitimacy are correspondingly strong. I will start by analyzing the behavior of constituencies at sessions of the PFII. In a second step, I will take a closer look at the discourse surrounding the Permanent Forum in statements made during recent sessions.

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<sup>96</sup> The PFII Recommendations Database can be accessed at [https://esa.un.org/unpfii/UNPFII\\_Recommendations\\_Database\\_list.asp](https://esa.un.org/unpfii/UNPFII_Recommendations_Database_list.asp) (accessed 29.01.2019). The database serves to monitor the status of recommendations made by the Permanent Forum. As of January 2019, there were 1411 entries to the data base. A search for "member states" in the "addressee"- field retrieved 533 results; for "UN" (including recommendations to the UN system or specific agencies) 654 results; for "IP" (used as abbreviation of Indigenous peoples in the database), 104 results (however, this included recommendations made to WIPO); for "NGO", 25 results; for "private sector" 14 results; and for "Academic", 6 results. For EMRIP, I read the existing Advice (which is contained in its studies) to compile a list of its addressees.

#### *4.4.1.1 Legitimation through behavior*

With regard to behavioral indicators, observations are both made with regard to the group as a whole, and with regard to the states, IOs, and IPOs that were part of the sample. As outlined in Chapter two, the analysis of behavior relies on indicators related to attendance to sessions, which captures how many stakeholders participate, and to engagement, which captures the activities connected to participation. With regard to attendance, I compared figures of observer delegations as recorded in participant lists of the sessions in 2004 and 2006 with figures from 2014 and 2016.<sup>97</sup> I both analyzed how many and which delegations participated. In turn, indicators for engagement varied a little with regard to each constituency, as possible means of engagement also varied.

No clear trend was observable concerning state attendance, with numbers varying between 85 (in 2014), 70 (in 2004) and 65 (in 2016).<sup>98</sup> Thus, during the last few years both relatively high and rather low state participation could be observed. However, in comparison to the WGIP which had around 40-45 states participating in the proceedings during the last decade of its existence, or the EMRIP with about 50-55 participating state delegations, this seems to indicate that a significant share of states consider the PFII to be comparatively important. In total, 52 states (31 from the sample) were regular participants, attending at least in three of the four years. In contrast, 11 states from the sample did not participate at all, or only once. Interestingly, these were overwhelmingly African states. Two more states, namely Switzerland and Great Britain, only attended the earlier sessions,<sup>99</sup> while a number of other states only attended the more recent sessions.

With regard to state engagement, I considered the following four indicators: making regular statements,<sup>100</sup> sending a high-level participant to the Permanent Forum,<sup>101</sup>

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<sup>97</sup> No list of participants for the 2015 session of the Permanent Forum was available online.

<sup>98</sup> These numbers have to be seen in relation to the about 90 countries which are considered to have Indigenous peoples living within their borders (UN DESA 2009: 1); and 30 OECD-DAC members some of which have Indigenous populations on their own. Thus, there should at least be around 100 to 110 potential state participants for Permanent Forum sessions.

<sup>99</sup> This is especially interesting as both Switzerland and Great Britain were regular attendants at the Working Group on Indigenous Populations.

<sup>100</sup> I defined "regular" as providing at least four statements in the three sessions I took a closer look at.

<sup>101</sup> I took into account attendance of heads of state, ministers, state secretaries, and permanent representatives to the United Nations. As there is no list of individual participants to the Permanent Forum, I relied on an analysis of statements at the Permanent Forum as registered at the docip online

organizing one or more side-events as (co-)facilitator in the years 2014 to 2016; and appointing a member to the Forum.<sup>102</sup> Data as regards changes of national policies in response to recommendations of the Permanent Forum was not easily available. Therefore, I relied on three indicators as a proxy: Hosting a pre-session meeting of the Permanent Forum, and donating money to the Voluntary Fund are actions that the PFII has asked from states in its recommendations.<sup>103</sup> Moreover, I took into account whether states responded to a questionnaire which the PFII sent out to governments to get information regarding the implementation of earlier recommendations.<sup>104</sup> Each indicator was weighed equally; I then clustered the states which participated at the Forum in recent years into three groups following the number of positive indicators.

In this regard, there were 25 states (8 from the sample) which regularly attended sessions, but without further engagement or alignment of policies except for an occasional statement. Most Asian states are in this group. Another 25 states (15 from the sample) showed some type of engagement or alignment of policies (1 to 3 positive indicators). This group was heterogeneous. For example, Bangladesh, Nepal and the Philippines were part of it as the only Asian states not in the low engagement-group, but also a number of African (Botswana, Namibia, South Africa) and some western states, namely Canada, Spain, Sweden, and the United States. Lastly, there was a group of 13 strongly engaged states (all from the sample) which showed a minimum of four indicators of engagement. This group included western and Latin American states and the Russian Federation; it was made up only by states with Indigenous populations, plus Estonia.<sup>105</sup> The variance within this group is quite big, however. For example, Mexico as

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documentation (<https://www.docip.org/en/>) which generally also lists the speaker. I assume that if high-ranking persons are part of a state delegation, they will also deliver a statement at the Forum.

<sup>102</sup> Here, I took into consideration members of the PFII from the periods 2008-10; 2011-13; 2014-16; and 2017-19. I assume that in regions with many states there is a certain rotation, so that states may not be able to nominate persons for each period; therefore I also took into consideration the two periods antecedent to the time frame under research (2014-16). As there are no lists of nominations available for governmental elected members, I took into account only those persons who eventually became members of the Permanent Forum.

<sup>103</sup> See for example Report on the 16<sup>th</sup> session, E/2017/43-E/C.19/2017/11, §58 (on donating to the Voluntary Fund) and §94 (on hosting pre- and intersessional meetings).

<sup>104</sup> See for example questionnaire at [http://www.un.org/esa/socdev/unpfii/documents/2016/Questionnaire/15th Session Questionnaire to Member States.pdf](http://www.un.org/esa/socdev/unpfii/documents/2016/Questionnaire/15th%20Session%20Questionnaire%20to%20Member%20States.pdf), accessed 29.01.2019.

<sup>105</sup> Many states from this group are also part of the so-called “Group of Friends”, which occasionally lobby in favor of Indigenous peoples. The Group of Friends of the Permanent Forum is an informal group of states. Members declare themselves supportive of Indigenous issues at the United Nations; through this group, they act together to support the Forum in its work. Members in 2017 were Argentina, Australia,

one of the most supportive states did not only score positively with regard to five indicators, but also showed high results with regard to some of the individual indicators (delivered 10 statements, (co-)facilitated 5 side-events, and reported each year to the Forum).

Two other observations are worth mentioning with regard to state engagement: First, for the period 2014-2016, one PFII seat remained vacant due to lack of nominations from the Asia-Pacific group. Moreover, since 2008 individuals from the Iran have permanently occupied one PFII seat for the Asia-Pacific group, further underlining a lack of interest from other states of the region to nominate members to the body. Moreover, PFII members are not satisfied with the response rates of states to the questionnaires on the implementation of recommendations. For preparation of the 2018 session, no such questionnaire was sent out as basically always the same few states responded to the request while many others never did.<sup>106</sup>

In short, state behavior at the Forum varies considerably. Many African states still do not participate at sessions; in contrast, many Asian states assist but do not engage. There is a forerunner group of states which actively support the Forum and its work, mostly from Western states and Latin America.<sup>107</sup> Potential donor states without Indigenous populations mostly do not participate at sessions; if they assist, they show rather low

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Bolivia, Brazil, Canada, Colombia, Denmark, Ecuador, El Salvador, Finland, Guatemala, Mexico, New Zealand, Nicaragua, Norway, Spain, Paraguay, and Peru.

<sup>106</sup> Statement by PFII member Brian Keane, 16.4.2018, see <http://webtv.un.org/search/2nd-plenary-meeting-permanent-forum-on-indigenous-issues-17th-session/5771909409001/?term=&lan=english&cat=Meetings%2FEvents&page=92>, at 0:08:00, accessed 29.01.2019.

<sup>107</sup> Sheryl Lightfoot (2016: Chapter 5) has analyzed states' commitment to the Indigenous rights' regime, and their behavior in terms of domestic politics targeting Indigenous peoples. Comparing her results with mine, in general it can be said that active participants at the PFII also show a high commitment to Indigenous rights (but not all states with a high commitment are active participants); exceptions: CANZUS (low commitment, but moderate behavior); and Russian Federation (low commitment, weak behavior). Other states she categorizes as "low commitment, weak behavior" mostly do not participate at all (Rwanda, Burundi, Uganda, and Ethiopia) or participate passively, in some case infrequently (Nigeria, Morocco, Kenya, Israel, Bangladesh). In turn, states with moderate or strong behavior are all regular participants of the PFII; most also show at least some engagement (to a lesser degree Panama and the Philippines); exception: Japan and Malaysia do not actively participate, but show moderate politics. This seems to indicate that there generally is a strong link between states' behavior regarding Indigenous peoples at the domestic and UN level. A very interesting exception is the Russian Federation that was among the most actively engaged states at the PFII in spite of weak domestic behavior regarding IPs. In this regard, the analysis of statements carried out below suggests that the Russian Federation's engagement at the PFII often contains a critical tone.

engagement while the proceedings are generally dominated by those states in which Indigenous peoples live.<sup>108</sup>

Attendance by IOs is about 1/3 lower now than it was a decade earlier; from about 30 to 35 participating entities it has lowered to now about 20-23. This number also seems low compared to the 42 IOs and UN agencies which are currently members of the Inter-Agency Support Group.<sup>109</sup> There was a high number of IOs (26) which participated only once in the years under consideration; this seems to indicate that while many IOs have shown some interest in the work of the Permanent Forum, not all of them could be convinced that attendance should be a priority for them. However, a majority of agencies and IOs from the sample are regular participants at sessions; only the UN Framework Convention on Climate Change (UNFCCC), UN-HABITAT, UNAIDS, the UN Office for Disaster Risk Reduction (UNISDR), the HRC and the Asian Development Bank (of the sample IOs) do not or only infrequently participate at sessions.<sup>110</sup> Four entities which attended the earlier sessions stopped assisting, including the International Organization for Migration (IOM) and UN-HABITAT as members of the IASG. In turn, there were four more regular participants which were not part of the sample.<sup>111</sup>

With regard to engagement, I took into account the following indicators: sending a high-level participant (director, or higher), number of statements delivered at sessions, and the organization of side-events. Regarding alignment of policies, I resorted to three indicators as a proxy: the provision of reports on agency policies as input to sessions, the adoption of a specific strategy on Indigenous peoples, and IASG chairmanship.<sup>112</sup> As with regard to states, all indicators were weighed equally. IOs were then grouped according

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<sup>108</sup> Donor states often primarily take advantage of sessions to meet project partners, network etc. (personal communication by a government delegate during PFII session, May 2008). However, there are two exceptions to this rule: Estonia and Spain both take a more active role at the Permanent Forum. While the Spanish engagement might be explained by its history as colonizing power, Estonians have claimed Indigeneity (as part of the family of Finno-ugric peoples), and Estonian state officials have at least to some degree used their engagement at the PFII to confront the Russian Federation.

<sup>109</sup> Although the IASG has over 40 members, less than 20 participated at the recent annual meetings, with attendance varying a bit depending on the venue of the meeting; Europe-based staff does not always attend meetings in the US, while staff of US-based organizations does not necessarily fly over to Europe.

<sup>110</sup> The IASG also is part of the sample, but member agencies participate on their own behalf, so its absence "as IASG" was not registered.

<sup>111</sup> The Inter-American Development Bank, the Economic Commission for Latin America and the Caribbean (CEPAL), the UN Environment Program (UNEP), and the United Nations Institute for Training and Research (UNITAR).

<sup>112</sup> Some of these indicators were not relevant in the context of intergovernmental bodies which are composed of UN Member states such as the GA, ECOSOC, and the HRC. For example, these bodies do not report to the PFII. Therefore, their engagement was not taken into consideration here.

to the number of positive indicators. There were eight active IOs and UN bodies (4 or more positive indicators);<sup>113</sup> of these, the two forerunners are IFAD and UNDP, which scored positively with regard to all six indicators. Ten agencies and IOs (eight from the sample) scored positively with regard to two or three indicators.<sup>114</sup>

Nearly all of the active IOs were also part of the sample. In other words, there is a core of roughly ten IOs and agencies which regularly engage with the PFII and are regularly addressed by recommendations.<sup>115</sup> UNFCCC, UNAIDS, and UN-HABITAT (from the sample) however, showed no engagement at all. Contrary to a pattern of behavior observed with regard to some states, namely regular attendance without further engagement, most agencies which participated generally also showed some type of engagement.<sup>116</sup> There are, however, some IOs and agencies which do not participate regularly at sessions, but nevertheless show some type of engagement, such as the Global Compact (which organized a side-event), the World Food Program (reported twice to the PFII), or the International Land Coalition (co-chaired the IASG in 2016). This also includes the Asian Development Bank from the sample. This suggests that some IOs are willing to engage with the PFII even though they do not attend sessions.<sup>117</sup> In short, as with regard to states, agency behavior with regard to the Permanent Forum varies strongly between no response at all and strong engagement.

With regard to the numbers of participating IPOs, no clear trend is observable. While attendance was especially high in 2004 (233 attending IPOs), it was low in 2005 (155 attending IPOs). In recent years, about 170 to 200 Indigenous organizations have participated at sessions. The number of participating individuals, however, was considerable higher: In total 2.200 individuals from all constituencies had registered for

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<sup>113</sup> FAO, IFAD, the International Labour Organization (ILO), the UN Development Program (UNDP), UNEP, the Secretariat of the CBD, OHCHR, and WIPO.

<sup>114</sup> The UN Children's Fund (UNICEF), the UN Educational, Scientific and Cultural Organization (UNESCO), the UN Population Fund (UNFPA), World Bank, EU, the UN entity dedicated to the empowerment of women (UN Women), WHO, and the Asian Development Bank from the sample; and CEPAL and the Inter-American Development Bank. The WHO as a whole is not very active, but its regional branch in the Americas, the Pan-American Health Organization (PAHO), is a regular participant. UN Women seems to have begun to engage more actively on Indigenous issues very recently. While during the timeframe under consideration, engagement was restricted to the delivering of reports, the Executive Director of the agency addressed the 2017 session of the Forum, and the agency chaired the IASG in 2017 for the first time.

<sup>115</sup> OHCHR, UN Women, UNDP, SCBD, PAHO, UNICEF, UNFPA, IFAD, UNEP, WIPO, UNESCO.

<sup>116</sup> There was one exception to this rule, namely UNITAR.

<sup>117</sup> This might be due to the high costs of attending sessions. In this regard, the high costs connected to attending sessions for agencies that do not have their headquarters in New York were mentioned by several interview partners from agencies.



the 2015 annual session (Sapignoli 2017: 89), out of which a majority probably represented IPOs. This makes the Permanent Forum the institution with the highest number of Indigenous participants.<sup>118</sup> With regard to the 37 internationally active Indigenous organizations which were part of my sample, a broad majority of IPOs (23) were regular participants at sessions of the Forum, two more were regular participants during recent sessions, six only participated sporadically, and five organizations attended earlier sessions, but seem to have stopped participating.<sup>119</sup> Four of the five IPOs (one transnational, two from Latin America, two from Africa) which have stopped to participate at the Permanent Forum participated at other UN processes or bodies (EMRIP, UPR, CERD, or WIPO's IGC).<sup>120</sup> This suggests that there are, at a low level, in fact some Indigenous organizations which consider other institutions more relevant for participation at the global level than the Permanent Forum. Some Indigenous experts now prefer to pursue their causes at the local or national level due to their perception that the Forum's work has limited impact on the grounds for Indigenous communities (Sapignoli 2017: 103). Cherokee scholar Jeff Corntassel (2007) who has himself participated at the PFII argues in an article to shift engagement from the UN to entirely Indigenous forums and initiatives. However, it is difficult to estimate the relevance and comparative importance of these voices.

Regarding engagement at the Permanent Forum, I took into account the following indicators: number of statements at the PFII 2014-16; nomination of an individual with organizational affiliation for membership of the PFII;<sup>121</sup> and organization of side-events. Alignment of policies was more difficult to measure with regard to IPOs, as the Permanent Forum does only infrequently address recommendations to IPOs. However, since 2016 IPOs have been asked to prepare reports on their activities as an input to sessions. Additionally, I also registered all types of creative unconventional behavior by Indigenous participants at the Forum which I personally observed during sessions or

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<sup>118</sup> In comparison, about 80 to 130 IPOs participated at of recent EMRIP sessions.

<sup>119</sup> One IPO did not attend the PFII during the analyzed years. With regard to these observations, it has to be taken into account that in some cases activists who participate are affiliated with different organizations simultaneously, so that some organizations might have been present at sessions without having their presence registered in the official documentation of the session. See also Chapter five, Section 5.1.1.

<sup>120</sup> For one organization, no recent information concerning activities beyond the local level could be obtained.

<sup>121</sup> I relied on lists of nominations to the Permanent Forum for the terms 2014-2016, and 2017-2019. I also took into account organizations which had a member of the organization appointed to the Permanent Forum in recent years.

about which there were reports in the literature; this type of activities, however, could not be traced back to specific IPOs (such as the sample IPOs). I then grouped Indigenous organizations with regard to the degree of their engagement. 15 organizations (out of the 31 sample IPOs which had participated at recent sessions) had been very active during recent sessions, delivering regular statements, nominating members to the Permanent Forum, and/or organizing side-events and/or responding to the call of the PFII to prepare a report. These were overwhelmingly big organizations spanning Indigenous groups from various countries such as the International Indigenous Treaty Council (IITC), the Federación Internacional de Mujeres Indígenas (FIMI), and the Asia Indigenous Peoples Pact (AIPP) or organizations from the Western hemisphere. 18 IPOs showed some engagement, while four IPOs had assisted at sessions of the PFII, but no engagement or alignment of policies could be observed.<sup>122</sup>

Apart from these direct, positive responses to the Permanent Forum in the form of engagement, strategies of creative unconventional behavior are regularly employed by Indigenous participants. One very visible element is the performance of ceremonial events. Even though religious rites are generally prohibited at the UN, it has become accepted that a prayer is spoken at the opening of sessions of the Forum and other Indigenous-specific UN institutions, followed by a short cultural performance such as a dance or a song. I suggest that through these rituals, Indigenous participants express their allegiance to the Forum, and show that they consider these meetings as “theirs”.

A number of practices are used to challenge the perceived power structure between Indigenous and state or IO observers at sessions. For example, Indigenous delegates sometimes put handwritten nameplates displaying their Indigenous nationality at their desk, similar to the plates that identify the seats of government and IO delegations. Indigenous participants have also challenged the traditional seating order of UN meetings with government delegates sitting in the front, and IPO and NGO representatives in the back in an effort to be treated as equals to states (Dahl 2012: 67). Therefore, at the Permanent Forum, seats for IOs and states are now placed in one section, with Indigenous organizations next to them, both in the front and back (ibid.: 65). However, through these actions IPOs express their dissatisfaction with concrete

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<sup>122</sup> Additionally, one sample IPO, which had not been registered as participant in recent sessions, organized a side-event. See footnote 116 for a possible explanation.

proceedings (at the lowest level of the hierarchy of legitimation objects) rather than with the institution as a whole.

A very specific event, in turn, was the “May revolt” at the 2008 session of the PFII. When at the end of the 2008 session the report was about to be adopted, a group of Indigenous delegates protested against the recommendations it contained concerning ongoing international policy debates on reducing emissions from deforestation and degradation (REDD), which they felt did not adequately reflect statements made by IPOs during the session. They interrupted the proceedings of the session by shouting and clapping their hands until they were allowed to read out their statement (notes from research diary, May 2008, see also Sapignoli 2017: 98). In 2012, during renovation of the UN buildings, there was some protest with regard to changed policies of admission to the session due to limited space in the room (Lightfoot 2016: 86). In a way, these protests, while expressing dissatisfaction with the actual proceedings, also seem to demonstrate allegiance to the PFII: both cases show that Indigenous participants felt that they had a right to have their positions reflected in the report, respectively a right to be present in the main meeting room. The protests also confirm that the protesters consider the PFII to be of high relevance to them, as otherwise they might not have cared to engage in open protest. However, such more radical challenges to the PFII have only been used in exceptional circumstances,<sup>123</sup> and most Indigenous activists generally seem to follow the rules of the game. Thus, Sheryl Lightfoot (2016: 86) cites an Indigenous activist stating: “You have to act like diplomats to be treated equally as diplomats”.

In general, over the years the number of participating observers has stayed stable at a high level (Sapignoli 2017: 89). In terms of numbers of participants, it is the single most relevant institution dealing with issues of relevance to Indigenous peoples internationally. Within each constituency, there are very active, engaged participants which at least to some degree react to recommendations. There are, however, other relevant actors from all categories who only assist at sessions or even abstain from attending. While these indicators seem to point to a medium degree of legitimacy (see Table 12), I will now proceed to analyze legitimation of the PFII in statements made during recent sessions to see whether this points to similar results.

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<sup>123</sup> In comparison, within the Working Group on the Draft Declaration, Indigenous delegates two times used a collective walkout to de-legitimize the process, and on one occasion some Indigenous participants even resorted to a hunger strike (Dahl 2012: 180–183).

Degree of legitimacy	Attendance to sessions	Engagement and Alignment of policies	Constituencies
<b>Medium “normal”</b>	Very high participation of IPOs, somewhat more limited (but still comparatively broad) by states and IOs; more or less constant participation over time, although participation of IOs has diminished to some degree	Varying engagement by participants, such as by delivering statements at sessions or organizing side-events; more limited reactions with regard to the alignment of policies; forms of unconventional behavior suggest both occasional dissatisfaction with proceedings and general allegiance of (some) IPOs to PFII	Supportive behavior by some participants from all relevant stakeholder groups; but also abstention from participation or lack of engagement by relevant actors from each group

**Table 12: Degree of legitimacy of the PFII as shown in the behavior of constituencies. Source: author’s elaboration.**

#### *4.4.1.2 Legitimation through statements*

In Chapter two, a number of indicators have been developed to assess statements made by representatives from all constituencies. I selected statements by those states, IPOs and IOs which were part of the sample, giving preference to the most recent statements, and to statements which dealt with the reform of methods of work.<sup>124</sup> I then screened all selected texts for legitimation statements and classified the selected pieces of text with regard to their general assertion (positive or negative evaluation) and the object of legitimation they referred to. The database of classified statements then formed the basis for further analysis.

With regard to the first indicator, namely the distribution of positive and negative evaluations, the number of positive evaluations came close to the 2/3 threshold. 154 out of 248 statements identified in the material were positive evaluations, in comparison to 94 statements which were classified as negative evaluations.<sup>125</sup> Concerning the second indicator, higher objects of legitimation, namely regime principles and the institution as a whole, were evaluated overwhelmingly positive. Thus, 51 positive evaluations of the Permanent Forum were identified compared to no negative evaluation, making up for more than a fifth of all evaluations. For example, at the 15<sup>th</sup> session of the Permanent Forum, Denmark stated on behalf on the Nordic countries:

<sup>124</sup> A more detailed description of the text selection process can be found in the Appendix.

<sup>125</sup> 166 positive statements or more would have led to a classification as highly legitimate.

“The Permanent Forum is a unique space for exchanging ideas and knowledge on issues related to indigenous peoples. With the broad participation of indigenous peoples, Member states, and UN agencies, funds and programmes, the Forum becomes an ideal mechanism in the promotion of respect for indigenous peoples' rights” (Nordic States 2016).

Similarly, evaluations regarding regime principles were mostly positive (33 of 37 statements referring to regime principles). Most frequent were positive references to Indigenous participation in all issues concerning them at the global level.

39 statements referred to specific structures of the PFII, 22 of them positive. While there were 11 positive evaluations of the work of the Forum in general (compared to one negative reference), both positive and negative statements were dispersed. Positive evaluations could be found with regard to the mandate (5), while negative evaluations for example were made with regard to the relationship with ECOSOC and placement in UN hierarchy (4) and the lack of a monitoring mechanism/ effectiveness (5).

Nearly half of all evaluations (121) – and more than  $\frac{3}{4}$  of negative evaluations (73) – were tied to specific features of the Permanent Forum, namely groups of actors and – due to the focus on institutional reform – on working methods. This was the only category where negative evaluations outnumbered positive statements, suggesting that while the PFII in general disposes of solid legitimacy, criticism of some of its specific features is widespread, and there was considerable consensus regarding the need for reform. This is supported by the fact that more than half of the positive statements in this category expressed support for institutional reform (27). Features which most attracted criticism are the process by which recommendations are made (10), speaking rights at the sessions (15), and the behavior of certain stakeholder groups at sessions (15). In sum, whereas legitimation was concentrated on higher objects of legitimation, delegitimation was mainly found with regard to institutional features at the lowest level, and directed to many objects, i.e. dispersed.

With regard to the different constituencies, evaluations were a little more positive than the average in texts by states. Nearly half of the positive statements referring to the PFII in general came from this group (26). Strikingly, only 16 texts contained negative evaluations at all. These texts may be grouped into two different types: On the one hand, there were texts which criticized specific features in the context of Forum reform, mostly in the context of an overall positive evaluation of the PFII, such as in the following excerpt from a statement by Ecuador:

“More than a decade has passed since the first session of the Forum, and in this time progress in favor of Indigenous peoples has been realized; nevertheless we know that it can continue to improve. In this sense we share the importance of continuing an open and comprehensive dialogue with the objective that the Forum better lives up to its mandate to examine Indigenous issues [...]” (Ecuador 2015).<sup>126</sup>

In this regard, statements by the Russian Federation to some degree stood out because they more fundamentally questioned the direction of the reforms, such as by warning that the newly introduced closed dialogues between members and individual constituencies might undermine the trust of stakeholders in the Forum (Russian Federation 2016).

On the other hand, there were texts mainly by Asian and, in one case, an African state in which delegitimation is not linked to Forum reform. In contrast, these texts suggest that some states mainly participate at the Forum to defend national interests. Typical issues in this context were the legitimacy of certain participants claiming Indigeneity and the allegedly inappropriate behavior by individual participants.<sup>127</sup>

“The participation at this Forum of KKF [Khmers Kampuchea-Krom Federation, H.N.], which is not even recognized as an indigenous peoples organization by fellow organizations, only goes against the interest of indigenous people, create distraction and waste the precious time of the Forum that could have been offered, instead, to many other organizations genuinely representing indigenous people around the world, to the distinguished members of the Forum and to other participants. This is in our view a serious matter for the Forum to consider as it discusses its future work” (Viet Nam 2015).

These texts also included the sole negative evaluation of regime principles regarding the principle of self-definition of Indigenous peoples as a foundation for the work of the Permanent Forum. However, most texts contained only positive evaluations.

Second, with regard to statements by IPOs, it was the group of texts that contained most negative statements; they even outnumbered positive statements (47 to 35). However, even with this ratio of positive and negative evaluations, texts from Indigenous organizations remained firmly within the “medium legitimacy” category. Similarly as with regard to the aggregated results, legitimation could be observed with regard to regime principles (7) and the PFII in general (13), whereas delegitimation focused on

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<sup>126</sup> Translation from Spanish original: “Ha transcurrido más de una década desde la primera sesión del foro, en este tiempo se ha logrado avances a favor de los pueblos indígenas, no obstante de ello sabemos que puede seguir mejorando. En este sentido compartimos la importancia de mantener un diálogo abierto y comprensivo sobre este con la finalidad que el foro cumpla mejor su mandato de examinar las cuestiones indígenas [...]”

<sup>127</sup> Although complaints about specific statements have not been taken into account with regard to legitimacy evaluations, these were also a recurrent feature of this group of texts.

objects at lower categories in the legitimation hierarchy. Thus, the higher number of delegitimation might at least to some degree be expression of the fact that the highest number of texts that explicitly dealt with forum reform came from this group. Issues which attracted the highest number of delegitimizing evaluations were the behavior of certain stakeholders, i.e. states or agencies (11) and speaking rights at sessions (12).

“One observation about this and other UN forums is that when IP raise issues there is often no response by states; states that decide to speak are able to respond with abstract and indirect rhetoric. Without change, states and IP will continue to talk cross each other and this does not assist with implementing the declaration at the domestic level” (Ben Wakefield Trust 2016).

In turn, it was also the group which contained most texts without any (de-)legitimation whatsoever (13 texts).<sup>128</sup> Moreover, there were also some texts which seemed far more critical about the Permanent Forum than most others. Thus, five texts accounted for 29 negative evaluations (in comparison to only 9 positive evaluations). Interestingly, these were mostly texts from US groups, while one came from the Andean countries. This seems to reflect a “differentiation in the indigenous movement” (Dahl 2012: 73) between Indigenous groups with already existing rights (such as treaty rights in the US<sup>129</sup>), and groups mostly from Africa or Asia which more strongly rely on participation opportunities at the UN level, as they lack rights and participation opportunities in the domestic context.<sup>130</sup>

Thirdly, texts from IOs contained the lowest number of legitimacy evaluations per text (1.75), and those were overwhelmingly positive. A high share of statements was directed to regime principles (10) and the PFII in general (10). The only negative references found in the material were made with regard to specific features and concerned a lack of interaction between agencies and Permanent Forum members and the decreasing participation at the Forum. In short, the texts show broad support by IOs for the Permanent Forum.

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<sup>128</sup> There were only four more texts from other constituencies which did not include any legitimation.

<sup>129</sup> In the context of European colonization, some Indigenous peoples in the US, Canada and New Zealand entered into treaties with the colonial powers. Treaty rights often guarantee reserved areas of land, but also religious freedom or hunting and fishing rights. As these treaties were made between equals (from government to government), they are nowadays used by the respective IPs to highlight their independent status as nations.

<sup>130</sup> This provides support to the findings of Agné and colleagues who suggest that those actors which experience weak democracy in the domestic context value the representativeness and accountability of IOs more positively as a counterbalance to repression experienced in their home countries (Agné et al. 2015: 482–483).

Lastly, in texts from PFII members the context of Forum reform was most evident, due to the fact that the current reform process was initiated and carried forward by members of the Forum, some of whom even formed a reform sub-committee. Thus, texts contained the highest share of legitimacy evaluations (4.6 per text), and these focused on structural issues and specific features of the Forum. Texts also expressed firm support for the reform process, while both delegitimation and legitimation were rather dispersed than concentrated on a few specific issues, showing that each member brought his or her specific concerns into the reform process. Delegitimation and legitimation were both nearly equally distributed (22 to 24 evaluations).

Degree of legitimacy	Distribution of positive/negative evaluations	Objects of legitimation: concentration and dispersal	Constituencies
Medium	Nearly 2/3 of legitimation statements (159 of 252 statements were positive)	Strong legitimation with regard to regime principles and the institution as a whole. Most delegitimation with regard to specific features	Support by all stakeholder groups but some more critical voices from within the state and IPO groups

**Table 13: Degree of legitimacy of the PFII as shown in statements made during sessions. Source: author’s elaboration.**

The above discussion about legitimation in statements made during PFII sessions suggests that the PFII enjoys medium legitimacy. With regard to the distribution of positive and negative evaluation, as well as with a view to the objects of legitimation, one might even argue that legitimacy tends towards high. However, given the existence of sub-groups from within the states and IPO constituencies which are critical about the PFII, I classified legitimacy as medium. Table 13 sums up the respective information.

In short, both statements and behavior suggest that the Permanent Forum disposes of solid legitimacy by parts of all relevant participant groups. At the same time, however, there are individual actors which remain highly critical of the institution. More than between constituencies, the analysis shows that there is significant variance within groups both with regard to participation indicators and rhetoric support provided to the PFII. In other words, legitimation structures of the PFII are characterized by medium or strong support by some actors, whereas others are far more critical or even abstain from participating. While we might thus speak about a medium degree of legitimacy of the PFII, we have to keep this variance in evaluations in mind.



## 4.4.2 Legitimation of the Expert Mechanism

The following section will take a closer look at EMRIP and the legitimation processes surrounding it. In comparison to the PFII, access modes for APO members at the EMRIP are weaker. It will therefore be interesting to see whether legitimation by its constituencies through behavior and speech reflects this difference. Parallel to the proceedings in the previous section on the PFII, I will start by analyzing the behavior of constituencies at sessions of EMRIP, as well as their reactions to claims made by the Expert Mechanism. I will then take a closer look at the discourse surrounding EMRIP in statements made during recent sessions by members of the institution, states, IPOs, IOs and NHRIs.

### 4.4.2.1 Legitimation through behavior

In the following I will give an overview regarding the behavior of each constituency as regards attendance to sessions and engagement with EMRIP with a specific focus on the states, IOs, NHRIs, and IPOs that made up my sample (see Appendix). With regard to attendance, I compared figures of observer delegations as recorded in participant lists of the sessions in 2008 and 2009 with figures from 2016 and 2017.<sup>131</sup> I both analyzed how many and which delegations participated. In turn, indicators for engagement varied a little according to constituencies, as not every mean of engagement was available to each group.

With regard to state attendance, no clear trend was observable. State participation oscillates at around 45-55 participating state delegations. While this is slightly more than the 40-45 states which participated at WGIP sessions prior to the creation of the EMRIP, state participation at the Permanent Forum is considerably higher with up to 85 delegations in recent years. There is quite a big share of regular participants within the states group. 35 states (28 from the sample<sup>132</sup>) sent delegations to the Expert Mechanism at least at three of the four analyzed sessions. Four more states participated in both the recent sessions. These numbers show that there is a big share of regular participants, and rather few delegations which only participate occasionally. In contrast,

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<sup>131</sup> 2008 and 2009 were chosen as the very first sessions of EMRIP, whereas 2016 and 2017 were chosen as the relevant years for EMRIP reform.

<sup>132</sup> This implies that with regard to numbers, participation from the sample states is fairly similar in the Expert Mechanism and the Permanent Forum (where 31 sample states participate regularly).

19 states from the sample did not participate at all, or only once. This included most African states, three Asian states, and four potential donors. One more state, the Philippines, did attend earlier sessions, but stopped attending in recent years.

I also took a closer look at varying degrees of interaction of participating state delegations with EMRIP. With regard to engagement, I took into account numbers of statements made during recent sessions, sending a high-level representative and the organization of a side-event in the context of the session. No indicators were available which showed whether states had acted upon EMRIP advice. As a proxy for alignment of policies, I therefore analyzed whether states had provided input to EMRIP studies, or responded to the questionnaire on UNDRIP implementation, and which states had hosted an inter-sessional meeting of EMRIP. I also registered which states participated in the mandate review Expert Seminar with a delegation, or by a written contribution. Each indicator was weighed equally; I then clustered the 39 states which had regularly participated at EMRIP in recent years into three groups following the number of positive indicators.

In general, state engagement is relatively low; few side-events are organized by states, practically no delegation sends high-level participants, and the number of states which provide input to EMRIP studies remains low. 12 states participated at EMRIP, but showed no engagement at all except for an occasional statement.<sup>133</sup> This group was very heterogeneous and contained African, Latin American, Asian and some European states. The low to medium engagement group (one to three positive indicators) was the biggest with 19 states falling into this group. Most Latin American states were in this group, but also South Africa and Burundi from Africa, and Japan and Indonesia from Asia, a few potential donors (Germany, Switzerland, France), western states with Indigenous populations (USA, New Zealand, Sweden), and the Russian Federation. Of the regularly participating states, only eight showed high engagement. These were either western states with Indigenous peoples (Australia, Canada, Denmark, Finland, and Norway) or Latin American states (Mexico, Guatemala, and Chile). Most of these states also permanently have one or more persons assisting to the session, while other state delegations only assist during specific agenda items.<sup>134</sup> Interestingly, there are also a

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<sup>133</sup> I.e. a maximum of one statement in the timeframe 2015-2017.

<sup>134</sup> Notes from my research diary from an EMRIP session, July 13<sup>th</sup>, 2017.

number of states which do not or only occasionally participate at sessions, but nevertheless react to EMRIP's demands such as by responding to its questionnaire or providing input to its studies.<sup>135</sup> In sum, most African and Asian states do not participate at all in the proceedings of the EMRIP, or do not participate actively. Latin American states mostly show medium engagement. Western states with Indigenous peoples show medium or high engagement. In turn, potential donors, if they participate at all, take a rather passive role in the proceedings; they seldom make statements, but in some cases provide input to studies or answer the questionnaire on UNDRIP implementation. EMRIP itself opines that state engagement is not sufficient, and has asked the HRC to encourage states to engage more actively at sessions and beyond (UN HRC 2017).

The number of participating UN agencies and funds and IOs varies around ten. Fourteen IOs participated in 2009, eight in 2016, and thirteen in 2017. Thus, IO participation is quite low at the Expert Mechanism. Moreover, in these numbers the other Indigenous specific mechanisms are included which regularly participate at EMRIP sessions (Special Rapporteur, Permanent Forum, and Voluntary Fund). Seven agencies from the sample have until today never participated at EMRIP, including some which are very active with regard to Indigenous issues, namely IFAD and the Secretariat of the CBD. Six more agencies only participated very irregularly (one or two times since the creation of EMRIP). UNESCO, UNITAR, WHO and the World Bank were somewhat more regular participants and assisted at three or four sessions. Only UNDP, ILO and the EU participated more regularly (and, of course, the OHCHR as the servicing entity of the EMRIP). Interestingly, UNITAR, which was not part of the sample, was also between the more regular participants.

With regard to engagement, I took into account the following indicators: sending a high-level participant (director, or higher), number of statements delivered at sessions, and the organization of side-events. Regarding alignment of policies, I resorted to the provision of input to EMRIP studies as a proxy. As with regard to states, all indicators were weighed equally. Agencies were then grouped according to the numbers of positive indicators. Results show that IO engagement at EMRIP is generally low. For example, there was practically no high-level participation at all except for welcoming speeches by

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<sup>135</sup> Among these are some states which do not have Indigenous peoples living within their territory (Cuba, Bosnia-Herzegovina), but also some that have (Namibia, Burkina Faso, Guyana).

the President of the Human Rights Council and the High Commissioner for Human Rights at Opening Sessions. In one instance, the Assistant Secretary-General for Economic Development participated at one specific agenda item. Moreover, while a few agencies had provided input to earlier studies of EMRIP, no input was given to the more recent studies. Numbers of statements by IOs were low; only for three IOs and agencies (EU, UNDP, and ILO) more than one statement made at EMRIP sessions since its inception was found in the docip archives. However, most of the agencies which participated more regularly were also more engaged. Thus, UNDP, ILO, UNESCO, WHO and the World Bank scored positively with regard to two or three indicators. To some degree, this reflects the study topics dealt with by EMRIP; the ILO, UNESCO, WHO and the World Bank are all addressed in EMRIP advice. UNITAR and the EU (of the more regular participants) as well as UNICEF, WIPO, and the Secretariat of the CBD (of those agencies which rarely or never participated) scored positively with regard to one indicator. In short, there is a core group of about five agencies/ IOs which participate quite regularly and show some engagement with regard to the Expert Mechanism. Interestingly, these are only in part the same IOs and UN agencies which are active in the PFII context. Still, in general IO participation is low and infrequent, and they seem to be secondary actors in the proceedings.

NHRI participation at EMRIP is scarce. In this regard, Commissioners from New Zealand and Australia are those who have very regularly participated at EMRIP sessions, while participation from other mechanisms took place only occasionally. Generally, two to five national or regional human rights mechanisms have been participating at EMRIP sessions. In total, seven NHRIs, two regional mechanisms, and the International Coordinating Committee (ICC) of NHRIs have participated at least once at EMRIP sessions. With regard to engagement, I took into account the following indicators: sending a high-level participant (the chair of the mechanism), number of statements delivered at sessions, and the organization of side-events. Regarding alignment of policies, I resorted to the provision of input to EMRIP studies as a proxy. All indicators were then weighed equally. Engagement at sessions was rather low. As the only regular participants, the Commissioners from Australia and New Zealand quite frequently delivered statements at sessions. In one case, the Chair of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights delivered a statement at the opening session, and in one case, a side-event was hosted by

Regional Human Rights Mechanisms. However, compared to other participant groups, NHRIs were comparatively engaged with regard to providing written input to EMRIP studies. While the New Zealand Human Rights Commission was the single most active mechanism, there has been some NHRI input to all of the recent EMRIP studies. This includes occasional input by NHRIs which never participated in EMRIP sessions, indicating that the work of EMRIP is probably better known and valued by NHRIs than low participation rates suggest.

With regard to the numbers of participating IPOs, attendance seems to be somewhat lower now than it was in the first years after the creation of EMRIP. 97 IPOs participated in 2008, 113 IPOs in 2009; in contrast, in recent years (2016 and 2017) about 80 to 85 delegations from IPOs participated.<sup>136</sup> Of the 37 internationally active Indigenous organizations which made up my sample, only seven were regular participants at sessions, and two more attended the two last sessions. In turn, there were seven additional organizations which participated irregularly at EMRIP sessions. Seventeen IPOs participated at some instance, but not during recent sessions, while four never assisted to EMRIP sessions. There is thus a rather small group (from the sample) of regular participants to EMRIP, while most IPOs only have participated occasionally at sessions. More than half of all IPOs from the sample (21) did not participate in recent sessions (2016/17). Eighteen of these did participate in other international activities related to Indigenous peoples, while only for three of them no such evidence could be detected. By tendency, regular EMRIP participants are either from western states, transnational IPOs, or geographically close to the meeting venue in Europe - or show a combination of several of these factors: For example, the Saami Council is a transnational NGO from Northern Europe and as such based in a western state. This supports the assumption that participation in EMRIP sessions to some degree may be determined by the availability of resources. However, in the case of scarce resources, for many IPOs participation at the EMRIP does not seem to be the first choice, as many of the same IPOs do participate at the PFII.

Regarding engagement at the Expert Mechanism, the following indicators were taken into account: number of statements at EMRIP 2015-17 and the organization of side-

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<sup>136</sup> These numbers are estimates, as in the last reports of EMRIP participating IPOs were listed together with non-Indigenous support NGOs. Not in all cases was it obvious from the names which organization pertained to which category.

events. With regard to the alignment of policies, I took into account the provision of input to EMRIP studies, as well as responses to the questionnaire on UNDRIP implementation. I also registered which organizations took part in the mandate review by participating at the Expert Seminar or submitting a written contribution. Additionally, I registered all types of creative unconventional behavior by Indigenous participants which I personally observed during sessions or of which accounts were found in literature; this type of activities, however, could not be traced back to specific IPOs (such as the sample IPOs). I then grouped Indigenous organizations with regard to the degree of their engagement.

In general, engagement was rather low. For example, usually about ten IPOs provided input to EMRIP studies.<sup>137</sup> Similarly, except for 2014, when the UNDRIP questionnaire was sent out for the first time and 18 IPOs answered it, in recent years roughly about ten IPOs provided answers to it. Compared to the 80 to 85 IPOs participating at EMRIP, these seem small numbers. Thus, of the fifteen IPOs from my sample which participated at recent sessions, only three were very active at the Expert Mechanism, notably AIPP, Congrès Mondial Amazigh (CMA), and the IITC. They all delivered high numbers of statements, organized side-events, participated in the mandate review, and provided input to studies or the questionnaire. Another thirteen organizations showed some engagement (among them three which did not participate in recent sessions, but nevertheless interacted with EMRIP, for example by providing input to one of its studies etc.). Two IPOs showed no further engagement. However, to some degree these lower numbers also reflect the fact that less IPOs assist at sessions of EMRIP than of the PFII.

With regard to strategies of unconventional behavior, these do not play a dominant role at the Expert Mechanism. On the contrary, it is very much a diplomatic space in which participants, including Indigenous peoples, adhere to the rules. For example, time limits are generally not exceeded; seating orders seem to be widely accepted, and nameplates (such as used by states or IOs) are only used by few participants. Moreover, a majority of Indigenous participants stick to agenda items, and “naming and shaming” specific states

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<sup>137</sup> However, there was strong variance with regard to topics, showing that particular themes probably were considered to have more relevance for IPOs or were considered as more pressing: Only very little input was received for the studies on disaster risk reduction and business and access to financial services, while roughly twenty IPOs provided input to the study on the right to health.

in statements seems to occur less frequently as compared to the PFII.<sup>138</sup> Some unconventional behavior may be observed with regard to the opening of sessions, which includes an Indigenous prayer (comparable to the proceedings at the PFII). I argue that this is an expression of allegiance by Indigenous participants to EMRIP.

Generally, we observe that there are lower numbers of participants from all groups, and important actors are missing. Thus, both active participation by states and IOs is limited to a clearly confined group of actors, and indigenous participation is also more constricted than at the PFII. A considerably lower number of side-events take place, so that in comparison to the PFII, EMRIP sessions are significantly smaller events. At the same time, some of the participating actors are very supportive of EMRIP. In total, I argue that these observations indicate a medium degree of legitimacy (see Table 14). In the following, we will have to analyze whether legitimation through statements by participants confirms this observation.

Degree of legitimacy	Attendance to sessions	Engagement and Alignment of policies	Constituencies
<b>Medium “normal”</b>	Medium attendance of IPOs which has diminished somewhat, more limited than at PFII; attendance by states limited to some regional groupings, with most Asian and African states being absent; IO attendance limited	Some very engaged actors esp. from states and Indigenous peoples, and a broad group of actors which only engage to a limited degree; more limited reactions with regard to the alignment of policies; Unconventional behavior is not very dominant, adherence to the rules of the diplomatic game by most IPOs	Very supportive behavior by a core group of participants from IPOs, states, and NHRIs; at the same time, abstention from participation or lack of engagement by significant actors from each group. Limited attendance and engagement by IOs.

**Table 14: Degree of legitimacy of EMRIP as shown in the behavior of constituencies. Source: author’s elaborations.**

*4.4.2.2 Legitimation through statements*

To gain further insights into perceptions of legitimacy regarding EMRIP, statements by all constituencies have been selected. EMRIP reform has been a topic at three recent EMRIP sessions (2015 – 2017). Therefore, statements from these years have been selected. The selection process made the first problem with regard to state participation obvious: While there are some state delegations which participate regularly, there is very limited state participation from Asia and Africa at the Expert Mechanism. Even

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<sup>138</sup> Notes from my field diary, July 2017.

though I decided to take into account any statement from countries of these regions, only 13 texts could be identified at all. Selected texts then were screened for any (de)legitimation of EMRIP they contained. Subsequently, these legitimation statements were analyzed with regard to their general direction (positive or negative) and with regard to objects of legitimation.

Roughly 75% of all statements which contained legitimacy evaluations (166) were positive, compared to only 56 negative statements. This suggests that EMRIP disposes of strong institutional legitimacy, compared to the 2/3-threshold which is suggested by Schneider et al. (2010: 69) as indicating high legitimacy. There were 15 texts (out of 110) which did not contain any legitimation, out of which 11 were IPO statements.<sup>139</sup>

Concerning objects of (de-)legitimation as the second indicator, with regard to higher objects of legitimation, namely regime principles and the institution as a whole, there were exclusively positive evaluations. To both levels, only 17 respectively 18 statements were directed. Given that a mandate review was under way during the timeframe from which the statements were taken, this suggests that the existence of the institution as such and the underlying regime principles were taken for granted by constituencies, and participants did not perceive EMRIP or its foundational principles to be in need of specific justification. This thus can be taken as further prove for strong institutional legitimacy.

Also with regard to lower objects of legitimation, i.e. referring to specific institutional elements or the way in which the mandate is carried out, positive evaluations clearly outweighed negative ones. Nearly half of all evaluations (103 of 222) referred to specific structures of the Expert Mechanism, which thus represented the biggest group of legitimation statements. Of these, 63 referred to the mandate review and the mandate, which was nearly exclusively evaluated positively (53 references).

“As regards the review of EMRIP's mandate, we consider the review to be an excellent opportunity to provide specific, constructive proposals to enhance the work and functioning of this mechanism with a view to strengthening it. EMRIP has much potential to serve as a new kind of platform for dialogue between States and Indigenous Peoples on achieving the ends of the Declaration” (Nordic States 2015).

Of the 10 respective negative statements connected to the mandate or mandate review, many criticized the mandate before review, thus arguing for the need of an

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<sup>139</sup> These numbers are nearly identical with the respective numbers of the PFII.



improvement. In turn, about 2/3 of the remaining 40 evaluations related to other issues were positive. EMRIP's work in general was highlighted positively 19 times, while critique was most numerous with regard to the relevancy of the institution and the impact and implementation of its advice.

Roughly 40% of negative evaluations (33 statements of 84) concerned methods of work or groups of actors. However, delegitimation was highly dispersed – there were 18 different specific elements to which at the most two negative evaluations referred, such as, for example, the degree of state participation, EMRIP resources, or its capacity for dialogue. This suggests that none of these elements is of pressing concern to a bigger group of participants. The only issue which was mentioned more often in a negative way (9 evaluations) was the relationship with the other two Indigenous mechanisms at the United Nations, namely the Special Rapporteur and the Permanent Forum, and more specifically a duplication of functions of these bodies. However, the co-existence of several bodies dealing with Indigenous issues at the UN and the coordination of work between them was also evaluated positively in 8 statements. Thus, this was a specifically controversial issue during the review process. Rhetoric support, in turn, was given to EMRIP studies and advice (9 evaluations) as well as to its functioning as a platform for dialogue between Indigenous peoples and states (7 statements).

Finally, I will take a closer look at the differences in evaluations between constituencies. First, in documents from states the highest number of legitimacy evaluations could be found – on average 2.6 references per text – and only one text contained no evaluative statement at all. Legitimation was predominant (74 of 104 references, 71%). Apart from IOs, it was the only group from which relevant legitimation of regime principles, i.e. Indigenous participation at the United Nations on issues that affect them, and EMRIP in general came (18 evaluations in total), such as in the following citation from a Canadian statement:

“Canada would like to express its support for the Expert Mechanism on the Rights of Indigenous Peoples, which we view as a valuable mechanism for promoting and protecting the human rights’ of indigenous peoples” (Canada 2016).

Only with regard to working methods or specific elements of the mandate, there were more negative (24) than positive (19) evaluations. However, criticism was mostly constructive, for example highlighting problems of the old mandate in the context of improving it. States were also the group most concerned about a possible duplication of

functions with the other Indigenous-specific mechanisms, but were also most engaged in highlighting on-going coordination between them – probably due to the fact that the UN budget is financed by member states. Six statements highlighted the importance of EMRIP studies and advice. This is all probably expression of the fact that the review process was steered mainly by the Human Rights Council, which is made up by states; Guatemala and Mexico took the lead in formulating the review resolution.

Three texts, however, caught attention because of their more critical tone. These were a text from Algeria, which complained about the politicization of EMRIP – the single instance that this complaint was raised. A text from Indonesia argued that mandate reform was unnecessary at the current time, given that the current mandate had not been explored sufficiently. Lastly, a text from Russia raised critical questions about the implementation of the suggested Methods of Work as presented by EMRIP, which are understood as a purposely broad misconstruction of the new mandate given to it. Still, in general the analyzed texts suggest high acceptance of the EMRIP by states.

In the analyzed documents by IPOs, significantly fewer evaluations could be found (1.6 statements per text). It was also the group with the highest share of documents which contained no evaluations at all (11 texts). Moreover, not a single statement referred to the Expert Mechanism in general. This probably reflects the fact that IPOs take the existence of EMRIP for granted, and rather elaborated on specific agenda items such as the mandate review in their contributions. Indigenous organizations also formed the group with the highest share of delegitimation (roughly 36%). Interestingly, they seem to be more critical about EMRIP than other participants – probably because they need the Indigenous-specific UN mechanisms more urgently than other groups. Therefore, it is not surprising that they also constituted the group most critical about a lack of impact of EMRIP's work (5 statements).

“We have yet to see any concrete results in response to the extensive and excellent work of the Mechanism by the HRC with regard to in depth discussion, careful review, and specific plans for implementation by its member states, and a process for assessing the impacts and results. This inactivity by the Council leaves some questions. What is the purpose of the Studies produced by the EMRIP? What is the plan of action for consideration and implementation of the advice that is presented to the HRC? As Indigenous Peoples who are encouraged to provide input for the Mechanism's Studies, and in support of the role of the EMRIP in the UN system, we would like to be assured that the work of Indigenous Peoples, States and Human Rights Experts through the EMRIP will be taken seriously by the Human Rights Council” (North American Caucus 2011).

Interestingly, a Global Caucus statement was the statement which was most critical about the new mandate. Thus, although this was the only statement in this regard, we

might assume that this position is shared by a significant share of Indigenous organizations, suggesting that not all Indigenous expectations have been fulfilled with the mandate review:

“There remain, however, concerns on specific elements of the new mandate. First, we note that the country visits continue to remain under the discretion of the States despite giving the opportunity for indigenous peoples to trigger the request (paragraph 2e). We recognize that this limitation is an overall concern in the UN system. As such, we recommend the Expert Mechanism be more proactive in encouraging States to invite them for country visits and technical advice to achieve full implementation of the Declaration” (Global Indigenous Caucus 2017).

With regard to IOs and National Human Rights Institutions, observations are very similar. Generally, evaluative statements were comparatively infrequent in these documents. Delegitimation is close to absent in these texts; the only examples come from the Special Rapporteur, from the UN High Commissioner for Human Rights (which are both very close to EMRIP) and from the EU, but not from UN agencies and funds or NHRIs, which probably do not engage closely enough with the EMRIP to be able to evaluate its functioning. In turn, texts from IOs contained a comparatively high share of legitimation at higher levels (12 statements). Thus, we find them assuring EMRIP of their general support. Texts also express value for the work of EMRIP in general (6 from IOs and 3 from NHRIs) and for EMRIP studies (4 from IOs).

Texts by members also contained low numbers of legitimation (1.8 references per text). This might, at first view, seem surprising; however, it probably might be explained by the fact that the review process was at the responsibility of the HRC, not of members themselves. Therefore, members did more strongly engage in explaining and justifying the new methods of work they had developed for EMRIP, with a special focus on its dialogue function (3 references):

“We were told [...] that what was to become an extremely unique addition to the work being done would be a mechanism or undertakings aiming at establishing dialogue between states and indigenous peoples. Because many states and many indigenous peoples are not engaging in dialogue” (Barume 2017a).

In short, all three indicators suggest that EMRIP is strongly legitimated in discourse. In general, the review process seems to have boosted institutional legitimacy. The analysis of statements suggests that the mandate review has taken up many issues of concern to participants and improved the EMRIP mandate in the view of its main constituencies. For example, some of the issues which were criticized in earlier statements were then introduced through the new mandate. Probably the high number of positive evaluations

which were found is also connected to the fact that the mandate review raised hopes of constituencies regarding the future of EMRIP, and when it was accomplished, participants were very much focused on taking stock of the improvements and celebrating the success.<sup>140</sup> Moreover, legitimation statements were not very frequent in the analyzed material, given the fact that institutional reform was an issue of debate in the time period from which documents were selected and moreover, preference was given to texts that dealt with the mandate review in the text selection process. In the 110 analyzed documents, only 222 legitimation statements could be identified (2.02 statements per text). 16 texts did not engage in any legitimation. This further strengthens the interpretation of high institutional legitimacy of EMRIP (see Table 15).

<b>Legitimation in discourse</b>	<b>Distribution of positive/negative evaluations</b>	<b>Objects of legitimation: concentration and dispersal</b>	<b>Stakeholder groups</b>
<b>high</b>	Roughly about 3/4 of legitimation statements (166 of 222 statements were positive)	Legitimation with regard to regime principles and the institution as a whole (but infrequent). Most delegitimation with regard to specific features, but even in this regard legitimation by far outweighs delegitimation.	Firm support by all stakeholder groups; IPOs comparatively most critical, but generally constructive; individual more critical voices from within the states group, but not very vocal

**Table 15: Degree of legitimacy of EMRIP as shown in statements made during sessions. Source: author’s elaboration.**

These observations, however, have to be interpreted in the context of the analysis of behavior carried out above, which has shown that attendance to and engagement at EMRIP is quite restricted. Thus, similar as with regard to the PFII, we can observe a strong differentiation in evaluations of EMRIP. However, in the case of EMRIP, the different evaluations are more evident from participation patterns than from statements made during sessions. In other words, the strong rhetoric legitimation of EMRIP to some degree also is result of the fact that many of the more critical actors do not participate in its proceedings.

In short, with regard to the two mechanisms that deal specifically with Indigenous issues at the core UN – and in line with the observations made by Agné and colleagues (2015) – we are able to observe that the very high degrees of access for IPOs which include access as observers and members do not automatically translate in equally high

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<sup>140</sup> It might be interesting to take a closer look at the EMRIP in a few years to see if the new mandate has lived up to the expectations.

degrees of legitimacy of all participating actors. While the PFII seems to be the more well-known body and has broader (and therefore more heterogeneous) participation, EMRIP has less participation which mostly includes those actors with a positive attitude regarding Indigenous affairs. As a result, the analyzed statements from the timeframe of EMRIP reform were overwhelmingly positive. While the lower attendance at EMRIP to some degree might also be an issue of resources, it nevertheless shows preference of constituencies for the PFII. To some degree, EMRIP sessions seem to be an additional event to sessions of the PFII for those actors which are particularly engaged in Indigenous-specific UN activities. In turn, the PFII seems to be able to attract some more critical actors. This suggests that although both bodies dispose of solid (medium) legitimacy, the legitimacy of the PFII is somewhat higher. Whether this can be explained by differences in member access modes will be explored in Chapter six.

Even more conspicuously, the above analysis has shown that there are significant differences within all constituencies with regard to their evaluation of Indigenous-specific UN institutions. In other words, individuals differ considerably with regard to their evaluations of the legitimacy of PFII and EMRIP. Therefore, I will in the following explore the relationship between APO access and perceptions of legitimacy to detect variables which might account for these differences – both with regard to the stronger participation at the PFII and with regard to variance within constituencies. In Chapter three, I highlighted two possible condition variables which impact on the relationship between access modes and perceptions of legitimacy, namely the broader institutional setting and the perceived authenticity of APO participants. I will start by exploring the possible effects of the first of these two variables.<sup>141</sup>

#### **4.5 Broader institutional setting**

My main hypothesis (as developed in Chapter three) presupposes that both the broader institutional setting and the perceived authenticity of APOs impact on the relationship between access modes and perceptions of legitimacy. While I will elaborate on de facto participants and authenticity in detail in the following Chapter, the remaining pages of this Chapter will dwell on the broader institutional setting of both the PFII and the

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<sup>141</sup> The perceived authenticity of APO participants will be treated separately in Chapter five due to the need to first explore in detail who these participants de facto are.

EMRIP as it affects perceptions of legitimacy, based on 37 interviews conducted with participants of both bodies.<sup>142</sup>

Regarding the Permanent Forum, the high institutional placement of the PFII as a body directly reporting to ECOSOC is greatly valued. At the same time, participants criticize that the PFII only makes recommendations, but has no decision-making competence.<sup>143</sup> Thus, the ex-member Matías Alonso has described it as a “machinery which produces recommendations without obligating nobody to nothing” (Rößler 2008: 392, my translation). In fact, the equal role of Indigenous and state members at the PFII was only accepted by states at the price of its restriction to a consultative organ (Lindroth & Sinevaara-Niskanen 2018: 45). Thus, the Permanent Forum is described as an information-gathering entity; similarly, government officials highlighted that the PFII mainly served to learn about Indigenous perspectives, which could then inform decision-making taking place in intergovernmental settings. Other participants criticized that the Permanent Forum has no means to implement recommendations. Since its creation, the PFII has produced thousands of recommendations of which only a minor number has seen follow-up. Members themselves have tried to address this problem. In the process of reform of working methods in 2015, they decided to reduce the number of recommendations made during each session, and assign responsibilities for follow-up to individual members.

In this context, interview partners emphasised that the ability of the PFII to achieve change mainly resides in its convening power, bringing together actors who in many cases have antagonistic relationships.<sup>144</sup> Therefore, the creation of a space for enhanced communication is by itself an important achievement of the PFII.<sup>145</sup> However, there are limitations to the PFII’s capacity to generate dialogue. Most importantly, states with less advanced policies towards IPs in the domestic context tend to eschew engagement at the PFII. Thus, most African states do not participate at the PFII, and many Asian states assist but without taking an active role (Morgan 2011: 55). Moreover, several interview partners were concerned that the structure of sessions with series of interventions is

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<sup>142</sup> An earlier and abridged version of this section has fed into Hasenclever & Narr (2019).

<sup>143</sup> In 13 interviews, the restricted authority of the PFII was highlighted as problematic, including three interviews with government officials and two with staff from UN agencies.

<sup>144</sup> 20 interview partners mentioned distrust between the participant groups as an important factor impacting on IP participation at the UN.

<sup>145</sup> This was mentioned by 35 of 37 interview partners.

not conducive to dialogue, and that Forum members too seldom ask questions to presenters. PFII members have recognized the necessity for improvement and are experimenting with different formats. For example, at the 2018 session, the PFII held informal and interactive dialogues with IPs and member states focusing on the seven socio-cultural regions.

With regard to results, the achievements of the PFII are mixed: On the one hand, the PFII has been instrumental for increasing the engagement of the UN System regarding Indigenous issues. During the first years of its existence, the Forum has been successful in that UN bodies and organs have been willing to cooperate (Rößler 2008: 77). UN agencies have even initiated a permanent exchange on issues related to Indigenous peoples in the IASG. On the other hand, precarious living conditions of Indigenous peoples domestically largely remain unchanged.<sup>146</sup>

Regarding EMRIP, the situation is very similar. Many Indigenous participants share the feeling that especially before the reform process, it had a very weak mandate without any decision-making competence.<sup>147</sup> This is especially in comparison with its predecessor, the WGIP, which had a standard-setting mandate. Moreover, the output of EMRIP in the form of studies and advice is considered a relatively weak instrument as thematic studies do not provide guidance to states with regard to the implementation of Indigenous rights. Before the reform process, the Human Rights Council even had the power to determine the topics of studies which EMRIP was going to elaborate, and in some instances selected topics against the preference of EMRIP members. While the new mandate is generally considered as a significant improvement, IPs had originally wanted a monitoring function regarding the implementation of the Declaration for EMRIP, a suggestion which was met with opposition by states. Still, several interview partners also highlighted that while the text of the mandate is fixed, there still is some leeway for members to interpret it broadly according to the needs of IPs. However, implementation of EMRIP advice remains a challenge even with the new mandate.

As a body directly reporting to the HRC, EMRIP counts with a high institutional placement within the UN hierarchy.<sup>148</sup> This again is often seen in comparison to the

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<sup>146</sup> This was highlighted by 23 interview partners.

<sup>147</sup> Problems connected to the limited mandate of EMRIP were mentioned in eight interviews.

<sup>148</sup> This was discussed by five interview partners.

WGIP which was at a very low position in the UN hierarchy. In this regard, next to the formal placement within the UN hierarchy, the behaviour of the HRC is considered as central in determining the relevance of EMRIP. On the one hand, the HRC decides how much room it leaves to EMRIP to determine its own work. On the other hand, by placing emphasis on EMRIP's work within its own sessions and taking its advice seriously, it can enhance the attention which EMRIP is given. In this regard, the half-day discussion of the HRC dealing with EMRIP and its work is not considered much, but nevertheless better than the attention provided by ECOSOC to the PFII, which does not discuss the PFII's work at all.

Another issue which strongly impacts on institutional leverage is the endowment of the respective institutions with resources, including both a budget to spend on activities and secretariat staff. With regard to both the PFII and EMRIP, a lack of resources was a concern to interview partners.<sup>149</sup> Several interview partners explicitly highlighted that the amount of available resources clearly puts limits to what these institutions can do. In this vein, even one government representative pointed out with regard to the scarce resources of EMRIP: "Member states should remember that they get what they pay for."<sup>150</sup>

When the PFII was created, in the very beginning it had no permanent funding or secretariat at all due to opposition by some states that insisted that it should function on the basis of voluntary contributions. Over the years, the resources that the PFII has to its availability have grown and the PFII now has a proper secretariat as well as resources to organize some inter-sessional activities. However, interview partners pointed to a variety of activities they considered important which cannot be realized due to a lack of funding. Two elements were highlighted repeatedly in this context: holding the PFII in other cities around the world, and the ability for members to travel around the regions from which they were nominated to improve their knowledge and build relationships with the respective IPOs and governments. It has also been suggested that secretariat staff and resources are still too limited, as scarce resources do not allow the PFII to carry out independent research, hire consultants or effectively follow up on the implementation of recommendations.

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<sup>149</sup> In total, 16 interview partners highlighted the scarcity of resources as problematic.

<sup>150</sup> G-WE04 (43).



The situation for EMRIP is even more difficult as it has fewer resources to its availability. Before EMRIP reform, its secretariat consisted of one person within the OHCHR secretariat. The scarcity of financial resources and lack of secretariat support thus very much limited the ability of EMRIP to produce significant outcomes. During the first years of its existence, EMRIP members had to be very creative to find funding for example to meet intersessionally, and greatly valued support by universities or NGOs which organized and funded workshops. Therefore, one important success of the EMRIP reform process is the increment of its resources, including one additional staff for its secretariat. In this context, the increased number (and thus workforce) of members is also considered a gain. This short excursion into resources aptly demonstrates how through the availability of resources, institutional capacities and leverage can vary significantly.

Additionally, there is also a feeling that the PFII's name (,Permanent Forum on Indigenous *Issues*' instead of ,Permanent Forum for Indigenous *Peoples*' which had been preferred by IPs) to some degree weakens the status of Indigenous peoples by avoiding recognition of their status as peoples. At a meeting of the ad hoc working group on the establishment of a permanent forum in 2000 when the controversy pertaining the future name of the body to be created rose up, Indigenous participants placed signs on their desks stating "WE ARE PEOPLES, NOT ISSUES" (Niezen 2003: 164). The respective conflict has not been resolved until now, as shown by the fact that the Permanent Forum in its report of the Thirteenth Session has suggested (without concrete results so far) to ECOSOC that it should decide "that further discussion is needed on the change of the name of the Permanent Forum on Indigenous Issues to the Permanent Forum on the Rights of Indigenous Peoples" (UN ECOSOC 2014: 5). The continuous opposition towards a name change of the PFII is all the more surprising as other institutions – such as EMRIP – already include a reference to Indigenous *peoples* in their name.

Indigenous participation takes place mainly through institutions such as the PFII and EMRIP, which have very open participation modalities for Indigenous peoples. On the one hand, this can be an advantage for less resourceful actors (which most IPOs are) as they can focus their scarce resources on participation within one arena (Brem-Wilson 2015: 80). On the other hand, a restriction of participation to these bodies furthers the marginalization of Indigenous voices vis-à-vis states (Simpson 2006: 118). Channeling Indigenous participation through specialized institutions has meant that states can and

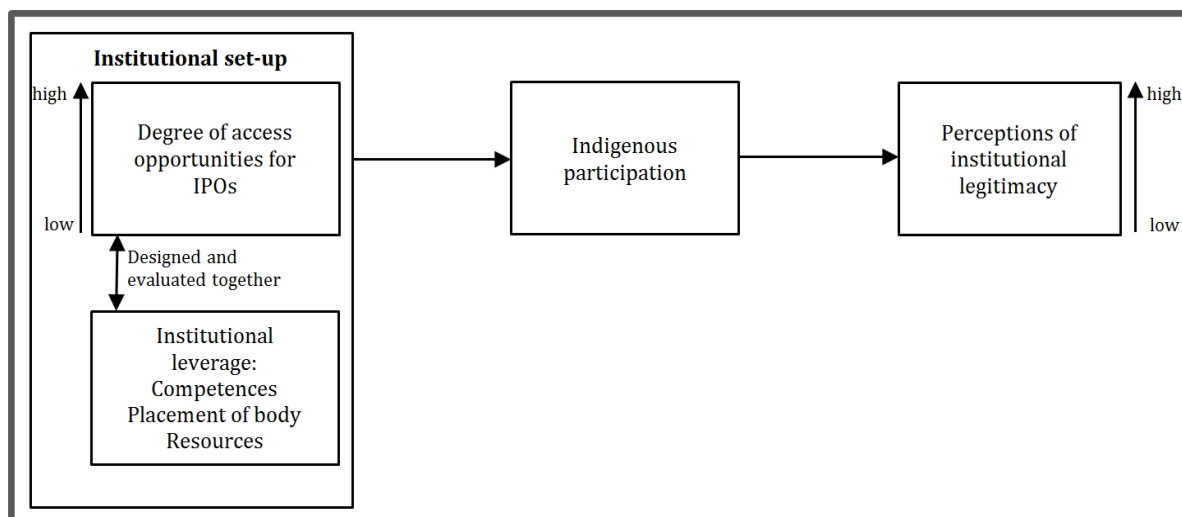
do remain absent from the process. Other UN processes such as the HRC remain closed to Indigenous participation. As a result, states can move important discussions that affect Indigenous peoples to intergovernmental settings.<sup>151</sup> At the same time, in the current discussions concerning the introduction of a specific participatory status for IPOs at the UN, some states make their willingness to extend participation rights for IPs to other bodies such as ECOSOC or the HRC dependent on a definition of Indigenous peoples as well as on state influence on IPO accreditation (UN General Assembly 2016: §22, 32, 39, see also Burger 2019: 2).

In sum, these findings show that institutional leverage has to be taken into consideration when evaluating access rights for APOs. Institutional leverage strongly influences evaluations and perceptions regarding the value of participation. There are several elements to consider apart from access modes with regard to the broader institutional set-up, and which together determine institutional leverage (and consequentially, the leverage gained by APOs through access rights): the mandate of an institution and its ability to effectively change the course of events, as expressed in decision-making competence and/or the monitoring of implementation; the institutional placement of a body within the broader institutional setting and its relationship with a possible parent body; and last but not least its endowment with resources such as a proper secretariat and financial means. Not only do APOs evaluate their access rights with a view towards institutional leverage; also states, when they create institutions that count with access rights for APOs, are probably well aware about institutional leverage and use it as a means to steer and adjust the relevance that APO participation can gain. I thus argue that degrees of APO access should never be evaluated separately, but that other dimensions of the institutional set-up should always be taken into account as well. This also resonates with findings that have shown that NSAs evaluate the deliberative quality of transnational institutions more positively the more influence they think they have in the respective body (Agné et al. 2015: 482). In other words, institutional set-up is a package, and its elements never stand in isolation (see Figure 9). This is also expressed by the subsequent citation from an interview:

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<sup>151</sup> Thus, many Indigenous interview partners highlighted other bodies such as CERD, the HRC etc. which do not provide for specific *Indigenous* access as most important for their engagement at the UN.

“We had hoped you know when we first started creating [the Permanent Forum, H.N.] that we would be able to create a body that you know could interVENE in situations, go and see where people are in crisis, they’re being relocated or you know facing resource exploitation and deforestation but that’s NOT how it came out. You know, we got a couple of things that we really wanted from the Permanent Forum and one is the high level placement in the un system and another is that half of the members are nominated by Indigenous peoples and that was the FIRSt in the un system. We were told that it would never work, we couldn’t do it, the UN is states, countries you know they are the ones who nominate or take those seats. So a lot was accomplished but the mandate probably was in some ways you know NOT what we had originally hoped for.”<sup>152</sup>



**Figure 9: Degrees of access for APOs and institutional leverage. Source: author’s elaborations.**

In the case of Indigenous-specific UN institutions, Indigenous participation takes place in institutions with limited institutional leverage. Institutions were created which endow IPs with specific rights; at the same time, states carefully confine participation rights allowing for IPO participation at the margins only. Participating actors are aware of these limitations, and they take them into account when evaluating the PFII and EMRIP, and Indigenous participation opportunities in them. Thus, Dahl argues that achievements of the Indigenous movement at the UN have only been possible because IPs accepted states as holding superior power (Dahl 2012: 36). Other authors share the perception that Indigenous participation remains constricted by state power (Corntassel 2007: 161; Tramontana 2012: 183; Bellier 2013: 196; Sapignoli 2017: 98; Lindroth & Sinevaara-Niskanen 2018). Indigenous activists themselves have reacted to the structural limitations of UN engagement in different ways: While some have stopped attending international meetings in frustration or as a conscious signal of resistance (Simpson 2006: 121), others argue that the UN can be a useful arena for IPs, but that they need to know what can (and cannot) be achieved at the UN (Sapignoli 2017: 103).

<sup>152</sup> I-NA3 (16).

## 4.6 Summary

In this chapter, I have argued that similar to other affected actors, IPs access the UN on the grounds of their specific marginalization and vulnerability. At the same time, however, they refer to specific Indigenous rights of self-determination and their status as peoples when they claim participation opportunities in the UN context. Subsequently, I have shown that degrees for Indigenous access of Indigenous-specific UN institutions are particularly high. Indigenous peoples can access the PFII and EMRIP as observers, and access for observers is both deep and broad. Moreover, in both institutions Indigenous individuals can become expert members, and these additional membership rights are medium or high in both quantitative and qualitative terms. However, as I showed in the subsequent section, these comprehensive access rights do not translate into correspondingly high perceptions of legitimacy. Instead, empirical legitimacy of both bodies is medium. This result should not be interpreted too negatively as medium legitimacy is the “normal” case, but it confirms earlier observations that increasing access does not automatically translate in strong perceptions of legitimacy (Agné et al. 2015). While the PFII has gained acceptance by a wide range of actors and counts with broad participation, EMRIP by tendency seems to attract actors which give additional importance to Indigenous issues. Thus, with regard to the PFII we observe more positive results regarding behaviour and more controversy in discourse, whereas EMRIP counts with less participation by particularly supporting actors.

Finally, in a last step I have shown that several variables determine institutional leverage, such as the competences of a specific institution, its placement within the broader field, and its resources. These factors all impact on the relevance which access rights have for APOs, and APOs (and other participants) are aware of the limiting role that these factors can place on their participation. Therefore, access rights always need to be evaluated within the broader context of the entire institutional set-up. This chapter thus confirms the assumption made in my initial hypothesis that institutional leverage is an important condition variable which impacts on the relationship between degrees of access and perceptions of legitimacy. The following chapter will explore the de facto participation by IPOs through access structures offered by the UN, as well as the role of the second potential condition variable, namely the authenticity of APO participants.

## *Chapter 5*

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# *Access Opportunities and de facto IPO Participation at the UN*

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In Chapter three, I have argued that access for APOs translates into concrete participation which then impacts on perceptions of legitimacy. This Chapter puts the first element of this causal nexus into focus by analyzing the causal relationship between access for IPOs and concrete patterns of IPO participation. As outlined in Chapter three, I assume that this relationship is shaped by two condition variables, namely the broader institutional setting – which has been explored in Chapter four – and the authenticity of participating APOs. Therefore, this chapter will set out to explore in greater detail the participation patterns of Indigenous peoples at the United Nations. It also explores the identity of those Indigenous individuals and organizations that bring Indigenous issues to the UN and thereby act as mediators or brokers between local constituencies and their IO and state interlocutors at the UN level (Greene 2004: 211). The central questions to be answered in this chapter are thus: How do organizations of Indigenous peoples use institutional access opportunities to self-represent at the UN? In other words, how do access opportunities for Indigenous peoples at the UN translate into de facto participation? Additionally, I will also ask to what degree Indigenous participants at the PFII or EMRIP are perceived as authentic representatives of affected communities, and how this does affect perceptions of legitimacy.

To answer these questions, this chapter undertakes a three-fold exercise: In a first step, I will take a closer look at Indigenous participation as it de facto is in institutions such as the PFII and the EMRIP. Who are the IPOs speaking in the name of Indigenous peoples?

In this context, I will highlight how several strong individuals and organizations as well as the Indigenous caucus structure Indigenous participation. Subsequently, I will analyze participation barriers for Indigenous peoples and how they impact on the composition of the Indigenous movement. In a final step, I will assess what this means for the authenticity and representativeness of APO participants. In this context, I argue that structural conditions heavily impact on which actors can make their voices heard, and that there is a responsibility for institutions interacting with affected actors to purposely reach out to APOs to counter possible distortions in participation. Empirical evidence for this chapter stems from my interviews, from notes made when assisting to sessions, from UN documents and statements made at the PFII and EMRIP, as well as from secondary literature.

## **5.1 Indigenous participation at the United Nations**

First I will take a closer look at the Indigenous movement at the UN. I will highlight the heterogeneity of Indigenous participants at the United Nations, analyze who some of the IPOs are which speak in the name of Indigenous peoples, and will take a closer look at caucuses as the main element structuring Indigenous participation.

### **5.1.1 Heterogeneity of Indigenous participation**

The Indigenous movement at the UN brings together very diverse actors, and is characterized by a high level of heterogeneity.<sup>153</sup> Looking at who registers as “Indigenous peoples’ organization” for participation at the Permanent Forum or the Expert Mechanism, the diversity of the movement becomes evident at one glance. For example, for the 2017 session of the Permanent Forum, organizations had registered that ranged from coalitions and federations (Asia Indigenous Peoples’ Pact) to individual organizations (Ogiek Peoples Development Program), from trusts and foundations (Global Indigenous Development Trust) or Study centers and research institutions (Global Edge Research) to Indigenous nations (Anishinabek Nation) and governing institutions<sup>154</sup> (Sami Parliament of Norway), from transnationally active organizations

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<sup>153</sup> This was highlighted by 11 interview partners.

<sup>154</sup> By Indigenous governing institutions, I refer to bodies which exert forms of authority with respect to Indigenous communities, and are recognized as rightfully exercising this authority by the respective communities.

(Indigenous Peoples of Africa Coordinating Committee, IPACC) to nationally (Organización Nacional Indígena de Colombia) or locally rooted groups (Fundación Wampira), and includes organizations with a focus on issue areas (International Indigenous Women's Forum) or specific thematic networks (Canadian Aboriginal AIDS network). Additionally, a growing group of Indigenous parliamentarians participates in the sessions (UN ECOSOC 2017a). A similar diversity may be observed with regard to the geographical backgrounds of participating IPOs. While the Indigenous movement in its beginnings was led by organizations from "the Northern Hemisphere commonwealth countries" (Brysk 2000: 101), nowadays IPOs from all seven socio-cultural regions take part in the proceedings. The same heterogeneity can be observed at the individual level, as the movement brings together "traditional leaders, tribal headmen, elders, activists, university-educated leaders, and so on" (Dahl 2012: 139). Thus, it has been observed that the Indigenous movement is characterized by higher diversity than other civil society movements active at the UN level (Morgan 2011: 73).

Indigenous participants can also be distinguished with regard to the main goals and primary orientation of their engagement. Dahl (Dahl 2012: 142–159) clusters Indigenous participants into six "alliances", namely the Internationals, which are experienced Indigenous diplomats, and oriented towards a global Indigenous constituency; the Modernists, who seek control of their peoples' development, and are primarily concerned with legal issues and politics; the Traditionalists whose primary goal is defense of cultural traditions; the Southerners, who come from the global south and seek to put pressure on their governments and build alliances with donors; the Grassroots, who are strongly rooted in local communities, but unable to make a lasting impact on the international level; and the Freewheelers, which come on a private agenda, but are mostly marginal to the movement as a whole.<sup>155</sup>

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<sup>155</sup> In a similar vein, Rößler (2008: 140–143) distinguishes between four ideal types of Indigenous participants: Indigenous 'experts' with many years of experience and expert knowledge in the UN context, but little contact to local communities; experienced Indigenous politicians with a (temporary) mandate by a national or international Indigenous group, who are more oriented towards their home constituencies than towards the UN; local Indigenous representatives from grassroots organizations in search for potential donors and funding opportunities; and those participating with a "private" agenda such as selling Indigenous craftwork. Other observers of the movement have clustered participants in the movement in negotiators and testifiers (Morgan 2011: 81), or elders and statesmen (Niezen 2003: 157). These less fine-grained distinction nonetheless also in a similar way point to the differences in functions and goals of Indigenous participants at the UN.

While the heterogeneity of Indigenous participants becomes obvious at first glance when looking at the list of participants of sessions of the PFII and EMRIP, until now Indigenous participation patterns have not been analyzed thoroughly. Thus, I took a closer look at participating IPOs at the PFII and EMRIP sessions in 2017 to better understand the composition of the Indigenous peoples' movement active at the UN. I looked at attendance as reported in the official reports of sessions, and how this translated into statements made during the session (as registered at the online archives of docip), and broadly classified participating IPOs with regard to home countries or regions and organization type (grassroots organizations, advocacy organizations, governing organizations, or issue networks).<sup>156</sup>

Several general patterns could be observed: First, Indigenous participation at the PFII is considerably higher than at the EMRIP (see Chapter four). 205 IPOs had either registered and/or made a statement at the PFII, compared to 100 IPOs at EMRIP. In this regard, there is a considerable number of IPOs delivering statements which are not formally registered as participants for the session (40 speakers at PFII 2017, 27 at EMRIP 2017). Probably a number of different reasons account for this difference in numbers: Some Indigenous speakers register through (support) NGOs; others might be members of several IPOs or have registered as members of government delegations; in other cases, statements are delivered by rather informal networks which form more or less spontaneously during sessions. On the other hand, there seems to be a high number of registered IPOs (127 at PFII/ 30 at EMRIP) which do not make any statement. While it is hard to estimate exact numbers, especially at the PFII there also seems to be a considerable number of persons not able to deliver a statement.<sup>157</sup> Moreover, only 24 IPOs participated at both events, meaning that the number of IPOs participating consistently across different institutions is rather low compared to the total number of Indigenous participants. A huge majority of Indigenous groups operating in the UN context is accredited through flexible participation measures; however, the number of

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<sup>156</sup> It was not possible to classify each IPO. For some IPOs, no information was obtainable through web-based searches. Additionally, a handful of other organizations which had registered as IPOs were not taken into consideration. This especially included several academic institutions, and a non-Indigenous donor.

<sup>157</sup> Numbers are hard to estimate given the difference between registered IPOs and speakers; moreover, some statements might not have been registered in the docip archives. At the same time, some participants probably do not aim at delivering an individual statement, but mainly work through caucuses and informal networks, or participate with other interests than delivering a statement (such as networking, craft-selling etc.).



Indigenous organizations with some form of ECOSOC status is increasing (Morgan 2011: 75). For the PFII session 2017, close to 30 IPOs with ECOSOC status<sup>158</sup> had registered. Of these, about 10 were from North America, while the other came more or less equally from all other parts of the world.

The data gathered also shows that there are vocal voices from all regions; but there are also still significant differences between regions with regard to participation (see Table 16 and Table 17). Generally, differences between regions were more pronounced at the PFII than at EMRIP. In this regard, especially Asia and Africa as two of the three biggest regions in terms of Indigenous peoples living there<sup>159</sup> still are underrepresented with regard to participating IPOs. However, this is to some degree mitigated by the fact that a number of very active organizations originate from these regions; the Asian region additionally counts with a very active caucus.

Latin America, in contrast, has comparatively high numbers of attending IPOs – but seems to be the region which is least able to translate participation into voice, in the sense that only one of the more active groups was based in Latin America, and that compared to the number of participating groups relatively few statements were delivered. In turn, North America and the Pacific are quite vocal regions. Especially from North America, in spite of not counting with high numbers of Indigenous individuals, many IPOs participate and deliver statements. Probably due to the PFII taking place in New York, this is even more pronounced at the PFII. In turn, the Arctic and Russia & Eastern Europe are comparatively small regions and had a less discernable voice at the PFII session 2017; both regions were somewhat more active at EMRIP. The Arctic region also has an active caucus. In short, these numbers suggest that participation by IPOs from Africa and Asia is still weak compared to the absolute number of Indigenous

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<sup>158</sup> Numbers are estimations, because the session's report only lists one category of ECOSOC status organizations, which includes both IPOs and support NGOs.

<sup>159</sup> It is estimated that about two thirds of the world's Indigenous peoples live in Asia. While valid numbers are notoriously difficult to obtain and vary greatly, one author cites conservative estimations to be adding to 220 million Indigenous peoples in Asia compared to 25 million in Africa, 6 million in the Pacific, and 1,5 million in the Russian Federation (Rathgeber 2011: 8). When adding up numbers cited in the IWGIA yearbooks 2015/2016, numbers figure considerably higher (up to 300 million IPs in Asia, around 67 million in Africa, 37 million in Latin America, around 6 million in North America) (calculated on the grounds of information provided in IWGIA 2015 and IWGIA 2016, see also Appendix). In any case, these figures illustrate the dimensions of differences in numbers between Indigenous peoples in the different regions.

peoples from these continents; and that participation from Latin American IPOs is less vocal than from other regions.

	No. of participating IPOs (registered participants and IPOs delivering statements)	No of active groups (>= 3 statements)	Total no. of statements from region (in brackets: included caucus statements)
<b>Africa</b>	15	3	22 (0)
<b>Arctic</b>	6	0	3 (1)
<b>Asia</b>	28	5	29 (4)
<b>Latin America</b>	51	1	15 (0)
<b>North America</b>	59	2	27 (0)
<b>Pacific</b>	28	2	22 (2)
<b>Russia &amp; Eastern Europe</b>	8	1	7 (0)
<b>Global/ Trans-regional</b>	10	1	26 (2 global; 10 by issue caucuses)

**Table 16: Attendance and participation patterns of IPOs at the PFII 2017. Source: author's elaboration.**

	No. of participating IPOs (registered participants and IPOs delivering statements)	No of active groups (>= 3 statements)	Total no. of statements from region (in brackets: included caucus statements)
<b>Africa</b>	16	3	17(0)
<b>Arctic</b>	6	0	8 (3)
<b>Asia</b>	11	2	16 (1)
<b>Latin America</b>	26	0	22 (0)
<b>North America</b>	15	2	20 (0)
<b>Pacific</b>	12	2	15 (0)
<b>Russia &amp; Eastern Europe</b>	8	2	11 (0)
<b>Global/ Trans-regional</b>	6	1	10 (2 global; 3 by issue caucuses)

**Table 17: Attendance and participation patterns of IPOs at the EMRIP 2017. Source: author's elaboration.**

Moreover, there are also significant differences regarding participation patterns within regions. From Africa, there is Indigenous participation from all parts of Africa, but participation by IPOs from Kenya as well as by Amazigh from North Africa and by Tuareg from the Sahel zone is most consistent. It is from these backgrounds that IPOs which participated at both EMRIP and the PFII come from, and participating groups include both grassroots organizations and (trans)nationally active advocacy groups. From other regions, there are only single participants which often work for one specific Indigenous group; and from many countries, there was no participation at all. Thus, big shares of African IPs are not represented at the UN level – which might be a result of the fact that the concept of Indigeneity is still comparatively new in the African context. IPACC as the federative IPO intending to bring together all African IPs in one organization is a regular participant at sessions, but does not make many statements.

Interestingly, Africa also is the continent which has highest continuity in participation in terms of numbers of IPOs which participated at both EMRIP and PFII sessions.

Participation from Asia was considerably stronger at the PFII. IPOs come from most Asian countries that have Indigenous groups living in their borders (though there was no participation from Thailand, Laos or China). Participation varied a lot between sessions of PFII and EMRIP – there were only three IPOs which participated in both events. For example, while no other country had a similarly strong participation as Bangladesh at the PFII, not a single IPO from this country participated at the EMRIP session. The Asia Indigenous Peoples Pact (AIPP), a federative organization with membership from most Asian countries, functions as a lead organization. Participation also included strong national federations such as the Cordillera Peoples Alliance from the Philippines; community-based NGOs focusing on community development and/ or advocacy; and a relative high share (1/4 to 1/3 of all participating IPOs from Asia) of diaspora organizations.<sup>160</sup>

There were IPOs participating at sessions of the PFII or EMRIP in 2017 from most Latin American countries (though none from Panama, Uruguay, or Argentina). The highest number of groups participated from Peru, Bolivia, Colombia, Mexico and Ecuador. There were also several organizations with membership from a number of countries (such as the Coordinadora de Organizaciones Indígenas de la Cuenca Amazónica, COICA, or the Coordinadora Andina de Organizaciones Indígenas, CAOI), though no IPO exists bringing together groups from the whole continent. Moreover, these IPOs do not shape IP participation as their Asian counterpart AIPP does. While there were all types of IPOs participating ranging from IPOs with a focus on research to advocacy organizations to national and regional federations, there was a comparatively high share of grassroots representatives speaking in the name of individual villages or communities (p.ex. Comuna San Jacinto del Pindo de Pastaza, Ecuador) and local community-based organizations. At the same time, there was high fluctuation in participation, as only three IPOs participated at both PFII and EMRIP 2017.

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<sup>160</sup> This is probably expression of the difficult human rights situations of many IPs in Asia, which might have contributed to a comparatively strong diaspora. It is sometimes difficult to maintain organizations within the respective countries due to substantial state repression, some of which do not recognize they have Indigenous peoples living within their borders. However, it probably also has to do with the availability of funding by diaspora activists which earn first-world salaries in their new home countries, and their dominance of UN languages (see section 3 of this Chapter).

Participation by North American groups differed most strongly between EMRIP and PFII in numbers, and participation at the PFII was four times stronger. Whereas at EMRIP, participating IPOs mainly included national and sub-national federations of Indigenous nations (such as the National Congress of American Indians or Grand Council of the Crees) and IPOs focusing on advocacy, participation at the PFII was very diverse and additionally included issue-specific networks, many grassroots organizations and tribal governments. Still, only two (advocacy) organizations participated at both the PFII and EMRIP. Although Indigenous participation from North America is undoubtedly broad, even within North America there are important Indigenous nations with high numbers of members which do not participate at the UN. Participation by IPOs from the Pacific region is strongest from New Zealand and Australia. Additionally, at the PFII 2017 there was a strong delegation from West Papua, whereas at the EMRIP IPOs from New Caledonia actively participated. Other delegations represented Hawai'i, Fiji, or the Moluccas from Indonesia. Whereas mostly advocacy IPOs and some issue-specific actors attended EMRIP, participation at the PFII also included several governing institutions and grassroots organizations.

From the Russia and Eastern Europe region, several Russian grassroots groups participated representing diverse IPs. Members of the Russian Association of Indigenous Peoples of the North (RAIPON) as the IP federation for Russia were only present at the PFII. From the Ukraine, the Crimean Tatars actively participated at both the PFII and EMRIP. Organizations of Finno-Ugric peoples also participated in both events. From the Arctic, few IPOs take part, but these are generally regular participants and include well-known and experienced transnationally active NGOs (the Inuit Circumpolar Council, ICC, which organizes Inuit groups; and the Saami Council for the Saami) as well as elected, representative institutions, namely the Saami parliaments from the Scandinavian countries. With regard to IPOs spanning several of the Indigenous regions, the most important actor is the International Indian Treaty Council (see below). Other actors mostly were issue-specific networks and initiatives with varying degrees of formalization (such as the Indigenous Peoples' Major Group on the 2030 Agenda).

In short, participation is diverse also with regard to countries from which IPOs originate. Only in Africa there are significant numbers of states from which no IPO participated; however, some Asian and Latin American states also had no participation at all. In other cases especially from certain Asian and African countries (and to a lesser degree from

Latin America), the only participant is an IPO which speaks for a certain group, but not for the entire Indigenous population of the country. From the Arctic, participation is limited in numbers, but takes place through strong, federative NGOs which include all IPs. In turn, there is broad participation by diverse groups from North America; from Australia and NZ; and from certain Latin American, African and Asian states. Somewhat in between is participation by groups from Russia and Eastern Europe. Another interesting observation is the fact that there is only a very low number of 1 to 3 IPOs from most regions which participate at both EMRIP and the PFII, whereas the huge majority of IPOs either participates at one or the other event. The degree of overlap regarding participation in both bodies is only higher for African and Arctic IPOs. Grassroots participation (in the form of local Indigenous governments or community voices) is strongest from Latin America and North America, and stronger at the PFII than at EMRIP. However, there are individual grassroots IPOs from all regions which actively deliver statements.

In this section I have shown that Indigenous participation at the PFII and EMRIP is very broad and heterogeneous. This diversity of actors is a result of the high degree of broad open access which characterizes Indigenous-specific UN institutions, because this allows any organization identifying as Indigenous to register for participation. However, the proceedings at sessions are dominated by a more limited number of very active, experienced and strong individuals and groups.<sup>161</sup> Whereas the reasons for the different strength of Indigenous voices will be explored in the third part of this chapter, the following paragraphs aim to convey an idea of who these vocal actors are.

### 5.1.2 Lead actors

There were six IPOs which were between the most active participants at both EMRIP and PFII sessions in 2017. These organizations will be shortly presented in the following, before highlighting the role of individual leadership. From Africa, the most vocal organizations both represent Nomadic pastoralists. The Association Tin Hinan,<sup>162</sup> based in Burkina Faso, focusses on a strengthening of Nomadic women from Mali, Niger and Burkina Faso with an emphasis on health related issues such as nutrition or sexual

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<sup>161</sup> 20 interview partners mentioned differences in the roles of Indigenous participants and highlighted the leadership roles taken by a reduced number of organizations and individuals.

<sup>162</sup> <https://www.tinhinan.org/>, accessed 02.02.2019. The name Tin Hinan makes reference to a mystic Tuareg queen of the 4th century.

and reproductive health. Tin Hinan also works on issues related to the environment, human rights and poverty reduction. The organization was founded in 1994, and has recently established counterparts in Canada and the US. Its program coordinator, Saoudata Aboubacrine, participated in the OHCHR fellowship in 1998. Since then, the organization has regularly participated at the WGIP, the PFII, and EMRIP. It has also been active in the context of UNFCCC and WIPO (mainly through Ms. Aboubacrine). The organization is one of the most vocal and respected voices from Africa within the Indigenous movement at the UN, as shown by the fact that Ms. Aboubacrine functioned as a coordinator for the African region in the process leading up to the World Conference. One of the members of the Permanent Forum (and its current chair), Mariam Wallet Aboubacrine, is a member of Tin Hinan.

Also from Africa, the Congrès Mondial Amazigh<sup>163</sup> (CMA) is a federation of Amazigh organizations mainly from Algeria and Morocco, and of diaspora organizations. Its offices are located in Paris. CMA's activities center on lobbying for Amazigh rights. It realizes conferences and festivals, conducts studies, and provides information on the human rights situation of Amazigh peoples. The CMA participated only sporadically at the WGIP, but since about 2007 has become very active at the UN level as a regular participant at PFII and EMRIP, and participates with delegations consisting of several persons. The organization also issues shadow reports regarding the situation of Amazigh peoples in Algeria, Tunisia and Morocco in the context of CERD and the HRC's Universal Periodic Review. The ex-PFII member Hassan Id Balkasm (2005-11) is one of CMA's founding members.

From Asia, the Asia Indigenous Peoples Pact (AIPP)<sup>164</sup> is a federation of Indigenous organizations from 14 countries, including many national level organizations. It has a comparatively big secretariat with about 20 employees working in several programs based in Chiang Mai (Thailand). AIPP specifically aims at strengthening the capacity of its member organizations, empowering Indigenous women, and establishing an Indigenous media network. Moreover, the organization works on human rights and environmental issues. It regularly organizes Asian-wide regional preparatory meetings on UN Indigenous mechanisms. Two staff members from AIPP have held mandates at

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<sup>163</sup> <https://www.congres-mondial-amazigh.org/>, accessed 02.02.2019.

<sup>164</sup> <https://aippnet.org/>, accessed 02.02.2019.

the UN: Joan Carling was a member of the PFII from 2014-2016; and Jannie Lasimbang was a member of EMRIP from 2008 to 2014. The organization holds ECOSOC consultative status and is accredited to a number of other UN agencies and programs such as UNFCCC, the CBD, WIPO, and UNEP. AIPP also functions as a facilitator for the IP Major Group in the UN sustainable development process. Since the mid-2000s, AIPP has become a very active participant at EMRIP and PFII and also regularly speaks in the name of the Asian caucus. The organization has participated at HRC sessions and the UPR. It generally accepts financial support from the private and public sector, including UN agencies.

In turn, the Khmers Kampuchea-Krom Federation (KKF)<sup>165</sup> represents one nationality, the Khmer-Krom from the Vietnamese Mekong delta, and diaspora Khmer-Krom. They self-identify as Indigenous, but are not recognized as such by the Vietnamese government. The KKF had received ECOSOC consultative status in 2012, but following pressures by Vietnam, the status was revoked after a few months.<sup>166</sup> Based in the US, the organization is run by a team of volunteer diaspora activists. The KKF mainly does lobby work for the Vietnamese Khmer-Krom, and since 2004 has actively participated at the UN with this goal. It has been a regular participant at PFII and EMRIP, but also has provided submissions to the UPR process and CERD. Moreover, KKF organizes conferences and events regarding the human rights situation of the Khmer-Krom. The organization is a very active member of the Unrepresented Nations and Peoples Organization (UNPO). Individuals of the Khmer-Krom diaspora strongly contribute to the financing of KKF.

The Indigenous Peoples Organisation of Australia<sup>167</sup> is a broad network of Aboriginal and Torres Strait Islander organizations and individuals which mainly functions in the context of United Nations activism. It aims at advocating for Indigenous rights and lobbies for the implementation of UNDRIP in Australia. It seems to be a rather loose

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<sup>165</sup> <https://khmerkrom.org/>, accessed 02.02.2019; see also UNPO Member page at <http://unpo.org/members/7887>, accessed 02.02.2019.

<sup>166</sup> <http://www.omct.org/human-rights-defenders/urgent-interventions/viet-nam/2012/07/d21880/>, accessed 02.02.2019.

<sup>167</sup> <https://www.facebook.com/Indigenous-Peoples-Organisation-Network-Australia-190946244391874/>, accessed 02.02.2019. The coalition also has a website (<https://indigenoupeoplesorg.com.au/>, accessed 02.02.2019), but this website focuses on a single campaign, namely a rally which took place in January 2018 and contains very limited information on the network itself.

coalition as it has no formal staff or office, but is housed and provided secretariat support by the Australian Human Rights Commission. At least under this name, it has only delivered statements at recent sessions of the PFII and EMRIP, as well as during the World Conference on Indigenous Peoples.

Lastly, the International Indian Treaty Council (IITC)<sup>168</sup> is an international Indigenous organization with offices in the US. It currently lists over 90 IPOs mainly from North and Central America as affiliates, but also some from South America, the Caribbean and the Pacific. The IITC was founded in 1974 as the international branch of the American Indian Movement. Through networking, lobbying, awareness-building and dissemination of information, it aims at supporting Indigenous struggles for self-determination. One central goal also is to strengthen Indigenous participation at the UN and in other international organizations. Thus, IITC has been involved in UN work since the first conferences in Geneva in the 1970s. It also was the first IPO to receive ECOSOC consultative status in 1977, and claims to have been the first IPO to be upgraded to General consultative status in 2011. There is probably no other Indigenous organization which has a similar record of continuous participation since the 1980s in practically all UN bodies relevant to Indigenous peoples: it is a highly visible and vocal IPO at sessions of the PFII and EMRIP, has been a central actor in the negotiation of the UNDRIP, and also takes part in the Human Rights Council, treaty body sessions, the CBD, UNESCO, acts as a FAO focal point and a co-convener of the Indigenous Peoples' Major Group on the 2030 Agenda etc. One of the central persons in the organization has been its executive director Andrea Carmen. Individuals connected to IITC also regularly carry out capacity-building workshops for Indigenous participants at the PFII and EMRIP. Thus, it has been considered as one of the most influential IPOs in the UN context (Dahl 2012: 180). The IITC receives funding from Indigenous nations, private donors, foundations and other allies, but accepts no funding from states.

This short presentation of the most vocal IPOs at EMRIP and PFII sessions in 2017 can of course provide only an impression insofar as it is restricted to the groups most active in 2017 in terms of the number of delivered statements, whereas there are of course other vocal IPOs within the Indigenous movement. The compilation, however, still allows for drawing some conclusions regarding general features of vocal IPOs. First, the most vocal

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<sup>168</sup> <https://www.iitc.org/>, accessed 02.02.2019.



IPOs often are federations or networks of IPOs, speaking for broad constituencies. AIPP and IITC bring together diverse Indigenous peoples from different countries; CMA spans Amazigh organizations from several countries and the Indigenous Peoples Organisation of Australia speaks for Australian IPOs. However, with Tin Hinan and KKF two individual NGOs also were between the most active IPOs. Second, of the four ‘southern’ IPOs, two (namely KKF and CMA) have strong connections to the diaspora and offices in ‘northern’ countries rather than in those states in which the peoples live for which they work. Third, the most vocal IPOs often are NGOs with professional staff rather than Indigenous nations, traditional authorities or governing institutions. Fourth, many of the IPOs most active in the context of EMRIP and PFII also engage in several other UN contexts such as treaty bodies and UN programs and agencies. And fifth, while some general patterns might be observed, this short introduction into vocal IPOs also speaks to the diversity of actors that shape the Indigenous movement at the UN.

Moreover, many of these vocal IPOs are connected to very effective individuals. Joan Carling, Saoudata Aboubacrine, and Andrea Carmen are examples in this regard. The importance of strong, experienced individuals is similar for many other IPOs active in the UN context.<sup>169</sup> Jannie Lasimbang has not only been linked to the AIPP, but has also worked for the Indigenous Peoples Network of Malaysia and Pacos Trust, which are also well-known IPOs in the UN context. Dalí Angel Pérez of the Organización de Mujeres Indígenas por la Conservación, Investigación y Aprovechamiento de los Recursos Naturales or Q’apay Conde of the Centro de Estudios Multidisciplinarios Aymara have both functioned as co-chairs of the Indigenous youth caucus; their organizations were between the few IPOs which attended both EMRIP and PFII in 2017. Kenneth Deer has been a central figure in organizing the Indigenous caucus (Dahl 2012: 116–117). Many of these central individuals also have been or currently are mandate holders at the UN, such as Philippine Victoria Tauli-Corpuz, Australian Les Malezer, Canadian Willie Littlechild, or US-American Dalee Sambo Dorough. These individuals sometimes participate as leaders in their own capacity rather than as representatives of certain IPOs. Their leadership is mostly explained with reference to long experience and continuity of attendance in the movement by interview partners. In this regard, the

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<sup>169</sup> Twelve interview partners highlighted the central role of individuals within the Indigenous movement; eight were Indigenous themselves, four were IO staff. Especially the role of Vicky Tauli-Corpuz, the current Special Rapporteur and long-time chairperson of the PFII, was highlighted regularly by interview partners.

importance of the OHCHR fellowship program also has to be highlighted. Several of the graduates have become effective voices in the Indigenous movement and initiated veritable UN careers, such as Megan Davis, former PFII chair and currently a member of EMRIP. In short, a group of Indigenous experts has formed in and around the United Nations which closely follow relevant meetings. These are generally well-educated individuals (or at least experienced from long years of interaction with development agencies, NGOs etc.) and dominate the vocabulary of the UN system. They often are experts with regard to specific fields of knowledge such as human rights, traditional knowledge, or biodiversity. One experienced Indigenous activist highlighted that the participation by individuals like himself who are present at all major UN events dealing with Indigenous issues is highly important to maintain the thread of lobbying by the Indigenous movement. At the same time, however, some observers feel that the number of individuals with expertise in each issue area is still limited.

### **5.1.3 The Indigenous caucus**

Given the heterogeneity of Indigenous organizations, one might imagine that it is not always easy for the Indigenous movement to come to common positions and speak with one voice. In fact, many interview partners highlighted that while there are general patterns common to the struggles of Indigenous peoples throughout the world, the particularity of concerns should not be underestimated.<sup>170</sup> This sometimes results in divergent and even contradictory positions.<sup>171</sup> Under these circumstances, it is easy to imagine that creating a common agenda can be a challenge. The main mechanism through which IPOs address this heterogeneity is through the caucus. The caucus is an informal body<sup>172</sup> which is used by the Indigenous participants present at a certain UN meeting to strategize and develop common positions. It functions as a parallel structure to official meetings at any given UN event with Indigenous participation. A thorough and comprehensive account of the caucus and its working methods has been made by Dahl (2012: 105–127). Here, I want to highlight the centrality of the Indigenous caucus for Indigenous activism at the UN and make the point that the caucus to some degree

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<sup>170</sup> This was highlighted by eleven interview partners.

<sup>171</sup> This was highlighted by six interview partners.

<sup>172</sup> Its informality goes so far that there is no standard procedure for its organization; instead, it takes place on the initiative of several dedicated individuals (Dahl 2012: 116–117).

reinforces the dominance of experienced activists which can be observed with regard to Indigenous participation in the UN system more broadly.

Given the heterogeneity of Indigenous self-representation at the UN, the Indigenous caucus is central as a unifying space. Dahl (2012: 112) argues that the caucus has two functions: internally, it works as a space for Indigenous peoples to discuss controversial issues and create common positions (which might be the most important reason for its existence); externally it is a medium for “representing” the Indigenous point of view vis-à-vis governments or the UN system. Thus, eight of my Indigenous interview partners specifically highlighted that the caucus is important, works effectively, and that coming to common positions strengthens the Indigenous voice at the UN. The caucus’s importance is also recognized by the UN, shown by the preferential treatment of caucus statements during sessions: they often are presented at the beginning of the respective agenda items, and they are given more speaking time. Indigenous participants themselves are very much aware of the fact that their leverage at the UN hinges on their ability to come to common positions (Dahl 2012: 126).

Given this importance of the caucus, it is especially interesting to look at its composition and working methods. Participation in the caucus is generally open to anybody who wishes to participate.<sup>173</sup> Meeting room and hour are openly announced, so that anybody can join these extra meetings. In other words, the caucus is not an elected or appointed body formally representing Indigenous participants, but a voluntary gathering of Indigenous activists who are present at a given UN meeting. As caucus statements are taken as *the* position of Indigenous peoples, this openness of the caucus is “essential to its legitimacy as representing all indigenous peoples” (Dahl 2012: 109). However, whereas the caucus theoretically consists of all Indigenous participants, its size normally varies from only a handful to over a hundred participants. Thus, a huge majority of Indigenous participants present at a given session do not participate in caucus meetings, and participation is rather unstable and volatile, as participants change from day to day (ibid.: 112).

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<sup>173</sup> Apart from Indigenous participants, participation in the caucus generally includes staff from support groups, researchers, and other non-Indigenous observers. The author has participated in several caucus meetings herself.

There is a caucus meeting during the weekend prior to the session of PFII and EMRIP. This preparatory meeting is special in so far that it always includes a training course for newcomers, and provides an introduction into the session.<sup>174</sup> Thus, many newcomers attend who later on will not show up again at caucus meetings (Dahl 2012: 110). This meeting generally also serves to discuss a common statement responding to the important issues which the session will address. At later caucus sessions, generally a smaller number of activists – mostly well-known and experienced individuals – participate. For example, during a caucus session taking place in the mid of the EMRIP session (which i. a. discussed whether the caucus would make a recommendation regarding the next topic for a study by EMRIP), the up to 30 participants included the Special Rapporteur Vicky Tauli-Corpuz, a Permanent Forum member, a speaker of the youth caucus and several other long-time participants of the Indigenous movement such as Andrea Carmen, Kenneth Deer, and Jannie Lasimbang. While participation spanned most regions, African and Russian IPs were largely absent.<sup>175</sup> Similarly, other scholars have observed that a core of activists that attend most international conferences, mostly funded by support groups, are usually present at caucus meetings (Muehlebach 2003: 244, Dahl 2012: 105-106).

With regard to working methods of the caucus, experienced activists usually chair the meetings. Dahl (2012: 116) has pointed out that this experience is much needed, as chairing the caucus is a difficult task: the caucus chair must be able to reconcile differences and to talk to both IPs and governments; additionally, the chair also needs to be trusted as being impartial to the interests of his or her own group. Formally, all participants are equal at the caucus, independent of their experience or background. Everyone is allowed to speak, and speakers are never cut off or denied the microphone, even when they do not stick to the agenda (ibid.: 111–112). Nevertheless, the proceedings are often dominated by more experienced, better prepared participants (Dahl 2012: 122–123). For example, they often bring text suggestions to caucus meetings as a starting point for deliberations (ibid.: 110). It is easy to imagine that in such a complex environment as the Indigenous caucus those with experience necessarily need to take on leadership roles. Moreover, there is also a language aspect to power

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<sup>174</sup> For an example of an agenda of such a preparatory caucus meeting, see [https://www.docip.org/fileadmin/documents/Autochtones/GLOBAL\\_INDIGENOUS\\_PEOPLES\\_CAUCUS\\_CONSULTATION\\_MEETING\\_2018\\_EN.pdf](https://www.docip.org/fileadmin/documents/Autochtones/GLOBAL_INDIGENOUS_PEOPLES_CAUCUS_CONSULTATION_MEETING_2018_EN.pdf), accessed 08.05.2018.

<sup>175</sup> Notes from my research diary, July 2017.

inequalities in the caucus. Dahl (2012: 113–115) describes how Spanish-speaking groups often take a less proactive stance with regard to preparation for the caucus and sometimes show a feeling of marginalization and inferiority vis-à-vis English-speaking groups, given the dominance of English language during caucus meetings. However, at least with regard to the new generation of younger Latin American Indigenous participants active within the youth caucus, this line of conflict seems to become less important.<sup>176</sup>

When it started to become increasingly difficult to develop common positions between all Indigenous participants, regional caucuses were created. From 2003 onwards, statements by regional caucuses became frequent, as shown by their regular appearance in the docip archives. Apart from delivering statements, some regional caucuses organize meetings with UN mandate holders or staff of UN agencies. However, they differ a lot with regard to degree of activity. The most active caucus is certainly the Asian Indigenous peoples' caucus. It is active both in the context of EMRIP and PFII and generally delivers several statements. Similarly, the Arctic caucus also delivers statements at most sessions of EMRIP and PFII. Both Arctic and Asian IPs highlighted in interviews that comparatively few individuals from their regions participate at sessions, which contributes to the effectiveness of the respective caucuses. In turn, the Pacific caucus is a regular speaker at the PFII only. The caucuses of Latin America, North America, and Africa have been less active in recent years in terms of making statements. In 2014, following a conflict within the North American region about whether to participate at the World Conference on Indigenous Peoples or boycott it, the North American caucus was even accused to have been hijacked by “NGOs funded by Wall Street Foundations”<sup>177</sup>. The caucus seems to not have recovered from this division, and has not delivered statements since then.

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<sup>176</sup> Notes from my research diary, July 2017.

<sup>177</sup> Cf. <http://www.wrongkindofgreen.org/tag/north-american-indigenous-peoples-caucus-naipc/>, accessed 02.02.2019. In 2015, the report of the preparatory meeting of the North American Caucus (at <http://unpfip.blogspot.de/2015/04/north-american-indigenous-peoples.html>, accessed 02.02.2019) mentions that far less individuals than usual participated at the meeting, and specifically notes the absence of the Forum member Ed John and PFII Secretariat staff; moreover, in contrast to earlier years, the report was not published officially at the PFII's website. This suggests that at the PFII there were significant doubts about the representativeness of the preparatory caucus meeting.

Generally, the regional caucuses seem to be used with greater frequency for statements within the PFII than at EMRIP.<sup>178</sup> At the same time, some of the regional caucuses also have adopted important functions in between sessions for the coordination of regional participation. Via e-mail, they maintain communication between participants in between sessions. While again the Asian caucus in this regard is an example for other regional groups, several interview partners highlighted that this kind of outreach to the regions was very much needed to strengthen Indigenous participation. Some regional caucuses have also organized preparatory meetings to discuss upcoming issues and generate recommendations for UN meetings. This allows Indigenous groups unable to travel to UN meetings to give their input to the process (Davis 2005). However, here again, interview partners suggested that it is often the most sophisticated groups which participate in this kind of activities. During the last years some thematic caucuses have gained importance, and have probably even gained more visibility than most of the regional caucuses. The most active caucuses in this regard have been the Indigenous women's caucus, the youth caucus, and recently the disability caucus. While the global caucus meeting that takes place at the weekend before the session still plays an important role, during sessions the regional and thematic caucuses nowadays are often more visible.

While I have highlighted the role of lead actors within the Indigenous caucus, this is not to negate the important functions it also offers for less experienced participants. On the one hand, it helps to enhance their effectiveness by offering capacity-building or providing support in the preparation of statements. On the other hand, the caucus strengthens the participation by grassroots participants by providing a safe space to make participants feel comfortable. Cheyns (2014) has argued that grassroots participants need a specific setting and format for their participation, as global institutions tend to devalue the specific contributions of grassroots; thus, providing a secure space for these participants in which they feel at ease and are supported before, during and after statements in the official sessions can be of paramount importance.<sup>179</sup> The caucus offers such space by treating all participants as equal and listening to everyone independent of any time limit. One particular eye-catching example in this

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<sup>178</sup> This might be due to the fact that given the higher number of participants, speaking time at the PFII is scarce, resulting in a greater need for coordinated statements.

<sup>179</sup> In the case analyzed by Cheyns (2014) - the Roundtable on Sustainable Palm Oil - these functions were provided by a local NGO with strong connections to grassroots participants.

regard is the Indigenous youth caucus. Whenever the youth caucus delivers a statement, all its participants gather around the speaker to demonstrate their support.

In short, Indigenous self-representation at the UN is broad and diverse: Different types of IPOs from very diverse geographical backgrounds are part of the movement. However, I have also shown that significant inequalities within the movement persist, and that there are a number of more vocal IPOs and activists with more experience and continued engagement who are more visible during sessions. To some degree, this is mirrored and replicated in the caucus as the main mechanism by which IPOs coordinate their participation. Therefore, in the following I will explore those factors which shape and delimit Indigenous participation within the UN. In this regard, it is important to understand that even when access opportunities are deep and broad, not any IPO may be able to participate at UN events.

## **5.2 Factors impacting on Indigenous participation**

We will now look at the processes that shape which IPOs get to participate in UN meetings and make their voices heard.<sup>180</sup> I have argued in Chapter three that authenticity is an important factor which conditions IPO participation; however, evidence from the interviews suggests that participation – and thus authenticity of IPO voices – is very strongly shaped by the resources IPOs dispose of; most notably by their expert knowledge, bureaucratic skills, and financial means. To some degree, resource constraints may be overcome by building alliances with NGOs and other donors, but these may also bring along certain risks. Moreover, positionings of home governments towards Indigenous peoples also significantly enable or constrain Indigenous activism.

### **5.2.1 Resources and capacities of IPOs**

Many of the differences in voice and visibility of IPOs can be explained by differences in resources, especially with regard to expert knowledge, bureaucratic skills, and financial means. My argument is that IPOs struggle with systematic resource constraints when participating at the UN, and that by tendency these are most difficult to overcome for grassroots organizations. In fact, current research indicates that local grassroots

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<sup>180</sup> An earlier and abridged version of this section has been published in Hasenclever & Narr (2019).

participants generally face serious challenges when attempting to make their voices heard in global settings (Brem-Wilson 2017: 320–322). The rules and rhythms of the UN setting structurally privilege participation by bigger, professionalized IPOs as compared to engagement by grassroots organizations. However, the capacity to make an impact when participating in the UN system can increase over time. References to (lacking) power resources of IPOs were very frequent in the interviews; in virtually all interviews participation barriers for IPs were mentioned, most strongly in those conducted with Indigenous persons.

Effective participation at the UN requires a high degree of professionalization and expert knowledge, which is a challenge for many IPOs. In the most basic sense, expert knowledge concerns a need to be informed about the issues which are being discussed, about possible ways by which these issues may affect local constituencies, as well as about possible policy alternatives (Brem-Wilson 2015: 86). Given that the topics which are negotiated are often complex, there is a need to specialize and focus on certain issue areas to be able to make an impact. Often, legal knowledge is needed to understand the meaning of certain expressions in an international law context (Dahl 2012: 73). Moreover, many UN agencies and programs continue to prefer “scientific” knowledge over the traditional knowledge by local community representatives (McKeon & Kalafatic 2009: 10). While there are growing numbers of Indigenous participants with university backgrounds, and some Indigenous participants have undoubtedly acquired expert knowledge over the years or even initiated a veritable “UN career” (Sapignoli 2017: 85), a considerable number of IPs reportedly do not even understand the mandate of a body such as the PFII.<sup>181</sup> Moreover, grassroots representatives mostly only have temporary mandates, turning it difficult for them to obtain the knowledge necessary to effectively participate in UN sessions and shape the outcome (Rößler 2008: 143). As a result, grassroots representatives mostly have not been able to make constructive inputs (Dahl 2012: 157–159). Moreover, there seems to be, at least to some degree, a geographic unevenness whereby certain regions with higher numbers of experienced and knowledgeable individuals such as the Arctic are more visible within the Indigenous movement. Several interview partners also highlighted that there still is a general lack of knowledge about the UN and existing participation opportunities at the level of local

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<sup>181</sup> This was a common concern in interviews conducted with experienced Indigenous observers.



communities. Especially in Asia and Africa many groups who could potentially identify as Indigenous peoples given their general characteristics until today do not even know about the concept of Indigeneity.

Closely linked to expert knowledge is the question of bureaucratic skills. The continuing lack of bureaucratic capacities of some Indigenous participants was a frequent concern in interviews.<sup>182</sup> In this regard, the capacity to fulfill the requirements of accreditation constitutes the first participation barrier in this context (Sapignoli 2017: 89). Especially for Indigenous individuals from remote communities, booking a hotel in New York or getting to the airport is a challenge, and even more so formulating one's concern in a three-minute statement. Participants also need to know where and when to line up to register for a statement; which UN organization a specific recommendation should be directed to, and which language to use to enhance the chance that a recommendation will be picked up. Unexperienced participants regularly read out their statements rapidly in order to fit it into the three-minute timeframe, making it difficult to follow (and translate) their presentation (Dahl 2012: 68). In this regard, Indigenous peoples face the general challenge that they come from traditions enhancing the role of oral communication, while within the UN context, they have to cope with a system based on Western legal traditions. By tendency, groups from Europe and North America have more experience in writing, which puts them at an advantage vis-à-vis other Indigenous participants (ibid.: 114).

Moreover, unexperienced participants tend to report and complain about specific local circumstances and individual struggles, which are serious and pressing to them.<sup>183</sup> While some experienced activists and diplomats express understanding for the urgency that these local community participants feel to tell their stories, there is a tendency to devalue these inputs and consider them as off topic or unconstructive. In fact, grassroots participants seem to be regularly denied self-expression on their own terms in global settings (Cheyns 2014: 447; Brem-Wilson 2017: 323). Instead, IPOs are encouraged to formulate their concerns in more general terms and to bring forward recommendations

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<sup>182</sup> 13 Interview partners mentioned a lack of bureaucratic skills.

<sup>183</sup> The fact that many IPOs air complaints especially in the PFII context was mentioned by most Indigenous and government interview partners as well as by members of PFII and EMRIP.

or suggestions on how to move forward.<sup>184</sup> That this is challenging for local community representatives goes without question. Additionally, a study on Indigenous women's participation in Kenya finds that poor leadership skills often come in combination with low self-esteem due to experiences of racial discrimination, poverty and low general education levels, posing further barriers to participation (Sena 2012: 10). In a similar vein, it has been highlighted that a lack of confidence in one's right to speak and being intimidated by other participants can constitute barriers to the effective participation of representatives of affected populations (Brem-Wilson 2015: 86).

Moreover, there is a need for Indigenous participants to demonstrate that they master participation standards and adapt their discourse accordingly to be accepted by other participants and be taken into account (Brugnach et al. 2017: 29). For example, one interview partner from a UN specialized agency highlighted how some IPOs deviated from what he expected as appropriate behavior in the UN context (due to what he interprets as lack of organization), and contrasted this with a growing group of more professional IPOs:

"The problem is that Indigenous organizations are sometimes a bit not too well organized themselves. [...] because they have a tradition of militancy, they have a tradition of free speech, and there is I would say a generation of peoples within the [Indigenous, H.N.] NGOs who are really well aware about that fact. And who are really profiling themselves as experts, and also really specialists in procedures, I mean negotiations. And this is, we are now in the transition. And I'm quite sure that the Permanent Forum will be more and more efficient because of this new generation of NGO militants which are really very much keen to be focused, organized, also to ensure continuity in their action, et cetera. And it's amazing how the NGOs are doing now. Some NGOs are really behaving like... official organizations. They really, they're really impressive in their work. So that we are in a transition there."<sup>185</sup>

Accordingly, some Indigenous interview partners feel that they only will be taken seriously when they behave according to the rules and procedures of the UN setting, and that they need to demonstrate their ability to engage effectively.

More advanced strategical capacities for effective participation also include organizing a caucus statement (as these are given preference during sessions), hosting a side-event, or lobbying members of the PFII to get one's concerns into the session's report. It is easy to imagine that this can be an overwhelming experience for anybody who comes to the United Nations for the first time. Moreover, considerable numbers of Indigenous peoples

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<sup>184</sup> Similar observations have been made by Cheyns (2014) with regard to the participation of local community representatives in the Roundtable on Sustainable Palm Oil, arguing that transnational settings require participants to convey their stories in a detached, non-emotional manner.

<sup>185</sup> IO6, 23.

are not able to communicate in one of the six UN languages.<sup>186</sup> This generally puts speakers with an Indigenous language as mother tongue at a disadvantage, and especially those from states where none of the UN languages is spoken. Additionally, outside the official meetings, language use is further reduced to English (and to some degree to Spanish) as the dominant language during side-events, caucus meetings etc. (for a similar concern in a different context see Brem-Wilson 2015: 85). There was also a concern by some Indigenous participants (in this case from Asia and Latin America) that their voice would not be heard because IPOs from the North generally or individual strong organizations within their region were more vocal. Similarly, McKeon and Kalafatic (2009: 15) report about fears that some powerful IPOs or strong individuals might disproportionately benefit from involvement with the UN system given their comparatively stronger capacities, whereas a vast majority of Indigenous peoples is being left behind.

In this regard, Indigenous participants themselves engage in training and mentoring Indigenous newcomers to the UN. As highlighted above, during the weekend before PFII and EMRIP sessions start there is a caucus session explicitly oriented at capacity-building. During this meeting, experienced Indigenous activists also support newcomers in the development of their statements. Moreover, a UN Indigenous Fellowship Program of the OHCHR provides Indigenous individuals with the opportunity to gain first-hand knowledge about the UN system.<sup>187</sup>

In this context, one also has to take into consideration the role of ECOSOC status. While obtaining ECOSOC status is not necessary for participation at the PFII or EMRIP, it opens up additional arenas of engagement for IPOs, such as at the HRC; at the same time, ECOSOC status is used by IPOs to attract potential donors and supporters.<sup>188</sup> However, obtaining consultative status remains especially difficult for community and grassroots organizations which often lack the formal structures and level of organization necessary for ECOSOC accreditation (Morgan 2011: 75). Thus, ECOSOC status at least potentially

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<sup>186</sup> This was especially highlighted by Indigenous interview partners from Asia.

<sup>187</sup> For further information, see <http://www.ohchr.org/EN/Issues/IPeoples/Pages/IFP.aspx>, accessed 02.02.2019.

<sup>188</sup> For example, IITC highlights on its website that it “was the first to be upgraded to General Consultation Status in recognition of its active participation in a wide range of international bodies and processes”, see <https://www.iitc.org/about-iitc/>, accessed 02.02.2019.

attributes to widening the gap between strong Indigenous NGOs and local grassroots organizations.

A lack of material resources of many IPOs was the most virulent concern in interviews.<sup>189</sup> Generally, most IPOs are very small and have limited resources, turning it into a challenge to mobilize the resources necessary to attend sessions of the PFII or EMRIP.<sup>190</sup> While there are funding opportunities such as by the Voluntary Fund for Indigenous Peoples and supportive NGOs, applying for travel grants already requires some degree of bureaucratic skills. Moreover, resources not only determine whether an individual can assist at all, but also impact on capacities: only through regular participation (requiring regular funding), other power resources such as bureaucratic skills and expert knowledge might be enhanced. What is more, only wealthier Indigenous organizations are able to pay for staff members, ensuring higher degrees of professionalization and continued engagement. Therefore, certain IPOs are much more visible during UN sessions than others. In other words, limited resources correlate with lower degrees of bureaucratic skills and formalization (Morgan 2011: 79).

While the lack of resources was an issue for most Indigenous interview partners, it most strongly hits IPs from developing countries. This sometimes results in situations in which one Indigenous group speaks for the entire Indigenous population of a country, because no other could finance the journey to New York or Geneva. The geographical unevenness is reinforced by the fact that meetings of the PFII take place in New York, making attendance comparatively cheaper for North American groups. However, as for IPOs from richer countries less funding is available, from these countries generally only the wealthier IPOs or individuals with own resources can afford to participate (Dahl 2012: 60), creating additional disparities within regions. Due to a scarcity of resources, IPOs engaging at the UN level often have to take decisions regarding which forum to engage with. Thus, participating at the PFII (or EMRIP) for some IPOs means that they will not be able to engage in other UN processes (McKeon & Kalafatic 2009: 22). Moreover, several interview partners suggested that dependence on external funding

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<sup>189</sup> 17 interview partners mentioned this, and a total of 38 interview passages related to the issue were coded.

<sup>190</sup> This issue appeared again and again in interviews with Indigenous participants. In many cases it also means that Indigenous participants cannot afford to stay during the entire session, but only assist for a reduced number of days.

can also impact on the content of UN activism,<sup>191</sup> as it results in IPOs advancing less radical positions.

Some IPOs, mostly from Western countries, have also established their own sources of funding. This includes those IPOs which are supported by a strong diaspora such as the KKF and CMA. Additionally, a number of IPOs have emerged which are organized in the form of funds and act as donors themselves. For example, the Seventh Generation Fund for Indigenous Peoples provides financial resources, technical assistance and training to Indigenous communities.<sup>192</sup> Inequalities in resources, however, sometimes lead to tensions within the Indigenous movement. For example, there have been suspicions that pertaining to an Indigenous organization which distributes funds to Indigenous communities can be helpful to gain support by regional IPOs for nominations to PFII membership.

This short discussion of IPO resources shows that IPOs – probably similar to other representatives of affected communities – face specific challenges when engaging at the UN level. By tendency, these resource constraints are stronger for IPOs than for NGOs, due to a higher level of informality of many IPOs. However, considerable inequalities also prevail *within* the Indigenous movement with regard to resources, and some IPOs can access the UN with less effort than others. In this regard, the dominance of ‘western’ voices for which the NGO sector is being criticized is to some degree replicated (Charters 2010: 239). The discussion also shows that access to different types of resources – i.e. money, knowledge, and bureaucratic skills – often is connected and interdependent, meaning that it gets easier to obtain each of these resources for an IPO that already possesses another resource. This additionally reinforces the trend towards unequal distribution of capacities and resources. Thus, for some IPOs it has been easier to adapt to the rhythms of global level meetings and negotiations than for others. As shown by the analysis of vocal voices within the Indigenous movement in 2017, resource constraints do not only determine access, but also affect who is being heard and able to make an impact within the Indigenous movement.

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<sup>191</sup> The possibility of a cut in financial support was not only mentioned as an abstract possibility: One interview partner highlighted that Australia cut contributions to the now defunct IPO World Council of Indigenous Peoples when it became too troublesome.

<sup>192</sup> See <http://www.7genfund.org/about-us>, accessed 09.05.2018.

## 5.2.2 The ambivalent role of allies

In this regard, the specific role of allies for IPOs also has to be discussed. Thus, the Indigenous peoples' movement at the UN probably would not have been as successful without the help and engagement of support NGOs. Many IPOs use the broad attendance to sessions of the PFII and alike as an opportunity to network and find allies. On the one hand, the ability to mobilize support by NGOs can be central to the success of IPOs; on the other hand, funding decisions by NGOs considerably structure the Indigenous movement. In other words, alliances with donors can both enable and constrain Indigenous organizing.

Non-Indigenous support and advocacy NGOs provide key resources to IPOs, for example by distributing travel grants, providing scientific and legal expertise, or by accrediting IP representatives through their organization. NGOs also engage at sessions by documenting the discussions that take place or meeting with project partners. Other NGOs engage in delivering conference services such as translation during caucus sessions. In turn, supportive NGOs generally do not deliver statements. Quite the opposite, NGO participants mostly act according to an unspoken norm that Indigenous peoples are the main actors during sessions of EMRIP and PFII, and can and should speak on their own behalf; some even give away their speaking slot to Indigenous participants (Dahl 2012: 60).

However, the role of NGOs goes much beyond support for IPO participation at sessions. Some NGOs play important roles because of their ability to reach broader audiences through publications or media contacts. It has even been argued that this has probably been "the most important role of the international support network" (Brysk 2000: 95). For example, when Russian Indigenous participants to the WCIP were hindered to leave the country, this was communicated to a bigger public by the NGOs Greenpeace and IWGIA.<sup>193</sup> Moreover, support by non-Indigenous NGOs was fundamental in rendering Indigenous organizing stronger and more visible in the first place when they started to approach the UN in the 1970s and 80s (Niezen 2003: 42–44). Many donors engage in the building-up and strengthening of Indigenous organizations. IWGIA also was a central player in expanding the concept of Indigeneity to Africa (Igoe 2006: 407). Thus,

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<sup>193</sup> Cf. for example press statement at <https://www.iwgia.org/en/sapmi/2140-russian-wcip-delegates-press-criminal-charges-rega>, accessed 02.02.2019.

relationships with central INGOs in the field seem to resemble what Schramm and Sändig (2019) have called “affectedness alliances”.

However, alliances with NGOs – or more specifically, reliance on their funding – also carry the risk of impacting on IPO identity and agendas. There is a connection between attracting public support and lifestyles that resonate with ‘western’ stereotypes of Indigenous peoples as, for example, environmental stewards. The geographic, cultural, and linguistic distance of many NGOs from local communities sometimes leads them to romanticize Indigenous peoples (Greene 2004: 222). Niezen (2003: 186–187) argues that expectations by western supporters have contributed to strong references to the “picturesque qualities of indigenous life” in Indigenous identities. However, as he continues to explain, realities of communities which have suffered under assimilative policies often do not respond to these images; and the adapting to stereotypes might delimit options of IPs for example regarding resource extraction on Indigenous territories. As a result, the essentialized ideas about Indigeneity often create identity challenges for growing numbers of “real” Indigenous peoples (Levi & Maybury-Lewis 2012: 80). For example, Hodgson (2002a: 1090) explains that in the case of Tanzanian Indigenous peoples, donors showed a preference to fund the well-known (and colorful) Maasai, whereas other groups self-identifying as Indigenous had considerably more difficulties in attracting funding. Relying on a case from Latin America, Greene (2004: 222) shows how even well-intended funding by NGOs might strengthen certain IPOs at the expense of others without taking into account the often complex local realities with different and sometimes competing organizations speaking in the name of one group. At the same time, receiving funding also brings along the danger lasting dependencies (Dahl 2012: 59–60).

In some cases, funding has even impacted on the agendas of IPOs. Thus, in the case of Tanzanian IPOs, dependence on funding resulted in a vulnerability of IPOs to donor agendas. When they adapted their own projects to attract funding, this resulted in a distancing between IPOs from the interests of their constituencies (Hodgson 2002a: 1093; Igoe 2003: 871). Additionally, increasing professionalization to respond to donor interests might widen the gap between IPOs and their constituencies. In this regard, Igoe (2006: 415) has described how the scaling-up of local IPOs in Tanzania by international NGOs to increase effectiveness resulted in cleavages between communities and leaders working on their behalf. Availability of funding for certain organizational activities such

as development projects might also lead to a focus on these and correspondingly result in a decrease of other functions such as advocacy (McKeon & Kalafatic 2009: 10). This is highly relevant in the context of Indigenous UN activism because, according to one Indigenous activist, many donors prefer funding concrete, tangible projects as compared to funding Indigenous participation at the UN. At the same time, some Indigenous interview partners expressed scepticism and distance with regard to NGOs more broadly, and accused them of behaving as spokespersons for IPs, while Indigenous peoples want to and can speak for themselves.

Not only supportive NGOs are potential allies for IPOs; allies also can be found within the group of states, as states by no means act as a uniform group. In this regard, some states include Indigenous individuals in their official delegations to the PFII and EMRIP. For example, the Nordic states often include members of the Saami parliaments in their delegations.<sup>194</sup> Moreover, some states have engaged in a Group of Friends of IPs on several occasions. This is an informal group which brings together states who self-identify as progressive actors with regard to Indigenous rights. The activities of the group depend on someone taking the initiative to organize it. For example, Mexico and Guatemala took the lead in advancing the negotiations regarding a participatory status for Indigenous peoples within the UN system. In this regard, individual leadership might also play a central role. Thus, the role of Ambassador Keith Harper in Geneva, the first Native American to be nominated US ambassador, is considered to have been central in the process of negotiating a stronger mandate for EMRIP. State interests also depend on the issue which is being negotiated; this opens up opportunities for building alliances that leave behind the Indigenous peoples versus states dichotomy. Other states, mostly through their development assistance, engage in funding Indigenous organizations. For example, the German Ministry for Development Cooperation, through its executing agency GIZ, from 2014 to 2016 realized a project named PROINDÍGENA which aimed at strengthening Latin American Indigenous organizations. The project *inter alia* included

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<sup>194</sup> However, this has not been without conflict within the Indigenous movement: especially Latin American IPs often find it difficult to accept Indigenous groups which cooperate with governments (Dahl 2012: 107–108). Leanne Simpson (2006: 115) who as an Indigenous activist has been a member of Canadian state delegations to negotiations in the context of the CBD, warns that Indigenous participation in state delegations can legitimize state positions even when IPs have not been involved in developing the content of statements.



support to “regional indigenous umbrella organizations in their efforts to impact international agreements that affect indigenous rights”<sup>195</sup>.

Similarly, potential allies can also be found within the group of IOs, and alliances might include actors from different categories. For example, in 2017 state ministries and agencies of the UN system in Peru joined with Indigenous organizations to organize a national level preparatory meeting to the PFII.<sup>196</sup> However, these alliances include the same challenges for IPOs as alliances with NGOs. In this regard, officials of UN agencies have questioned themselves whether UN funding of APO projects leads to a downgrading of political advocacy functions of the organizations they engage with (McKeon & Kalafatic 2009: 10).

In short, the comparative weakness of IPOs requires them to build alliances – be it with other sectors of civil society, with states or with IOs. In this regard, an enhanced role of NGOs and other supportive actors by providing additional resources, facilitating participation, and thus strengthening the Indigenous voice might prove vital. At the same time, it is necessary both for IPOs and for donors alike to be aware of the potential dangers residing in funding decisions. Thus, while IPOs need to carefully select funders according to their own priorities and projects, donors need to engage in responsible funding and take the respective decisions together with the concerned IPs. Specifically, there is a need to reach out to those communities which still do not know about UN activities on IPs or have not been able to articulate themselves in the UN context. Moreover, specific importance could be given to capacitating Indigenous governing institutions and traditional power wielders and bringing them to the UN, which could strengthen the legitimacy of the Indigenous endeavour within the UN and, at the same time, ensure enduring relationships with local constituencies.

### **5.2.3 Domestic context**

As highlighted in the previous paragraphs, states can be important allies for Indigenous activists. Some states are important donors for IPOs, and some have supported and brought forward Indigenous concerns in intergovernmental contexts. However, there are significant differences in the degree to which states support Indigenous rights. Due

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<sup>195</sup> See Project Outline at <https://www.giz.de/en/worldwide/12304.html>, accessed 02.02.2019.

<sup>196</sup> See <http://chirapaq.org.pe/en/committee-was-created-to-support-peruvian-indigenous-leader-at-the-un>, accessed 02.02.2019.

to the power that they hold, states which oppose Indigenous rights can significantly constrain Indigenous activism. Thus, one Latin American interview partner reported that in the early years of their engagement at the UN, statements delivered by his IPO were diligently reported to the government back home, a fact which was feared by Indigenous activists. In recent years, an alarming increase in repression and criminalization of Indigenous human rights defenders took place. Of the 281 human rights defenders murdered in 2016, it is estimated that up to half of them were Indigenous; additionally, instances of “violent attacks and threats, enforced disappearances, illegal surveillance, travel bans, sexual harassment and other forms of violence” were reported (UN ECOSOC 2017b: §73–81). Whereas state institutions are not necessarily the perpetrators of such crimes, some do not effectively engage in protecting Indigenous activists.

In some cases, however, the state also actively takes part in the repression of activists. For example, the Philippine government recently accused Indigenous human rights defenders as being terrorist group affiliates, including the current Special Rapporteur, Vicky Tauli-Corpuz.<sup>197</sup> At the 2018 session of the Permanent Forum, Russian ex-member of the PFII Pavel Sulyandziga reported about an Indigenous activist who had been harassed by the state to the degree that she was forced to apply for political asylum in the European Union, and highlighted that this case was the rule rather than an exception.<sup>198</sup> Moreover, the knowledge that states might punish Indigenous individuals who criticize state policies in the UN arena once they return home might result in a self-censorship by IPOs, thus proclaiming less controversial positions when they engage at the global level (Bellier 2013: 192). In this regard, one interview partner from the Arctic highlighted that IPOs from his region which was made up by democratic states were able to bring forward more radical and aggressive positions than others. The caucuses sometimes support individual Indigenous activists who fear repression by their government by speaking out on behalf of them. Government behaviour might even lead to the exclusion of some voices, as in the case of Tanzanian Maasai activists who mostly stopped engagement in the Indigenous movement and now prefer to mobilize under the label of “pastoralist livelihoods” as a result of government hostility towards mobilization

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<sup>197</sup> <https://www.un.org/development/desa/indigenouspeoples/news/2018/03/unpfii-indigenous-human-rights-defenders-in-the-philippines/>, accessed 02.02.2019.

<sup>198</sup> <https://www.un.org/press/en/2018/hr5391.doc.htm>, accessed 02.02.2019.

based on Indigenous rights (Hodgson 2008: 220-221). Some governments block the participation of IPOs which denounce human rights violations taking place in their home countries such as by not providing passports to them (Dahl 2012: 60–61). Moreover, there are continued allegations that some states pressure the US not to provide visa to certain Indigenous activists for participation at the PFII.

In sum, the position of states vis-à-vis Indigenous activism severely impacts on the abilities of Indigenous actors to engage effectively at the UN level. Thus, Niezen (2003: 56) highlights the dominance of Indigenous participants from liberal democracies within the Indigenous movement, explaining this with greater openness of governments in these states towards civil society organizing and criticism.<sup>199</sup> While since 2003, when he made this observation, the composition of the Indigenous movement has become more global, many of the stronger IPOs still have their offices in liberal democracies.

In this section, I have argued that IPOs face specific challenges when engaging within the UN context. Their limited resources, their ability to engage in alliances with supportive actors, and the domestic environment for IPO organizing are structural conditions which strongly shape Indigenous participation at the UN. They affect Indigenous participation through open access modalities, and impact on who becomes appointed as member to Indigenous-specific UN institutions. In the next section, I will dwell into perceptions of the authenticity of those IPOs that get to participate at the PFII and EMRIP in spite of resource constraints and other participation barriers.

### **5.3 Indigenous Peoples' Organizations and Authenticity**

In this section, I will dwell on the question of authenticity of participating IPOs as perceived by participants of the process, namely Indigenous peoples themselves, government officials and UN staff as well as experts on Indigenous issues. As outlined in Chapter three, I assume that perceptions of authenticity of APO participants fundamentally shape the empirical legitimacy of institutions that allow for APO access.

Moral strength and legitimacy is the main argument for entitling affected actors instead of NGOs with participation rights. Unlike NGOs, they are directly rooted in local

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<sup>199</sup> This is not specific to Indigenous activism: research on NSA participation in global environmental governance has found that these actors are more likely to have their headquarters in democratic countries (Uhre 2013: 158–159).

communities resulting in particular knowledge and lived experience; moreover, they can be held accountable by the affected groups (Sändig et al. 2019). Compared to other affected actors, IPs claim to have even stronger moral grounds for participation (see section 4.1.2). As outlined above, with regard to Indigenous participation at the PFII and EMRIP there is no selection process by the UN. Every IPO (i.e. organization self-identifying as Indigenous) can register as participant, independently of its institutional form, concrete program or the constituency it represents. In other words, by enabling broad Indigenous participation, a high number of opinions and perspectives are represented at sessions. Open access opportunities also cater to the reluctance of Indigenous peoples to organize in the form of NGOs, and a (probably well-founded) fear by IPOs regarding state control of Indigenous participation. However, it also means that in a way, the question of IPO representation and authenticity is left to Indigenous peoples themselves. In this regard, two interview partners specifically highlighted that it is within the responsibility of Indigenous participants to ensure that only legitimate voices speak out.

At the same time, the authenticity of IPOs that engage at the UN is an issue for many participants. It is mostly discussed with regard to two different issues: First, with regard to the question of who is (and is not) Indigenous; and secondly, regarding the closeness of participants to local communities. These two lines of discussion will be presented below, starting with the discussion surrounding Indigeneity.

### **5.3.1 Indigeneity**

On the one hand, the Indigeneity of some groups self-identifying as Indigenous has been put into question. As shown in Chapter one, there is no formal definition of Indigeneity; in contrast, the concept relies on self-identification. At the same time, there are limits to the possibility of self-identification.<sup>200</sup> Thus, there have been several instances in which groups participated at sessions of the WGIP, PFII or EMRIP whose claims to Indigeneity were not recognized by the other Indigenous participants. During the 2000s, Irish organizations regularly participated at PFII sessions. The Indigeneity of the Crimean Tatars – who are very active participants at PFII and EMRIP – is contentious, as they are accepted as Indigenous by many other participants, while Russian IPs generally consider

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<sup>200</sup> In contrast, one interview partner also argued that Indigeneity is a constructed identity and a political decision and therefore no individual group could legitimately be denied this self-identification.

them as a national minority (Dahl 2012: 200–202). However, this participation has generally not been considered as problematic, as most of these groups marginalize themselves, do not participate in the caucus, are not paid much attention to by other participants when they deliver statements and often stop to attend after a few sessions (ibid.: 196–197). A more problematic aspect in this context is that some states especially from Asia and Africa insist that all inhabitants of their country are indigenous to it<sup>201</sup> or that the concept of Indigenous peoples only applies in the context of Western colonization,<sup>202</sup> negating the rights of IPs from their territories to participate in Indigenous-specific UN activities.

An even more complicated discussion is the question of who is authentically Indigenous, as this relates to lifestyles and positions that an individual holds. In this regard, it has been observed that Indigenous peoples (and individuals) are considered culturally authentic to the degree that they conform to stereotypes about Indigenous peoples; in other words, the more they turn into savvy experts at the UN and become valued interlocutors for IO and government delegates, the more they risk being considered as inauthentic (Lindroth 2011: 555–556; Levi & Maybury-Lewis 2012: 100). Indigenous participants employ various strategies to counter this “paradoxical tension between tradition and modernity” (Lindroth 2011: 556). Many Indigenous participants change from day to day between traditional dress and modern suit when they participate at UN sessions, or combine traditional dress with modern clothes. Moreover, many statements by Indigenous participants start or end with a greeting in an Indigenous language. For example, Wilton Littlechild, Ex-member of PFII and EMRIP, usually ends his presentations with the Cree expression “hai hai” (thank you). Other oral strategies frequently employed by Indigenous participants include greetings to “our Indigenous brothers and sisters”, expressions of respect to the elders or “our ancestors”, and references to “Mother Earth” or to a holistic Indigenous world view.

What is interesting in this regard is that these symbols have become essential and globalized concepts for the Indigenous movement, and as such they are sometimes used even by Indigenous peoples in whose traditions they are unknown (Dahl 2012: 164–

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<sup>201</sup> See f.ex. statement by Indonesian delegation to EMRIP in 2015, which argues that UNDRIP is not applicable in the Indonesian context (Indonesia 2015).

<sup>202</sup> See f.ex. statement by Chinese delegation to the PFII in 2015 (People’s Republic of China 2015).

166). These elements of globalized Indigenous ways of speaking are combined in statements with the bureaucratic formulations typical of the UN context. The use of language and dress signalling Indigeneity in combination with elements that show dominance of the diplomatic rules of the game is a way to signal membership to both worlds, and a reaction to discussions of authenticity. However, Dahl (ibid.: 177) as a long-time observer of Indigenous participation in the UN context has argued that by tendency the use of these strategies to demonstrate authenticity has lost importance in the course of the years, parallel to the growing acceptance of Indigenous peoples as participants in the UN system.

The question of who is authentically Indigenous is not only posed by outsiders to the Indigenous movement, but also by some Indigenous participants. In this regard, some of them explicitly link Indigeneity to a certain worldview. Failing to comply with this worldview, the Indigeneity of other participants is put into question. This was very strong in one interview with a North American Indigenous activist who accused other Indigenous participants as “apple” – “red on the outside, and white in the inside”. He argued that some Indigenous people had acculturated and assimilated, and therefore are now involved in activities that are violating “our Indigenous spiritual believes”.<sup>203</sup> According to my interview partner, this development takes place globally – with only a minority of Indigenous peoples still sharing Indigenous values and cosmovision. What is interesting in this context is that the speaker refers to a globally shared Indigenous concept of the sacred and makes an explicit link between sharing this concept and authentic Indigeneity – suggesting that a genuine Indigenous person can only hold certain convictions and a certain worldview; otherwise he or she “loses” Indigeneity.

### **5.3.2 Representativeness and accountability**

Questions regarding the accountability and representativeness of IPOs come in two variants: On the one hand, there is a concern that IPOs participating at the UN level by tendency are not sufficiently connected to local communities; on the other hand, criticism addresses the issue of transparency, meaning that for other participants it is often difficult to assess the representativeness and accountability of individual IPOs. I will address both concerns in more detail below.

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<sup>203</sup> I-NA2 (22).

Regarding representativeness, it has been argued that a lack of representativeness is inherent to Indigenous participation at the global level, as structural conditions work against representativeness: “It is inherently difficult for culturally distinct communities to designate leaders who are both representative of the group’s values and effective in the wider political arena. [...] International organizations reward leaders who are *least* representative of the cultural perspective they seek to defend” (Brysk 2000: 274, emphasis in the original). The necessity to professionalize and adapt to the working methods of an intergovernmental context potentially can lead to alienation between participating organizations and local constituencies (Uvin 1995: 505; Brugnach et al. 2017: 29). Cherokee scholar Jeff Corntassel (2007: 161) similarly argues that

“[i]n order to be successful [...], indigenous delegates must often mimic the language and strategies of those institutions they work within. What results is a cadre of professionalized indigenous delegates who demonstrate more allegiance to the UN system than to their own communities.”

As highlighted above, IPOs generally suffer from resource constraints when they engage at the international level, but are affected by these constraints to different degrees. In the context of IP participation at the UN, grassroots representatives oftentimes are not able to adapt to the prevalent working modes. They do participate, but do not have the same impact on the proceedings as individual strong Indigenous NGOs. Some staff members of IOs share the concern that many of those individuals and groups which participate within the UN system tend to represent more advantaged sectors of Indigenous peoples; they express doubts about the links to local constituencies or question the selection process of spokespersons (McKeon & Kalafatic 2009: 11).

To some degree this concern might reflect a general mistrust between local community representatives and global Indigenous advocates. It has been argued that especially local grassroots representatives often distrust Indigenous ‘diplomats’ and fear that they participate at the UN to obtain personal advantages rather than to achieve advances for their communities (Rößler 2008: 133). Thus, one Indigenous participant explained that the PFII was not the right place to consult with Indigenous peoples, but that instead this consultation should take place at the grassroots level. In 2013/14, when there was a conflict within the North American region on whether to support the WCIP or boycott it, one observer insulted the members of the regional caucus as “lobbyists who’ve grown accustomed to the international NGO lifestyle” and warned that “grassroots indigenous activists have good reason to be suspect of the motivations and trustworthiness of the

indigenous lobbyists who have repeatedly been less than transparent or forthcoming with information about the UN process”.<sup>204</sup> In Latin America, community-based activists sometimes talk about the “TACA group” (TACA being a Latin American airline) when referring to international activists lacking strong ties to communities (Dupuits & Pflieger 2017: 57). From a contrary perspective, two interviewees remarked that at the community level there is little interest in or recognition and valorisation of the important work realized by those who engage at the UN, while people tend to think that “people just go there on vacation”<sup>205</sup> or as “ethno-travellers”<sup>206</sup>.

Some of the criticism also addresses the organizational form of the most active IPOs at the international level as (international) Indigenous NGOs. In many cases IPOs which take leadership roles at the UN differ from those which are strong at the national or local level, as many of the umbrella organizations focusing on the national and regional arenas generally do not consider the UN as their primary battle ground (Dahl 2012: 153). Thus, one Indigenous interview partner observed that the IPOs active at the local and national level and those active at the UN level “are like in two separate worlds”.<sup>207</sup> A staff member of an IO highlighted that there was a huge gap between the debates at the UN level and the grassroots. This observation is confirmed by Rößler (2008: 143) with regard to Latin American IPOs, describing a general detachment of Indigenous leaders in the UN system from those at the local or national level. One of my interview partners argued that authority ultimately resides at the community level – and given that only a share of communities do feel represented by (national and international) Indigenous organizations, the additional participation of community representatives is highly important. Another issue in this regard is that participating IPOs often are NGOs themselves rather than Indigenous governing institutions. Thus, one Indigenous interview partner highlighted that he participated at the UN as a representative of an Indigenous NGO, whereas the traditional authorities of his people should be involved to a higher degree – however, they often lack the relevant information and resources to do so. Similarly, a staff member of an IGO felt that Indigenous peoples’ own local institutions weren’t sufficiently taken into account – “which by the way would have

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<sup>204</sup> <https://intercontinentalcry.org/naipc-credibility-issue/>, accessed 02.02.2019

<sup>205</sup> I-NA1 (8)

<sup>206</sup> Original in Spanish (ethno-viajero); I-LA3 (8).

<sup>207</sup> Author’s translation from the Spanish original: “están como en dos mundos distintos”; EXP2 (16).



more legitimacy in terms of really representing communities”<sup>208</sup>. Another interview partner argued for an enhanced role of Indigenous parliamentarians.

In the interviews, questions of representativeness and accountability appear regularly. Individual Indigenous participants are challenged as not being rooted in a community. In fact, it has been observed that some Indigenous participants make a living as activists at the UN and never return to their communities.<sup>209</sup> In this regard, the concern about individuals who are not closely linked to communities is aired by all types of participants – including by some Indigenous actors. For example, two interviewees from Latin America highlighted that there had been cases of Indigenous leaders who were corrupted by their engagement at the UN, using it for their personal benefit rather than for the good of their communities. A government representative highlighted that even within the Indigenous caucus “there is often deep, profound disagreement about who is who”, and that there are Indigenous individuals claiming authority but who are unknown in the states they come from and in reality sometimes just are “an NGO of one person”<sup>210</sup>. In a similar vein, one staff member from a UN body and long-term observer of Indigenous participation highlighted that even between the very active Indigenous participants at the UN there are still quite a few who are not well rooted, or even not rooted at all in a local community or in a national or global level IPO. A staff member of another IO bluntly argued that some of those registering as Indigenous participants in reality do not have close links to any Indigenous community and therefore do not have a legitimate reason to participate. In short, some doubts remain with regard to which of the IPOs participating in global policy-making in fact authentically represent Indigenous peoples (Charters 2010: 239).

While these discussions mostly concern Indigenous observers, some IPs also question the closeness of Indigenous members to local constituencies. In this regard, there seems to be a connection between the feeling of having effectively participated in the selection process of members and convictions regarding the authenticity of regional members, as criticism regarding links between members and local communities mostly were aired by Indigenous participants from regions which do not have internal nomination procedures

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<sup>208</sup> IO7 (31).

<sup>209</sup> However, it has to be kept in mind that there are also cases in which Indigenous activists do not live in their home countries due to the danger of being persecuted (Tsutsui 2016: 138).

<sup>210</sup> G-WE02 (36).

for membership (see also Section 4.3.2). For example, a Latin American Indigenous activist complained:

“But many times it is persons which have been nominated that... I don’t know from where they have surfaced, they never have been seen in the organizational processes. They don’t come from a basis, from an organizational basis.”<sup>211</sup>

While considerable discussion surrounds the question of how closely Indigenous participants are linked to communities, there is another share of IO and state officials which rather frames the issue as a question of lacking transparency and information regarding the background of IPOs. Due to the very diverse participation at sessions, it is not always easy to tell who represents whom, especially with regard to the less well-known organizations. Moreover, the statements which IPs make regarding whom they represent are often equivocal (Dahl 2012: 134). Thus, one government official explained that not knowing the background of certain IPOs from other countries, it was difficult to know which weight to attach to their statements. Similarly, a staff member of an IO highlighted that it was very difficult prepare for sessions and to know who you are talking to during the sessions, given a lack of background information about participating IPOs and the high numbers of Indigenous participants.<sup>212</sup>

However, it has been highlighted that not every criticism of Indigenous representativeness and authenticity is appropriate or well-founded; by contrast, sometimes accusations in this regard are used strategically to discredit certain Indigenous participants. For example, Indigenous participants sometimes use representativeness to express disagreement with other Indigenous individuals holding differing positions and convictions (Dahl 2012: 139). In the same vein, some states have used the question of representativeness with ill attempt. This criticism targets IPOs who,

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<sup>211</sup> I-LA1 (28). Translation from the Spanish original: “pero muchas veces también son personas que han sido nombrado... yo no sé de donde han surgido nunca se han visto en los procesos organizativos. de una base, de una base organizado no vienen de eso.”

<sup>212</sup> A document by the CBD on Indigenous participation in the proceedings of the Working Group on Article 8j also highlights this problem: “Barriers exist however in simply identifying and obtaining information on these initiatives. For example, with the exception of IBIN (Indigenous Peoples Biodiversity Network), the North American Indigenous Peoples Biodiversity Network and COICA (Coordinating Body for the Indigenous Peoples’ Organizations of the Amazon Basin), international organizations or initiatives among Indigenous and local people are not readily identifiable through searches on the Internet. These barriers, which are ultimately barriers to international cooperation among Indigenous and local communities can be related to communication capacity (i.e., no access to Internet transmission of information, traditional use of oral rather than written forms of communication, language), issues of trust (reluctance to share information with outsiders) and consent (consent to use information obtained orally.)” UNEP/CBD/WG8J/1/4, available at <https://www.cbd.int/kb/record/meetingDocument/1959?Event=WG8J-01>, accessed 5.02.2019.

in the eyes of state delegations, carry illegitimate or unwanted messages (ibid.: 134). While Indigenous peoples gossip about fellow Indigenous participants on the hallways or in the cafeterias, states sometimes even issue statements during sessions in which they openly challenge the legitimacy of IPOs from their countries. An example in this regard is Vietnam – during the 2015 session of the PFII, a Vietnamese state official bluntly argued that the KKF was “a foreign based organization that does not in any way represent the ethnic Khmer people in Viet Nam”, and that it was “not even recognized as an indigenous peoples organization by fellow organizations” (Viet Nam 2015). State delegations from Indonesia time and again challenge West Papuan IPOs, arguing for example that they follow an “ill-intended agenda” and are “misleadingly claiming to be the genuine representatives of over 400 tribes in Papua and West Papua Provinces of Indonesia, attempting to misuse this august Forum” (Indonesia 2016). Other states have intended to delegitimize Indigenous participants by charging them with non-adherence to the rules of sessions, such as by politicizing the work of the PFII (Russian Federation 2016), or have blamed Indigenous participants with separatism or other illegal behavior, such as in the above mentioned case when the Philippines accused Indigenous human rights defenders as terrorist group affiliates.

However, how much importance do we have to attach to the statements which question Indigenous authenticity? 13 of 37 (slightly above one third) of all interview partners – state and IO officials, IPO activists and other experts – critically mentioned discussions regarding the moral authority of Indigenous participants. In this regard, it has to be taken into consideration that my interview partners from states and IOs were all rather supportive of the Indigenous movement in general. Still, many found it important to highlight the moral authority of Indigenous participants as a challenging element of Indigenous participation in the UN context. Moreover, several interview partners explicitly highlighted doubts about authenticity as a shared concern of many participants. Other interview partners highlighted the continuance of the issue, pointing to it as an “issue that keeps coming up and up”.<sup>213</sup> This suggests that representativeness of Indigenous participants is in fact a contentious issue at least for a significant share of participants.

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<sup>213</sup> IO7 (31).

As a measure of comparison, I also coded all references which explicitly referred to legitimate Indigenous participation. Both groups of statements were practically equal in terms of numbers of interviews taking up the issue, and numbers of coded passages. Interestingly, however, many of these positive statements were made by Indigenous activists who asserted their own link to local communities or to Indigenous governing institutions. In other words, IPOs engage in self-legitimation by pointing to their own closeness to an Indigenous constituency. At the same time, few interview partners did argue for a solid legitimacy of Indigenous participants in general. Some Indigenous interview partners highlighted that Indigenous participation is good and successful, without going into further detail. Two state officials argued that it was up to Indigenous peoples to determine their representation, and that other participants had no right to judge this participation. An ex-member of the PFII argued more generally that “the recommendations that come from the floor or the interventions are really coming from Indigenous communities. Directly.”<sup>214</sup> On an aggregated level, however, there were significantly more critical comments with regard to authenticity than there was appraisal of it. Still, it is also interesting to observe that Indigenous participation per se is generally not called into question. Instead, its concrete form is under discussion. I argue that Indigenous participation is valued by many participants, but that a significant group considers that there is considerable room for improvement in this regard. In sum, authenticity of IPOs is a relevant concern for some participants, but not all participants put much weight to it.

#### **5.4 Indigenous participation, authenticity and the role of resources**

The above discussion has shown that authenticity of Indigenous participation has different dimensions. IOs, states and IPOs themselves all discuss the issue of authentic Indigenous voices. What does this mean for the moral authority of Indigenous participants? From a normative point of view, Dahl (2012: 134–139) argues that the fact of being representative of local communities and the legitimacy of Indigenous participants need to be distinguished, pointing to the fact that Indigenous participants come to the UN with differing mandates and thus their moral authority is grounded in different aspects. For those who have a message to convey, this is the trustworthiness of

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<sup>214</sup> MPF-I1 (25).

their story; for others who are spokespersons of their communities, this may in fact be representativeness and accountability; still for others who participate as experts, their legitimacy resides in their expertise regarding the issues being negotiated. Many Indigenous participants are firmly rooted in national movements or local communities; however, they are not bound by them when they come to international meetings, but can act relatively independently in the UN sphere (ibid.: 142–157). The relative independence of some IPO participants might, to a certain degree, even be an advantage, as these individuals can act in the general interest of Indigenous peoples rather than in the interest of their communities alone (ibid.: 140).

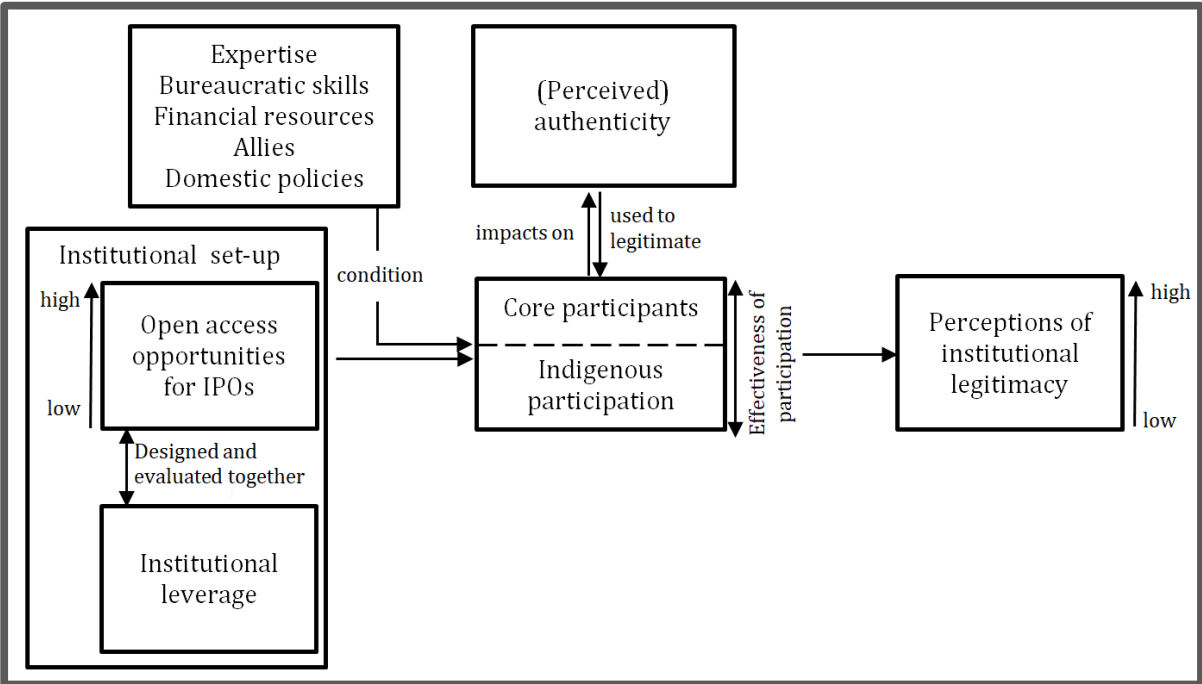
While these are all highly valuable arguments, discussions regarding the authenticity of Indigenous participants are relevant from an empirical point of view. As shown in the previous section, the legitimacy of Indigenous participants is in fact taken into consideration by participating actors, and references to the (lack of) legitimacy of some Indigenous participants are quite frequent. In this context, objectively “measuring” the legitimacy of certain Indigenous actors speaking in the name of communities is a complex to impossible task. Representativeness is often enough an issue of internal controversies, including at the local level. Greene (2004: 222) has argued that external actors often oversimplify Indigenous realities by assuming that centralized authorities exist which represent Indigenous groups.<sup>215</sup> However, he continues, this is only the case in rare examples, and legitimate representation is often hotly debated both internally and externally even at the local level. It is easy to imagine that the representativeness of IPOs becomes even more contentious at the UN level given the geographic distance to local communities, turning it more difficult to obtain information about local realities of the numerous IPOs which engage at the UN level.

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<sup>215</sup> In this context, it has to be taken into consideration that not all IPs count with traditions of delegation of power. Juliana Ströbele-Gregor (2013: 79–80) reports from Latin America that for many IPs of the continent, traditional authority is linked to temporarily exercising charges in service of the community, whereas decision-making power is retained by community assemblies. Moreover, Rathgeber (2013) reminds us of the lack of opportunity of many IPs to develop strong institutions due to the experience of colonialism and enduring paternalism. What is more, modern Indigenous organizations oftentimes were formed as a response to requirements for interaction and cooperation with the state or western organizations as well as for access to resources, following western values and orientations that clashed with Indigenous concepts of leadership. This means that Indigenous leaders in many cases are confronted with contradictory expectations regarding their role by funding organizations and by their own communities, and occasionally results in Indigenous NGOs which lack legitimation in the eyes of local communities (Bremen 2013: 63–64, 70).

Thus, within the UN context, authenticity rather than being an objective characteristic of IPOs is rhetorically constructed and challenged. In other words, IPOs active at the UN are forced to negotiate and validate their role as mediators and brokers of (local) Indigenous communities. Moreover, participants are aware of this and sometimes use moral authority as a strategic tool to legitimate or delegitimize certain Indigenous participants. At the same time, Indigenous participants also engage in legitimating their own position and role at the UN. Thus, authenticity is not a characteristic possessed. Instead, it is negotiated and produced through discourses and practices which are fundamentally shaped by ideas about Indigeneity held transnationally (Lucero 2006).

Moreover, access to resources such as expertise or alliances with powerful NGOs impact on the legitimacy of IPOs. As shown above, a lack of bureaucratic skills often results in IPOs being taken less seriously, and possessing relevant expertise legitimizes Indigenous participation in the eyes of some actors. Moreover, by engaging with powerful external actors IPOs can strategically build up their legitimacy (Greene 2004: 222–223). In other words, the same condition variables which shape Indigenous self-representation at the UN also directly impact - at least to some degree - on the perceived authenticity and legitimacy of IPOs.



**Figure 10: Access and participation of IPOs at the UN, resources and authenticity. Source: author’s elaborations.**

Moreover, perceptions of authenticity build on the concrete form that Indigenous participation at the UN takes. However, the perceived and real distortions with regard to

representation to some degree are a result of several limiting conditions which impede the effective participation of local voices. These factors which i. a. include resource constraints, allies, and state policies function like filters determining who is able to participate, how effective participation is going to be and, by tendency, work against representativeness and authenticity. At the same time, however, authenticity can be an additional resource of which IPOs dispose, and shares of all actors involved at the PFII and EMRIP use authenticity strategically to (de)legitimate participation by certain IPOs. Figure 10 shows the relationship between resources, Indigenous participation and perceived authenticity.

Thus, I argue that one cannot talk about the authenticity of Indigenous participation at the UN without taking into consideration the constraining and enabling factors which shape Indigenous self-representation. Although access opportunities for IPOs are highly open, the concrete form of self-representation by Indigenous peoples is by no means freely chosen, but determined by the availability of resources, expertise, bureaucratic skills, alliances with supportive actors, and state policies regarding Indigenous affairs. The following citation from an interview illustrates this link between capacities to participate and authenticity of Indigenous participants:

“Not everybody can attend also. And those tend to be the most organized and may I say, sophisticated groups that participate in those things. And so, yeah it's a MIXED story, but I mean, the thing wouldn't work if we didn't have broad Indigenous participation. [??] experts sitting there talking among themselves, or a bunch of experts and governments and un agencies, it wouldn't have the credibility. Eeem... there is an issue with Indigenous participation though. And there are different points of view on this. But... there is always an issue about representativeness, like who do you represent. Because some Indigenous delegates come there and they CLAIM to represent somebody, or some community. But others will dispute that.”<sup>216</sup>

The citation above also suggests that broad, heterogeneous Indigenous participation to some degree counterbalances the perceived lack of authenticity of some individual participants.

These observations also allow for some preliminary remarks regarding a strengthening of IPO authenticity. While some observers argue that Indigenous peoples themselves have to assure that only legitimate IPOs participate, and Indigenous peoples insist that they need to freely determine their own representatives, there are ample opportunities to strengthen Indigenous participation by addressing those conditions which delimit Indigenous participation. In other words, the observations made above should

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<sup>216</sup> G-WE02 (36).

“galvanise international institutions, states and Indigenous peoples to consider the ways in which international law making and processes can ensure that all legitimate indigenous peoples voices can be heard” (Charters 2010: 239). Thus, instead of criticizing a lack of representativeness of Indigenous participants, by providing funding and capacity-building or reaching out to communities, the authenticity and moral authority of Indigenous participation can be enhanced. For example, Kanyinke Sena, an ex-member of the PFII, suggests a mixture of awareness-creation, capacity-building, development of entrepreneurship to ensure financial security, as well as networking and alliance building between Indigenous communities to strengthen the political participation of Indigenous hunter-gatherer women from Kenya (2012: 12–14). At the same time, IPOs could bolster their own legitimacy by being more transparent regarding their members, sources of funding, decision-making structures and, most importantly, the exact mandate of speakers (McKeon & Kalafatic 2009: 32).

## 5.5 Summary

In this chapter, I have taken a closer look at Indigenous participation at the UN, showing that while it is very heterogeneous due to open participation modalities, there are a limited number of Indigenous lead actors which are able to make a strong impact on UN proceedings. Subsequently, I have argued that the resources and capabilities of IPOs, their ability to build alliances with more powerful actors, as well as state policies which determine the space for IPOs to organize all shape the form that Indigenous self-representation at the UN takes and determine who is able to participate and how effective participation will be. Moreover, I have dwelled on the debates surrounding the authenticity of IPOs engaging at the UN level, arguing that both the question of whether someone is in fact Indigenous, and the representativeness and closeness to local communities of Indigenous spokespeople are time and again brought up by participants of Indigenous-specific UN institutions. However, in a last step, I have argued that rather than being an objective and measurable characteristic of IPOs, authenticity is constructed in a rhetoric process. At the same time, resources and capabilities of IPOs, their alliances and domestic space for organizing impact on Indigenous participation and contribute to shaping IPO authenticity. Thus, these factors could constitute a starting point for attempts to close down perceived limitations of IPO authenticity.



# Chapter 6

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## *From Participation to Perceptions of Legitimacy: Legitimacy-related mechanisms*

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In the last chapter, I have looked at how Indigenous access opportunities at the PFII and EMRIP translate into participation of IPs at the United Nations, highlighted several factors which condition Indigenous participation, and explored the role of authenticity in shaping Indigenous participation. In this chapter, I will analyze the causal chain which connects Indigenous participation and institutional legitimacy by exploring the concrete links between both variables. The central question which this chapter intends to answer is thus: Through which mechanisms does Indigenous participation impact on perceptions of legitimacy? In a first step, I will explore the effects of Indigenous participation as observers, before turning to the effects of Indigenous membership at the PFII and EMRIP. Lastly, I will take a closer look at the prior attitudes and values of individuals as well as their expectations towards Indigenous-specific UN institutions as one factor which may account for diverging legitimacy evaluations within constituencies.

### **6.1 Indigenous participation as observers and perceptions of legitimacy**

Basically, three different mechanisms based on participation of Indigenous peoples as observers could be identified in the interviews and will be presented below. These mechanisms are based on (1) enhanced communication between groups and voluntary

action; (2) Indigenous voice and ownership; and (3) advocacy and accountability. For each of them, it will be shown in detail how Indigenous participation impacts on perceptions of legitimacy. While the mechanisms echo some elements of the mechanisms elaborated upon in Chapter three, each of them also deviates to some degree from what had been predicted by theoretical reasoning. Moreover, each of the mechanisms brings along specific problems and controversies which will also be explored. Additionally, many interview partners made references to personal or organisational benefits – most notably through networking and capacity-building – as “by-products” of participation. While I assume that these rather individual benefits do not directly impact on legitimacy (which is based on moral evaluations rather than individual gains), in the final part of this section I will highlight how these “windfall gains” of Indigenous participation at the UN in the medium term strengthen Indigenous engagement, and thus impact on the other mechanisms linked to Indigenous involvement.

### **6.1.1 Bringing together actor groups and constructive engagement**

Elements of a mechanism connected to the encounter and constructive engagement of different constituencies were present in 28 of the 37 conducted interviews. It was comparatively strong especially in interviews with state officials – issues related to the functioning of the mechanism were taken up regularly by all of them. Similarly, IO representatives and all except one member of EMRIP and the PFII made regular or even frequent references to this mechanism. Thus, in interviews conducted with state officials, IO representatives and members of the respective institutions, this was the most important mechanism in terms of references made to it. In turn, references were only found in eight (of 14) interviews conducted with IPOs, and within this group to very different degrees. This suggests that there is no consensus by Indigenous activists regarding the importance of this mechanism. Throughout all interviews, it was the mechanism which was made reference to far most frequently, both in terms of positive and negative references.

The mechanism is closely linked to the idea that participation by Indigenous peoples at the UN is important because it brings them together with members of other important constituencies, so that together they can develop solutions for the challenges that Indigenous peoples face. Thus, one interview partner described the PFII as a “powerful

voice for cooperation”.<sup>217</sup> The PFII and EMRIP in this understanding rather than taking an independent role function as policy-dialogue platforms and as conveners bringing together parties with a long history of opposing interests. In other words, according to this perspective one of the central values of institutions like EMRIP and the PFII is their capacity to bring people together in one room to discuss issues of importance. In the broadest sense, bringing these groups together improves the communication between them. On the one hand, this relates to facilitation and improvement of a dialogue between Indigenous peoples and states which in some cases does not exist in home countries. On the other hand, it also includes a dialogue between Indigenous peoples and UN agencies, programs and funds about their policies. Members of the Permanent Forum explicitly intend to strengthen this dialogue by asking questions and responding to statements.

The session, in this understanding, is a meeting during which all participants can enter into dialogue by presenting their ideas and making recommendations. This includes reports about government and IO policies on Indigenous peoples with a focus on progress and remaining challenges, as well as feedback on these policies.<sup>218</sup> In this context, it is considered as especially important that there is space for all groups to independently provide their perspectives. Specific emphasis is put on the importance of constructive and solution-oriented interventions such as the sharing of best practices.<sup>219</sup> The basic idea is that this exchange of ideas can spur the interest of other actors and may lead to the adoption and repetition of exemplar projects. This exchange of ideas very generally leads to increased attention to Indigenous peoples and raises awareness regarding their needs and priorities.<sup>220</sup>

As a result of this raised awareness, states and IOs get an idea about urgent issues to be addressed and are able to take better decisions on issues concerning Indigenous

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<sup>217</sup> MPF-G1 (5).

<sup>218</sup> This was mentioned time and again by state officials and interview partners from IOs. Moreover, three interview partners highlighted the beneficial effect of preparing for these reports, as it involves taking stock of progress and remaining challenges, as well as asking for information within different departments which in turn become more aware about recommendations made by the PFII or EMRIP. Additionally, knowing that one has to report about progress wields certain pressure on states and agencies to implement recommendations.

<sup>219</sup> 12 interview partners including long-time Indigenous activists, state officials and members of the PFII made this point.

<sup>220</sup> Some Indigenous participants highlighted that states often are not sufficiently aware about Indigenous perspectives regarding certain policies, but can (and are willing to) learn when those are explained to them.

peoples. This includes both domestic decision-making of states as well as decisions taken in intergovernmental contexts such as at the HRC or elsewhere. For example, it has been suggested that the adoption of ILO Convention 169 by the Central African Republic resulted from experiences at the Permanent Forum (Sapignoli 2017: 96). Moreover, through their involvement especially at the PFII UN agencies, programs and funds increase their knowledge about IPs. This then can serve as a basis for mainstreaming Indigenous issues within single entities and the UN system more broadly. In some cases, Indigenous focal points within UN agencies even propose to the PFII the text of certain recommendations targeting their own agency and subsequently use these recommendations to lobby for their implementation. As a result, increasing attention to Indigenous peoples can be observed in many UN contexts.

The constructive interaction especially between representatives of states and Indigenous peoples in the longer run contributes to improving the relationship between them.<sup>221</sup> Thus, some interview partners specifically highlighted that state officials gain a better understanding of Indigenous perspectives and consequentially change their attitude towards them. This way over the years “relationships of trust, mutual understanding, and confidence can develop between indigenous individuals and government representatives” (Dahl 2012: 76). Some governments even purposely take advantage of this mechanism and send staff members to sessions of the PFII or EMRIP with the primary purpose of educating them and opening their minds. Similarly, through participation in Indigenous-specific UN institutions, UN officials acquire expertise and become sensibilized with regard to issues concerning Indigenous peoples (Sapignoli 2017: 86). At the same time, participating IPOs experience that the sharing of positive examples can inspire others and start to engage more constructively. However, the building of trust and understanding occurs at the level of individual participants. Thus, as one interview partner highlighted, sometimes individual state or agency representatives feel much more supportive regarding Indigenous peoples than the tenor of the official country or agency policy suggests, and they try to advance Indigenous concerns within these limits. Still, it seems to be more difficult to translate these positive experiences at the individual level into broader institutional learning of states or IOs.

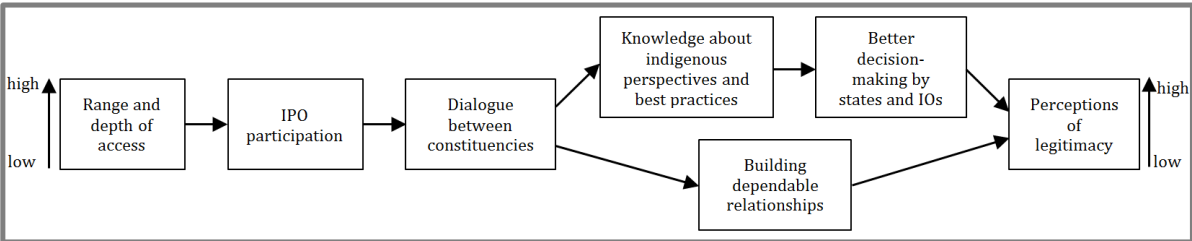
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<sup>221</sup> In fact, members of the PFII pointed out that the PFII especially in the early years of its existence was very cautious in dealing with governments and avoided exposing individual countries with the purpose of building up trust. Another interview partner highlighted that in the case of protest and confrontation by IPOs such growing trust could be easily undermined.

Interview partners also gave concrete examples to demonstrate this improvement of relationships. Thus, Indigenous activists and state officials now increasingly also exchange in informal settings. Moreover, while governments and IPOs sometimes openly contradicted each other during earlier sessions, some of them now talk with each other in advance and exchange on what they are going to say. Others now occasionally work together as allies to forward issues. Some also aired the expectation that if IPs and government representatives closely cooperate at the PFII and EMRIP, these positive experiences will lead to increased engagement by other states which up to today have abstained from attending these bodies.

In short, with regard to this mechanism Indigenous participation in the first place is a means to enable the dialogue and interaction between constituencies. This constructive engagement on the one hand results in the exchange of ideas and best practice, and enables decision-makers at IOs and governments to take better informed decisions regarding policies that affect Indigenous peoples. On the other hand, it also contributes to building trust and dependable relationships between constituencies (see Figure 11). One statement which is characteristic for this approach to Indigenous participation stems from an interview with a government-nominated member to the Permanent Forum:

“I think just having the permanent forum eXIST, so that you could show that it IS possible for Indigenous peoples to work with the states within which they live, in a manner which promotes cooperation, and to make progress on all the things that are important to Indigenous peoples, you know. So I think that even just BEing there is important.”<sup>222</sup>



**Figure 11: Mechanism based on bringing together constituencies and constructive engagement. Source: author’s elaborations.**

Both the depth and range of access impact on this mechanism. Dialogue between any specific Indigenous group and the government of the state it lives in can only be strengthened if members of the respective IPs attend sessions. Moreover, this mechanism also requires deep access for Indigenous observers, as it depends on

<sup>222</sup> MPF-G1 (23).

speaking rights for them. While the mechanism is based on observer access, Indigenous membership access nevertheless strengthens and enhances its functioning. Members act as a “filter”<sup>223</sup> by listening to all statements and turning most relevant inputs into recommendations for consideration by all constituencies. Generally, several interview partners highlighted the value and quality of PFII recommendations and EMRIP advice, and emphasized that recommendations were taken seriously by states and agencies. Additionally, both the high number of Indigenous attendees at sessions and Indigenous membership raise awareness of the UN system for bodies such as the PFII and EMRIP. In short, a broad range of access as well as depth of access both positively affect the functioning of the mechanism.

However, in the perspective of several participants, this mechanism does not function smoothly. One basic challenge which was highlighted frequently by interview partners is that still many states and some agencies do not attend sessions – especially those which are less advanced with regard to respecting Indigenous rights. A number of other IOs and states send representatives, but they do not deliver statements or provide reports on policies but rather passively observe the proceedings. The varying degree of engagement and attention to the PFII and EMRIP also finds expression in the fact, according to the perspective of some observers, that some states send low ranking or even unqualified delegates. Moreover, one Indigenous interview partner remarked that also IPOs sometimes could engage more strongly, for example by better preparing for sessions and carefully elaborating recommendations beforehand. In fact, some interview partners critically pointed out that interventions by IPOs sometimes were unconnected to the agenda, or consisted in complaints rather than recommendations. In turn, others highlighted the fact that IPs and states were often still seeing each other as opponents rather than partners as an obstacle to meaningful dialogue. Similarly, the improvement of relations between IPs and governments is sometimes formulated as a wish or future perspective rather than as a development which is already taking place.

Additionally, even if participants engage constructively, it seems to be a considerable challenge to establish a format which enables participants to really enter into dialogue. Participants generally read out statements prepared beforehand, and sessions often resemble series of interventions rather than a dialogue. Dahl (2012: 56) suggests that

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<sup>223</sup> IO2 (39).

the lack of engagement by some PFII members, the fact that some IPOs do not stick to the agenda as well as unwillingness by some states and IOs hinder the establishment of a dialogue during PFII sessions. In this regard, PFII and EMRIP members are still experimenting with different formats with regard to the structure of sessions. For example, the PFII at its fifteenth session in 2016 introduced closed dialogue sessions between members and each constituency – agencies, states, and Indigenous peoples. While this change probably is helpful to improve the communication between individual constituencies and members of the PFII, single IPs and states have criticized this innovation as potentially amplifying perceived divisions between constituencies (Russian Federation 2016; IPO of Australia & Aboriginal Rights Coalition 2017). This also shows that there might be a trade-off between improving the exchange of information and deepening trust between participants.

Some interview partners from agencies also highlighted their wish to get more specific questions and advice in response to their input to sessions; however, they admitted that going into more detail with regard to the policies of individual IOs represented a real challenge given the general shortage of time. Moreover, the advice which states and IOs need is often very specific and directly tied to the concrete implementation of projects or policies. In turn, the PFII has made rather general recommendations, whereas EMRIP has focused on legal advice regarding international law, and some state and IO officials felt that this output is often not sufficiently specific to make an impact. What is more, profound, detailed knowledge about each agency and state is needed to provide the required advice which members often do not possess. Thus, there seems to be a significant gap between the needs of participants and the ability of the PFII and EMRIP to cater to these needs.

Last but not least, it remains unclear to what degree increased awareness and recommendations really translate into positive impact “on the ground”. The fact that living conditions of Indigenous peoples have generally not improved in spite of increased awareness can result in frustration by IPOs. Therefore, some Indigenous participants feel that dialogue and advice is not sufficient, and that the Permanent Forum and the Expert Mechanism require more authority to push states or IOs to change their policies and projects. Similarly, a government representative highlighted that more follow-up would be required, and that IPOs should lobby governments more

strongly to pursue issues at the General Assembly and elsewhere, where decisions are being taken.

This mechanism reflects and combines some elements of the mechanism based on deliberation and social learning (see 3.4.3) and of the mechanism based on problem-solving capacity (at 3.4.4). However, there are also some major deviations. With regard to the first mentioned mechanism, I argued that common decision-making by equals is conducive to arguing, which in turn leads to social learning. Elements of arguing could not be identified with regard to the empirical mechanism described above, and some participants have remained rather skeptical as regards constructive engagement. Nonetheless, some trust-building and social learning does occur between participants on the grounds of sustained interaction.

In turn, the mechanism based on problem-solving capacity assumed that diverse participants bring along specific types of resources and knowledge which increases institutional problem-solving capacity. While there were many references to the specific knowledge and experiences which participants shared during sessions and there also seems to be some positive effect on the recommendations and advice of the PFII and EMRIP, the central link in the empirical case is between increased knowledge and awareness and the decision-making *of states and IOs* as those actors who really have the power to impact on the living conditions of IPs. In turn, increasing costs of agreement do not seem to play a decisive role as decision-making is no central element of the mechanism.

Finally, the evidence presented in support of the mechanism based on constructive engagement as well as the fingerprints challenging it need to be assessed to evaluate their explanatory power (see Appendix). On the one hand, some of the evidence presented had a comparatively high degree of certainty, such as the rhetorical focus on cooperation, the emphasis given to the exchange of best practice, and the references to the high quality of advice. However, this type of evidence could also have been explained by the existence of other mechanisms (maybe participants are primarily interested in their reputation at the UN stage and therefore simply engage in positive rhetoric). This similarly applies for the observation that individual participants often feel more positively about IPs than the IO or governments they work for (they might have selected their job due to this sympathy).



At the same time, some bits of evidence are also characterized by a higher degree of uniqueness. In this regard, the fact that PFII members adjusted working methods to allow for better exchange as well as the focus on a facilitation role of EMRIP under its new mandate provides unique evidence for the importance of dialogue. Similarly, the fact that some states purposely send staff to PFII or EMRIP sessions to open their minds highlights that at least some actors believe in the building up of dependable relationships through cooperation. Moreover, the fact that some IPOs and state delegations nowadays communicate about their statements before delivering them presents unique evidence for the improvement of bilateral relations between IPs and governments of the states they live in in some cases. Lastly, when Indigenous focal points within agencies suggest the text of concrete resolutions to the PFII, this provides unique support to the impact of cooperation on policy outcomes.

However, some counterevidence to the mechanism has also been presented. With regard to dialogue between participants, this especially concerns the absence of important actors. Persisting “unconstructive” behavior and images of other constituencies as opponents rather than partners show that while the mechanism outlined above has relevance, its reach might be limited in the sense that it only works with respect to a section of participants from IPOs, states and IOs. Moreover, the characterization of recommendations as not specific enough, as well as the need to lobby for the implementation of recommendations suggests that the assumed better decision-making by states and IOs with regard to Indigenous peoples is probably the weakest element in the mechanism. More precisely, it seems to be something which some participants claim or aspire to, but there is still a lack of evidence that it systematically occurs in practice.

### **6.1.2 Indigenous voice and ownership**

Elements of a mechanism linked to Indigenous voice and ownership were found in 35 of 37 interviews. Thus, it was the mechanism which the highest number of interview partners referred to. While references to this mechanism thus appeared in interviews with members from all constituencies, only for Indigenous activists it was clearly the most relevant mechanism. While there were comparatively few negative references, Indigenous activists also were most critical regarding its functioning; in turn, interviews with others contained practically no negative references. Generally, this mechanism seems to be the least controversial, but its comparative relevance differs for IPs who

value it strongly, and other constituencies for whom it is secondary to the mechanism based on constructive engagement.

This mechanism is closely linked to the idea that access for IPs to the UN first and foremost serves to strengthen the voice to Indigenous peoples who previously had no chance to systematically bring up their concerns. In this sense, it is the mechanism which most closely reflects the idea of giving a voice to those affected by global policy-making. Thus, both Indigenous and other interview partners frequently described both the PFII and EMRIP as institutions which are primarily for Indigenous peoples, and in which Indigenous peoples are the central actors. On the one hand, these institutions bring many Indigenous individuals to the UN who may present their perspectives or express their concerns. For example, one interview partner described the PFII as a “marketplace for Indigenous stories to be told”.<sup>224</sup> This is closely linked to the idea that these stories are conveyed to a global level forum, and heard by it. There were also a number of references which described states or agencies as rather passive, secondary actors which participate in the proceedings mainly to be informed and learn about current discussions and ideas among Indigenous peoples.

The participation opportunities for Indigenous peoples are considered as a tribute to the specific knowledge and status of IPs. Thus, several interview partners specifically highlighted that access rights were an expression of the recognition by the UN that IPs are active subjects who have expertise to contribute to global negotiations. Similarly, access rights are interpreted as an acknowledgement of the specific rights of IPs in comparison to NGOs or other sectors of civil society. Many Indigenous participants consider it as their right to participate in UN affairs that affect them, reflecting their status as peoples with rights to self-determination (see Chapter four, Section 4.1). Thus, Indigenous observers generally do not consider themselves as observers to the sessions of UN institutions dealing with Indigenous issues, but as participants with full rights:

“I mean I think it's fair to say that we, we don't really feel like we're observers. From the time that we started in, and like many other Indigenous groups we felt that we had a right to be here, and a right to be heard. And a right of equality with the states that are here.”<sup>225</sup>

As such, the increased space for Indigenous participation through the PFII and EMRIP is broadly valued and leads to ownership by Indigenous participants. Emotional

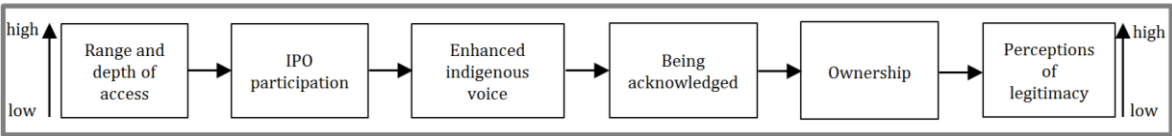
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<sup>224</sup> EXP4 (4).

<sup>225</sup> I-PAC1 (12).

attachment is created by the feeling that participation rights reflect the growing recognition of IPs at the international level. Thus, several Indigenous interview partners explicitly expressed their appreciation of the opportunities for active Indigenous participation which these institutions offer. In this context, also some non-Indigenous interview partners highlighted the broad estimation which institutions such as the PFII and EMRIP enjoy specifically in the eyes of Indigenous peoples. The emotional attachment resulting from participation was perhaps most strongly expressed by an Indigenous interview partner who stated: “But I in particular, I DO believe in the Permanent Forum. I DO believe in what is being done. I have been inSIDE. I have been able to look at it, no, how one can work.”<sup>226</sup> Indigenous ownership seems to be particularly strong because Indigenous peoples already were involved in the process of negotiating the concrete institutional features of the Permanent Forum and the Expert Mechanism. Indigenous interview partners proudly highlighted Indigenous participation in the creation or review of the institutions, whereas several other interview partners pointed out that the PFII and EMRIP only had come into existence because Indigenous peoples had fought for them, making them “their” institutions.

In short, Indigenous access specifically gives Indigenous peoples a space to express their perspectives and voices. This is considered to reflect an acknowledgement and official recognition of IPs by the UN, leading to Indigenous ownership and enhanced perceptions of legitimacy (see Figure 12). A government representative aptly summed up the close relationship between Indigenous access, voicing Indigenous concerns, the recognition of Indigenous peoples and ownership by stating: “It’s clear that the Permanent Form is VERY important to Indigenous people. And these spaces where they’re recognized and given, I said before a SAFE PLAcE to tell their stories, is esSENTial.”<sup>227</sup>



**Figure 12: Mechanism based on Indigenous voice, acknowledgement and ownership. Source: author’s elaborations.**

<sup>226</sup> Author’s translation from Spanish. Original text: “Pero YO en lo particular, yo SÍ creo en el foro. Yo sí creo en todo lo que se está haciendo. Yo he estado aDENTro. Yo he podido mirarlo, no, como se puede trabajar”, EXP2 (10).

<sup>227</sup> G-WE02 (36).

For this mechanism to function properly, both broad and deep participation of IPs are important. Regarding broad access, I argue that the broad access of potentially all Indigenous peoples to PFII and EMRIP is a prerequisite for them to be effectively considered as bodies which represent the Indigenous voice in global policy-making. In this regard, one interview partner pointed to the still limited ability of the PFII to speak for Indigenous peoples in general given that compared to the total number of IPs, an overwhelming majority still does not participate. Regarding deep access, IPs need to be able to speak at sessions to trigger the functioning of the mechanism as ownership is linked to active participation. Moreover, the analysis of the interviews also suggests that Indigenous membership such as in the PFII and EMRIP very much strengthens the causal relationship between access for IPOs on the one hand and ownership and perceptions of legitimacy on the other. Thus, the expert members of both PFII and EMRIP are regularly conceived as an enhanced voice of Indigenous peoples<sup>228</sup> who emphasize Indigenous concerns and promote them within the UN system and beyond. This understanding of the role of members is also reflected in an expectation that members focus on Indigenous priorities, such as in the following statement by an Indigenous participant at EMRIP which is also exemplar for strong ownership:

“It is, in essence, it is OUR meeting. Expert Mechanism is OURS, we wanted it, we created it, and so WE need to be the ones to keep on PUSHING. ‘Cause the Expert Mechanism, the expert members, they need to be told as well what we want. What we EXPECT from them.”<sup>229</sup>

This attitude regarding members also finds expression in the widespread expectation that the voices of IPOs should be reflected in the session’s report. In effect, many participants perceive the report to strongly represent an Indigenous point of view.

Moreover, Indigenous membership is considered as a very specific acknowledgement and a tribute to Indigenous peoples as important actors at the UN. Hence, quite a number of interview passages highlighted that Indigenous membership in an UN body constitutes an important achievement. This includes the recognition of IPs as experts when they become officially appointed as expert members. Even more important in this context, however, is the specific composition of the PFII and the equality of Indigenous and government-appointed members in it. This is considered as a significant and unique

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<sup>228</sup> In some way, this understanding of the PFII and EMRIP expert members as an enhanced voice for Indigenous peoples is also reflected in the fact that two interview partners were convinced that all members of the PFII and EMRIP are Indigenous.

<sup>229</sup> I-PAC2 (38).

change of the UN system in favor of Indigenous peoples reflecting enhanced justice towards IPs and a step towards equality with states. Moreover, comments highlight that this equality constitutes a unique form of recognition that so far no other non-governmental actor group at the UN has obtained. Ownership by Indigenous peoples is additionally strengthened through arrangements which allow IPs to feel that they come to the UN on their own terms, such as by the ability to nominate Indigenous members to the PFII, by their acceptance as chairpersons of the Forum, and by the definition of seven Indigenous socio-cultural regions mirroring Indigenous worldviews for the nomination processes at PFII and EMRIP.<sup>230</sup>

However, while this mechanism features prominently in many interviews, a number of interview partners also highlighted problems connected to its functioning. Thus, some Indigenous participants criticize the PFII as not sufficiently enabling Indigenous participation. This criticism is often linked to time constraints at sessions.<sup>231</sup> Due to the high number of participants who want to make statements, not all can deliver their statement, and those who can need to fit their message in the two- or three-minute timeframe which is accorded to each intervention. Some Indigenous participants feel that this is not adequate, as the stories and issues they bring are serious and pressing, and deserve more space. By some, limited speaking time for IPs is seen in direct connection with speaking time for representatives of IOs and states which they feel should be reduced to allow for more extensive statements by IPOs. Ownership for the PFII goes so far that some Indigenous participants see it as their place in which only IPs should speak.

Moreover, even if IPOs are able to deliver their statement, some respond with frustration if their statement does not get reflected in the report or if their specific concern is turned into a generic recommendation. Moreover, not knowing what happens to one's recommendation or the feeling that no action can be taken upon recommendations due to lacking institutional leverage of EMRIP and PFII can also lead to a disappointment of Indigenous participants. In the longer run, the functioning of the

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<sup>230</sup> The importance of Indigenous membership was also highlighted by comparing it to the WGIP which never had Indigenous members appointed to it, resulting in a feeling of marginalization by Indigenous participants.

<sup>231</sup> In fact, this criticism is very closely tied to the PFII, whereas EMRIP is not targeted in a similar manner. This might be due to the fact that there are far less participants at EMRIP sessions, and time constraints do not play a comparable role.

Indigenous voice-based mechanism thus seems to depend on the feeling that one's concerns are heard and taken into consideration, and in fact have the potential to change the course of events.<sup>232</sup> This again highlights the importance of the broader institutional setting as elaborated upon in Chapter four.

This mechanism closely reflects the inclusion-based mechanism elaborated upon in Chapter three, section 3.4.1. While theory assumed that the ability to express opinions and disagreement results in perceptions of fair process, in my case study the idea of fair process was very much linked to the feeling that participation rights for IPs were something which corresponded to them and represented an acknowledgement of their specific status as Indigenous peoples – explicitly distinguishing them from other APOs seeking participation rights in global policy-making. In turn, the general quality of the process – except for time constraints – seemed to be less relevant in this context.

Evidence presented in support of this mechanism differed with regard to certainty and uniqueness. Empirical fingerprints with a high degree of certainty for example are the rhetoric support given to Indigenous participation and the description of the PFII and EMRIP as bodies in which IPs are the primary actors whereas other constituencies take a secondary role (this could equally represent a rhetoric excuse for one's passivity and lack of engagement within the body). At the same time, the numerous references by Indigenous participants to fair process – understood as recognition and acknowledgement of their specific status and rights – constitute rather unique evidence for this mechanism. Moreover, this is closely linked to expressions of ownership such as by the reference to “our” PFII or EMRIP, which also present unique fingerprints.

However, the fact that IPs do not in any way enjoy preferential participation arrangements at the PFII or EMRIP in comparison to other constituencies is important counterevidence to the mechanism based on Indigenous voice. For example, speaking time for IPs does not exceed that of other actors. This, together with the observation that interview partners from states and IOs more frequently made reference to the mechanism based on constructive engagement, suggests that for staff of governments and IOs it is generally of secondary importance only. Moreover, the above analysis showed that perceptions of fair process are not fixed, but vary between participants.

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<sup>232</sup> Several Indigenous interview partners explicitly highlighted Indigenous participation as a means to very generally affect change in favor of IPs.

What may be considered as sufficient access and space for Indigenous participation by some might be criticized by others. This confirms observations made with regard to multi-stakeholder standard-setting which demonstrated that while inclusiveness as a value is broadly shared by participants, different perspectives persist with regard to the concrete meaning of adequate representation (Tamm Hallström & Boström 2010: 143). In other words, access does not automatically translate in ownership and thus enhanced perceptions of legitimacy. Instead, this seems to depend on individual expectations and ideas of appropriate access which might explain variance in the effects of this mechanism.

### 6.1.3 Advocacy and accountability

A third mechanism links participation and perceptions of legitimacy through advocacy and accountability. In total, this was the mechanism which was mentioned least frequently in the interviews. References appeared in 26 of 37 interviews, but mostly did not play a prominent role. However, all but two Indigenous activists made reference to this mechanism, and for some of them, it seems to be the single most important mechanism, or equally important as the mechanism based on Indigenous voice. References were also made regularly by state officials, but for them this mechanism never is most important. It has no relevance for IO representatives, and only little for members of the PFII and EMRIP.

In this mechanism, Indigenous access primarily is a means for Indigenous peoples to gain leverage and make states (and to a much lesser degree agencies) accountable for their actions affecting Indigenous peoples.<sup>233</sup> In a similar vein, Charters (2010: 221) describes Indigenous participation in UN forums as motivated by

“the hope that the international legal system can be a mechanism by which indigenous peoples’ self-determination will be recognized and that it will provide the much-desired and needed censure of domestic legal systems”.

Thus, especially the Permanent Forum is sometimes primarily considered as a platform for IPs to raise awareness about specific local concerns and violations of rights, denounce state action and lobby for change. Several interview partners highlighted that

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<sup>233</sup> In this regard, it represents a variant of the boomerang model of transnational activism developed by Keck and Sikkink (1998). However, instead of networking with international advocacy groups which in turn lobby IOs and friendly states to make them target states violating human rights, through access to UN institutions Indigenous peoples are enabled to directly act on the global level themselves (Thies 2006).

for IPOs this ability to point to rights violations occurring in their home countries is a central element of their participation in UN institutions due to a feeling that within national contexts they lack access to their governments, and that otherwise governments would simply ignore Indigenous peoples. Similarly, some government officials referred to the use of UN institutions by Indigenous peoples as a mechanism to air complaints.

The ability of IPOs for naming and shaming states (and to a lesser degree IOs) for their actions regarding Indigenous peoples is strengthened through information obtained during sessions. Several Indigenous interview partners highlighted that it was important to know what states and agencies do or claim to have done to be able to contradict them directly in the case of major differences in perspective. Similarly, a government official admitted that being transparent about state action also revealed what governments were not doing yet and thus could foster criticism by Indigenous groups. While with regard to this mechanism, the focus clearly lies on the relationship between IPs and the states they live in, there were also a number of references to learning about the respective activities of UN agencies. In this context, it was also highlighted as important that states as the ones who establish and finance the agencies get information about IO policies on IPs.

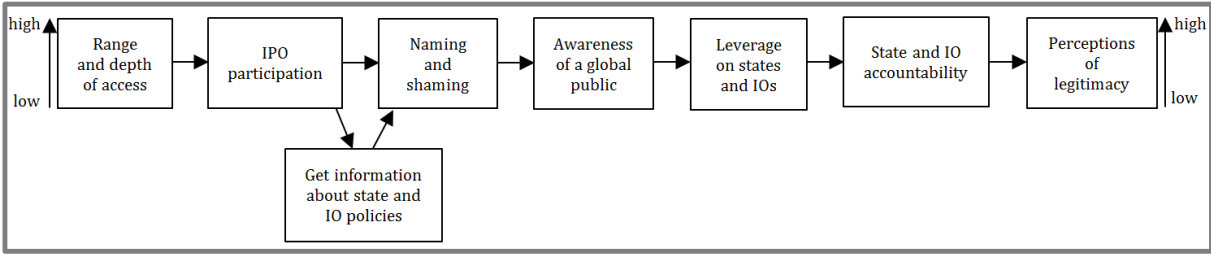
States often are highly sensible when negative information regarding their actions is being spread at the global level. Therefore, when Indigenous peoples highlight violations of rights within an international forum, many states feel pushed and discomforted, and often want to respond to accusations. As outlined in Chapter five, some even attempt to delegitimize those voices which proclaim unwanted messages. As one interview partner explained, Indigenous-specific UN institutions function to some degree as monitoring mechanisms where states have to explain themselves and their actions and are pressured towards implementation. This is sometimes considered as an impetus for change at the domestic level (Sapignoli 2017: 94). Therefore, some IPOs bring complaints to the UN even when they have already been communicated at the national level. Additionally, IPOs can use the Special Rapporteur on the Rights of Indigenous Peoples who is generally present during sessions to raise awareness of alleged human rights violations and increase pressure on their government. One Indigenous activist



explained that the chance to bring rights violations before a global “referee”<sup>234</sup> (namely the UN) enhances their stand vis-à-vis the government and results in a relationship which is fairer. Moreover, participants feel that referring to the advice and recommendations by PFII and EMRIP gives them more authority when they present their claims. In other words, IPs feel that they gain some leverage on states, and states sometimes react by addressing urgent issues.

In short, Indigenous access in this perspective is mainly a means to gain leverage on states. By highlighting violations of rights, international awareness about domestic situations is increased, and states are being held accountable. When states report to the PFII or EMRIP, this information is sometimes used to highlight opposing perspectives or refer to it when promises are broken (see Figure 13). One statement which was typical for this mechanism was made by a state official:

“Well I mean the benefits for THEM, for the Indigenous people is that it gives them a chance to.. see if they can CHANge things for their benefit. Using the UN as... leverage. And I think that's worked in the past, obviously. Even in the [state's] example, where human rights complaints about [policy] let to [policy change]. Eem. So I mean it's beneficial to them that way.”<sup>235</sup>



**Figure 13: Mechanism based on naming and shaming and increased leverage. Source: author’s elaborations.**

This mechanism requires both broad and deep access for Indigenous observers to function properly. Strictly speaking it is not essential that Indigenous activists are able to participate in high numbers, as other groups may bring forward the complaints about rights violations of those not able to speak for themselves.<sup>236</sup> However, this mechanism only works if there is no state influence on admission policy and selection criteria for IPOs, as otherwise states could easily exclude those voices which they deem too critical. Moreover, while some elements of the mechanism play out with simple access rights, such as learning about Indigenous rights or getting to know what states claim to do with

<sup>234</sup> I-PAC1 (32).

<sup>235</sup> G-WEO3 (41).

<sup>236</sup> This occasionally happens when IPOs cannot raise their voice because repression by states is too strong, as one Indigenous interview partner from Asia pointed out.

regard to Indigenous peoples, naming and shaming requires speaking rights for Indigenous activists. In turn, Indigenous membership only plays a subordinated role in this mechanism. The person who acts as chair however plays an important role by allowing or not allowing for Indigenous human rights complaints (see below). To some degree, members can also put emphasis on selected Indigenous concerns such as when the PFII openly protested against Indigenous activists being put on a list of terrorist group affiliates by the Philippines,<sup>237</sup> but this has rather been an exception, and generally no state is directly named.

As with the mechanisms outlined before, there were also a number of comments in the interviews which critically referred to the functioning of this mechanism and highlighted related challenges and problems. In this regard, several interview partners pointed out that hearing reports about human rights violations was not part of the PFII's and EMRIP's mandates.<sup>238</sup> In fact, interview partners reported that in the early years of the existence of the Permanent Forum some governments almost called for its closure as they felt they had not given it the mandate to deal with human rights violations. Sometimes the respective chairs of sessions even have turned off the microphone when they felt that criticism by IPOs became too harsh. Moreover, several interview partners pointed out that just highlighting violations of rights is unproductive and does not improve the situation of Indigenous peoples. Instead, some interview partners warned that if IPOs overuse the PFII or EMRIP to highlight complaints, this may lead to states refraining from participation.<sup>239</sup>

While some experienced activists admit that reports about human rights violations should better be delivered within other bodies such as the Human Rights Council or CERD, many IPOs do not have the resources necessary to pursue their causes within the UN human rights mechanisms. Thus, it remains a challenge to find a balance between giving space to allegations of human rights violations as one central concern of IPOs, and solution-oriented work which more strongly focuses on ways forward. Indigenous activists have suggested strengthening the mandate of either the PFII or EMRIP in a way

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<sup>237</sup> <https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/03/2018.03.13-UNPFII-statement-Philippines-HRDs.pdf>, accessed 04.02.2019.

<sup>238</sup> This criticism was aired by some more experienced Indigenous activists, state officials, and members of PFII and EMRIP.

<sup>239</sup> It was also highlighted that during the last years of the existence of the WGIP it mainly heard complaints about human rights violations which led to decreasing state participation.

which would allow them to more specifically consider human rights violations, or increasing the resources available to the Special Rapporteur.

It is striking that in comparison to the theoretical mechanism based on accountability, this mechanism focuses on enhanced accountability *of states and agencies* as the other participating constituencies, and not on raising the accountability of the respective body itself. Thus, there are only limited similarities between the mechanism as theoretically outlined and the one observed in the case study. The reduced importance of institutional accountability may be due to the fact that PFII and EMRIP do not take far-reaching decisions, whereas the policies of agencies and governments very directly impact on the living conditions of Indigenous peoples.

The fact that (some) IPOs repeatedly use the PFII (and to a lesser extent EMRIP) as mechanisms to point to rights' violations by states through naming and shaming represents unique and certain evidence in support of this mechanism. Similarly, the fact that some of this criticism is communicated at the UN level after having been communicated at the domestic level is unique proof for the importance of broad audiences in this regard. Moreover, the need that some states feel to defend their policies or even de-legitimize the carriers of such messages is unique evidence of the fact that IPs in fact gain some leverage on states through this mechanism. However, evidence regarding de facto accountability remains inconclusive. On the one hand, the fact that some IPOs perceive states to be more accountable provides fingerprints with high certainty. On the other hand, as cooperation within the PFII and EMRIP is voluntary, strategies such as delegitimizing Indigenous participants or abstaining from participation are a means to avoid increased accountability vis-à-vis IPOs. No explicit counterevidence to this mechanism was observed. However, the countless negative references to it which described this mechanism as unproductive and not part of the mandate show that this mechanism had not been intended when opportunities for Indigenous access were created in the first place, and point to the enduring controversy surrounding it.

It is important to note that the first three mechanisms described are all linked to specific expectations regarding the primary goals of Indigenous participation at the UN. Whereas the first mechanism is closely linked to the idea that it is beneficial to bring together Indigenous peoples, governments and UN agencies to exchange about best practices and

develop constructive solutions, the second and third mechanisms rather focus on an enhanced voice for Indigenous peoples and the opportunity given to IPs to gain leverage on governments. While in the case of the first mechanism, Indigenous access is seen as a tool to enable better communication between constituencies, in the case of the other two mechanisms it rather enhances abilities for IPs to voice their concerns. It is obvious that to some degree these expectations are conflicting and even mutually exclusive, as the UN can either offer a space for cooperation between governments, IOs and Indigenous peoples, or a space uniquely dedicated to enhancing and supporting Indigenous voices. I will return to this argument in the third section of this chapter.

#### **6.1.4 The “windfall profits” of access: capacity-building and networking**

Apart from the mechanisms which directly link Indigenous access with perceptions of legitimacy, there are important personal and organizational benefits connected to Indigenous access. While I assume that these benefits do not directly impact on morally grounded perceptions of legitimacy, over time they strengthen Indigenous participation and thus have repercussions on the functioning of the mechanisms outlined above. These benefits are not directly connected to the content and proceedings of sessions, but rather result from the fact that the meetings bring together a range of different actors. References to the windfall profits of access were found in 30 of 37 interviews; these types of benefits are thus regularly mentioned by interview partners from all constituencies. For individual Indigenous activists these side-effects of their access to the UN even seem to be more important than the effects of the mechanisms outlined above in terms of numbers of references in the interviews.

First, participation in UN institutions dealing with Indigenous affairs as a side effect strengthens the expertise and political savvy of IPOs. This capacity-building has several dimensions: It includes increased knowledge about international instruments regarding Indigenous rights and often a specialization and growing expertise with regard to certain issue areas (see also Chapter five). Even more importantly, IPOs also deepen their knowledge about diplomacy and political tactics, thus enhancing their own negotiation abilities. Through their active participation in the proceedings, they learn how UN negotiation processes work, how power relations play out, and how compromises are being made within the UN context. The Indigenous caucus fulfills a

specific role in the context of capacity-building, as it provides an important space for experienced activists to impart their knowledge to newcomers.

This increase in experience and capacity not only positively affects Indigenous engagement at the global level, but also strengthens Indigenous activism in domestic contexts by increasing the ability of IPOs to defend their rights at the local and national level. For example, with the experience gained at the UN, IPOs have organized seminars and trainings on Indigenous rights in their home countries. Others report that through participation at the UN, they have built up credibility and moral authority in the perspective of domestic actors, and their opinions and advice are increasingly sought by others, including by Indigenous governing institutions and traditional authorities. Again others feel that their experiences at the UN level enhance their equality with other members of domestic societies. Moreover, it becomes easier to claim rights within domestic contexts when disposing of knowledge about international laws and standards. The following excerpt from an interview with a North American Indigenous activist exemplifies the high relevance that capacity-building has for many IPOs:

“I think a lot of the benefits are to see how sort of the power politics work in these settings. You know, see how states interact, state observers interact, how non-governmental organizations interact, other nations. [...] For youth and for other folks that are participating, I think that it's really good training for them, you get sort of a hands-on experience with these kinds of. the language of diplomacy.”<sup>240</sup>

Second, a central element of all sessions of EMRIP and the PFII is the networking taking place behind the scenes, in the hallways and cafeterias of UN buildings. Interview partners from all constituencies pointed to the particular opportunities for networking which the sessions of PFII and EMRIP offer and the value it had to all of them. For IPOs, sessions are first and foremost an opportunity to network and exchange with other Indigenous organizations. They use the setting provided by sessions of the PFII and EMRIP to exchange about common problems as well as about possible solutions, and develop common positions and strategies to coordinate their work both at the regional and global level. Moreover, they seek and provide support to and for each other with regard to their individual struggles. Several Indigenous interview partners also pointed out that it was central for them to realize that they were not alone in their plight but part of a movement with similar struggles and objectives. For Indigenous participants, sessions thus have become an important space to create networks and form friendships

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<sup>240</sup> I-NA1 (10).

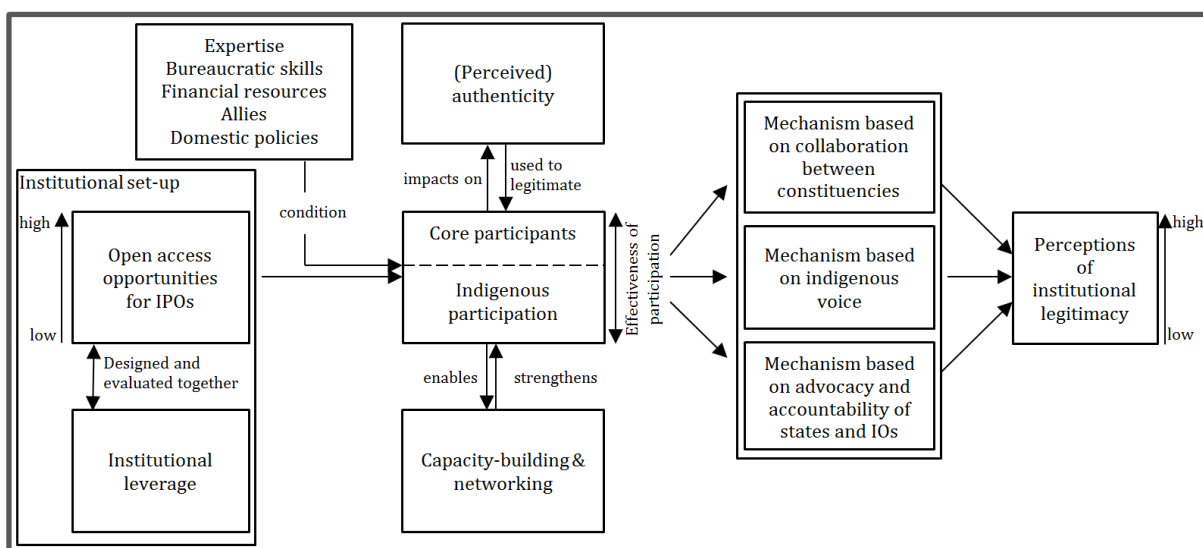
with other groups from all around the world. The awareness of common struggles led to the formation of international solidarity and the coalescing of an Indigenous identity in the first place (Stamatopoulou 1994: 69; Niezen 2003: 46–47). In fact, the emergence of the Indigenous movement is considered to be very much tied to UN activism, and nowadays sessions are an important opportunity to coordinate activities, including those of regional or global networks and of organizations which sometimes have no other opportunity to meet throughout the year.

At the same time, Indigenous activists also take advantage of sessions to network with state officials and agency representatives outside the bounds of the formal setting. These informal meetings for example during dinner are valued by participants who feel that they allow for more frank discussion. Moreover, for IPOs they are an opportunity to lobby for their proposals, promote issues of importance to them and build alliances. Networking and lobby opportunities are of particular importance to those IPOs which in the domestic context lack access to government officials or UN agencies.

However, not only IPOs appreciate networking opportunities; for both states and agencies, they are an important additional reason to send representatives to the sessions. For example, like-minded states cooperate in a Group of Friends of Indigenous Peoples to share information on activities and perspectives on UN institutions dealing with Indigenous issues. Those working for development agencies take advantage of the meeting to meet project partners from around the world. State officials also schedule private meetings with members of EMRIP and the PFII to provide suggestions and feedback, highlight specific concerns in the regions, and discuss challenges and cooperation opportunities. An EMRIP member highlighted that in some cases even states which do not participate actively in the sessions informally engage with EMRIP members behind the scenes, because they want to avoid open confrontation with IPOs from their territories at the official meeting. Similarly, agencies closely interact at the PFII in the context of the daily meetings of the IASG which they consider to be an opportunity to learn from each other and exchange with their colleagues. Moreover, agencies also meet with states and members to coordinate efforts regarding Indigenous peoples and receive questions and feedback from IPOs. In this sense, sessions are an opportunity to meet with project partners and coordinate upcoming work. In short, for many participants the proceedings behind the scenes are at least as important as the proper session:

“Well one of the, the GOOD things, one of the BIG things that happen at EMRIP is the NETWORKing. where you meet people from all over world. And you meet other Indigenous peoples, you meet academics, you meet scholars, you get a chance to talk to STATES, you know, that you normally don't do at home. [...] And that's very very useful. Particularly to Indigenous peoples from other countries, who are perhaps not as open to speak to Indigenous peoples. But when they're HERE, they have an opportunity, so these people have an opportunity to meet, to represent themselves with the government.”<sup>241</sup>

With regard to capacity-building, some of the presented evidence has a high degree of certainty. IPOs describe their increased political savvy and diplomatic experience, and are described as experts by their interlocutors from states and IOs. At the same time, as more unique bits of evidence, the realization of specific events most importantly by the Indigenous caucus speaks to the relevance of capacity-building; as one result, IPs nowadays engage in a diverse number of specific UN processes. Moreover, the relevance of networking during sessions of the PFII and EMRIP is easy to observe for any participant to sessions, as participants constantly engage in networking and informal talks in the hallways and cafeterias, presenting evidence with a high degree of both uniqueness and certainty. Figure 14 graphically brings together the findings of this section with the findings of the previous chapters.



**Figure 14: Mechanisms between Indigenous participation as observers and perceptions of institutional legitimacy. Source: author's elaborations.**

## 6.2 The dynamics of Indigenous membership

While Indigenous membership does play a role in the mechanisms outlined above by enhancing their functioning, there are also two mechanisms uniquely linked to

<sup>241</sup> I-NA4 (5).

Indigenous membership at the PFII and EMRIP. In other words, these mechanisms result from the specific composition of the Permanent Forum, which brings together government and Indigenous nominated experts, and the Expert Mechanism, whose composition focuses on independent expertise.

### **6.2.1 The Permanent Forum: The pooling of perspectives**

The very specific and unique attribute of the PFII is its composition consisting of equal numbers of experts nominated by Indigenous peoples and by governments. This composition, in the perspective of interview partners, is strongly tied to a pooling of different perspectives. In this regard, Indigenous and government nominated members apart from their independent expertise also bring along specific perspectives and experiences. For Indigenous members, this is lived experience regarding the challenges which IPs are facing, and knowledge about local living conditions as well as about the aspirations of Indigenous peoples. For government nominated members, this is most importantly diplomatic experience and a profound understanding about what type of language and content will be acceptable to states as those actors who discuss the PFII report at ECOSOC. The geographic element in the composition formula additionally assures a regional balance and broad local perspectives. As a result, Indigenous and government nominated members often have different mindsets and ways of examining the pertinent issues which is considered to lead to rich and fruitful discussions.

Moreover, members do not only bring along specific perspectives. Having Indigenous members in the Permanent Forum for many participants is a matter of course, and without it a body that focuses on Indigenous affairs would not be able to work. At the same time, including government nominated members adds to the moral authority of the Permanent Forum in the eyes of especially those states that are more critical regarding Indigenous peoples. Having government nominated individuals participating as members in the PFII means that those governments have a stake in the proceedings and cannot turn a blind eye to the Permanent Forum easily.<sup>242</sup>

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<sup>242</sup> Similarly, a discussion paper by the Government of Denmark/ Greenland Home Rule on possible features of the Permanent Forum in the process of its creation argued: "A permanent forum consisting exclusively of indigenous peoples' organizations is unlikely to be acceptable to Governments and, furthermore government presence in the forum is important to ensure that any decisions or recommendations carry weight within the United Nations system. In the same way, a permanent forum on indigenous peoples consisting exclusively of government representatives is likely to be unacceptable to



As a result of interaction and exchanges of viewpoints, members get to know the other side of the coin, and the Permanent Forum is perceived to be neutral towards specific interests. More specifically, interview partners highlighted that its composition helps the Permanent Forum to strike a balance between realizing the goals and ambitions of Indigenous peoples on the one hand, and ensuring that it stays within the UN framework on the other. This neutrality is additionally enhanced by the status of members as independent experts. Even if they are partly nominated by Indigenous peoples and partly by states, as independent experts they are supposed to act independently of their nominating constituencies. This means that they are (supposed to be) not driven by particular interests but by individual expertise. Thus, one Indigenous activist argued that members needed to be independent of Indigenous peoples as IPs also did not want governments to influence members nominated by states. Due to the balanced discussions that take place at the Permanent Forum, it can make impartial recommendations. Moreover, the diplomatic experience of some members ensures that recommendations are realistic in the sense that they have a chance of being implemented. Recommendations made by the Permanent Forum gain additional weight through the fact that members nominated by governments participated in their development and have consented to them; as such, they are considered to have been publicly approved by states' representatives. As a result, the Permanent Forum is perceived to be credible:

“And I think most beneficially, it [the PFII, H.N.] gives Indigenous peoples a real focus within the un system. And a CREdible focus you know. It's a CREdible group, especially because it consists of a mixture of government and Indigenous representatives.”<sup>243</sup>

Sustained interaction between members also enhances processes of trust building between them. Thus, two PFII members pointed out that in the first years of its existence the relationship between government and Indigenous nominated members was characterized by distrust. Members first needed to learn how to work together and support each other in order to be able to work effectively and make good recommendations. For some Indigenous observers, they were successful in this process, as they perceive unity to prevail between members.

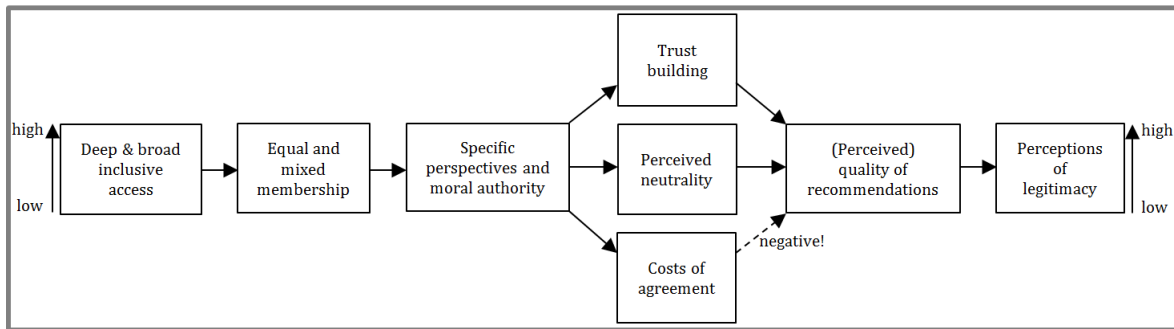
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indigenous peoples whose active presence in a permanent forum clearly is a prerequisite to its success”, published in García-Alix (1999: 61–62).

<sup>243</sup> G-WE03 (35).

However, while many statements in interviews emphasized the benefits of mixed membership, there were also many references to the fact that on some occasions, mixed membership also can make decisions about recommendations more difficult, and sometimes the dynamics in the private meetings of members seem to be very difficult. Recommendations at the Permanent Forum are made by consensus; this means that if just one member disagrees with a certain recommendation, this recommendation will not be included in the report. Therefore, it is possible that one single member can obstruct the proceedings. In fact, individual members of the PFII reported in interviews that certain recommendations on sensitive issues have not been possible because there was no consensus in this regard. Decision-making procedures and especially a lack of transparency in this regard have been a concern for Forum members and the Secretariat (Sapignoli 2017: 83). Moreover, some Indigenous observers feel that statements and recommendations of the Permanent Forum are formulated in comparatively weak language. Some even suspect government nominated members to take state positions and slow down the Indigenous members. Others, in turn, suggest that it is the high number of sixteen members who all have their own personality and independent ideas rather than the divide between government and Indigenous nominated members which is the main reason for conflicts in the process of drafting the reports.

In short, mixed membership by government and Indigenous nominated members as equals within the PFII means that members bring along both the specific perspectives and knowledge of these two constituencies and lend enhanced moral authority to the PFII especially in the view of the respective group. The broad input by both Indigenous and government nominated members leads to rich discussions and strengthens perceived neutrality of the PFII and its recommendations. Moreover, over time trust building between members can fuel common positioning. At the same time, different backgrounds of members can contribute to rising costs of agreement, potentially interfering with the functioning of this mechanism (see Figure 15).



**Figure 15: Membership-based mechanism at the Permanent Forum based on neutrality, trust building and rising costs of agreement. Source: author’s elaborations.**

The functioning of the mechanism outlined above relies on equal access and consensus decision-making. It is due to the equality of members (in decision-making competence and numbers) that the Permanent Forum is perceived to be neutral; and it is specifically consensus decision-making which ensures that states cannot easily put aside its recommendations. Moreover, trust building between members works well because members need to find a common voice to work together. However, consensus decision-making also raises the difficulty of coming to decisions. Moreover, as shown with regard to the observer-based mechanisms, access for Indigenous members does not function independently of access for observers, and members and observers closely interact during sessions. In this regard, the presence of observers during sessions affects costs of agreement. Thus, several members of the PFII mentioned that it was necessary to introduce private sessions to facilitate decision-making by Forum members, as otherwise finding compromises would be impeded. Still, some IPOs remain highly critical with regard to private sessions which they consider to be taking speaking time away from them.

As with respect to the mechanisms based on observer access, there were also several more skeptical remarks by interview partners which prove that in the eyes of some participants, the mechanism does not work as smoothly as presented above. These comments first and foremost put into doubt the neutrality of the PFII. Thus, some Indigenous interview partners question the extent to which members nominated by governments can work independently of states; there are assumptions that some states do influence and control members nominated by them. Moreover, some Indigenous activists even suggest that by working as members of the PFII, members generally become controlled and co-opted, impeding their action in favor of IPs.

The mechanism outlined above resembles the mechanism based on deliberation elaborated upon in Chapter three. However, contrary to what the theoretical mechanism assumes, arguing and reasoned consensus as dominant mode of interaction did not develop to the degree predicted by theory. Instead, members make compromises and accept that there are issue areas in which it is difficult to advance due to reservations by certain members. Therefore, they try to focus on those areas in which there is stronger unity and in which progress therefore is possible:

“...some of the sessions were private. Those were the meetings where we would forge the common front around certain recommendations. Using the principle of consensus. And then particularly some of us, who had more experience, working with others to say, you know, you can call it finding the compromises, but I don't mean that in the sense of finding the least common denominator. In other words, it wasn't to find the least that you could do. It was to find those areas where you could really do as much as was possible.”<sup>244</sup>

Still, although arguing and reasoned consensus plays a subordinated role at best, some trust building seems to occur even in its absence as a result of constant interaction. Moreover, costs of agreement do play a considerable role due to the reduced role of arguing as a decision-making mode. Lastly, the mechanism also points to the specific importance of mixed membership which can be important to raise the relevance of an institution with APO participation in the eyes of states.

Evidence for this mechanism is mostly based on perceptions of interview partners and certain rather than unique. However, with regard to the background of members, in fact some of the state nominated members have been experienced diplomats. Moreover, the value that Indigenous interview partners attach to Indigenous membership at the PFII and EMRIP is unique with regard to the moral authority that Indigenous membership can bring into Indigenous-specific UN institutions. In contrast, as it has not been possible to conduct interviews with state officials of states which are more critical with regard to Indigenous rights, it remains unsure to what degree the membership of state nominated members can really add moral authority to bodies with APO participation in their eyes. Moreover, to gather unique evidence about the fruitful discussions between members, or trust building between them, it would have been necessary to observe meetings between them, which is impossible as these meetings are closed. Concerning perceived neutrality, evidence presented above suggests that this perception is shared by some actors and contested by others. Therefore, I argue that as with regard to the mechanisms

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<sup>244</sup> MPF-G1 (17).

based on APO participation as observers, differences in perceptions regarding the effects of this mechanism seem to remain between different individuals. Moreover, evidence that recommendations made by bodies with mixed membership have higher chances of being implemented is comparatively weak: The recommendations data bank of the PFII in December 2018 listed only 79 recommendations as completed, implemented or ongoing/completed, in comparison to 572 ongoing recommendations and 724 recommendations listed as not initiated or for which no implementation status has been ascertained.<sup>245</sup> Thus, significant doubts remain with regard to the degree to which mixed membership can improve the quality and implementation of recommendations.

### **6.2.2 The Expert Mechanism: Independent expertise**

In contrast to the Permanent Forum with its mixed membership of Indigenous and government nominated members, the Expert Mechanism consists of seven members which are selected following the general procedures for independent experts at the Human Rights Council (see Chapter four). While members can be nominated by IPOs, and for example the Asian region uses the same procedures for nominating a joint candidate for the PFII and EMRIP, there is no official nomination relationship to any constituency. This formally enhances the independence of members. The major distinction to the PFII, however, is that there are no members at EMRIP with official links to any government. Membership at EMRIP thus more strongly follows the principle of individual expertise, with the peculiarity that a majority of members is of Indigenous origin. Not surprisingly, interview partners therefore specifically highlighted the individual capacity of members as well as their expertise and dedication to the cause of Indigenous peoples as the most important characteristics that members should have. Additionally, it is considered beneficial that members have different backgrounds and areas of expertise, which allows EMRIP to cover a broad range of issues.

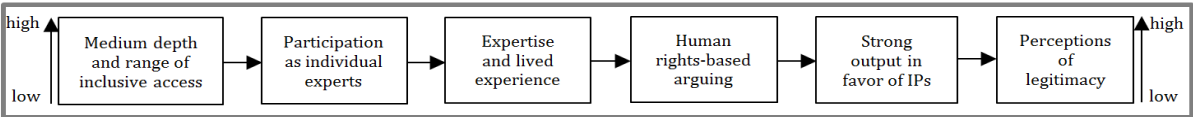
Still, while many interview partners put emphasis on expertise as a qualification for membership, some Indigenous participants feel that some, a majority or even all members should be of Indigenous origin. Similar as with regard to the PFII, Indigenous members provide EMRIP with added moral authority, as they possess lived experience

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<sup>245</sup> [https://esa.un.org/unpfiiidata/UNPFII\\_Recommendations\\_Database\\_list.asp](https://esa.un.org/unpfiiidata/UNPFII_Recommendations_Database_list.asp), accessed 1.12.2018.

regarding the topics EMRIP deals with.<sup>246</sup> Moreover, having one member from each of the seven socio-cultural Indigenous regions helps to provide a regional balance and reflects the diversity of Indigenous voices. As a result, Indigenous peoples feel that discussions at EMRIP are based on human rights expertise rather than politics. Thus, Indigenous interview partners praised an absence of government interference and blockade, the “pure dialogue”<sup>247</sup> as well as easier decision-making at the Expert Mechanism which they trace back to the absence of members with direct relations to governments. In fact, as members have similar backgrounds of Indigenous rights, there seems to be much less controversy within EMRIP. As a result, Indigenous observers often feel that the output of EMRIP in the form of studies and expert advice has high quality and is beneficial for IPs. One interview partner even explicitly pointed out that Indigenous peoples could achieve more at EMRIP than at the PFII.

Thus, at the Expert Mechanism access for Indigenous peoples is tied to individual expertise and specific knowledge regarding Indigenous rights. At the same time, Indigeneity of (some) members assures lived experience and provides members with a deeper and reality-based understanding about the challenges Indigenous peoples face. The similar backgrounds of members grounded in Indigenous rights assures that discussions within EMRIP are by tendency less controversial, and, even more importantly, more based on facts and less influenced by politics. This discussion results in a strong output in favor of Indigenous peoples, which increases perceptions of legitimacy within this constituency (see Figure 16).



**Figure 16: Membership-based mechanism at the Expert Mechanism based on independent expertise and strong output. Source: author’s elaborations.**

This mechanism is based on equal access for members, as their status as individual experts would not allow for any discrimination between them. While some Indigenous peoples regret that they lack influence on the selection process, the independent expert role of members is probably stronger when members are selected by an independent committee based on individual qualifications. At the same time, the functioning of this

<sup>246</sup> Some Indigenous interview partners also maintained that Indigenous membership was important because they considered members as their representatives.

<sup>247</sup> I-PAC2 (28).

mechanism does not seem to depend on exclusively having members with an Indigenous background, as this has varied over time. Nevertheless, a certain quantity of Indigenous members seems to be necessary in terms of its acceptance by IPs.

However, similar to the other mechanisms outlined in this chapter, there were also several indications that this mechanism does not always function as easily as described above. First of all, the quality of EMRIP members in the past has differed. This meant that a huge part of the workload had to be shouldered by the best skilled members, whereas other members had less capacity to engage or were simply less dedicated to EMRIP's work. As a result, an important focus with regard to the recent reform at EMRIP lay on enhancing the importance of individual qualifications and expertise with regard to Indigenous rights in the member selection process.

Moreover, several commentaries highlighted the difficulties which EMRIP faces in making an impact in the sense that its advice really results in policy change. First, members face the challenge of making advice which is relevant to states. Thus, while EMRIP studies are generally good at expressing Indigenous rights and explaining in great detail how rights should be interpreted, some state officials argue that this type of output is generally not relevant within domestic contexts, where the challenges that governments and Indigenous peoples are facing are much more specific. In this regard, EMRIP is confronted by conflicting expectations of its constituencies, as IPOs expect members to be advocating on behalf of them, while states expect to receive advice which is relevant to them. Additionally, due to the lack of specific government expertise at the Expert Mechanism, it might have difficulties to find a balance between making radical demands and the possibilities of getting these demands adopted by HRC (Dahl 2012: 42). For example, before its recent reform, EMRIP could not decide independently about the topics of its studies, but depended on the HRC for the selection of study themes. In a number of cases, states within the Council blocked studies on more sensitive and controversial issues. Members of EMRIP, Indigenous peoples and even some government officials also sometimes feel that the Human Rights Council should take the advice provided by EMRIP more seriously.

EMRIP also probably faces stronger challenges in getting broad support by other actor groups apart from Indigenous peoples. Participation by states and UN agencies is low compared to the Permanent Forum, and generally active participation at sessions is

restricted to those states which are most pro-active with regard to Indigenous peoples, while African and Asian states are largely absent (see Chapter four). Similarly, agencies are often not as engaged as EMRIP members would wish, even when EMRIP studies have dealt with topics directly relevant to the specific mandate of an agency. The most important challenge for EMRIP, however, seems to be its capacity to produce outcomes which are broadly used by other actors. EMRIP members themselves consider their studies and advice as tools which others, such as government agencies or UN entities, could and should use as reference documents and tools to help them in their work. However, to date this has only occurred in rare instances. One government official thus suggested that IPOs more actively need to remind states of EMRIP advice in domestic contexts. Consequentially, some observers feel that EMRIP work so far has mostly led to symbolic changes rather than real impact in domestic contexts.

In short, on the one hand the specific composition of EMRIP – which brings together expert members most of whom have an Indigenous background – enables strong outcomes in favor of IPs and broad support by them. However, on the other hand, this make-up might make it more difficult for EMRIP to get actors more skeptical with regard to Indigenous issues on board. This constitutes a challenge for EMRIP effectiveness (and legitimacy) in the longer run, as its possible achievements depend on voluntary engagement of the respective actors. EMRIP members seem to have recognized this challenge as for example in the 2017 session, which was the first under its new mandate, members strongly employed a rhetoric of dialogue with governments. Moreover, one EMRIP member specifically highlighted the importance of gaining broad trust by states:

“And I don't know exactly how we will do that but I think that we should increase the trust between us the experts and those states. The states should understand that we are not enemies of them and that we're not doing something to undermine their power or their policies, but we want to really HELP them to do more for Indigenous peoples.”<sup>248</sup>

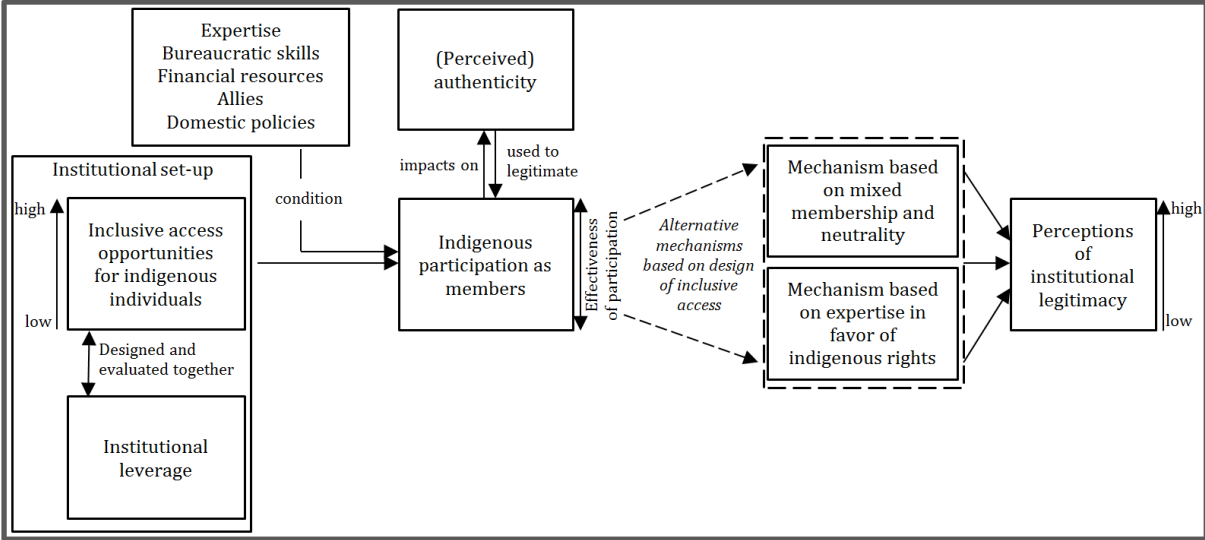
The evidence presented above suggests that the mechanism works for some participants, and especially for Indigenous constituencies, in the sense that they perceive expertise and rights-based arguing to play an important role within EMRIP, and outcomes to be favorable to IPs. However, verifying whether the dialogue taking place between members in fact is different from dialogue at the PFII would require assisting at closed meetings. At the same time, the weak participation by states is certain evidence

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<sup>248</sup> MEM-I1 (20).



for the difficulty of EMRIP to gain broad support by governments (it could also result from financial constraints for some states, or lack of information). In turn, the fact that EMRIP members themselves feel that some states perceive EMRIP as enemy has a higher degree of uniqueness, providing further support to the insight that EMRIP composition makes it easier to gain legitimacy in the eyes of IPs, but at the same time makes it more difficult for EMRIP to gain legitimacy in the eyes of some more critical states. Once again, prior mindsets and expectations seem to play a decisive role with regard to the impact of the mechanism.



**Figure 17: Mechanisms between Indigenous participation as members and perceptions of institutional legitimacy. Source: author’s elaborations.**

Another important insight from the analysis is that the mechanisms based on inclusive access function autonomous of and additional to those based on open access. In other words, bringing individuals affiliated with APOs into transnational institutions as members plays out differently and has other effects than opening institutions to APO observers, mainly because the very process of coming to decisions within the institution changes. In this regard, specific composition features make an important difference, as they affect not only the interaction between members, but also perceptions by others concerning the primary orientation of the body and its members. This also implies that the two mechanisms outlined above based on IPO access as members depend on the specific composition of membership and thus either one or the other will function within a single institution (see Figure 17).

### **6.3 On the importance of prior mindsets and expectations**

As outlined in the previous sections of this chapter, the mechanisms which link Indigenous access and perceptions of legitimacy vary with regard to the importance that they have for different constituencies. At the same time, the above analysis as well as the analysis of perceptions of legitimacy carried out in Chapter four also showed that there are significant differences within constituencies. In this regard, one element which appeared time and again in the interviews to explain individual evaluations of the PFII or EMRIP was the importance of prior mindsets and expectations. I thus argue that these individual attitudes and expectations regarding participation constitute the basic stance of actors regarding Indigenous participation at the UN; this stance impacts both on the comparative importance which mechanisms are given and on the willingness to engage in the first place. In this regard, the fact that participants engage in transnational institutions guided by distinct motivations and expectations also resonates with other research made with regard to the legitimation of transnational governance, where scholars have observed diverging interests and expectations (see Chapter two, Section 2.2.2).

#### **6.3.1 Attitudes towards other constituencies**

Prior attitudes, norms and values of individuals coalesce into a basic stance towards Indigenous participation in the UN system. This stance determines whether participation takes place rather grudgingly or is proactive. Within each of the groups of states, UN agencies and IPOs there are both actors which are willing to engage proactively with other constituencies as well as actors which maintain defensive attitudes regarding cooperation. In this regard, one very strong element which came up in all but two interviews as shaping interaction at the PFII and EMRIP were the attitudes of participants towards other constituencies. While this thus seems to be considered as a relevant factor by practically all participants, interviews with Indigenous activists as well as members of the PFII and EMRIP contained high numbers of negative references to distrust between constituencies, whereas interviews with IO representatives and state officials contained higher numbers of references to positive attitudes as facilitating interaction.

Thus, one challenge that EMRIP and the PFII have to deal with is significant antagonism and reluctance to engage by parts of all constituencies. Some governments still negate

that IPs should dispose of specific rights altogether, do not recognize their status as peoples, or understand Indigenous participation within the UN as an offense or a threat. These governments opposed the creation of the Permanent Forum altogether and, as highlighted by several members of the PFII, even attempted to shut it down when it had dealt with human rights violations in the first years of its existence. Similarly, some governments impeded a strong mandate for EMRIP when it was created, and are currently lobbying against enhanced participation rights for IPOs within the UN General Assembly.<sup>249</sup> If they participate at sessions, this is mostly to be able to respond to any critical comment that IPOs from their territory might make or even to deny the existence of Indigenous peoples within their borders. Thus, one EMRIP member highlighted that states still needed to understand that EMRIP is there to support rather than attack them. In turn, some IPOs generally consider the presence of other constituencies, especially of governments, in Indigenous-specific UN institutions as an obstacle. Moreover, some UN agencies remain disinterested and unwilling to focus specifically on Indigenous peoples and rights. One member of the Permanent Forum aptly sums up this difficult framework for the PFII's work by stating that:

“There are of course some states who do not think that the Permanent Forum should exist because they really don't believe that Indigenous peoples have rights or have issues that should be represented at that level. There are of course some Indigenous peoples who feel that the Permanent Forum does not go far enough, does not treat them as though they were equal to states. [...] And then you have some parts of the UN system that simply don't like to be told what to do. [...] All of those parts of the UN that don't feel that even reports are part of the UN, you know, that they all have their own independent mandate. So having the Permanent Forum come along and give them recommendations and ask them to do things, some were not happy.”<sup>250</sup>

Some participants also feel that individual actors from all constituencies sometimes misuse institutions such as the Permanent Forum to further their own private agenda rather than engaging together for a common good.

Defensive attitudes regarding participation are closely linked to or even founded in distrust between constituencies. A particularly strong element in the interviews was the distrust that many Indigenous peoples feel vis-à-vis states. Thus, some Indigenous activists feel that states only follow their own interests and will continue to do so

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<sup>249</sup> The then chair of the PFII, Dalee Sambo Dorrough, with reference to the UN system in general, highlighted in her statement to the WCIP that due to consensus decision-making, one single state can block advances with regard to Indigenous rights, which she considered a “huge injustice” (UN General Assembly 2014a) – suggesting that in fact, the intervention by some states effectively hampers progress.

<sup>250</sup> MPF-G1 (11).

irrespective of Indigenous ideas and positions or even of Indigenous rights.<sup>251</sup> Correspondingly, several Indigenous activists consider the UN to work for state interests and that by participating within it, they enter a system which does not belong to them<sup>252</sup> or which even represents a continuation of colonization at the global level. As a result, some Indigenous activists also distrust the Permanent Forum members. While this mostly concerns members nominated by states, in some cases members more broadly have been accused of not working for Indigenous interests. Even individual Indigenous members in the early years of the PFII's existence mistrusted government nominated members. In other words, a specific challenge of Indigenous participation within the UN system is the fact that some actors – both from IPOs and governments – have strong reservations regarding cooperation with the other group due to a long history of antagonism and opposing interests. Thus, the relationship between Indigenous and state delegations is in many cases still characterized by a lack of trust and respect, resulting in confrontation rather than cooperation.

At the same time, attitudes within constituencies differ.<sup>253</sup> Within each constituency there are also proactive actors which consider constructive engagement with the other constituencies as positive. For example, several interview partners highlighted that there also are states which support Indigenous rights and have positive relationships with IPs living within their borders. Thus, there is a core group of states which also take an active role within the PFII and EMRIP and push Indigenous issues within the UN context.<sup>254</sup> Moreover, some government officials pinpointed that their governments generally consider Indigenous issues as a central component of their policy and regard Indigenous participation at the UN level as beneficial. Through their own active engagement, they intent to show their support for the Permanent Forum and Expert Mechanism, and they actively encourage other governments and agencies to participate

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<sup>251</sup> As highlighted by one interview partner, the distrust of some IPs with regard to states also is shown by the fact that many IPs feared that the creation of the PFII was a strategy by states with the primary intent to disestablish the Working Group on Indigenous Populations.

<sup>252</sup> Additionally, some Indigenous activists criticize that until today very few UN staff is of Indigenous origin, which probably adds to the feeling of entering an alien system.

<sup>253</sup> Occasionally, attitudes may even differ within a single organization, as both state officials and IO staff pointed out. Thus, especially within agencies there are often some dedicated staff members who want to engage on Indigenous issues, but struggle with convincing other parts of the agency. Similarly, within governments attitudes of individual state officials towards Indigenous peoples may differ significantly. Additionally, it was also highlighted that government orientations towards Indigenous peoples in some cases have changed dramatically through elections.

<sup>254</sup> These more positive attitudes can equally be interest-based, for example when states want to uphold the image of a human rights following state.

at sessions. Similarly, some UN agencies are very aware of and active on Indigenous rights, and dedicate significant resources towards Indigenous peoples. These agencies consider IPs generally and the PFII specifically as partners in their work. Given this variance in the willingness to engage, one interview partner suggested that proactive actors should take a leadership role within the UN to advance Indigenous issues:

“You have to find a way to do something POSitive. To actually CHANGE it. And to me, that's what the Permanent Forum has the responsibility to do, is to actually LEAD the un system, within lead states, lead organizations representing Indigenous peoples, through the agencies of the un, to actually do POSitive things.”<sup>255</sup>

Moreover, there are a number of governments and agencies which are generally supportive of Indigenous participation within the UN, but take a passive role regarding the proceedings. Similarly, a number of Indigenous activists do not participate at the UN with either clearly negative or positive attitudes. Instead, in their perspective, UN institutions dealing with Indigenous issues provide a space or platform for Indigenous peoples which they should use to their advantage. This, in the words of Claire Charters (2010: 224), “reflects many indigenous peoples’ implicit, even if begrudging, decision to recognize that their only option is to work with existing international political structures”. In other words, some IPOs generally accept UN institutions as they are, trying to make the best of existing institutions although they are aware of their limitations. For them, both EMRIP and PFII are tools which they use strategically to advance their interests alongside other mechanisms at the local and national level.

These differing attitudes and mindsets of actors are of uttermost importance as they determine the openness towards other constituencies. Whereas a positive approach facilitates interaction, opposition towards other constituencies can be a severe obstacle for the effective functioning of UN institutions dealing with Indigenous issues. This way, prior attitudes and values determine the success of interaction. In this regard, the Indigenous focal point within one agency pointed towards the huge difference which attitudes make:

“The [UN agency] itself has always seen Indigenous peoples as the. To help our work. And that changes the whole paradigm. If you see them, if you see people in a positive light. I've come across other bodies were they seem to see Indigenous peoples as Indigenous problems. And the result of that is inevitably yes, they become problematic.”<sup>256</sup>

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<sup>255</sup> MPF-G1 (25).

<sup>256</sup> IO4 (14).

As these perceptions and attitudes were directly expressed by interview partners, they constitute certain evidence. Moreover, the high number of interview partners which brought up the issue independently suggests that it has high relevance and adds to the uniqueness of evidence.

At the same time, there is a link between attitudes of participants and what they see as the primary purpose of Indigenous access to the UN. Thus, IPOs which distrust states often specifically value the UN for offering a space for advocacy and human rights complaints, and are more critical regarding active participation and statements by states or even IOs. At the same time, defensive states abstain from engaging constructively, but primarily assist to impede human rights complaints by Indigenous activists from their territories. In turn, actors from all constituencies who are more open towards the other constituencies generally put emphasis on better communication and cooperation between constituencies. This way, there is also a close connection between attitudes of participants and their respective expectations regarding Indigenous participation at the UN.

### **6.3.2 Expectations regarding Indigenous participation at the UN**

As outlined in the first section of this chapter, there are different mechanisms which link participation with observer status and perceptions of legitimacy. These mechanisms are linked to different expectations regarding the primary purpose of Indigenous-specific UN institutions, namely providing relevant advice versus advocating for the rights of IPs. In this regard, a significant number of interview partners specifically emphasized diverging expectations of participants at PFII and EMRIP.<sup>257</sup> Consequentially, many of the negative evaluations of the PFII and EMRIP are closely linked to the inability of both institutions to cater to the conflicting expectations of participants. This includes both references to unfulfilled expectations as a source of frustration; and references to the importance of knowing what can effectively be expected from Indigenous participation.

On the one hand, several interview partners highlighted that there was a significant gap between the expectations of many Indigenous participants and the official mandate of the Permanent Forum. Formally, the Forum is mandated to give advice to the UN system,

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<sup>257</sup> 16 interviews (of 37) contained references to expectations regarding Indigenous participation at the UN. The topic was especially prominent in interviews with Indigenous activists.

whereas many Indigenous peoples expect it to deal with human rights violations or to provide them with a space to speak out at a global level. Thus, several interview partners pointed out that a significant share of IPOs feel that the Permanent Forum does not fulfill their expectations and therefore are disappointed and frustrated or even feel they have been deceived.

At the same time, officials of UN agencies regularly expect to receive more systematic guidance and advice when they participate. They argue that giving advice to the UN system had been the main objective in creating the Permanent Forum. Thus, they are frustrated if their inputs are not taken into consideration sufficiently, and if speakers at sessions bring forward their own issues rather than responding to statements by agencies, engaging in dialogue and providing advice. Similarly, some state officials as well as some IPOs which are oriented towards cooperation sometimes feel that complaints by IPOs take up too much time, and express frustration about behaviour which they feel is inappropriate given the mandate of the PFII. Thus, these divergent expectations to some degree mean that most participants are not completely satisfied with the proceedings at sessions:

“I think on the Indigenous side there's no conSEnsus. Because, and this is one of the problems. Many of the Indigenous groups see this as THEIR place, you know, and they see state presence as... sort of... being an obstacle, or see them as interlopers. But that's a misunderstanding of what the Permanent Forum is. And also I know there's a lot of, some of the Indigenous people that attend are... annoyed. There is criticism that the states are talking too much here. And they're taking up our time, you know. We wanna talk more. But you know, even the members of the Permanent Forum will say, that... that view is based on a misunderstanding of what the Permanent Forum is. It's supposed to be a place where everyone comes together, and everyone tries to work together, or to commUNicate in a SAFE SPACE. And so, I know the Permanent Forum members have told us, that they were frustrated by this. 'cause they want more states there. And [??] 1000 or 2000 Indigenous delegates will show up, and they all wanna talk, and often they want to talk, voice COMPLAINTS about the conditions in their own countries. Which is NOT what the Permanent Forum is supposed to be doing. It takes up a lot of time, and it's frustrating for everyone.”<sup>258</sup>

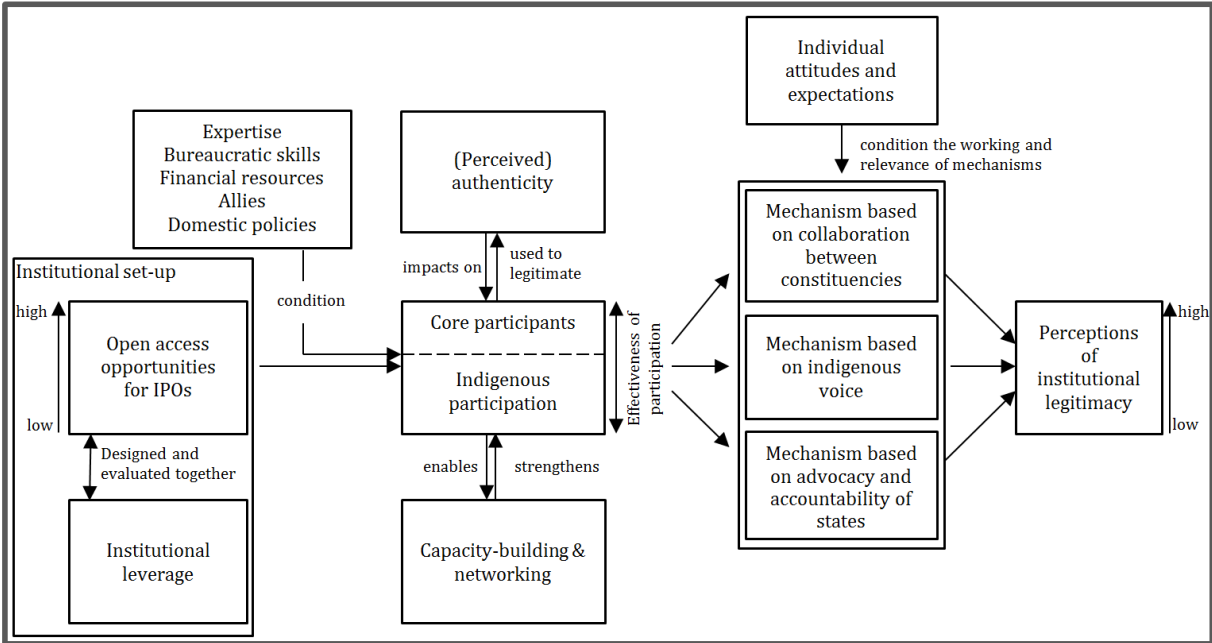
Evidence for the importance of divergent expectations has been gathered from interviews. As these different expectations have been distilled directly from interviews, the uniqueness of evidence is high, in the sense that de facto different expectations by participants exist regarding the PFII and EMRIP.

For members of PFII and EMRIP, these divergent expectations constitute a significant challenge. Members mostly have aimed at satisfying all the diverse interests and finding

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<sup>258</sup> G-WE02 (17).

space for states, agencies and IPOs and their respective interests alike by both trying to give advice to states and agencies and giving space to Indigenous peoples. At the same time, due to the limited resources as well as scarce meeting time during sessions, this dual demand will remain a challenge in the forthcoming years. In this regard, several interview partners also suggested that there is a need to find a space for dealing with human rights abuses that Indigenous peoples experience in addition to the work of the Special Rapporteur who is just one person. In turn, some actors, especially some of the very experienced Indigenous activists, also suggest that the key to more satisfaction with Indigenous-specific UN institutions lies in conveying to IPOs what can – and cannot – be expected of PFII and EMRIP.



**Figure 18: Indigenous access as observers to UN Indigenous-specific institutions, participation and perceptions of legitimacy. Source: author’s elaborations.**

The issue of frustrated expectations was particularly prominent with regard to the Permanent Forum. This is probably due to the fact that the Permanent Forum is the body with higher numbers of attending IPOs, governments and agencies. The higher number of participants also means that there is stronger competition regarding the use of scarce time. Moreover, higher numbers of grassroots participants – who often come precisely with the objective to highlight human rights concerns – attend PFII sessions. Additionally, at EMRIP state participation by tendency encompasses the more proactive states. As a result, some participants feel that at EMRIP, there is more respect between governments and IPs, and all constituencies take engagement seriously. Nevertheless, similar to the Permanent Forum, the Expert Mechanism also to some degree has to



confront divergent expectations regarding its primary function, namely providing relevant advice or advocating for the rights of Indigenous peoples. Figure 18 illustrates the effect of individual attitudes and expectations with regard to mechanisms relying on Indigenous access as observers.<sup>259</sup>

## 6.4 Summary

In this chapter, I have argued that there are three mechanisms which link access for Indigenous observers and perceptions of legitimacy, namely one based on improved communication between constituencies, one based on an enhanced Indigenous voice in global politics, and one based on Indigenous advocacy and accountability of states. However, each of these mechanisms is based on different ideas and conceptions regarding the main function of Indigenous access; therefore, mechanisms to some degree mutually exclude each other – especially the one based on enhanced communication between constituencies and the one based on advocacy and state accountability. As a result, those effects of access which are praised by some are criticized by others. In addition to these three mechanisms, individual benefits of participation linked to networking and capacity-building strengthen their functioning.

Moreover, Indigenous membership within the Permanent Forum and the Expert Mechanism plays out differently: Whereas at the Permanent Forum, due to a mixed membership of government and Indigenous nominated experts, the focus lies on neutrality and trust building between constituencies, at EMRIP Indigenous membership is more closely linked to individual expertise and advocacy on behalf of Indigenous peoples. At the same time, different individuals often evaluate the comparative strengths and weaknesses of these mechanisms in opposite ways. These diverging evaluations seem to be, at least to some degree, based on the different attitudes and mindsets of participants vis-à-vis other constituencies as well as different expectations regarding the work of Indigenous-specific UN institutions.

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<sup>259</sup> The effects of individual attitudes play out in a similar way with regard to Indigenous membership. However, this was difficult to display in one figure.

# *Conclusions*

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## *Major Insights and Implications for Policy and Research*

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This dissertation has addressed the question of whether the participation of affected actors as a recent trend in global governance contributes to making global policy-making more legitimate in the eyes of relevant constituencies, including states, IOs and the broader UN system, and the concerned affected actors themselves. Taking the participation of Indigenous peoples in Indigenous-specific UN institutions as empirical example, it has assessed whether and to what extent access by organizations of affected populations strengthens institutional legitimacy as perceived by participating actors, and what the main determinants for perceptions of legitimacy are. In order to answer this question, in Chapter one I elaborated on the general transformations in global governance, as well as on the trend towards the inclusion of affected actors and of Indigenous peoples in particular. The second Chapter developed a framework for assessing perceptions of legitimacy of institutions that count with APO participation, and laid out indicators for this evaluation. Chapter three then focused on the possible influence of APO access as the independent variable. Based on empirical research, the subsequent chapters took a close look at Indigenous access to and participation in PFII and EMRIP. Chapter four analyzed Indigenous access to the Permanent Forum and the Expert Mechanism and compared this to perceptions of legitimacy regarding both institutions. Chapter five elaborated on Indigenous participation through the access structures offered by the UN. Finally, Chapter six dwelled on the effects of Indigenous participation at PFII and EMRIP, and how they link to perceptions of legitimacy. Against the backdrop of the research realized, this concluding part of the dissertation takes a

look back at the insights gained as well as the remaining open questions and blank spaces. The final pages of this dissertation will then serve to elaborate on recommendations for both policy and future research.

### **7.1 Major insights of the dissertation and open questions**

In this dissertation, I have shown that there is in fact a link between Indigenous access to both PFII and EMRIP and perceptions of legitimacy. However, this study has shown that due to a mix of different factors – including a perception by IPOs of the limited impact of their participation on policy outcomes, challenges for IPOs to access and effectively engage at the UN and discussions about the authenticity of participating IPOs, as well as contrary expectations of constituencies regarding Indigenous participation and defensive attitudes by some participants – deep and broad Indigenous access to the PFII and EMRIP does not automatically translate into equally strong perceptions of legitimacy. In short, I suggest that broad and deep APO participation might translate into more positive legitimacy perceptions, but only does so under certain conditions.

On the one hand, results indicate that access opportunities for affected actors for many participants are a necessary (but not sufficient) prerequisite for empirical legitimacy. There were numerous references by interview partners from all constituencies who pointed out that without significant Indigenous participation, Indigenous-specific UN institutions would suffer from severe legitimacy deficits. Nearly all interviews contained references to Indigenous voice as one mechanism linking Indigenous participation and perceptions of legitimacy (see 6.1.2), and other mechanisms outlined in Chapter six also rely on meaningful Indigenous participation. Furthermore, as highlighted in Chapter one, over time access opportunities throughout the UN system have constantly been increased, and recently negotiations are taking place which aim at introducing a specific status for IPOs for their participation within the UN. This suggests that a norm of legitimate UN governance concerning Indigenous peoples is on the rise which calls for the involvement of representatives of Indigenous peoples; this assumption also resonates with recent research which has argued more broadly that new norms of policy-making beyond the state require the appropriate participation of affected interests (Dingwerth & Weise 2012).

On the other hand, those who gain access not only take into consideration how they participate but also the broader institutional context in which participation occurs. More specifically, the perception to effectively be able to change the course of events is of paramount importance if access opportunities are to translate into perceptions of legitimacy. In other words, in the medium to long term there is a risk of frustration and disillusion of those actors provided with participation opportunities if access does not translate into effective influence with regard to policy-making. This result also suggests that it does not make much sense to evaluate access structures independently of the broader institutional set-up. Moreover, it provides support for the assumption by Hans Agné and colleagues (2015: 485) that the limited power of NSAs in relation to states accounts for lacking effects of NSA participation on perceptions of legitimacy. It also leaves us more skeptical with regard to the impact of the trend towards APO participation. Is the affectedness paradigm a rather cosmetic development by which states respond to a norm of growing involvement of APOs in global policy-making without giving up their prerogative in policy-making – or through which states even try to weaken NSA participation by replacing involvement of NGOs by engagement with weaker APOs (Hasenclever & Narr 2019)? In other words, the final impact of the affectedness paradigm still remains to be assessed.

This dissertation has also addressed the question of whether the participation of affected actors as compared to participation by NSAs more generally can enhance the empirical legitimacy and acceptance of global policy-making in the eyes of relevant constituencies. More specifically, can the affectedness paradigm address the representation deficit in global policy-making by bringing those actors to the global stage which normally are underrepresented at this level? In this regard, I have shown that participation by APOs brings about its very own challenges. It does not suffice to provide access to APOs; far from it, successful APO participation requires careful institutional design which accounts for and respects the specific characteristics of APOs. Moreover, there is a need to accommodate APO participants with procedures which mirror at least some elements of APOs' ways of dealing with challenges instead of simply expecting them to adapt to UN procedures. This study has also contributed to insights into how access structures translate into participation by affected actors, including with regard to a number of factors which hinder or even impede effective participation. Thus, another factor for successful APO participation consists in constantly building up the

capacity of APOs to successfully engage in global policy-making and providing adequate financial and organizational resources to enable their participation. Without such specific measures, there is a considerable risk that access opportunities favor those APOs which are least representative of grassroots constituencies. In this regard, however, this study also suggests that discussions about a (lack of) authenticity of participating APOs do not do them justice in view of the difficult conditions they face in engaging at the global stage. Against this backdrop, it suggests that APO participation requires assistance and support by allies from other sectors in order to live up to its promise of strengthening marginalized voices in global policy-making.

This study has also shown that one of the major difficulties with regard to Indigenous participation at the UN is that IPOs, states and agency participants differ with regard to what they expect of Indigenous participation, and that these different expectations also result in differing evaluations of Indigenous-specific UN institutions. Whereas some participants mainly value Indigenous participation as a mechanism for dialogue and cooperation between IPs, states, and the UN system, others primarily see Indigenous access as an opportunity for lobbying and pointing to human rights concerns. In this regard, whereas there are significant differences between constituencies, differences *within* constituencies are even more pronounced. This finding resonates with other recent research which has pointed to the continuous legitimation struggles which surround transnational institutions (Tamm Hallström & Boström 2010; Bexell 2014), and has assumed that rationales for the inclusion of NSAs can differ among participants, and that these rationales are at least partially competing (Nasiritousi et al. 2016). This suggests that the conflicting expectations and the resulting competing framings of institutional legitimacy observed with regard to PFII and EMRIP are typical rather than exceptional with regard to transnational institutions.

Moreover, this dissertation has shown that expectations are based on individual mindsets. Actors do not come into cooperation arrangements neutrally, but bring along a history of prior experiences, ideas, and most probably prejudices; some actors even completely abstain from participation due to critical attitudes. In institutions which mainly build on dialogue, best practices and voluntary action, this can mean that their existence especially benefits those IPs living in countries which are willing to engage, whereas for others which might need the UN even more urgently, less direct benefits can be obtained. At the same time, the respective institutions seem to function based on the

assumption that “although [constituencies] may maintain different positions, their underlying interests are the same or at least reconcilable” (Craps et al. 2004: 381). This research suggests that attitudes and expectations of participants are highly diverse and sometimes collide. Some of the conflicts and resulting negative evaluations especially with regard to the PFII result from the fact that actors pursue distinct interests which clash with the expectations of other actors regarding the working of the institution. This provides an additional challenge for Indigenous participation at the UN, and one which will not be easy to address.

However, these results bare one major weakness: They derive from the examination of one carefully selected specific case, which allowed us to examine the case in great detail. Due to the strength of Indigenous involvement as well as its comparatively long history, it can be assumed that at least some of the results might resonate with other examples of affected actors participating at the global level. However, it still remains to be seen whether the results can be easily transferred to APO participation in other issue areas. Research by other scholars such as Brem-Wilson (2017) suggests that observations regarding the difficulties to engage due to a lack of capacities and resources are similar for other cases. On the other hand, the Indigenous case is very specific in the sense that Indigenous peoples claim participation rights not only on the grounds of their affectedness, but also with reference to specific Indigenous knowledge and, more importantly, rights of self-determination and their status as peoples. Moreover, due to a history of conquest and subjugation, relationships between states and IPs might be more fraught with tension than relations between states and other APOs. Thus, bringing states and IPs together at the UN is probably an especially difficult endeavor, explaining the decisive role of prejudices and mindsets in this specific case.

## **7.2 Implications for policy**

Against the backdrop of the observations made, what are major implications for policy-makers which aim at sustainably strengthening participation by IPs in global policy-making? In the following, I identify four areas in which improvements should be envisioned, namely Indigenous self-organization, the institutional set-up of both the PFII and EMRIP, building stronger links with the local level, and, lastly, coming to a solution regarding the pending question of a specific status for Indigenous peoples at the United Nations. Many of the suggestions build on proposals which have been made by interview

partners. While there are of course connections between the four areas, for reasons of greater clarity they are presented here as four separate areas for action. Additionally, there is a need to increase available resources for implementation. Whereas there are certainly no easy solutions to the complex process of engaging with Indigenous peoples at the global level, nevertheless some points of departure can be presented.

### **Strengthening Indigenous self-organization**

Much of the ability of the Indigenous movement to take advantage of the spaces offered by the UN hinges upon the professionalization and adaption of IPOs to the working methods of the intergovernmental context. There is a need for those Indigenous activists who engage at the UN to professionalize their participation and act strategically to be able to engage with states and agencies on a level playing field. This includes a better preparation of participants before sessions, for example through regional preparatory meetings. These preparatory meetings also can play an important role as spaces for Indigenous peoples to independently develop positions and strategies among themselves before facing states and agencies in the UN context (McKeon & Kalafatic 2009: 32). In this regard, the better Indigenous activists succeed in coordinating their endeavor at the UN, the stronger their voice will be. This, of course, also includes coordination in the processes of nominating members to PFII or EMRIP. The more unequivocally one candidate enjoys support by an entire region, the more difficult it will be to ignore the candidature. Moreover, a tight following-up on particular issues by teams of people or working groups through the entire UN system would ensure both sufficient expertise and continuity on behalf of Indigenous peoples to allow for strong and effective advocacy.

However, the growing professionalization of Indigenous activists creates the dual danger of excluding actors and alienating the participating organizations from their local constituencies (Brem-Wilson 2017: 325). As highlighted, grassroots IP representatives oftentimes find the working modes of the UN challenging. Moreover, the more they succeed in adapting to UN participation modes, the higher the risk that local communities might not feel represented by them (Brugnach et al. 2017: 29). Thus, there is a continuous need to nurture and build relationships between IPOs and local communities.

Moreover, as outlined in Chapter five, Indigenous participation also might be strengthened through addressing the issue of representation. This dissertation has shown that the responsibility for authentic Indigenous representation need not be left to Indigenous peoples alone. Of course, IPOs need to permanently build and strengthen relationships with their bases, and both seek their input and report back to them on the work undertaken at the UN. Moreover, they should be transparent and be prepared to disclose such activities to the UN system (McKeon & Kalafatic 2009: 32). In many cases, IPOs could also be more explicit with regard to their representativeness by clearly stating on behalf of whom and with what mandate a specific intervention is being made. At the same time, there is a need for (financial) support to IPs in their endeavor to enhance the capacities, knowledge and participation especially of Indigenous governing institutions with regard to Indigenous-specific UN processes. Moreover, a very practical recommendation especially for UN agencies in this regard is to build closer relationships with IPOs in order to better get to know them and their links to local communities (ibid.: 11).

#### **Addressing limitations in the institutional set-up of PFII and EMRIP**

As argued in Chapter four, while IPs generally value access rights they have gained at the UN, they are nevertheless well aware of the institutional limitations in the set-up of the PFII and EMRIP. Thus, one central concern of many IPs is that both institutions need to be strengthened and provided with stronger authority. One way to enhance authority without changes in the mandate would be to reduce the number of recommendations (especially at the PFII), and in turn, ensure that these recommendations are followed up upon, as implemented by the PFII with regard to its 2015 session. At the same time, reducing the number of recommendations clashes with expectations of IPOs that the reports should reflect their concerns in their entirety. Alternatively, the PFII, the EMRIP, the SRIP and Indigenous activists could coordinate to identify a limited number of major concerns each year and increase pressure on friendly governments to put more emphasis on these issues within higher UN forums such as the HRC, ECOSOC and the GA's Third Committee. However, to be effective, this strategy depends on a reduced number of issues as well as strategic coordination between the respective actors.

Additionally, there is a need for advice and recommendations by EMRIP and PFII to be more specifically tailored to the individual circumstances within countries or individual



agencies. With regard to states, it could be helpful to focus on groups of states with similar backgrounds and similar types of implementation issues (such as Latin American states etc.) rather than making universal suggestions to the entire group of states which are often too general. At the same time, the knowledge of members often is not specific enough both with regard to the conditions within agencies and within states to make this type of recommendations. One option to address this deficit could be to more closely collaborate with partners – such as external consultants or universities – or increase secretariat staff within bodies to be able to do more research. Additionally, the engagement with both staff from agencies and state officials still can be increased. The case of staff members from agencies who collaborate with PFII members to develop recommendations tailored towards the needs and specific circumstances of the individual agency certainly constitutes a positive example in this regard.

Another central recommendation in this regard is to find a space for reports about human rights violations as one issue which is of paramount importance to many IPs. It has been suggested that while the PFII and EMRIP are not equipped to deal with alleged human rights complaints themselves, there should be an instance at sessions which picks up these concerns, talks to the respective IPs, and helps them redirect their complaints to the appropriate body. To some degree, this is already being realized through the fact that the Special Rapporteur attends the sessions of the Permanent Forum and the Expert Mechanism, and Indigenous peoples search her out frequently to alert her about human rights violations. However, the Special Rapporteur is just one person and does not have many resources. As it is not probable that states will strengthen the SRIP, it could be envisioned to create a trust fund financed by supportive actors to strengthen the SRIP's work and closely co-operate with her. A team of legal advisors could be present at sessions of PFII and EMRIP to absorb much of the human rights concerns and deal with them much more effectively. In cases of alleged human rights violations, it could engage in legal advice for the concerned IPs, help them to direct their concern to the appropriate UN body, and support them financially and organizationally to forward their issue to the appropriate body to seek redress.

Moreover, and maybe most importantly, there is a need to bridge the gap between global policy deliberations and meaningful change at the local level. Much of the criticism regarding the PFII and EMRIP is concerned about the lack of change of local living conditions of Indigenous peoples worldwide in spite of increased attention by the UN. In

this regard, one important recommendation is to continue mainstreaming Indigenous rights at the country level in the UN system. This could include strengthening the role of UN country offices within the PFII and EMRIP processes. Until today, it is mainly the specific Indigenous peoples' focal point within agencies who participates at PFII sessions; in addition, enhanced emphasis could be put to bringing staff from country offices to sessions.

### **Strengthening links with the local level**

Another central area for action is the relation between Indigenous-specific UN institutions and the local level of communities and, more specifically, the necessity to move the PFII and EMRIP closer to grassroots Indigenous peoples. As outlined in Chapter five, there are significant differences in the capacities to engage of IPOs, and for grassroots organizations it is a huge challenge to engage effectively. There is thus a responsibility by institutions dealing with issues which strongly impact on marginalized communities to adapt and provide spaces for effective participation of affected actors (McKeon & Kalafatic 2009: 35; Brem-Wilson 2017: 325). If Indigenous engagement with the UN system is to be improved, there is a need to bring it closer to Indigenous peoples instead of exclusively expecting Indigenous peoples to come to UN grounds and adapt to UN rules of procedure.

The first option in this regard is to increase the role of regional processes within both the PFII and EMRIP. This would mean creating (and financing) regional processes or preparatory meetings to discuss and generate recommendations from within the regions as input to the PFII and EMRIP sessions. Some regions have already organized such preparatory processes, most notably the Asian Indigenous caucus which regularly organizes such events. However, this has been completely at the responsibility of regional caucuses, including organizing resources for such meetings. On the other hand, in other regions such as Latin America it has been much more difficult to organize similar processes. This is probably due to the fact that within Latin American Indigenous traditions, Indigenous representatives are expected to cater to their own communities and in many cases there is no tradition of representation of one ethnic group by leaders of others groups (Feldt & Ströbele-Gregor 2011: 8–9). Therefore, it might be necessary to find a neutral convener of preparatory meetings, such as the UN (or PFII and EMRIP) itself. At the same time, this would require precautions to be taken to ensure that

regional processes effectively feed into the main session. Alternatively, it has been suggested that sessions of the PFII could rotate around different cities worldwide. In this regard, PFII members suggested holding the 2007 session in Bangkok. However, due to resource constraints this proposal never materialized.

The advantages of moving sessions around the world or organizing regional preparatory meetings are evident: it would enhance the visibility of PFII and EMRIP and bring them closer to local communities. Importantly, it allows IPOs unable to finance travel costs to New York or Geneva to provide an input to sessions.<sup>260</sup> Moreover, this would address concerns that some IPs remain excluded from sessions of the PFII simply because they are denied visas to enter the US. Regional preparatory meetings could have the additional advantage that if significant shares of IPOs present their concerns at the regional level, this could reduce time constraints at sessions. In short, I argue that states should provide the necessary resources and adapt international institutions to enhance effective Indigenous participation. Additionally, to strengthen links with the local level, members could be provided with a budget to travel within the respective regions and consult with local communities. This would mean that they gain a more profound understanding about living conditions on the grounds in the entire region, and could provide an additional channel of input into the proceedings of sessions for local communities which would not require them to travel at all.

All these options have the additional advantage that by creating stronger repercussions at the regional level, they would raise attention for Indigenous issues within the respective regions. This would probably mean that more Indigenous peoples become aware of the existence of Indigenous-specific UN institutions, and even of the concept of Indigeneity, which is still unknown in vast parts of Asia and Africa. What is more, this could also be beneficial in the additional sense of encouraging states and IPs to invest in more positive ties between actor groups. A major impediment for cooperation between IPs and states globally results from the distrust between constituencies which goes back to a history of colonization and occupation. Several interview partners highlighted that this improvement of bilateral relations most probably occurs at national rather than global levels. Other comments in interviews also suggest that it takes the courageous

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<sup>260</sup> In fact, it has been shown that NSA participation rises with the geographic proximity to the venue (Uhre 2013: 156).

decision by leaders at the national level to invest in more positive relationships and set a process in motion which addresses past injustices.

### **A specific status for Indigenous peoples**

The fourth area for action is the pending discussion regarding a specific status for Indigenous peoples within the UN. As outlined in Chapter six, many Indigenous activists feel that their participation at the UN is very much conditioned by the framework that the UN sets, in contrast to being able to come to the UN on their own terms. In this regard, introducing a specific status for Indigenous peoples similar to that of NGOs would constitute an important symbolic signal to IPs that the UN recognizes their authority to co-determine the terms of their participation at the UN. Moreover, it would constitute recognition of the specific legitimacy of IPOs deriving not only from their specific vulnerability and affectedness, but from the particular role of Indigenous governing institutions as actors representing nations or peoples rather than particular issues. At the same time, Indigenous peoples still remain excluded from many forums where important decisions regarding their rights are taken. This includes the General Assembly, and most specifically its Third Committee which regularly deals with Indigenous issues, as well as the HRC and ECOSOC which do not provide structures for Indigenous participation.

As outlined in Chapter one, there are currently negotiations taking place on the issue of enhanced participation for Indigenous peoples in the UN system. In 2017, the General Assembly instead of coming to a decision in this regard decided to continue negotiations in the form of interactive hearings with member states and Indigenous peoples, and deferred further action to its 75<sup>th</sup> session. In the first of these hearings in April 2018, many participants including representatives of IPOs and states expressed their dissatisfaction and dismay regarding the lack of advancement on this behalf. Some IPOs also felt that the situation had come to a stalemate, as Indigenous peoples had outlaid their positions in great detail in earlier meetings and were not going to downgrade their demands to the UN.<sup>261</sup>

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<sup>261</sup> General Assembly: Informal interactive hearing with Indigenous peoples on 17.04.2018, webcast available at <http://webtv.un.org/search/general-assembly-informal-interactive-hearing-with-indigenous-peoples/5772636330001/?term=indigenous&sort=date>, accessed 05.02.2019.

Against this backdrop, it is of foremost importance to move forward and again develop a positive impetus for Indigenous participation. A minimum approach and first step in the right direction could constitute in introducing a specific status for Indigenous governing institutions with participation rights equal to those of NGOs. In this regard, the hardest negotiations probably concern the questions of who will decide about applications. Taking into account Indigenous rights for self-determination, any selection procedure would need strong and legitimate Indigenous participation as well as a mechanism for appeal. At the same time, Myrna Cunningham's proposal to provide members of the PFII with participation rights at the General Assembly<sup>262</sup> is worth taking into consideration.

### **Provide more resources**

All these activities require resources, which most Indigenous peoples themselves do not possess. Thus, to effectively strengthen Indigenous participation, additional resources need to be mobilized. In this regard, NGOs can prove vital by providing additional resources, facilitating participation, and thus strengthening the Indigenous voice. One central task of NGOs in this context could be creating and strengthening learning opportunities and exchanges about effective strategies between Indigenous peoples themselves (Simpson 2006: 127). Moreover, they might provide strategic information on UN processes to Indigenous peoples (McKeon & Kalafatic 2009: 35). This dissertation has shown that NGOs remain central actors even when participation modalities focus on affected actors. NGOs exert an important role as gatekeepers and through their funding decisions, which heavily impact on who gets a say at the global level. They should reach out to those communities which still do not know about UN activities on IPs or have been unable to articulate themselves in the UN context. In addition, they could invigorate capacities of Indigenous governing institutions, and bring them to the UN. This could strengthen the legitimacy of the Indigenous endeavor within the UN and, at the same time, ensure enduring relationships with local constituencies. In this regard, it is of pivotal importance that NGOs respect the identities and superior authority of Indigenous peoples, and that any decision about the development of projects and spending of resources is taken together with Indigenous peoples themselves (McKeon & Kalafatic 2009: 32, 35).

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<sup>262</sup> <http://www.filac.org/wp/notiteca/filac-informa/myrna-cunnigham-exige-mayor-participacion-de-los-pueblos-indigenas-en-naciones-unidas/>, accessed 05.02.2019.

### **7.3 Implications for research**

Apart from implications for practical political action, this study has also laid out a number of remaining blank spots. Hence, this dissertation ends with some recommendations regarding interesting and promising future research in several of the areas that have been addressed by this study.

#### **Rethink the normative dimension of APO participation**

This dissertation has addressed the question of empirical legitimacy of institutions that provide access opportunities to APOs. At the same time, it started with the observation that research on APOs often assumes that their participation will enhance the democratic legitimacy of global policy-making (Batliwala 2002: 396; Sändig et al. 2019). Against the backdrop of the difficulties of enhancing empirical legitimacy through the inclusion of IPOs as highlighted by this study, an exciting future research endeavor could constitute in re-assessing the normative potential of APO participation to enhance the democratic legitimacy of global governance. Several aspects appear relevant in this regard: To what degree are criteria of acceptability used by real-world actors convincing from a normative point of view? What does it mean for the normative legitimacy of APO participation that grassroots representatives encounter severe obstacles for meaningful involvement even in institutions which focus on APO participation? Moreover, the results of this study point to the necessity of taking into account not only access modalities for APOs but also the broader institutional setting when assessing the normative legitimacy of institutions which allow for APO participation.

#### **Research favorable circumstances for APO participation**

This dissertation has dwelled upon factors which constrain effective Indigenous participation. Furthermore, it has argued that institutions themselves need to change to enable APO participation and meet APOs at least half-way in terms of institutional procedures and conditions of engagement. While this dissertation has made some suggestions in this regard, such as enabling regional level access and participation structures, more research is needed on conditions favorable to APO participation. Thus, to gain a better understanding of how institutions could adapt and change to facilitate Indigenous engagement as well as of other conditions of success, it would be extremely interesting to study and compare cases of collaboration between Indigenous peoples

and states deemed successful by both constituencies – both at the global and at the national level. In this context, it could also help taking a closer look at instances deemed less virtuous by participants to learn from errors. This also, and more specifically, includes research on trust building and reconciliation processes between Indigenous peoples and states at the national level. Additionally, it would be highly important to more systematically explore the effects of PFII recommendations and EMRIP advice on state and IO policies. Under which conditions are recommendations implemented by their addressees? One starting point suggested by this research in this context is the specificity of a recommendation and its transferability to local contexts. This would be extremely helpful information for members of EMRIP and PFII to be able to more individually tailor recommendations to the needs and circumstances of addressees.

At the same time, additional research is also needed with regard to the relationship between IPOs active at the UN level – and APOs more generally – and their local constituencies. Under what conditions does the exchange between APOs and local actors work well both in terms of feeding local concerns, experiences and proposals into global policy-making, and in terms of reporting back to local actors about the proceedings at the global level? And how can NGOs most effectively engage in supporting the consultation and exchange between local constituencies and their global spokespersons (McKeon 2009: 185)? In this regard, comparative research which explores the links and alliances between APOs, their local constituencies and supportive NGOs could significantly advance our understanding about successful environments for this kind of cooperation as a precondition for legitimate participation of APOs in global policy-making.

### **Broaden the scope of research**

The last recommendation for future research avenues is to broaden the scope of research. As outlined above, this study builds on a single case study of Indigenous participation within the core UN system. While this approach has yielded important insights regarding the micro level of APO engagement, larger samples both with regard to Indigenous participation in other institutions and with regard to APO participation in other issue areas would be particularly helpful for making generalizations that go beyond the specific case of Indigenous participation at the PFII and EMRIP towards effects of APO participation more broadly. For example, a broad quantitative analysis

might provide us with important insights regarding the question of whether it is a general trend to provide APOs (and maybe even NSAs more generally) with broad and deep access only when the effective power of the respective institution is clearly circumscribed. It would also enable us to assess perceptions of legitimacy of institutions building on APO participation more broadly. More specifically, it would help us to understand whether the prominent role of individual mindsets and mistrust regarding other constituencies is specific to the Indigenous case, or can be observed in a similar way within other cases.



# *Appendix*

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## *Methodology of the Dissertation*

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During each research process, numerous methodological decisions need to be taken and affect the quality of research. In this regard, equal to quantitative research, qualitative research aims at reaching quality standards which assure the objectivity, reliability and validity of results (Kuckartz 2012: 165). In other words, even though it works with interpretation of content, sound qualitative research should yield reproducible results. In this regard, there are two main dimensions regarding quality standards. On the one hand, the basic research design, especially with regard to case selection, impacts on external validity, and thus determines whether results can be generalized and transferred to other similar cases. On the other hand, the internal validity of the study is affected by the process of gathering and interpreting data in the course of the research process, and thus strongly impacts on the credibility of results (ibid.: 166–169). The following pages therefore highlight the main methodological choices made in the context of this dissertation. In this regard, documenting, reflecting and justifying methodological choices is by itself considered a criterion of good qualitative research (Kuckartz 2012: 168). Questions of external validity will mainly be dealt with in the first section of this Appendix, while the internal validity of the study will be in focus in the second and third sections. The Appendix concludes with a short overview on the application of the methodology in practice.

## **8.1 Research design: establishing causality**

### **8.1.1 Single case study and case selection**

In Chapter one, I have argued for a case study as the most appropriate research design for my dissertation. I have explained that the time and effort needed to deal with a theoretical concept as complex as legitimacy required constricting the number of cases being researched. By limiting the number of cases, the researcher is able to reach higher conceptual validity and collect and analyze data on those indicators that best represent the theoretical concepts (George & Bennett 2005: 19–20). Additionally, the number of issue areas with extensive APO participation is still limited. It has been suggested that knowledge gained from studying individual cases is comparatively more valuable in fields where limited numbers of cases exist than in fields where there are thousands of cases (Blatter et al. 2007: 128).

Moreover, I am not only interested in whether there is a positive connection between APO access modes and legitimacy, but also, and more specifically, interested in how the initial case conditions are transformed into perceptions of legitimacy. As they allow for an intensive examination of the process that connects independent and dependent variable, case studies have proven more appropriate for this type of research (van Evera 1997: 54). The deep exploration of causal mechanisms also facilitates an eventual identification of unexpected aspects, new hypothesis and left-out variables and is better able to deal with causal complexity (George & Bennett 2005: 20–22). However, this means that whereas results will hopefully have high internal validity, their external validity might be limited (Blatter et al. 2007: 137–138). In short, case study results very probably will be highly valid in explaining how APO access modes impact on legitimacy in the specific case of Indigenous participation within the core UN, and they will moreover be helpful in explaining whether different causal mechanisms (and which) were present. However, results are generalizable to cases in other policy fields only to a limited degree.

In case study research, case selection is an important task; the quality of results is highly dependent on how well the researcher accomplishes it. This takes us to the question which considerations guided case study selection. There are different strategies a researcher might follow when selecting cases to assure that the results obtained are

valid and significant, including controlled comparison and selection strategies guided by theoretical considerations (Blatter et al. 2007: 140–157). A number of potentially interesting cases for studying the effects of APO access have been identified. The CFS has been highlighted as outstanding with regard to APO participation because it gives priority to the participation by affected communities. In global health governance, the GFATM includes representatives of affected communities as board members with full rights, and requires their participation in Country Coordinating Mechanisms at the domestic level. Indigenous involvement in the CBD encompasses several bodies and is especially far reaching with regard to the Working Group on Article 8j (WG8j).

	CFS	GFATM	CBD (access for IPOs)	Indigenous issues at UN
<b>Access for APOs as observers</b>	Yes, priority participation, through Civil Society and Indigenous Peoples Mechanism	At the global level in Partnership Forum; at the country level through country dialogues	Yes; varies between bodies, most far reaching at WG8j	Yes, very strong
<b>Access for APOs as members</b>	No	Yes; on the Board and in Country Coordinating Mechanisms	No	Yes
<b>Since</b>	Reform in 2009	2002	1992	1982 (WGIP)
<b>Within case comparison possible</b>	No	Yes	Yes	Yes
<b>Accessibility of data, esp. with regard to APOs</b>	Limited	Limited	Limited	Broad
<b>Issue Area</b>	Food security	Health	Biological diversity	Indigenous Rights

**Table 18: Comparison of interesting cases for studying APO access. Source: author's elaborations.**

However, the case of Indigenous rights within the UN appeared to combine most advantages for studying APO access (see Table 18), such as access opportunities for observers and members, opportunities for within-case comparison, as well as a comparatively long history and thus a probably high degree of institutionalization. Moreover, the accessibility and richness of data added a practical reason to selecting Indigenous access to the UN as a case study. This included the existence of an online archive of statements made during the sessions by the NGO docip, as well as broad documentation by the UN, for example with regard to participants of sessions. Moreover, sessions of the PFII and since more recently also of EMRIP are screened on UN WebTV, and sessions are comparatively easy to access for scientists. According to Van Evera

(1997: 79), data richness by itself is a legitimate reason for selecting a specific case, especially in studies which draw on process-tracing for unpacking causality.

Single case studies have particular advantages, but also specific requirements. On the one hand, as there is no variance in case background, there is no need to control for the effect of perturbing third variables. On the other hand, this uniformity in background can mask antecedent conditions which might be necessary to set in motion or magnify a theory's action (van Evera 1997: 53). Furthermore, in single case studies it is necessary to take into consideration a range of alternative hypothesis to account for the impact of possible left-out variables (George & Bennett 2005: 80). Thus, Chapter three considers a number of alternative hypotheses regarding the impact of access by affected actors. At the same time, process-tracing can serve to compensate for the weaknesses of single case studies and strengthen the validity of results (van Evera 1997: 72; George & Bennett 2005: 80), which is why it has been applied in this study.

### **8.1.2 Process-tracing**

By using process-tracing, the scholar “attempts to identify the intervening causal process – the causal chain or causal mechanism – between an independent variable (or variables) and the outcome of the dependent variable” (George & Bennett 2005: 206). That is, she looks for evidence to prove that a certain chain of effects between the independent and the dependent variable was in fact present in a certain case by collecting data that documents each single step of the causal chain. The underlying rationale is that by using process-tracing, causal inferences become more convincing as they rest on multiple within case observations of evidence tied to the specific causal processes (Trampusch & Palier 2016: 442). Still, as process-tracing has grown increasingly popular in recent years, approaches and applications of it have varied (ibid.). Thus, there is a need for researchers to be explicit about the approach followed, which I will do in the following.

This dissertation basically follows the proceedings for process-tracing as proposed by Beach (2016). Thus, process-tracing starts by theoretically outlining the mechanisms at work which flash out the causal path from independent to dependent variable. Beach (ibid.: 465) especially highlights the need to define the individual steps of causal mechanisms with regard to entities such as actors or organizations that engage in

activities. These activities, in turn, set causal forces in motion and produce change and thus are the drivers which link the independent variable with the outcome in continuous steps. In other words, sound process-tracing requires, as a first step, thorough theorizing about the presumed mechanisms at work to focus analytical attention of the researcher (Trampusch & Palier 2016: 450). In this context it has to be kept in mind that causality is often complex. For example, different causal mechanisms might impact on the outcome, and different causal variables might interact (George & Bennett 2005: 212). Therefore, it is important to look for evidence of alternative explanations and alternative paths through which the outcome could have occurred.

As a second step, there is a need to specify which type of empirical fingerprints the researcher should be able to find in case the presumed mechanisms are in fact at work (Beach 2016: 468–469). This evidence can take a variety of forms and can include statistical patterns, temporal sequences of events, written or oral accounts of participants as well as proof about the taking place of specific facts and incidents (ibid.: 469). This has been implemented in this study through carefully outlining a number of alternative mechanisms which are presumably at work when APOs gain access to transnational institutions, including an elaboration on probable evidence to look for when carrying out empirical research in the case of each mechanism.

Subsequently, the researcher engages in collecting data on the empirical case to look for the predicted evidence. A determinate causal chain can only explain a case if there is evidence of an uninterrupted causal path between cause and outcome. In turn, the explanatory value of a causal mechanism is weakened if evidence on one (or more) intervening variables cannot be attained (George & Bennett 2005: 222). In this regard, observation of causal processes requires time and deep knowledge about the case, and should rely on different sources of data including interviews (Trampusch & Palier 2016: 450). In the context of this study, interviews have been my main source for data for tracing processes linked to APO access, but I have also relied on other evidence.

The step of gathering empirical data also includes an assessment of the respective fingerprints taken to corroborate or refute the working of a certain mechanism (Beach 2016: 470). In this regard, the evidence found for each mechanism presented in Chapter six is evaluated with regard to its certainty and uniqueness. Pieces of evidence which an attentive observer most probably should be able to observe in case the mechanism in

question in fact has theoretical relevance are characterized by a high degree of certainty. Thus, their absence disconfirms our trust in the workings of the mechanism while their presence alone does not confirm its existence in practice, as alternative mechanisms could have produced the same evidence. In turn, unique pieces of evidence are those which are necessarily produced by the very same mechanism under analysis, but their absence does not automatically mean that the mechanism does not function as predicted (van Evera 1997: 31–32). Additionally, observations of evidence which run counter to what would have been expected by the workings of each mechanism are also assessed.

Lastly, I have also outlined alternative mechanisms as well as identified condition variables which the gathered evidence pointed to. This is an additional strength of process-tracing: condition variables will leave specific fingerprints in the process which careful research should be able to detect (van Evera 1997: 74). Similarly, traces of alternative mechanisms can be uncovered by thorough process-tracing.

## **8.2 Data collection and analysis regarding perceptions of legitimacy**

Comprehensive data needed to be collected mainly for two different purposes: first, to assess perceptions of legitimacy regarding Indigenous-specific UN institutions, and second, to trace mechanisms at work that link Indigenous access and perceptions of legitimacy. While I relied on document analysis and the observation of behavior for the first, interviews served as a main source of information for the second purpose. The following pages describe the methodological choices made in this regard.

### **8.2.1 Sampling of relevant actors**

As laid out in Chapter two, I relied on both legitimation in discourses and behavioral indicators to determine degrees of legitimacy. To realize this, in a first step I had to determine whose statements and actions would be taken into account for analysis. Sampling was undertaken separately with regard to three constituencies: States, IOs, and Indigenous peoples' organizations.

With regard to states, sampling distinguished between donor states and states with Indigenous populations. Donor states have been included in the sample if they pertained to the Development Assistance Committee of the Organization for Economic Co-Operation and Development (OECD-DAC) and donated at least 0.5% of the GNI to

development cooperation, or donated more than 10.000 US\$ million. Moreover, OECD-DAC member states were included in the sample if they had a specific focus on Indigenous issues in development cooperation (as shown by the existence of a respective policy or program).

Country	Focus on IPs in development cooperation	% of the GNI	Net ODA (in US\$ million)
Australia***	yes <sup>263</sup>	0,27	3200
Austria		0,32	1200
Belgium		0,42	1900
Canada		0,28	4300
Czech Republic		0,12	202
Denmark*/***	yes <sup>264</sup>	0,85	2600
European Union**	Is being developed	Not provided	13800
Finland*		0,56	1300
France		0,37	9200
Germany*/**/**	Yes, related to Latin America <sup>265</sup>	0,52	17800
Greece		0,14	282
Hungary		0,13	156
Iceland		0,24	39
Ireland		0,36	718
Italy		0,21	3800
Japan		0,22	9300
Korea		0,14	1900
Luxembourg*		0,93	361
The Netherlands*		0,76	5800
New Zealand		0,27	438
Norway*/***	yes <sup>266</sup>	1,05	4300
Poland		0,10	442
Portugal		0,16	306
Slovak Republic		0,1	86
Slovenia		0,15	62
Spain***	yes <sup>267</sup>	0,13	1600
Sweden*		1,4	7100
Switzerland*		0,52	3500
United Kingdom*/**		0,71	18700
United States**		0,17	31100

\*More than 0,5% of GNI; \*\*More than 10.000 US\$ million; \*\*\*States with a specific focus on Indigenous issues in development cooperation (as shown by the existence of a specific policy/ program)

**Table 19: OECD-DAC members. Data from 2015, as available on <http://www.oecd.org/dac/dacmembers.htm>, accessed 7.02.2017. Source: author's elaborations.**

<sup>263</sup> <https://dfat.gov.au/about-us/publications/Documents/reaching-indigenous-people-in-the-australian-aid-program-guidance-note.pdf>; and <http://dfat.gov.au/about-us/publications/Pages/dfat-indigenous-peoples-strategy-2015-2019.aspx> (both accessed 05.02.2019).

<sup>264</sup> <http://www.netpublikationer.dk/UM/5717/index.htm>, accessed 05.02.2019.

<sup>265</sup> [https://www.bmz.de/en/publications/archiv/type\\_of\\_publication/strategies/konzept141.pdf](https://www.bmz.de/en/publications/archiv/type_of_publication/strategies/konzept141.pdf), accessed 05.02.2019.

<sup>266</sup> <https://www.regjeringen.no/globalassets/upload/kilde/ud/pla/2004/0003/ddd/pdfv/288775-urfolkeng.pdf>, accessed 05.02.2019.

<sup>267</sup>

[http://intercoonecta.aecid.es/Documentos%20de%20la%20comunidad/Estrategia\\_Pueblos%20Ind%C3%A9nigenas.pdf](http://intercoonecta.aecid.es/Documentos%20de%20la%20comunidad/Estrategia_Pueblos%20Ind%C3%A9nigenas.pdf), accessed 05.02.2019.

Additionally, although Estonia is no OECD-DAC member, the country was included in the sample as a European country with a specific policy focus on Indigenous peoples and strong engagement with regard to Indigenous issues at the international level. Table 19 and Table 20 compile the respective information; states which were selected as part of the sample are marked in light grey.

Country	Policy focus on IPs
Estonia	yes <sup>268</sup>

**Table 20: Non OECD-DAC members with specific policy focus on Indigenous peoples. Source: author’s elaborations.**

With regard to states with IPs, states were included in the sample that had the highest percentage of Indigenous population compared to the total population, or a high number of Indigenous persons living inside their borders in absolute terms. To assure for broad geographical diversity, sampling was undertaken separately for the seven Indigenous regions that form the basis for Indigenous membership in the PFII and EMRIP. For practical reasons, I merged North America, Europe, and the Pacific as these regions each contained few countries. As no official statistic was found that lists countries with Indigenous populations, their total number and relative percentage of the population, a list was compiled on the basis of the IWGIA yearbook 2016.<sup>269</sup> Missing data has been calculated on the basis of data provided in the IWGIA yearbook, or from the International Data Base of the US census bureau<sup>270</sup> (total population) and is listed in brackets. While the (calculated) data may not be exact in every case, it serves as a proxy. I took into account states where Indigenous populations constituted either more than 10% of the total population, or counted more than 1.000.000 individuals. Table 21 to Table 24 compile the respective information; selected states are marked in light grey.

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<sup>268</sup> Kindred Peoples Program; Estonia also has a special policy focus on Indigenous issues at the UN level, see <http://www.vm.ee/en/estonia-united-nations>, accessed 05.02.2019.

<sup>269</sup> The yearbook in some years also lists non-independent territories (such as Palestine). However, my list only includes member states of the United Nations. Countries have been compared to the countries listed in the 2015 yearbook, and missing data has been added. A total of 60 states were included. As around 90 countries are considered to have Indigenous populations (UN DESA 2009: 1), the list is by far not exhaustive. However, I assume that all states with significant Indigenous populations are mentioned at least once every two years.

<sup>270</sup> [http://www.census.gov/popclock/world?intcmp=w\\_200x402](http://www.census.gov/popclock/world?intcmp=w_200x402), accessed 05.02.2019.



Country	No. of Indigenous persons	% of total population
Argentina	955.000	(2,39)
Bolivia*/**	2.800.000	41
Brazil	800.000	0,42
Chile**	1.566.000	(8,8)
Colombia**	1.500.000	3,4
Costa Rica	ca. 104.000	2,5
Ecuador*/**	ca. 1.100.000	(14,7)
Guatemala*/**	More than 6.000.000	60
Honduras <sup>o</sup> */**	1.270.000	Ca. 14
Mexico*/**	16.933.283	15,1
Nicaragua	ca. 600.000	(9,79)
Panama*	ca. 418.000	12
Paraguay	113.000	(1,6)
Peru*/**	More than 4.000.000	14
Suriname	20.344	3,8
Venezuela	(ca. 840.000)	2,8

<sup>o</sup>Data for Honduras is from the 2015 yearbook; \*more than 10% of total population; \*\*more than 1.000.000 Indigenous individuals

**Table 21: States with Indigenous populations in Latin America. Source: author's compilation.**

Country	No. of Indigenous persons	% of total population
Australia	670.000	3
Canada**	1.400.000	4,3
Denmark [Greenland]	ca. 50.000	(0,89)[88 in Greenland]
Finland	8.000	0,16
New Zealand*/**	(ca.675.000)	15
Norway	50.000-65.000	1,06-1,38
Russia**	260.000 recognized by government; several million unrecognized	0,2 (recognized by government)
Sweden	20.000	0,22
USA**	5.100.000	1,7

\*more than 10% of total population; \*\*more than 1.000.000 Indigenous individuals

**Table 22: States with Indigenous populations in Europe, North America, and the Pacific. Source: author's compilation.**

Country	No. of Indigenous persons	% of total population
Bangladesh**	up to 5.000.000	(up to 3)
Burma	n.a.	n.a.
Cambodia	(160.000-320.000)	1-2
China**	113.792.000	8,49
India**	84.300.000	8,20
Indonesia*/**	50-70 million	(20 or more)
Israel	225.000	2,7
Japan**	1.417.000	(Ca. 1)
Laos	n.a.	n.a.
Malaysia*/**	(4.309.000)	13,9
Nepal*/**	(9.5-13 million)	35-50
Philippines*/**	10-20.000.000	10-20
Taiwan	535.000	2,28
Thailand	923.257	(ca.1,3)
Vietnam*/**	13 to 14 million	14

\*more than 10% of total population \*\*more than 1.000.000 Indigenous individuals;

**Table 23: States with Indigenous populations in Asia. Source: author's compilation.**

Country	No. of Indigenous persons	% of total population
Algeria*/**	11 million	up to 30
Angola <sup>o</sup>	ca. 24.000	0,1
Botswana	ca. 66.000	3,3
Burkina Faso	n.a.	n.a.
Cameroon**	more than 1.044.300	More than 12,40
Central African Republic	more than 60.000	(ca 1)
Congo Brazzaville	300.000	Up to 10
Democratic Republic of Congo**	up to 2.000.000	Up to 3
Ethiopia*/**	14.25 million	Ca. 15
Kenya*/**	(ca. 12 million)	ca. 25
Mali**	(ca. 1.400.000)	8
Morocco*/**	up to 20.000.000	up to 70
Namibia	ca.129.000	8
Niger <sup>o</sup> */**	1.689.000	18,3
Rwanda	33.000-35.000	0,3
South Africa	ca. 500.000	around 1
Tanzania	ca. 524.000	( up to 1)
Tunesia*/**	around 1.000.000	Around 10
Uganda**	Ca. 1.000.000	(ca. 2,5)
Zimbabwe	3800	0,03

<sup>o</sup>Data for Angola and Niger is from the 2015 yearbook; \*more than 10% of total population; \*\*more than 1.000.000 Indigenous individuals

**Table 24: States with Indigenous populations in Africa. Source: author's compilation.**

International organisations with work relevant to IPs were included in the sample. Relevance in this context was defined by the number of recommendations by either the PFII or EMRIP addressing a specific IO or UN body. IOs that had 8 or more PFII recommendations<sup>271</sup> or EMRIP advice<sup>272</sup> directly targeting them were included in the sample, and are highlighted with light grey. Two lists of agencies were compiled, one containing members of the IASG, and another containing other UN bodies and IOs relevant to the mandate of the PFII and EMRIP. This second list was done to prevent overlooking organizations which have been less receptive to Indigenous issues. However, there are only a very limited number of organizations regularly addressed by the Permanent Forum or EMRIP which are not yet members of the IASG. Additionally, the EU was included in the IO sample as a major donor (see Table 25 and Table 26).

<sup>271</sup> The number of 8 was chosen as a threshold because it meant that the Forum had issued recommendations to the IO regularly (on average once every second session).

<sup>272</sup> EMRIP advice was far less regularly directed to IOs and only occurred in a limited number of instances. In a number of cases, advice was also directed very generally to e.g. "financial institutions" or "human rights treaty bodies". In these cases, the respective institutions have been marked as having been mentioned indirectly in the table.

International Organization/ UN body, program or agency	PFII recommendations addressing IO	EMRIP advice addressing IO
African Development Bank	4	indirectly
Commonwealth Secretariat	-	
Economic Commission for Latin America and the Caribbean (ECLAC)	7	
European Union*	2	
Fondo para el Desarrollo de los Pueblos Indígenas de América Latina y El Caribe	-	
Food and Agriculture Organization of the United Nations (FAO)	28	
Inter-American Development Bank (IADB)	6	indirectly
Inter-Parliamentary Union	2	
International Fund for Agricultural Development (IFAD)	29	
International Labour Organisation (ILO)	27	yes
International Land Coalition Secretariat	1	
International Organization for Migration (IOM)	6	
Liaison Office of the UN Regional Commissions	-	
Secretariat for the Convention on Biological Diversity (SCBD)	34	yes
Office of the UN High Commissioner for Human Rights (OHCHR)	60	
Office of the United Nations Special Representative of the Secretary-General on violence against children	1	
United Nations Children's Fund (UNICEF)	72	
United Nations Conference on Trade and Development (UNCTAD)	1	
UN Department of Economic and Social Affairs (DESA)	11	
UN Department of Political Affairs (DPA)	-	
UN Department of Public Information (DPI)	3	
United Nations Development Program (UNDP)	72	
UN Educational Scientific and Cultural Organization (UNESCO)	54	yes
United Nations Environment Program (UNEP)	19	indirectly
UN Framework Convention on Climate Change (UNFCCC)	11	indirectly
United Nations Forum on Forests (UNFF)	4	
United Nations Global Compact	2	
United Nations Human Settlements Program (UN-HABITAT)	10	
United Nations Industrial Development Organization (UNIDO)	-	
United Nations Institute for Training and Research (UNITAR)	6	
United Nations Non-Governmental Liaison Service (NGLS)	-	
United Nations Office of the Coordination of Humanitarian Affairs (OCHA)	1	
United Nations Population Fund (UNFPA)	25	yes
United Nations Program on HIV/AIDS (UNAIDS)	9	
United Nations System Staff College (UNSSC)	-	
United Nations University, Institute of Advanced Studies	1	
UN Women <sup>273</sup>	22	
World Bank	42	yes
World Food Programme (WFP)	3	
World Health Organization (WHO)	42	yes
World Intellectual Property Organization (WIPO)	29	yes
World Tourism Organization (UNWTO)	1	

\*included as a major donor.

**Table 25: Members of the IASG and number of recommendations addressing them. Source: author's compilation.**

<sup>273</sup> Including recommendations directed towards the predecessor UNIFEM.

International organization/ UN body or program	PFII recommendations addressing IO <sup>274</sup>	EMRIP Advice addressing IO
African Commission on Human and Peoples' Rights	4	
African Union	4	
Asian Development Bank	8	indirectly
Association of South East Asian Nations (ASEAN)	2	
Committee on the Elimination of Racial Discrimination	5	indirectly
Committee on the Rights of the Child	7	indirectly
Department of Peacekeeping Operations (DPKO)	3	
ECOSOC	10	
General Assembly	8	
Global Environmental Facility (GEF)	2	
Global Fund to Fight AIDS, Tuberculosis and Malaria	6	
Human Rights Council	16	
Inter-Agency Support Group on Indigenous Issues (IASG)	29	
Intergovernmental Panel on Climate Change	1	
International Monetary Fund	4	indirectly
International Union for Conservation of Nature	1	
Organization for Economic Cooperation and Development	1	
Organization of American States (OAS/OEA)	3	
Stockholm Convention on Persistent Organic Pollutants	1	
UN Convention to Combat Desertification (UNCCD)	2	
UN Development Group (UNDG)	4	
United Nations Office for Disaster Risk Reduction (UNISDR)	1	yes
UN-REDD Program	3	indirectly
World Trade Organization (WTO)	3	

**Table 26: IOs and UN bodies not listed as members of IASG with a mandate relevant to Indigenous peoples, and no. of recommendations addressing them. Source: author's compilation.**

Lastly, a number of prominent IPOs that have a clear focus on advocacy for Indigenous rights were selected during the sampling process. This was the most difficult list to compile, as no comprehensive list of important IPOs could be found which could have served as a starting point. Moreover, information on IPOs is not always easy to obtain. Therefore, I had to rely on compiling my own list. Several guiding criteria helped me in this context: Organizations were only selected if they engaged in global level advocacy regarding IPs. Moreover, they had to have a board of directors that was constituted of Indigenous persons. Moreover, preference was given to organizations that had a broad geographical focus (spanning a whole country or a number of countries). To assure for geographical balance, sampling was undertaken separately for the seven Indigenous regions that serve as a basis for selecting members of the Permanent Forum and EMRIP.

<sup>274</sup> As of February 2017. See PFII recommendations database, [https://esa.un.org/unpfidata/UNPFII\\_Recommendations\\_Database\\_list.asp](https://esa.un.org/unpfidata/UNPFII_Recommendations_Database_list.asp), accessed 05.02.2019.

Indigenous organizations with an international approach were included in an additional category. All IPOs listed in Table 27 were included in the sample.<sup>275</sup>

Name of IPO	Geographic focus
International Alliance of Indigenous and Tribal Peoples of the Tropical Forests	International
International Indigenous Women's Forum - Foro Internacional de Mujeres Indígenas	International
Tebtebba Foundation	International
International Indian Treaty Council	International
Indigenous Peoples of Africa Coordinating Committee (IPACC)	Africa
Congrès mondial Amazigh	Africa/North Africa
Working Group of Indigenous Minorities in Southern Africa (WIMSA)	Africa/Southern Africa
Mbororo Social and Cultural Development Association (MBOSCUDA)	Africa/Cameroon
Mainyoto Pastoralist Integrated Development Organization (MPIDO)	Africa/Kenya
Indigenous Information Network (IIN)	Africa/Kenya
Ogiek Peoples' Development Program (OPDP)	Africa/Kenya
Movement for the survival of the Ogoni people (MOSOP)	Africa/Nigeria
Communauté des Potiers du Rwanda (COPORWA)	Africa/Ruanda
South African San Institute (SASI)	Africa/South Africa
Inuit Circumpolar Conference (ICC)	Arctic
Saami Council	Arctic
Asia Indigenous Peoples Pact Foundation (AIPP)	Asia
Bangladesh Indigenous Peoples Forum	Asia/Bangladesh
Parbatya Chattagram Jana Samhati Samiti n (PCJSS)	Asia /Bangladesh
Aliansi Masyarakat Adat Nusantara (AMAN)	Asia/Indonesia
Partners of Community Organizations (Pacos Trust)	Asia/Malaysia
Chin Human Rights Organization	Asia/Myanmar
Nepal Federation of Indigenous Nationalities (NEFIN)	Asia/Nepal
Cordillera Peoples Alliance	Asia/Philippines
Coordinadora de las Organizaciones Indígenas de la Cuenca Amazonica (COICA)	Latin America/Amazon Basin
Coordinadora Andina de Organizaciones Indígenas (CAOI)	Latin America/Andean Countries
Consejo de Todas las Tierras	Latin America/Chile
Organizacion Nacional Indígena de Colombia (ONIC)	Latin America/Colombia
Confederación de las Nacionalidades Indígenas del Ecuador (CONAIE)	Latin America/Ecuador
Assembly of First Nations	North America/Canada
Congress of Aboriginal Peoples (CAP)	North America/Canada
American Indian Law Alliance	North America/USA
Indian Law Resource Center	North America/USA
National Congress of American Indians (NCAI)	North America/USA
New South Wales Aboriginal Land Council	Pacific/Australia
L'auravetli'an Information and Education Network of Indigenous People (LIENIP)	Russian Federation
Russian Association of Indigenous Peoples of the North, Siberia and Far East (RAIPON)	Russian Federation

**Table 27: Important Indigenous peoples' organizations and networks with a focus on global advocacy (not exhaustive). Source: author's compilation.**

<sup>275</sup> However, I do not claim that the list originating from this sampling strategy is exhaustive in any respect.

Members of the respective institutions constituted a separate category; however, due to their limited number, no further sampling was necessary. Sample actors were taken into account both with regard to the analysis of behavioral patterns and the analysis of statements.

### **8.2.2 Legitimation discourses**

Statements made during recent PFII and EMRIP sessions comprised several hundreds of texts, making further selection necessary. Therefore I will outline the criteria by which I selected texts for an analysis of perceptions of legitimacy. In a second step, I will also provide further information regarding text analysis.

#### **Text selection**

As outlined in Chapter two, the analysis of legitimation discourses surrounding Indigenous issues at the United Nations relied on statements made during recent sessions of the PFII and EMRIP. In recent years, the Permanent Forum realized a review of its working methods and the Expert Mechanism underwent a major review of its mandate. Sampling concentrated on statements from the respective years due to the expectation that statements from this timeframe would contain comparatively much legitimation.

1. Priority was given to statements made at PFII sessions 2014, 2015 or 2016 and at EMRIP sessions 2015, 2016 and 2017 respectively. Only if no such statement was available, statements that were made directly prior to this period were taken into account.
2. All statements from 2014, 2015 and 2016 which explicitly dealt with PFII reform or its methods of work were selected (even if authors of statements were not part of the sample). In the case of EMRIP, this included all statements referring to EMRIP reform from 2015, 2016 and 2017. While these texts are not necessarily by the most representative organizations, I argue that their close connection to the issue at stake (evaluation of the PFII/ EMRIP) by itself justifies the inclusion of these texts.

3. If no such statement was available for a certain actor who was part of the sample, preference was given to statements that dealt with Indigenous participation at the UN, at the international level or with Indigenous participation in the own state.<sup>276</sup>
4. Up to two statements were chosen for each actor who was part of the sample.<sup>277</sup>
5. If there were several statements falling into the same category, the most recent ones were chosen.
6. As there were practically no recent statements at PFII and EMRIP sessions from African governments that were part of the sample, I also took into account statements from other African states.
7. Additionally, a number of collective statements were selected following the same principles as outlined above. For IPOs, this especially included statements made by caucuses when available, including regional and thematic caucuses. For states, a statement by the Group of Friends has been selected, and for agencies, statements by the IASG. I argue that these statements are of specific relevance given that they have been agreed upon by broad actor coalitions.

A total of 110 Texts were chosen for both the PFII and EMRIP, including 40 texts from states, 20 texts from IOs,<sup>278</sup> 40 texts from IPOs and 10 from members of the PFII. In the case of EMRIP, I only selected five statements from members, as the institution only had five members in the timeframe under consideration. Instead, to allow for the comparability of results between both institutions, I selected another five statements from NHRIs, as these are increasingly important actors at EMRIP sessions. Texts were not available from all organisations identified in the sampling strategy. A complete list of all selected statements is provided attached to the Bibliography.

### **Text analysis**

The text sample was then screened to identify legitimisation statements (see Chapter two), and all legitimisation statements were filed in a list. This list registered with regard to each statement: (1) the constituency to which the speaker belonged, (2) legitimisation

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<sup>276</sup> Due to lacking language skills, I have not been able to take into consideration statements which were exclusively available in Russian. If possible, I resorted to the translation of the respective text as available by UN interpreters through the screening of sessions on UN Web TV. In turn, documents in French, Spanish, or English have been used for analysis.

<sup>277</sup> Three Statements were selected for the Nordic States (Denmark, Finland, Norway, and Sweden) as they delivered collective statements.

<sup>278</sup> This lower number reflects the fact that the number of IOs participating at sessions of the Permanent Forum and EMRIP is also considerably lower than numbers of governmental and Indigenous observers.

object and (3) pattern, (4) whether the statement contained legitimation or delegitimation, as well as (5) to which level of the legitimation hierarchy the targeted object belonged. These elements were then analyzed both with regard to total numbers and at the level of each constituency with the aim of answering the following questions:

- How many statements containing legitimation were there overall, and by each constituency? This question aimed at finding out how salient legitimacy-related issues and problems were (legitimation intensity). Given the context of institutional reform, it was expected that a lot of attention would be given to legitimacy-related issues.
- With regard to objects of legitimation, which institutional features are at the center of debate and how much discursive support do they enjoy? Objects of (de)legitimation were then clustered following the hierarchy of (de)legitimation as outlined in Chapter two (legitimation objects and levels).
- Are there significant differences observable between the constituencies or within constituencies with regard to legitimation discourses?

Thus, text analysis encompassed both quantitative and qualitative elements. On the one hand, identifying and coding legitimation statements involved careful reading and understanding of texts. On the other hand, coded statements were compared with regard to frequency distributions (p. ex. as regards the legitimation objects, and as regards different stakeholder groups). The results of this analysis are presented in Chapter four, Section 4.4.

### **8.2.3 Behavior**

In Chapter two, I have suggested how political behavior may serve as an indicator of low, medium, and high institutional legitimacy. The following paragraphs will elaborate upon the concrete indicators that were used in the context of researching the legitimacy of Indigenous-specific UN institutions, as well as on data collection and analysis.

#### **Indicators and data collection**

In Chapter two, Section 2.3.2, I have suggested relying on indicators which capture attendance to sessions and engagement with PFII and EMRIP to measure legitimacy. With regard to attendance, I took into account the number of participating organizations, as well as development of attendance over time. No reliable source could



be detected which offered absolute numbers of participants, and even when reports or studies referred to participant numbers, these were generally rounded numbers and not broken down with regard to different constituencies. Therefore, I relied on the lists of participating organizations as compiled in UN documents. For the PFII, names of attending delegations are compiled in an extra document,<sup>279</sup> which contains lists of entities represented by delegations clustered into different categories: states; IOs, UN bodies and specialized agencies; NGOs in consultative status with ECOSOC; Indigenous peoples' organizations; academic institutions; bodies represented by Indigenous parliamentarians; and national and regional human rights institutions. For EMRIP, these lists are contained in the official report of the session. In this context, a difficulty consisted in exactly calculating the number of participating IPOs, as those with ECOSOC consultative status generally are listed as NGOs. Thus, for calculating numbers of IPOs, I added up IPOs as mentioned in the report and NGOs with ECOSOC status that I identified as Indigenous organizations. To allow for comparison over time, I compiled numbers of participating delegations both for two recent sessions (from the years of reform, as outlined above), and for two earlier sessions. In the case of the PFII, I compared recent numbers to those from 10 years earlier. In the case of EMRIP, I relied on data from its first sessions as a measure of comparison, as its first session only took place in 2008.

With regard to engagement and alignment of policies, indicators differed to some degree between constituencies. This was due to the fact that opportunities for engagement as well as available data also differed between constituencies. The concrete indicators which have been used in each case are therefore outlined directly in the respective sections in Chapter four. Some general remarks are nevertheless necessary and possible with regard to the identification of relevant indicators.

For each constituency, I identified indicators which captured both direct engagement at sessions, and responsiveness to the PFII or EMRIP. With regard to the former, data on statements made during sessions as well as active engagement in the (co-)organization of a side-event was compiled for all constituencies. Additional indicators were selected for each constituency by looking for opportunities which actors from the respective constituencies had to engage actively, and for which data was available. This included information on whether a state or IO had sent high-level participants to the Permanent

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<sup>279</sup> Published i.a. on the web page of the respective PFII session. Official UN doc. No: E/C.19/[year]/INF/1.

Forum or EMRIP, as this demonstrates specific importance given to the respective institution. For the PFII, I additionally registered which states had an own national appointed to the PFII, and which IPOs had members nominated to the Forum.<sup>280</sup> I assume that both states and IPOs must have significant interest in the PFII if they engage in putting forward a (potential) member of the body.

With regard to the alignment of policies, indicators were more difficult to identify, as direct action or even policy change in response to recommendations of the PFII and EMRIP is difficult to observe. States and IOs have been asked to report to the PFII on the implementation of recommendations; however, these reports rather seem to compile actions which states realize in the areas of work of the PFII than to reflect unique responses to recommendations made by the Forum. Moreover, only a limited number of states and IOs have submitted reports in recent years. Therefore, I relied on a number of other indicators as a proxy. First, I registered responses to concrete requests by the PFII and EMRIP to support their work at sessions. This included reports by states and IOs to the PFII on their relevant policies and, since 2016, reports on activities by IPOs. For EMRIP, this included the provision of input to its studies by all constituencies, and responses to a questionnaire on the state of implementation of UNDRIP by IPOs and states. Second, I also took into account actions in response to some very concrete recommendations of the PFII and EMRIP for which the respective information was comparatively easy accessible. For the PFII, this included the hosting of a pre-sessional meeting, donating money to the Voluntary Fund for states, and the adoption of a specific strategy on Indigenous peoples for IOs. With regard to EMRIP, I took into account whether a state had hosted an inter-sessional meeting of EMRIP, and which states and IPOs actively participated in the mandate review by assisting to the expert seminar organized to discuss the review, or by a written contribution. Additionally, as outlined in Chapter two, I also took into account unconventional behavior by IPOs.

### **Analysis of behavioral indicators**

Information regarding the specific indicators was collected with regard to the specific IPOs, IOs and states identified by the sampling strategy outlined above and, where possible, also on an aggregated basis. With regard to states and IOs, I also took into

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<sup>280</sup> For EMRIP, no such data was available, as candidates can apply for membership themselves.

account whether there were other active participants which were not part of the sample – this was not possible with regard to IPOs due to the high number of Indigenous participants. All information gathered was compiled in a list.

Indicators for individual entities (states, IOs, and IPOs) were codified in a binary way (positive/negative). This required a definition of thresholds for certain indicators (for example how many statements by a participant were necessary to qualify for positive engagement); if this was the case, these thresholds are noted in footnotes to the text in Chapter four. Each indicator was weighed equally. Subsequently, for each entity part of the sample I analyzed for how many indicators it scored positively, and clustered participants of each constituency into groups of very active, less active and inactive participants. The respective thresholds were set individually for each constituency depending on the total number of indicators used. Results of this analysis are presented in Chapter four, Section 4.4.

### **8.3 Data collection and analysis for tracing causal mechanisms**

Within the context of the research project, interviews were used to detect the workings of causal mechanisms as well as of important condition variables. As outlined above, interviews can serve as an adequate methodological tool to get deep knowledge of the specific case and to trace causal mechanisms (Trampusch & Palier 2016: 450). However, there is a broad spectrum of different techniques for interviews differing with regard to the degree the interviewer directs and controls the progressing interview (Blatter et al. 2007: 60–61). While in narrative interviews, the interviewer gives only an initial stimulus for narration, other interview forms make use of interview guidelines that pre-structure the interview to different degrees. Therefore, the researcher should describe in detail how interviews have been conceptualized and carried out (Kruse 2014: 151–152). This is what I do in the following paragraphs.

#### **8.3.1 Basic considerations and preparations**

The first task consisted in deciding about the adequate methodology with a view to the research interest. In other words, I had to ask myself which actors possibly had relevant knowledge with regard to Indigenous access to the UN, and through which type of interview I could get this information from these actors most effectively. I was

specifically interested in process knowledge of actors, i.e. knowledge regarding procedures, interactions, or specific routines, as well as in individual perceptions, interpretations and evaluations of these processes (interpretation knowledge). The importance of interpretation knowledge implies that the interview partner is in focus, at least to some degree, as a private person (Bogner & Menz 2009: 72).

Participants to both the PFII and EMRIP were identified as those actors which most probably held relevant process and interpretation knowledge about the proceedings, benefits and challenges of Indigenous participation which impact on perceptions of legitimacy. This more specifically included observers to the PFII and EMRIP as well as members and secretariat staff which most probably would all have different perspectives and insights regarding processes. In this regard, interviews with members of the respective institutions proved especially rich, because these often were persons who had been involved in Indigenous affairs for decades and had in-depth knowledge about both observer and member-related mechanisms. Moreover, my research interest which aimed at capturing not only the perspectives of Indigenous peoples themselves but also of other constituencies collaborating with IPs in the context of the UN required that interviews needed to be conducted with actors from a broad range of backgrounds, including state officials and staff of UN programs and agencies. This enabled me to also explore whether there were significant deviances with regard to perceptions and evaluations of the respective constituencies regarding Indigenous-specific UN institutions.

### **Key Informant Interviews and Interview Guidelines**

I decided to rely on key informant interviews as methodological approach. Key informant interviews as a variant of guideline interviews are characterized by the fact that interviews are centered on interview partners as representatives of their group with regard to system knowledge, perceptions, and behavior (Kruse 2014: 168–169). They are conducted with the help of guidelines which structure the process of interviewing. Relying on a guideline for interviews seemed to be the adequate approach in the context of this study as I did approach interview partners with some background knowledge, and one goal of the dissertation consisted in testing previously elaborated hypotheses. In this context, the quality of data generated depends both on the guideline

itself (p. ex. the way questions are formulated), and on the application of the guideline in concrete interviews (ibid.: 215). I will elaborate on both aspects here.

For developing the interview guideline, I followed the SPSS model<sup>281</sup> for interview guideline development (Helfferich 2009: 182–185): In a first step, as many questions as possible were generated. These questions then were checked with regard to the following aspects: first, questions had to ask for more than just facts. Second, questions should produce answers which would be adequate to answer the research question. Moreover, they should be formulated in an open way to generate narrative answers. The questions should also explicitly be oriented to generating new knowledge, and not be determined by the expected answers. And lastly, questions should produce answers which reflect the concepts of interview partners, not the researcher's own theoretical concepts.

Questions which were not considered adequate during checking were deleted. The remaining questions then were sorted into thematic groups: With regard to each topic, the interview guideline consisted of a set of questions, beginning with an open stimulus which gave interview partners the possibility to answer following personal priorities and relevance systems. Additionally, I prepared questions to invite the interviewee to keep on talking, and more concrete inquiries (Kruse 2014: 213–219). I then sorted and subsumed these sets of questions into a first version of an interview guideline. Finally, I reworked the phrasing of questions following the hints and instructions given by Kruse (ibid.: 219–229), and elaborated slightly different versions for different constituencies, and for participants of both EMRIP and PFII. After the first round of interviews, the guideline was slightly adapted. This especially concerned the wording of one question, which did not produce valuable answers, probably because it was formulated in a too open way which overstrained interview partners and did not generate valuable answers.

In interviews, the guidelines were used spontaneously in reaction to the progressing interview. This corresponds to the advice given by Flick (2011: 222–223) for the application of interview guidelines: the interviewer should in the course of each interview spontaneously decide when, in which sequence, and if at all she poses the prepared questions. Moreover, in each case she should decide spontaneously if and

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<sup>281</sup> The letters SPSS refer to the German words *sammeln*, *prüfen*, *sortieren*, *subsumieren* (to collect, check, sort and subsume).

when more detailed inquiries are needed, depending on the narration of the interview partner on the one side and the research interest on the other. Interview guidelines were generally not made known to interview partners in advance. However, upon request I did make a basic set of questions (main question of each block, see Figure 19) available to the interview partners before the interview took place. In one case, however, this led to strong irritations during the interview, as the interview partner did not expect any additional question and was irritated whenever the interview guideline was not followed tightly.

<p>Set 1: How did you become engaged in/did you start working for [name of state/IO/IPO]?</p> <ul style="list-style-type: none"> <li>• Ice-breaker question, personal background</li> </ul> <p>Set 2: Please describe to me the activities and work of [name of state/IO/IPO] with respect to Indigenous issues at the UN.</p> <ul style="list-style-type: none"> <li>• Background information on UN activities</li> </ul> <p>Set 3: What are the objectives [challenges] of participating as an observer at EMRIP [PFII]?</p> <ul style="list-style-type: none"> <li>• Motivation for participation, positive effects and challenges benefits of open access</li> </ul> <p>Set 4: In your opinion, what do you think about the specific composition of the PFII [EMRIP]?</p> <ul style="list-style-type: none"> <li>• Advantages and challenges connected to member access</li> </ul> <p>Set 5: In a general way, how do you judge the PFII [EMRIP]?</p> <ul style="list-style-type: none"> <li>• Evaluation of institution, legitimacy</li> </ul> <p>Set 6: What changes have been achieved by Indigenous peoples as a result of their work at the UN?</p> <ul style="list-style-type: none"> <li>• Results and achievements of UN activism</li> </ul> <p>Set 7: In your opinion, how would ideal Indigenous participation at the PFII [EMRIP] look like?</p> <ul style="list-style-type: none"> <li>• Success factors, suggestions for improvement for Indigenous access</li> </ul> <p>Set 8: Is there anything that is especially important to you that has not come up during our conversation and that you would like to mention specifically?</p> <ul style="list-style-type: none"> <li>• Open question and free statement</li> </ul>
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**Figure 19: Thematic blocks of interview questions. Source: Author's elaborations.**

### Selection of interview partners

In total, 37 interviews have been conducted. In general, I followed a mixture of a gatekeeper approach and snowball-system to identify potential interview partners (Kruse 2014: 255–256). In a first step, I personally or via email contacted some very well-known activists and experts in the field, government officials who had assisted to the PFII or EMRIP for several years, and focal points of international organizations. When people reacted to the interview request, I asked them with who else I should talk about the topic. This proved especially fruitful with regard to contacts with government

officials or activists as those were not openly available, whereas contacts of relevant staff of UN programs and agencies were more easily obtained.

During the first interviews with experienced Indigenous activists, it became apparent that the experience, knowledge and oftentimes the resources determined the ability of Indigenous activists to effectively engage at institutions dealing with Indigenous issues. Interview partners frequently alluded to the lack of capacities of other participants to engage. Gläser and Laudel (2009) have pointed to the problem that the quality of experts which are being interviewed might determine both their perceptions and description of certain phenomena, and/or might also lead to them experiencing different situations/phenomena as a consequence of differing abilities. Therefore, I decided to also interview some less experienced observers and grassroots participants. These actors were selected more randomly by contacting them during sessions.

I also took into account the origin of interview partners. With regard to government delegates, I tried to identify interview partners from the five different geographical groups used in the UN context.<sup>282</sup> However, I only was able to conduct interviews with government officials from states which had comparatively advanced policies regarding Indigenous issues. Even within this group, one interview partner requested that the interview would not be recorded. Interview partners were either staff of New York missions of a country, or experts working within the state. Realizing that the latter often had more detailed knowledge with regard to the questions asked, I focused more strongly on identifying this type of actor.

With regard to Indigenous peoples, I tried to interview individuals from each of the seven Indigenous socio-cultural regions as defined by the Permanent Forum. However, mainly due to lack of competence in language, I have only been able to interview one individual from Eastern Europe/ Russia, and one from Africa, in comparison to three to five persons from the other regions. However, this sample still guaranteed that there were both a significant share of interview partners from “western” states (US, Australia, northern Europe) and from the global South (Africa, Asia, Latin America).

Within international organizations, I conducted interviews with “Indigenous Focal Points”, the main person within each organization responsible for issues related to IPs.

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<sup>282</sup> Western Europe and Others; Eastern Europe; Latin America and the Caribbean; Africa; Asia-Pacific.

The sample included both organizations with a long-standing engagement, and organizations which had only lately developed an interest in Indigenous issues. An additional number of interviews have been conducted with people who closely follow Indigenous participation at the United Nations, such as representatives from NGOs and staff of the PFII Secretariat.

### 8.3.2 Realization of interviews

Experts often have tight schedules which can result in time constraints regarding the realization of interviews (Flick 2011: 218). This was a limiting factor especially for interviews conducted during sessions of Indigenous-specific UN institutions. During sessions, possible interview partners had a lot of other things to do which left less time for extensive interviews. Moreover, interviews were regularly interrupted by third persons approaching interview partners with questions. Therefore, I offered the opportunity to possible interview partners which I contacted during sessions to make an appointment for a telephone interview carried out a few weeks later. It has been argued that interviews conducted via phone are characterized by specific difficulties (Christmann 2009): This is especially due to the fact that communication via telephone is limited to verbal elements, thus restricting the ability of the interviewer to signal interest and potentially unsettling interview partners. Moreover, external perturbations such as a third person entering the interview partner's room are not easily discernible for the interviewer. Third, interview partners might be less focused or concentrated during a phone call than in a face-to-face meeting. While these factors certainly have to be accounted for, telephone interviews nevertheless seemed to be the more practicable option given that the challenges of face-to-face interviews during meetings of the Permanent Forum or the Expert Mechanism were even bigger, and interview partners were located all over the world. A total of 37 interviews<sup>283</sup> have been conducted (see Figure 20).

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<sup>283</sup> When the interviews I-PAC2 and G-WEO4 were initiated, a second interview partner was present and also answered the initial questions. However, in both cases, this second person left the interview after the starting phase and the main part of the interview was realized with just one interview partner.



<p><b>Interviews with indigenous activists:</b>  I-ARC1: Via telephone, 22.12.2008  I-ARC2: New York, 23.04.2008  I-ARC3: Geneva, 12.07.2017  I-AS1: Via telephone, 11.12.2008  I-AS2: Via telephone, 07.01.2009  I-LA1: Panama City, 07.04.2008  I-LA2: Panama City, 08.04.2008  I-LA3: Panama City, 09.04.2008  I-NA1: San Francisco, 27.03.2008  I-NA2: New York, 08.05.2008  I-NA3: Via telephone, 22.12.2008  I-NA4: Geneva, 14.07.2017  I-PAC1: New York, 24.04.2008  I-PAC2: Geneva, 13.07.2017</p> <p><b>Interviews with state officials:</b>  G-AS1: New York, 25.02.2009  G-LAC1: New York, 20.02.2009  G-WEO1: New York, 25.02.2009  G-WEO2: Via telephone, 18.03.2009  G-WEO3: Via telephone, 26.03.2009  G-WEO4: Geneva 14.07.2017,  continued via telephone, 17.08.2017</p>	<p><b>Interviews with IO officials:</b>  IO1: New York, 26.02.2009  IO2: Via telephone, 25.03.2009  IO3: Via telephone, 27.03.2009  IO4: Via telephone, 05.03.2009  IO5: Via telephone, 01.04.2009  IO6: Via telephone, 18.03.2009  IO7: Via telephone, 19.03.2009</p> <p><b>Interviews with members of PFII and EMRIP:</b>  MEM-I1: Via telephone, 24.08.2017  MEM-I2: Geneva, 14.07.2017  MPF-G1: New York, 28.04.2008  MPF-G2: Via telephone, 27.03.2009  MPF-I1: New York, 30.04.2008  MPF-I2: Geneva, 02.10.2008</p> <p><b>Interviews with other experts:</b>  EXP1: New York, 25.04.2008  EXP2: New York, 18.02.2009  EXP3: New York, 20.02.2009  EXP4: Geneva, 12.07.2017</p>
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**Figure 20: List of interviews. Source: author's elaborations.**

Interviews were conducted either in English or Spanish. Given the diversity with regard to the geographical background of interview partners, many interview partners were not native speakers. It has been argued that interview partners should be questioned in their own language whenever possible (even when this implies that the interviewer uses a language foreign to her) as this will allow for more simple as well as more productive and easy-flowing communication (Kruse 2014: 321). However, in many cases I did not master native languages of interview partners. Doing interviews in their languages would have implied delegation and subsequent translation of interviews, or the use of interpreters. Moreover, taking this approach seriously would have meant working in many different languages (including in many cases Indigenous languages) and recurring to the help of many different persons. This did not seem a practical option. While doing only English and Spanish interviews excluded some possible interview partners, it still included a sufficiently big group with very diverse geographical and cultural backgrounds. Moreover, as the interviews were conducted with persons used to interacting within a United Nations context, interview partners were used to working in UN languages. Thus, while some interviews contain pronunciation, grammatical and/or

vocabulary mistakes, interview partners were generally able to produce ‘flowing’ text even when they were talking in a foreign language.<sup>284</sup> As translation always also contains elements of interpretation (Kruse 2014: 323), during interview analysis I continued to work with Spanish original interviews and only translated those passages which are used in the final text of the dissertation.

Before the interview, participants were assured that the information gained would be treated as confidential, in the sense that I would not cite them by name. All findings would be aggregated and/or anonymized by the use of code names, so that individual participants could not be identified. Interview participants signed an agreement of the confidentiality of information (Helfferich 2009: 190–192). Interviews were generally taped. In one case a person revoked his consent to tape the conversation just when the interview was about to start so that I just took notes during the interview and completed them from my memory afterwards. To anonymize interviews, each was accorded a specific code which combined

- a reference to the specific constituency (I for Indigenous activists; G for government officials; IO for officials of the UN system and international organizations; MEM for EMRIP members; MPF for PFII members; and EXP for other experts)
- for interview partners from states, a reference to their geographical background (AS for Asia, LAC for Latin America and the Caribbean, WEO for Western European and Others)
- for Indigenous interview partners, a reference to their geographical background (ARC for Arctic, AS for Asia, LA for Latin America, NA for North America, PAC for Pacific)
- and a consecutive number (see Figure 20).

The conduct of interviews was characterized by interaction effects to different degrees (Abels & Behrens 2009; Bogner & Menz 2009), depending on the interview partner. While the paternalism, iceberg and feedback effect impacted on the realization of single

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<sup>284</sup> It has even been argued that in some cases it might be beneficial to rely on a foreign language for the conduct of an interview, as interview partners might express context in more creative ways when recurring to other languages than their mother tongue (Kruse 2014: 323). However, this was not so much the case in the interviews conducted for the dissertation, as interview partners were generally used to express themselves in English/ Spanish within the context of Indigenous issues at the UN.

interviews, especially the category of race (Indigenous vs non-Indigenous) was very present during many interview situations. Several interview partners asked me before, during, or after the interview whether I was Indigenous, or for what other reason I had decided to focus on a topic related to Indigenous rights. This was possibly due to the fact that many scientists within the field have been or are, to differing degrees, also engaged as activists. However, it did in some cases result in interview situations in which I was seen as an accomplice, while in some other interviews, especially with Indigenous individuals, I also seem to have been identified as a potential critic. To some degree, an “inversed ethnic paternalism effect” was observable during some interview situations, in the sense that I felt like an intruder into a field which some Indigenous activists feel should be researched by Indigenous peoples themselves. This to some degree resulted in a more contained, cautious performance by me during interviews. Therefore, I did reflect on interaction effects as one step during interview analysis. Postscripts realized after the interview were especially important in this regard. Postscripts contained information with regard to the atmosphere of interviews, the mental state of interviewer and interview partner as well as our relationship; the dynamic of the interview, interaction effects, outstanding topics on which the interview had touched (or not touched), interruptions of the interview or other perturbations, and any other particularity which seemed of specific importance for the interview situation (Kruse 2014: 284–285).

### 8.3.3 Interview transcripts

The taped interviews were then transcribed to allow for content analysis. How transcription should be done correctly to best serve the interests of research projects has been the subject of considerable debate. On the one hand, it has been argued that transcripts need to be as complete as possible. This especially means that one not only needs to transcribe *what* is being said (i.e. noting down words), but also *how* it is being said (i.e. prosody, punctuation, para-verbal features). Otherwise later the content of interviews might be misinterpreted, as for example irony cannot be identified in incomplete transcripts (Kruse 2014: 351–353). Other authors have argued for the use of compromises and shortcuts. For example, Flick (2011: 379) argues that apart from being time- and energy-consuming, too much precision in transcription can result in confusing transcripts which might even be more difficult to interpret.

In this thesis, the following pragmatic approach between the extremes was taken: all interviews were transcribed by the author.

- I transcribed filler words and grammar mistakes, but especially with regard to “ahms” etc., repetitions, and slurred pronunciation, transcripts were slightly straightened to make them easier to read.
- I transcribed everything in small letters. Capital letters were used to highlight emphases made by the speaker.
- Breaks were also transcribed. Shorter breaks were noted down with dots, each dot signaling one second. The duration of longer pauses was noted down with cardinal numbers in brackets, e.g. (4s).
- Incomprehensible passages were noted with three bracketed question marks: [???]. When I was not sure whether I had understood correctly, I put the respective passage in brackets and question marks: [?to them?]
- [institution], [name] etc. were used whenever anonymizations were necessary to ensure that inferences on the interview partner would be impossible
- Other non-verbal expressions such as laughs were noted in round brackets: (coughs), (laughs)
- Comments of the respective other person were quoted in brackets directly in the text.

#### **8.3.4 Content analysis**

Once interviews had been transcribed, I proceeded to content analysis. Again, choices needed to be made with regard to the adequate approach which would suit the research interest, but would also take into consideration available resources including time. I have opted for a qualitative content analysis, as the primary intent of interviews was to test the relevance of possible mechanisms connecting APO access and perceptions of legitimacy (and eventually uncovering alternative mechanisms) and trace their working. Thus, the specific wordings and formulations in interviews constituted a central element of analysis.

One main distinction with regard to the different approaches of content analysis is the degree of openness, which mainly refers to the process of developing codes. Some authors have argued for an approach to texts which is basically free of prior theoretical

assumptions and in which analytical codes, categories, and concepts are developed inductively during a thorough and systematic reading of texts (Kruse 2014: 369ff.). In turn, at the other end of the continuum, previously defined code schemes may be used that have been developed deductively on the grounds of the central variables and categories of indicators of the respective study.

Here, my proceedings were mainly oriented at the methodology of thematic qualitative text analysis as outlined by Kuckartz (2012: 77–98) and Schmidt (2007). This approach works with deductive codes developed on the basis of theoretical assumptions, but still is sufficiently open to allow for the development of new categories and codes in the process of coding. In other words, it aimed at an explicit and continuous interplay between the theoretical comprehension of the researcher and the text material (Schmidt 2007: 448). Still, the methodology had to be adapted to the needs of this research project with regard to some details. In the following, I will outline my respective choices.

While the different steps of text analysis are presented below in sequential order, in reality different steps were partly undertaken in a parallel manner, and the research process contained feedback loops (Kuckartz 2012: 50–51). In practice, this meant that I started with transcribing interviews and even developing a first code system before all interviews were conducted. This flexible approach has the advantage that the researcher can improve her research strategy building on experience gained in the research process. For example, when during interview transcription it became apparent that a certain question did not produce relevant answers, the interview guideline for subsequent interviews was changed.

The following steps of interview analysis were all conducted supported by MaxQDA software. While the use of QDA software does not relieve the researcher of her intellectual work, it can provide assistance in all steps of text analysis and save her considerable time (Kuckartz 2010: 13).

### **Transcript summaries, code list, coding guideline and actual coding**

The first step of analysis consisted in reading transcripts carefully one by one to understand them “on their own” and develop an understanding for each text as a whole. I noted down all details which seemed of special relevance for the text, both with regard to content and specific formulations, in text memos attached to each interview (see

Figure 21). In these case summaries, special attention was given to aspects which related to the central research questions (Kuckartz 2012: 55).

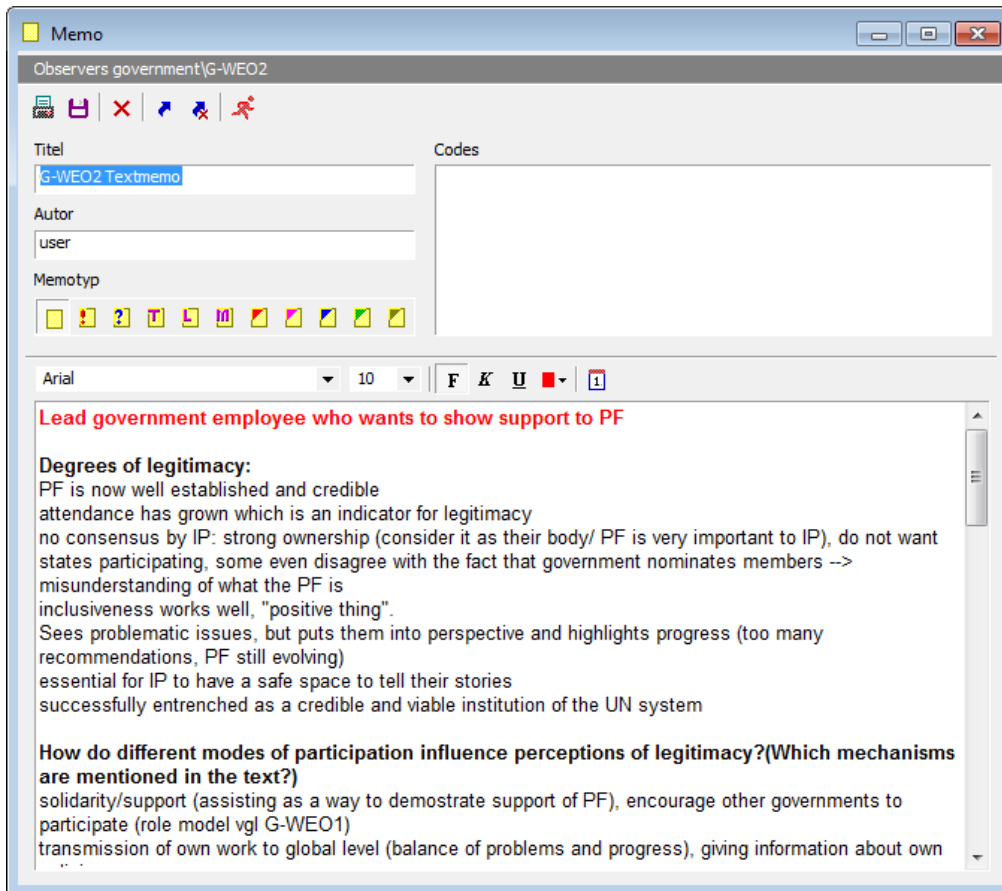


Figure 21: Example of excerpt from text memo. Source: author's elaborations.

However, I also noted down if interviewees preferred other wordings than those used in the interview guideline, if they did not take up certain topics or added new aspects. Whenever similarities or differences between transcripts were striking, this was also noted down in the respective text memos. This approach ensures that not only text passages in the transcripts are taken into consideration which confirm the researcher's presuppositions, but also those which deviate from them, introducing counterintuitive aspects (Schmidt 2007: 450).

In the following, I developed a provisional coding guideline. For this, I relied, on the one hand, on the theoretical concepts elaborated upon in chapters two and three of the dissertation (see Miles & Huberman 2000: 58). However, I also took into account ideas which had come up during the reading of interview transcripts. Thus, for example the relevance of prior mindsets and expectations (see Chapter six) was an issue which surged from the coding process. Similarly, the differences between Indigenous peoples

and other affected actors and the specific rationale for Indigenous participation (see Chapter four) also emerged as an important issue from the careful reading of interviews. The first code system contained main codes, as well as more specific sub-codes.

<p><b>Institution</b></p> <ul style="list-style-type: none"> <li>PFII</li> <li>EMRIP</li> <li>WGIP</li> <li>UN system generally</li> <li>comparison between institutions</li> <li>others</li> </ul> <p><b>participation modes</b></p> <ul style="list-style-type: none"> <li>expert membership (EMRIP)</li> <li>member access (PFII)</li> <li>openness</li> <li>not specified</li> </ul> <p><b>Legitimacy evaluations</b></p> <ul style="list-style-type: none"> <li>positive</li> <li>negative</li> </ul> <p><b>rationale for Indigenous participation</b></p> <ul style="list-style-type: none"> <li>being affected</li> <li>specific knowledge and perspective</li> <li>Indigenous rights</li> <li>urgency of situation</li> </ul> <p><b>moral authority of Indigenous observers</b></p> <ul style="list-style-type: none"> <li>problems w/ moral authority <ul style="list-style-type: none"> <li>at the individual level</li> </ul> </li> <li>legitimate Indigenous participation <ul style="list-style-type: none"> <li>own link to constituency</li> </ul> </li> </ul> <p><b>heterogeneity of Indigenous movement</b></p> <ul style="list-style-type: none"> <li>caucus/ coordination</li> <li>general heterogeneity</li> <li>differences in capacity</li> <li>geographic unevenness</li> <li>differences in interests and opinion</li> <li>lead actors</li> </ul> <p><b>challenges for IPOs</b></p> <ul style="list-style-type: none"> <li>lack of bureaucratic skills</li> <li>lack of knowledge at local level</li> <li>lack of financial resources</li> <li>lack of expert knowledge</li> <li>relationship to NGOs/ allies</li> <li>state impact on Indigenous participation</li> </ul> <p><b>challenges for other observers</b></p> <p><b>session challenges</b></p> <ul style="list-style-type: none"> <li>time constraints</li> <li>lack of dialogue between participants</li> <li>lack of serious engagement</li> </ul> <p><b>quantity of participants</b></p> <ul style="list-style-type: none"> <li>lack of IO/state participation</li> <li>increase in participation</li> </ul> <p><b>Positive consequences of participation</b></p> <ul style="list-style-type: none"> <li>bring actor groups together</li> <li>Acknowledgement</li> <li>Indigenous voice</li> <li>Ownership</li> <li>enhanced communication <ul style="list-style-type: none"> <li>dialogue between groups</li> <li>get information and advice</li> <li>provide information and advice</li> <li>infos for communities</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>knowledge &amp; awareness</li> <li>Advocacy</li> <li>complaint/ reports about HR violations</li> <li>accountability</li> <li>pooling of perspectives</li> <li>moral authority</li> <li>neutrality towards specific interests</li> <li>increased engagement</li> <li>social learning</li> <li>good output</li> </ul> <p><b>Benefits of the setting</b></p> <ul style="list-style-type: none"> <li>capacity-building &amp; learning</li> <li>building an Indigenous movement</li> <li>networking &amp; lobbying</li> <li>group-internal coordination</li> </ul> <p><b>negative consequences of participation</b></p> <ul style="list-style-type: none"> <li>Politization</li> <li>costs of agreement</li> <li>frustration of participants</li> <li>co-option</li> </ul> <p><b>specifics of member access</b></p> <ul style="list-style-type: none"> <li>legitimate selection process</li> <li>problems of selection process</li> <li>being Indigenous</li> <li>professional qualifications</li> <li>problems with members</li> <li>expert status and role</li> <li>responsiveness/ representative role</li> </ul> <p><b>Policy change</b></p> <ul style="list-style-type: none"> <li>no immediate results</li> <li>lack of change</li> <li>lack of change at the community level</li> <li>level not specified</li> <li>at the national-regional level</li> <li>at the international level</li> </ul> <p><b>other relevant institutional factors</b></p> <ul style="list-style-type: none"> <li>relationship between PFII/EMRIP/SRIP</li> <li>resources</li> <li>regulatory authority</li> <li>location in UN hierarchy</li> <li>mandate</li> </ul> <p><b>Context</b></p> <ul style="list-style-type: none"> <li>specific agency approach</li> <li>conditions within states</li> <li>diplomatic arena/ UN context <ul style="list-style-type: none"> <li>UN state dominated</li> </ul> </li> </ul> <p><b>Divergent expectations</b></p> <ul style="list-style-type: none"> <li>Anticlimax/disappointment</li> </ul> <p><b>mindset of participants</b></p> <ul style="list-style-type: none"> <li>tool perspective - neutral</li> <li>defensive</li> <li>distrust between participant groups</li> <li>passive but supportive</li> <li>proactive</li> </ul> <p><b>need and proposals for improvement</b></p> <ul style="list-style-type: none"> <li>with regard to IP participation</li> <li>proposals for institutional change</li> </ul>
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Figure 22: Code system. Source: author’s elaborations.

I also elaborated definitions for each code, which are important in order to be able to apply codes consistently throughout all interviews (Miles & Huberman 2000: 63). I then worked through approximately 1/3 of all transcripts to elaborate on this first code list. In this process, new codes were added; others were revised, renamed, integrated or even deleted. Moreover, code definitions were also elaborated upon. I thus combined a deductive approach with inductive elements in the development of the final, more precise code list (Kuckartz 2012: 62). The final codes (see Figure 22) already identified the most important categories and basic structure of the text analysis (Kuckartz 2012: 77).

This code system was then applied to all interview transcripts with the help of the coding guideline, and texts passages were coded accordingly. In many cases, text segments were coded with several overlapping codes. Different colors for main codes helped in graphically distinguishing the different main codes in the process of actual text analysis. Whenever ideas with regard to data interpretation surfaced during the process of coding, these were noted down in memos attached to the respective paragraph or text.

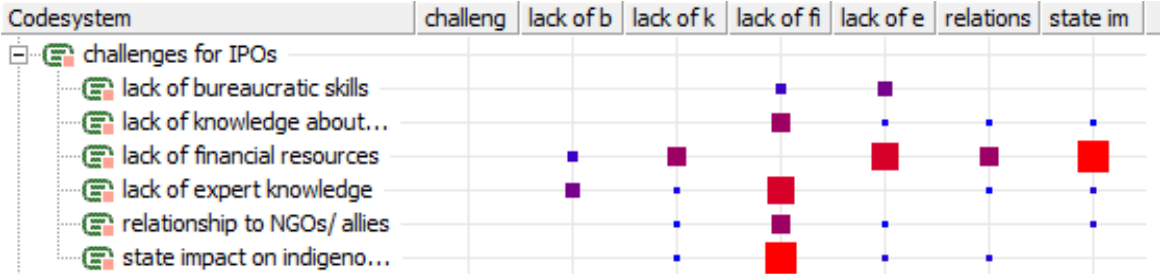
### **Data interpretation**

The subsequent interpretation of interviews followed the main topics identified during the coding process. With regard to each of the main categories, I carried out a four step analysis procedure (Kuckartz 2012: 93–95): (1) an inductive reading of codings related to a certain main code; (2) an analysis of possible relations between different sub-codes; (3) an analysis of possible relations with other main codes; and (4) an analysis of similarities and relevant deviations within and between constituencies. Interesting observations and questions which resulted from this analysis were noted down in the logbook which served as a research diary during the process of interview analysis.

I started by an inductive reading of all coded segments of a certain main code and identified recurrent topics and general assertions as well as singularities and contradictions to systematize the content linked to each main code (Kuckartz 2012: 94). I grouped statements and paragraphs together which had very similar content. This to some degree reflected the different sub-codes of a main code, but also helped to discover more fine-grained distinctions and important topics within sub-categories.

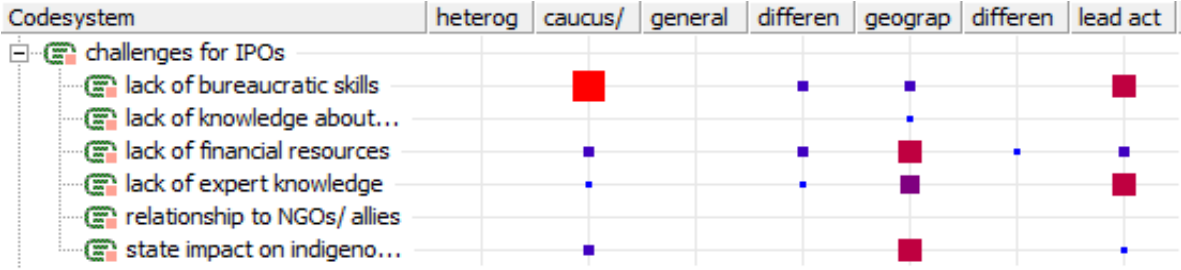


In a second step, I focused on relations between different sub-codes of the main code, that is, I checked whether there were certain sub-codes which were regularly used together in one paragraph. For this exercise, MaxQDA software is very helpful, as it allows the researcher to graphically explore these relations to gain first insights. The code-relations-browser allows for a visualization of the comparative frequency of text segments which any two codes are attached to. As a variant, the code-relations-browser (near) shows in how many cases any two codes appear close to each other (e.g. within a certain number of paragraphs) in interviews. For example, this analysis suggested that lack of financial resources is closely connected to practically all other challenges for IPOs (see Figure 23). The insights gained during graphic exploration helped to direct attention in the further analysis of texts.



**Figure 23: Code-relations-browser (near) - Overlap between codings of “challenges for IPOs”.** Source: author’s elaborations.

In a third step, I explored possible relations between the main code and other main codes in a similar way as outlined above with regard to relations between sub-codes. This helped to uncover potential connections between main codes. Thus, the graphic analysis i. a. pointed to geographic differences with regard to challenges for IPOs – and suggested that the caucus was an important player in the context of bureaucratic skills (see Figure 24).

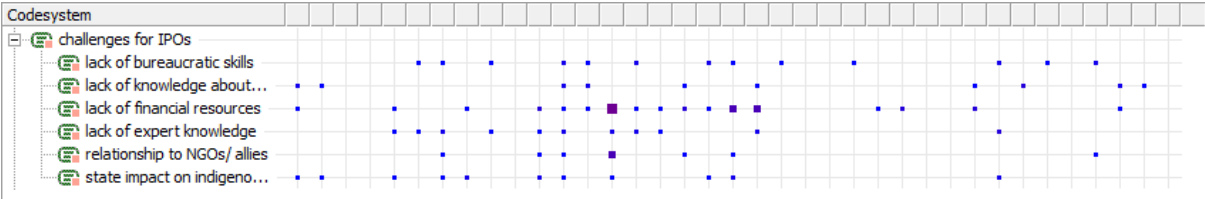


**Figure 24: Code-Relations-Browser, overlapping codings of “challenges for IPOs” and “heterogeneity of the Indigenous movement”.** Source: author’s elaborations.

At the same time, this example also shows that the graphic analysis by itself could provide some ideas of where to look for possible important relations, but to further

understand these connections, additional text work was necessary. Thus, I used text retrieval functions offered by MaxQDA to select all text passages coded with the respective codes and re-read them. This then for example helped to understand that the caucus engaged in qualifying new Indigenous participants to help them overcome the lack of bureaucratic skills.

Lastly, I also explored differences within and between constituencies. The Code-Matrix-Browser, another MaxQDA tool for graphic analysis, proved helpful in this regard. The Code-Matrix-Browser displays the frequency of codings for each interview (see Figure 25). Each little grey square represents one interview. In this case, it showed that the issue of challenges for IPOs appeared very frequently in interviews with Indigenous observers (squares 7 to 20) – especially the issue of financial resources –, whereas it was practically no issue in interviews with state officials (squares 21 to 27).



**Figure 25: Code-Matrix-Browser „Challenges for IPOs“. Source: author’s elaborations.**

The findings and conclusions from this analysis provided the foundation for the case study and were elaborated upon in the text of this dissertation. The presentation of results was enriched by some citations from the interviews. These were selected because they were representative of issues which were frequently mentioned in interviews, but in comparison to other text passages more aptly illustrated or summarized a broader set of issues.

**8.4 Summary: Methodology in practice**

This final section summarizes how the methodological approach outlined above has been applied in practice during the process of writing the empirical chapters of the dissertation. First, Chapter four starts with an exploration of commonalities and important distinctions between IPs and other groups of affected actors, based on results of text analysis, but also on UN documents and secondary literature. This was also helpful to understand the range and generalizability of the findings of this study. The chapter continues by providing some background information on the PFII and EMRIP,

including on the specific arrangements for Indigenous access as both members and observers. While this is mainly done based on information contained in official UN documents, this information is double-checked and enriched with information from the interviews to better understand how formal access opportunities play out in practice. The following step was the central exercise for this chapter and consisted in the assessment of perceptions of legitimacy. This relied on data collected and analyzed as outlined in Section 2 of the Appendix. Finally, based on material for interview analysis, I explored the role of the broader institutional setting on perceptions of legitimacy.

Chapter five begins with a rather descriptive part which explores de facto Indigenous participation as enabled through access structures. This section relies on data gained from official UN documents (especially with regard to assisting IPOs) as well as on information gathered from websites of IPOs. Moreover, I used interviews to enrich the analysis. The subsequent steps which explore specific challenges and hurdles for Indigenous participation as well as the authenticity of Indigenous participants again build on interviews as their main source. Lastly, Chapter six elaborates on mechanisms connecting Indigenous access as observers and as members with perceptions of legitimacy, as well as on the importance of prior mindsets and expectations as condition variables. This also draws strongly on interviews and the procedures of interview analysis elaborated upon above. Throughout the process of empirical analysis, existing secondary literature has been used to complement the analysis.

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## List of analyzed statements

### For the Permanent Forum on Indigenous Issues

#### Donor states (9 statements)

- Government of Australia (27.04.2015): *Intervention by Australia at the PFII*. Delivered by Mr Mike Fordham, Assistant Secretary, Australian Department of the Prime Minister and Cabinet, Agenda Item 7a - Implementation of the UN Declaration on the Rights on Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01e9/1f48ded8.dir/PF15Mike270.pdf> (accessed 06.02.2019).
- Government of Australia (2016): *Intervention by Australia at the PFII*. Delivered by Rachel O'Connor, Head of Australian Government Delegation, Agenda Item 9 - Dialogue with the Special Rapporteur on the Rights of Indigenous Peoples and the Chair of the Expert Mechanism on the Rights of Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01d9/d327f298.dir/PF16Rachel095.pdf> (accessed 06.02.2019).
- Danish Mission to the UN (22.04.2015): *Joint Statement by Denmark on behalf of the Nordic Countries: Denmark, Sweden, Norway, Iceland, and Finland*. Delivered by Ib Petersen, Permanent Representative of Denmark to the United Nations, Agenda Item 8 – Future Work of the Permanent Forum (discussion of methods of work). Available at <http://statements.unmeetings.org/media2/4657490/denmark-nordic-countries.pdf> (accessed 06.02.2019).
- Danish Mission to the UN (27.04.2015): *Joint Statement by Denmark on behalf of the Nordic Countries: Denmark, Sweden, Norway, Iceland, and Finland*. Delivered by Julie Garfieldt Kofoed, Second Secretary, Permanent Mission of Denmark to the United Nations, on Agenda Item 7(a) – Implementation of the United Nations Declaration on the Rights of Indigenous Peoples. Available at: <http://statements.unmeetings.org/media2/4657679/denmark-nordic-countries.pdf> (accessed 06.02.2019).
- Danish Mission to the UN (2016): *Joint Statement by Denmark on behalf of the Nordic Countries: Denmark, Sweden, Norway, Iceland, and Finland*. Speaker not specified, on Agenda Item 10 – Future Work of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHddbfa453ede2.dir/PF16Julie135.pdf> (accessed 06.02.2019).
- Government of Germany (2011): *Statement to the PFII*. Delivered by Miguel Berger, on Agenda Item 4a-Implementation of the United Nations Declaration on the Rights of Indigenous Peoples (Human rights). Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH011b/618fd0df.dir/PF11miguel113.pdf> (accessed 06.02.2019).
- Agencia Española de Cooperación Internacional al Desarrollo (AECID) (15.05.2012): *Intervención de AECID*. Delivered by María Victoria Wulff, Directora del Programa Indígena de la Agencia Española de Cooperación Internacional para el Desarrollo, on Agenda Item 4 – Human Rights. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0187/da8b750f.dir/pf12maria238.pdf> (accessed 06.02.2019).

Estonian Mission to the UN (2015): *Statement to the PFII*. Delivered by H.E: Margus Kolga, Ambassador, Permanent Representative of Estonia, on Agenda Item 7(a ) Human Rights – Implementation of UNDRIP, available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01a8/3535e4e1.dir/PF15Margus376.pdf> (accessed 06.02.2019).

Estonian Mission to the UN (2016): *Statement to the PFII*. Delivered by Sven Jürgenson, Permanent Representative of Estonia, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH9539/e0116709.dir/PF16Sven027.pdf> (accessed 06.02.2019).

## **States with Indigenous populations**

### **North America, Europe, and the Pacific (7 statements)**

Government of Canada (12.05.2014): *Statement on behalf of the Government of Canada to the PFII*. Delivered by Josée Touchette, Senior Assistant Deputy Minister, Aboriginal Affairs and Northern Development, on Agenda Item 3 Open Dialogue – Governance. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHdb6d/33b42a88.dir/PF14josee045fr.pdf> (accessed 06.02.2019).

Government of New Zealand (12.05.2014): *Statement to the PFII*. Delivered by Sir Jerry Mateparae, Governor General of New Zealand, on Agenda Item Opening Ceremony. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH015e/043176cf.dir/PF14jerry024.pdf> (accessed 06.02.2019).

Government of New Zealand (22.04.2015): *Statement to the PFII*. Delivered by Arawhetu Gray, Deputy-Secretary Policy Partnerships, Te Puni Kokiri (Ministry of Maori Development), on Agenda Item 3(a) Outcome of the World Conference. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0163/85f5976f.dir/PF15Arawhetu112.pdf> (accessed 06.02.2019).

Russian Federation (22.04.2015): *Statement to the PFII*. Speaker not specified, on Agenda Item 8 – Future Work of the Permanent Forum (methods of work). Available at <http://statements.unmeetings.org/media2/4657538/russian-federation.pdf> (accessed 06.02.2019).

Russian Federation (18.05.2016): *Statement to the PFII*. Delivered by Ms. Sukacheva, on Agenda Item 10 – Future Work of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH9f56/bc79dc8e.dir/PF16Russia145.pdf> (accessed 06.02.2019).

Government of the United States (20.05.2015): *Statement to the PFII*. Delivered by Ann Marie Bledsoe Downes, Deputy Assistant Secretary, Department of Interior, on Agenda Item 3(a) – Outcome of the World Conference. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH1805/003641a3.dir/PF15annmarie023.pdf> (accessed 06.02.2019).

Government of the United States (10.05.2016): *Statement to the PFII*. Delivered by Linda Lum, on Agenda Item 3(d) Follow-up of the World Conference on Indigenous Peoples. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH012c/6a3ea44f.dir/PF16Linda081.pdf> (accessed 06.02.2019).

## Latin America (10 statements)

- Bolivian Mission to the UN (22.05.2015): *Statement to the PFII*. Delivered by Ingrid Sabja, Representative of Bolivia to the United Nations, on Agenda Item 8 – World Conference in Indigenous Peoples. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH2b0f/8672f9ec.dir/PF15ingrid125.pdf> (accessed 06.02.2019).
- Government of Chile (18.05.2016): *Statement to the PFII*. Delivered by Juan Eduardo Faúndez Molina, Subsecretario de Servicios Sociales, Ministerio de Desarrollo Social de Chile, on Agenda Item 10 – Future Work of the Permanent Forum. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHd9d6/eac402c8.dir/PF16Juan141.pdf> (accessed 06.02.2019).
- Colombian Mission to the UN (2015): *Statement to the PFII*. Delivered by María Paulina Dávila, in the name of Miguel Camilo Ruiz Blanco, Ambassador, Permanent Representative of Colombia to the United Nations, on Agenda Item 03a-Follow-up on the recommendations of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH19c5/e77ccef0.dir/PF15mariacolombia041.pdf> (accessed 06.02.2019).
- Mission of Ecuador to the UN (24.05.2015): *Statement to the PFII*. Speaker not specified, on Agenda Item 8 – Future Work of the Permanent Forum (discussion of methods of work). Available at: <http://statements.unmeetings.org/media2/4657661/ecuador.pdf> (accessed 06.02.2019).
- Government of Guatemala (10.05.2016): *Statement to the PFII*. Delivered by Carlos Raúl Morales, Ministro de Relaciones Exteriores de la República de Guatemala, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH8704/212473ab.dir/PF16Carlos005.pdf> (accessed 06.02.2019).
- Government of Honduras (2014): *Statement to the PFII*. Delivered by Dulce Sánchez, Ministra Consejera, on Agenda Item 04b-Dialogue with the Special Rapporteur on the Rights of Indigenous Peoples. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH014a/f7ba2fdc.dir/PF14dulce323.pdf> (accessed 06.02.2019).
- Government of Mexico (12.05.2014): *Statement to the PFII*. Delivered by Nuvia Magdalena Mayorga Delgado, Directora General de la Comisión Nacional para el Desarrollo de los Pueblos Indígenas, on Agenda Item Opening Ceremony. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0155/e07ddb18.dir/PF14magdalena021.pdf> (accessed 06.02.2019).
- Government of Mexico (22.05.2015): *Statement to the PFII*. Delivered by Eviel Pérez Magaña, Senador, Presidente de la Comisión de Assuntos Indígenas del Senado, on Agenda Item 3(a) - Follow-up on the recommendations of the Permanent Forum: Outcome of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH013d/83846a29.dir/PF15evielmexico106.pdf> (accessed 06.02.2019).
- Government of Panama (10.05.2016): *Statement to the PFII*. Delivered by Irene Gallego, Viceministro de Assuntos Indígenas del Ministerio de Gobierno, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHed8/0b655dda.dir/PF16Irene017.pdf> (accessed 06.02.2019).

Mission of Peru to the UN (2016): *Statement to the PFII*. Delivered by Gustavo Meza-Cuadra, Representante Permanente del Perú ante las Naciones Unidas, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0105/b9e02167.dir/PF16Peru028.pdf> (accessed 06.02.2019).

### **Asia (7 statements)**

Government of Bangladesh (2014): *Statement to the PFII*. Delivered by Naba Bigram Kishore Tripura, Secretary, Ministry of CHT Affairs, on Agenda Item 5-Half-day discussion on the Asian region. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH7ec3/51719384.dir/PF14naba145o.pdf> (accessed 06.02.2019).

Government of China (22.04.2015): *Statement to the PFII*. Delivered by Yao Shaoiun, Counsellor, on Agenda Item 03a-Follow-up on the recommendations of the Permanent Forum: Outcome of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01a5/e930b94f.dir/PF15Yao107.pdf> (accessed 06.02.2019).

Government of Indonesia (2016): *Statement to the PFII*. Speaker not specified, on Agenda Item 05-Discussion on the theme Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0180/0f446b09.dir/PF16Indonesia116.pdf> (accessed 06.02.2019).

Mission of Japan to the UN (22.05.2013): *Statement to the PFII*. Delivered by Naoto Hisajima, Minister, Permanent Mission of Japan to the United Nations, on Agenda Item 7(a) – Implementation of the UNDRIP. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHc5bb/1413af66.dir/PF13Naoto144.pdf> (accessed 06.02.2019).

Government of Nepal (13.05.2014): *Statement to the PFII*. Delivered by Prakash Man Singh, Deputy-Prime Minister and Minister for Federal Affairs and Local Development, on Agenda Item 03-Special theme: «Principles of good governance consistent with the UNDRIP art. 3 to 6 and 46». Available at: <https://papersmart.unmeetings.org/media2/3297516/nepal.pdf> (accessed 06.02.2019).

Mission of the Philippines to the UN (14.05.2014): *Statement to the PFII*. Delivered by Libran L. Cabactulan, Ambassador and Permanent Representative, Philippine Mission to the United Nations, on Agenda Item 03-Special theme: «Principles of good governance consistent with the UNDRIP art. 3 to 6 and 46». Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH151d/ffb7ae64.dir/PF14libran115%20.pdf> (accessed 06.02.2019).

Mission of Viet Nam to the UN (2015): *Statement to the PFII*. Delivered by Nguyen Duy Thanh, Second Secretary, Permanent Mission of Viet Nam to the United Nations, on Agenda Item 08-Future work of the Permanent Forum, including issues of the Economic and Social Council and emerging issues. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHb25d/1521ab7f.dir/PF15vietnam359.pdf> (accessed 06.02.2019).

## **Africa (6 statements)**

- Government of Botswana (19.05.2016): Statement to the PFII. Delivered by Slumber Tsogwane, Minister of Local Government and Rural Development, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0175/48b1dbec.dir/PF16Slumber155.pdf> (accessed 06.02.2019).
- Government of Congo-Brazzaville (18.05.2011): Statement to the PFII. Delivered by Bienvenu Okiemy, Ministre de la Communication et des Relations avec le Parlement, Porte-Parole du Gouvernement, on Agenda Item 04a-Implementation of the United Nations Declaration on the Rights of Indigenous Peoples (Human rights). Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH014e/bda16e98.dir/PF11bienvenu100.pdf> (accessed 06.02.2019).
- Mission of Mali to the UN (29.04.2015): Statement to the PFII. Delivered by Dianguina dit Yaya Doucoure, Ministre Conseiller, Mission Permanente du Mali auprès des Nations-Unis, on Agenda Item 07a-Implementation of the UN Declaration on the Rights on Indigenous Peoples. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01a5/a2c9e3d9.dir/PF15Yaya385.pdf> (accessed 06.02.2019).
- Government of Namibia (10.05.2016): Statement to the PFII. Delivered by Royal Jk/ui/o/oo, Deputy Minister Marginalized Communities, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHafeb/f1d85bf6.dir/PF16RoyallJK015.pdf> (accessed 06.02.2019).
- Government of South Africa (13.05.2016): Statement to the PFII. Delivered by Obed Bapela, Deputy Minister of Cooperative Governance and Traditional Affairs, on Agenda Item 03-Follow-up on the recommendations of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH99d4/2bc06c4f.dir/PF16Obed076.pdf> (accessed 06.02.2019).
- Mission of Tanzania to the UN (23.05.2013): Statement to the PFII. Delivered by Ramadhan M. Mwinyi, Deputy Permanent Representative of Tanzania to the United Nations, on Agenda Item 4 - Half-day discussion on the African Region. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0136/7c10e8f4.dir/PF13Ramadhan168.pdf> (accessed 06.02.2019).

## **Group of Friends (1 statement)**

- Group of Friends of Indigenous Peoples (13.05.2016): Statement to the PFII. Delivered by the Mexican delegation to the PFII, on Agenda Item 03-Follow-up on the recommendations of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH252c/57879843.dir/PF16MexicoGFII072.pdf> (accessed 06.02.2019).

## **International Organizations**

- FAO (2014). Statement to the PFII. Delivered by Yon Fernandez de Larrinoa, Program Coordinator for the Strengthening of Partnerships between FAO and Civil Society, on Agenda Item 08-Comprehensive dialogue with United Nations agencies and funds. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH2e27/e6b64286.dir/PF14yon180o.pdf> (accessed 06.02.2019).

- IFAD (2015): Statement to the PFII. Delivered by Antonella Cordone, Senior Technical Specialist, Indigenous Peoples and Tribal Issues, on Agenda Item 3(a) - Follow-up on the recommendations of the Permanent Forum - Outcome of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH4fb5/558cbc87.dir/PF15antonella028.pdf> (accessed 06.02.2019).
- ILO (20.04.2015): Statement to the PFII. Delivered by Shauna Olney, ILO Office for the United Nations, on Agenda Item 3(a) - Follow-up on the recommendations of the Permanent Forum - Outcome of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01a5/ea712957.dir/PF15ilo116.pdf> (accessed 06.02.2019).
- CBD (10.05.2016): Statement to the PFII. Delivered by Viviana Figueroa on behalf of Braulio Ferreira de Souza Dias, Executive Secretary, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHdc2f/acff5cdd.dir/PF16Braulio001a.pdf> (accessed 06.02.2019).
- OHCHR (12.05.2016): Statement to the PFII. Delivered by Antti Korkeakivi, Head of Indigenous Peoples and Minorities Section, on Agenda Item 4 - Implementation of the six mandated areas of the Permanent Forum. Statement of file with the author.
- UNICEF (23.05.2011): Statement to the PFII. Delivered by Richard Morgan, Director, Policy and Practice, on Agenda Item Comprehensive Dialogue between UNICEF and the Permanent Forum on Indigenous Issues. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0183/776d93fc.dir/PF11richard191.pdf> (accessed 06.02.2019).
- DESA (9.05.2016): Statement to the PFII. Delivered by Mr Wu-Hongbo, Under-Secretary General for Economic and Social Affairs, on Agenda Item Opening Ceremony. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHf178/672f8886.dir/PF16Wu000s.pdf> (accessed 06.02.2019).
- UNDP (12.05.2014): Statement to the PFII. Delivered by Patrick Keuleers, Director, a.i., Democratic Governance Group, on Agenda Item 3 – Principles of Good Governance consistent with the UN Declaration on the Rights of Indigenous Peoples: articles 3 to 6 and 46. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0196/5d13bad7.dir/PF14patrick035.pdf> (accessed 06.02.2019).
- UNESCO (9.05.2016): Statement to the PFII. Delivered by Dr. Boyan Radoykov, Knowledge Societies Division, Communication and Information Sector, on Agenda Item 3b - International expert group meeting on the theme “Indigenous languages”. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01c6/47c29adb.dir/PF16UNESCO001d.pdf> (accessed 06.02.2019).
- UNEP (10.05.2016): Statement to the PFII. Delivered by Jamil Ahmad, Deputy Director, UNEP New York Office, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH8b88/21681dda.dir/PF16UNEP001c.pdf> (accessed 06.02.2019).
- UNFPA (2016): Statement to the PFII. Speaker not specified, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHacfe/71251eab.dir/PF16UNFPA001e.pdf> (accessed 06.02.2019).



- UN Women (11.05.2016): Statement to the PFII. Delivered by Beatrice Duncan, on on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Statement of file with the author.
- World Bank Group (2016): Statement to the PFII. Speaker not specified, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH018b/4155d082.dir/PF16wbg205.pdf> (accessed 06.02.2019).
- PAHO/WHO (11.05.2016): Statement to the PFII. Delivered by Sandra del Pino, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01eb/ab6b0839.dir/PF16PAHO-WHO205.pdf> (accessed 06.02.2019).
- WIPO (10.05.2016): Statement to the PFII. Delivered by Hai-Yuean Tualima, WIPO Indigenous Fellow, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH7b88/22e84dda.dir/PF16WIPO001f.pdf> (accessed 06.02.2019).
- ECOSOC (9.05.2016): Statement to the PFII. Delivered by H.E. Sven Jürgenson, Vice-President of ECOSOC, on Agenda Item Opening Ceremony. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01d2/cdde72d8.dir/PF16Sven000r.pdf> (accessed 06.02.2019).
- President of the GA (9.05.2016): Statement to the PFII. Delivered by H.E. Mogens Lykketoft, President of the 70<sup>th</sup> session of the General Assembly on Agenda Item Opening Ceremony. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0127/11d9703c.dir/PF16Mogens000q.pdf> (accessed 06.02.2019).
- IASG (15.05.2014): Statement to the PFII. Delivered by Nicola Brandt, UNICEF, on behalf of IASG, on Agenda Item 8 - Comprehensive dialogue with United Nations agencies and funds. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH8182/92807300.dir/PF14nicola154.pdf> (accessed 06.02.2019).
- Fondo para el Desarrollo de los Pueblos Indígenas de América Latina y el Caribe (FILAC) (2015): Statement to the PFII. Delivered by Natalia Sarapura, on Agenda Item 8 – Future work of the Permanent Forum – methods of work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH261b/831831f7.dir/PF15Natalia191.pdf> (accessed 06.02.2019).
- EU (22.05.2014): Statement to the PFII. Delivered by H.E: Ioannis Vrailas, Deputy Head of Delegation, Delegation of the European Union to the United Nations, on Agenda Item 9 – Future Work of the Permanent Forum, including emerging issues. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0177/6f567204.dir/PF14charlotta423.pdf> (accessed 06.02.2019).

### **Indigenous Caucus Statements**

- Global Caucus (12.05.2014): Statement to the PFII. Delivered by Gino Gabriel Altamirano, on Agenda Item 06-Discussion on the World Conference on Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01f6/dc6b96ba.dir/PF14gino273.pdf> (accessed 06.02.2019).
- African Caucus (12.05.2016): Statement to the PFII. Delivered by Daniel ole Sapit, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01b3/7aa11b3e.dir/PF16Daniel061a.pdf> (accessed 06.02.2019).

- Arctic Caucus (2016): Statement to the PFII. Delivered by the ICC, on Agenda Item 04- Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH1fc9/8c957dda.dir/PF161nuit049.pdf> (accessed 06.02.2019).
- Asian Caucus (2016): Statement to the PFII. Delivered by Atama Katama, on Agenda Item 10 – Future Work of the Permanent Forum. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHaf39/6a55d05b.dir/PF16Atama155a.pdf> (accessed 06.02.2019).
- North American Caucus (2015): Statement to the PFII. Delivered by Janice Makokis, on Agenda Item 8 – Future work, including discussion on methods of work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0123/c0d6847d.dir/PF15janiceNaipc193.pdf> (accessed 06.02.2019).
- Foro Indígena de Abya Yala (19.05.2016): Statement to the PFII. Delivered by Mindahi C. Bastida Muñoz, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0151/f7171eea.dir/PF16Mindahi192a.pdf> (accessed 06.02.2019).
- Pacific Caucus (29.04.2014): Statement to the PFII. Delivered by Ghazali Ohorella, on Agenda Item 8 – Future Work of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01d8/4a0584b5.dir/PF15Ghayali388.pdf> (accessed 06.02.2019).
- Women Caucus (2015): Statement to the PFII. Delivered by Naomi Leleto, on Agenda Item 8 – Future work of the Permanent Forum, including emerging issues. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01b2/9cd4a88c.dir/PF15naomiwomen126.pdf> (accessed 06.02.2019).
- Youth Caucus (2014): Statement to the PFII. Delivered by Vichea Om, on Agenda Item 09- Future work of the Permanent Forum, including emerging issues. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0175/9d896aa8.dir/PF14vichea436.pdf> (accessed 06.02.2019).
- Disability Caucus (2015): Statement to the PFII. Delivered by Ruci Senikula, on Agenda Item 03a-Follow-up on the recommendations of the Permanent Forum: Outcome of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHc9c2/2caad865.dir/PF15rucidisabcaucus044.pdf> (accessed 06.02.2019).

## **IPO statements**

- FIMI (2014): statement to the PFII. Delivered by Teresa Laines Reynes, on Agenda Item 03- Special theme: «Principles of good governance consistent with the UNDRIP art. 3 to 6 and 46». Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH82ce/58b25cc0.dir/PF14teresa060es.pdf> (accessed 06.02.2019).
- Tebtebba (2014): Statement to the PFII. Delivered by Jennifer Corpuz, on Agenda Item 6 - Discussion on the World Conference on Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH6f50/057f6ec3.dir/PF14jennifer256.pdf> (accessed 06.02.2019).
- IITC (2015): Statement to the PFII. Delivered by Andrea Carmen, on Agenda Item 8 – Future work of the Permanent Forum – methods of work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH2a0c/3272c8ec.dir/PF15Andrea127.pdf> (accessed 06.02.2019).

- Tribal Link Participants (2015): Statement to the PFII. Delivered by Michaela Jade, on Agenda Item 8 – Future work of the Permanent Forum – methods of work. Available at <http://statements.unmeetings.org/media2/4657631/tribal-link-project.pdf> (accessed 06.02.2019).
- IPACC (2014): Statement to the PFII. Delivered by Vital Bambanze, on Agenda Item 03-Special theme: «Principles of good governance consistent with the UNDRIP art. 3 to 6 and 46». Available at <https://papersmart.unmeetings.org/media2/3276459/ipacc.pdf> (accessed 06.02.2019).
- Mainyoito Pastoralists Integrated Development Organization (23.05.2013): Joint Statement with other IPOs to the PFII. Delivered by Edward T Porokwa, on Agenda Item 4 – Half-day discussion on Africa. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01a9/788f8a49.dir/PF13edwardp173.pdf> (accessed 06.02.2019).
- Indigenous Information Network (2013): Statement to the PFII. Delivered by Martha Ntoipo, on Agenda Item 4 – Half-day discussion on Africa. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH90b6/a2362e00.dir/PF13Martha175.pdf> (accessed 06.02.2019).
- CMA (2016): Statement to the PFII. Delivered by Kamira Nait Sid, on Agenda Item 05-Discussion on the theme Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH68a8/34904b05.dir/PF16Kamira125.pdf> (accessed 06.02.2019).
- ICC (2014): Joint Statement with other IPOs to the PFII. Delivered by Joanne Ottereyes, on Agenda Item 03-Special theme: «Principles of good governance consistent with the UNDRIP art. 3 to 6 and 46», available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0124/e377125e.dir/PF14joanne120.pdf> (accessed 06.02.2019).
- Saami Council (2016): Statement to the PFII. Speaker not specified, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01d7/02cfc051.dir/PF16Saami-council161a.pdf> (accessed 06.02.2019).
- AIPP (2016): Statement to the PFII. Delivered by Sochea Pheap, on Agenda Item 3d - Follow-up to the World Conference on Indigenous Peoples. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH6a2f/9ffe4a3e.dir/PF16Sochea078.pdf> (accessed 06.02.2019).
- Parbatya Chattagram Jana Samhati Samiti (PCJSS) (2014): Statement to the PFII. Delivered by Ujana Larma Talukdar, on Agenda Item 9 – Future work of the Permanent Forum, including emerging issues. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0152/f3c3c113.dir/PF14Ujana427.pdf> (accessed 06.02.2019).
- Aliansi Masyarakat Adat Nusantara (AMAN) (2016): Statement to the PFII. Delivered by Ariana & Rukka Sombolinggi, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH566a/01b7d4cb.dir/PF16Ariana167.pdf> (accessed 06.02.2019).
- Nepal Federation of Indigenous Nationalities (NEFIN) (2015): Statement to the PFII. Delivered by Dandu Sherpa, on Agenda Item 7 (a): Implementation of United Nations Declaration on Rights of Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHa329/8371d5a0.dir/PF15dandu249.pdf> (accessed 06.02.2019).

- Cordillera Peoples Alliance (2016): Statement to the PFII. Delivered by Sarah Dekdeken, on Agenda Item 04-Implementation of the six mandated areas of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH019f/0789d52d.dir/PF16Sarah004.pdf> (accessed 06.02.2019).
- Bangladesh Indigenous Peoples Forum (22.04.2015): Joint Statement with other IPOs to the PFII. Delivered by Pallab Chakma, on Agenda Item 8 – Future work of the Permanent Forum – methods of work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01a9/0d691ccc.dir/PF15Pallab128.pdf> (accessed 06.02.2019).
- KKF (2015): Statement to the PFII. Delivered by Conduct Hang, on Agenda Item 8 – Future work of the Permanent Forum – methods of work. Available at <http://statements.unmeetings.org/media2/4657626/khmers.pdf> (accessed 06.02.2019).
- Assyrian Aid Society (2015): Statement to the PFII. Delivered by Nora Michael, on Agenda Item 8 – Future work of the Permanent Forum – methods of work. Available at <http://statements.unmeetings.org/media2/4657627/assyrian-aid-society.pdf> (accessed 06.02.2019).
- COICA (14.05.2014): Statement to the PFII. Delivered by Jhon Wajai, on Agenda Item 03-Special theme: «Principles of good governance consistent with the UNDRIP art. 3 to 6 and 46» (Study on best practices and examples in respect of resolving land disputes and land claims). Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0155/5b9b3759.dir/PF14rodrigo119.pdf> (accessed 06.02.2019).
- CAOI (2015): Statement to the PFII. Delivered by Blanca Chancosa, on Agenda Item 8 – Future work of the Permanent Forum – methods of work. Available at <http://statements.unmeetings.org/media2/4657633/caoi.pdf> (accessed 06.02.2019).
- Assembly of First Nations (2015): Joint Statement with other IPOs to the PFII. Delivered by Perry Bellegarde, on Agenda Item 7 (a) – Implementation of UNDRIP, Human Rights. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHb32d/c26fcfa0.dir/PF15Perry253.pdf> (accessed 06.02.2019).
- Congress of Aboriginal Peoples (2016): Statement to the PFII. Delivered by Dwight Dorey, on Agenda Item 10-Future work of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH9f3a/b865c470.dir/PF16Dwight143.pdf> (accessed 06.02.2019).
- International Native Tradition Interchange (18.05.2016): Statement to the PFII. Delivered by Rocio Velandia, on Agenda Item 10-Future work of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHd5cf/9841fdea.dir/PF16Rocio153.pdf> (accessed 06.02.2019).
- American Indian Law Alliance (23.05.2015): Joint Statement with other IPOs to the PFII. Delivered by Betty Lyons, on Agenda Item 8 – Future work of the Permanent Forum – methods of work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0124/2f772c9e.dir/PF15Betty178.pdf> (accessed 06.02.2019).
- Indian Law Resource Center (18.05.2016): Statement to the PFII. Delivered by Karla General, on Agenda Item 10-Future work of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHc9c1/7c5ff5b2.dir/PF16Karla150.pdf> (accessed 06.02.2019).

- New South Wales Aboriginal Land Council (2014): Statement to the PFII. Delivered by Craig Cromelin, on Agenda Item 03-Special theme: « Principles of good governance consistent with the UNDRIP art. 3 to 6 and 46» (Study on the Impact of the Doctrine of Discovery). Available at [http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH016f/e8bea56e.dir/PF14craig\\_it3L.PDF](http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH016f/e8bea56e.dir/PF14craig_it3L.PDF) (accessed 06.02.2019).
- Alifuru Council (18.05.2016): Statement to the PFII. Delivered by Ghazali Ohorella, on Agenda Item 10-Future work of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHe65d/5ef12da7.dir/PF16Ghazali144.pdf> (accessed 06.02.2019).
- Ben Wakefield Trust (18.05.2016): Statement to the PFII. Delivered by Kingi Snelgar, on Agenda Item 10-Future work of the Permanent Forum. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHd1c1/8c57ebd2.dir/PF16Kingi142.pdf> (accessed 06.02.2019).
- Aupuni Hawai'i (30.04.2015): Statement to the PFII. Delivered by Kai Landow, on Agenda Item 8 – Future work of the Permanent Forum – methods of work. Available at <http://statements.unmeetings.org/media2/4658010/item-8-aupuni-hawaii.pdf> (accessed 06.02.2019).
- Russian Association of Indigenous Peoples of the North, Siberia, and Far East (2015): Statement to the PFII. Delivered by Alexander Novikov, on Agenda Item 8 – Future work of the Permanent Forum – methods of work. Available at <http://webtv.un.org/search/5th-meeting-permanent-forum-on-indigenous-issues-fourteenth-session/4190092883001/> at 2:24:40 (accessed 06.02.2019).

### **Permanent Forum members**

- Aboubakrine, Mariam Wallet (2015): Statement on Agenda Item 8 – Future work of the Permanent Forum including emerging issues – Methods of Work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHe912/081cee97.dir/PF15mariam314.pdf> (accessed 06.02.2019).
- Carling, Joan (22.04.2015): Statement on Agenda Item 8 – Future work of the Permanent Forum including emerging issues – Methods of Work. Available at <http://webtv.un.org/search/5th-meeting-permanent-forum-on-indigenous-issues-fourteenth-session/4190092883001/> at 1:35:35 (accessed 06.02.2019).
- Choque Quispe, Maria Eugenia (2015): Statement on Agenda Item 8 – Future work of the Permanent Forum including emerging issues – Methods of Work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01e7/5a4a127b.dir/PF15mariaeugenia121.pdf> (accessed 06.02.2019).
- Davis, Megan (01.05.2014): Closing statement by the Chairperson. Agenda Item: Closing session. Available at: <http://statements.unmeetings.org/media2/4658133/closing-statement-by-chair.pdf> (accessed 06.02.2019).
- Hassani, Mohammed (22.04.2015): Statement on Agenda Item 8 – Future work of the Permanent Forum including emerging issues – Methods of Work. Available at <http://webtv.un.org/search/5th-meeting-permanent-forum-on-indigenous-issues-fourteenth-session/4190092883001/> at 1:31:00 (accessed 06.02.2019).
- Loode, Oliver (22.04.2015): Introductory Statement on Agenda Item 8 – Future work of the Permanent Forum including emerging issues – Methods of Work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0171/5bb2a3fd.dir/PF15olivier118.pdf> (accessed 06.02.2019).

- Nzoa, Gervais (22.04.2015): Statement on Agenda Item 8 – Future work of the Permanent Forum including emerging issues – Methods of Work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01ad/992fa041.dir/PF15gervais134.pdf> (accessed 06.02.2019).
- Sambo Dorough, Dalee (22.04.2015): Introductory Statement on Agenda Item 8 – Future work of the Permanent Forum including emerging issues – Methods of Work. Available at Video of Session, <http://webtv.un.org/search/5th-meeting-permanent-forum-on-Indigenous-issues-fourteenth-session/4190092883001/> at 0:53:50 (accessed 06.02.2019).
- Sambo Dorough, Dalee (23.04.2015): Statement on Agenda Item 8 – Future work of the Permanent Forum including emerging issues – Methods of Work. Available at <http://webtv.un.org/search/7th-meeting-permanent-forum-on-Indigenous-issues-fourteenth-session/4193939752001/> at 1:12:40 (accessed 06.02.2019).
- Toki, Valmaine (19.05.2016): Statement on Agenda Item 4 - Implementation of the six mandated areas of the Permanent Forum with reference to the United Nations Declaration on the Rights of Indigenous Peoples. Available on video of session, <http://webtv.un.org/meetings-events/watch/16th-meeting-permanent-forum-on-Indigenous-issues-fifteenth-session-9-20-may-2016/4904076979001>, at 2:37:15 (accessed 06.02.2019).

## Expert Mechanism on the Rights of Indigenous Peoples

### Donor states (7 statements)

- Australian Mission to the United Nations (15.07.2016): Statement to EMRIP. Speaker not specified, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01b5/09eac205.dir/EM16Australia001.pdf> (accessed 06.02.2019).
- Australian Mission to the United Nations (10.07.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 03-New Mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH734f/08a52569.dir/EM17Australia30710.pdf> (accessed 06.02.2019).
- Government of Austria (9.07.2013): Statement to EMRIP. Speaker not specified, on Agenda Item 5 - Study on the access to justice in the promotion and protection of the rights of Indigenous peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01bd/d30f0e65.dir/EM13austria088.pdf> (accessed 06.02.2019).
- Nordic States (20.07.2015): Statement to EMRIP. Delivered by Permanent Mission of Norway to the United Nations, on Agenda Item 03-Follow-up to the World Conference on Indigenous Peoples, including the review of the mandate of the Expert Mechanism. Available at: <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01e8/a39cea67.dir/EM15Erling014.pdf> (accessed 06.02.2019).
- Nordic States (11.07.2016): Statement to EMRIP. Delivered by Ambassador Steffen Kongstad, Norway, on Agenda Item 03 Follow-up to the World Conference on Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH25f2/889fcb0.dir/EM16Norway007.pdf> (accessed 06.02.2019).

- Nordic States (10.07.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 3- New mandate of the Expert Mechanism on the Rights of Indigenous Peoples: Activities and methods of work. Available at:  
<http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH011b/3d8df023/25da7dd2.dir/EM17Nordic30710.pdf> (accessed 06.02.2019).
- Government of Germany (23.05.2015): Statement to EMRIP. Speaker not specified, on Agenda Item 08 – UN Declaration on the Rights of Indigenous Peoples. Available at  
<http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHcb3d/05084561.dir/EM15germany195.pdf> (accessed 06.02.2019).
- Government of Estonia (13.07.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 6 - Ten years of implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned. Available at  
<http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0123/5e9080d2.dir/EM17estonia60712.pdf> (accessed 06.02.2019).

## **States with Indigenous populations**

### **North America, Europe, and the Pacific (8 statements)**

- Canadian Mission to the United Nations (11.07.2016): Statement to EMRIP. Speaker not specified, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at  
<http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH849f/e1a31e63.dir/EM16Canada%20-%20Mandate%20Review005a.pdf> (accessed 06.02.2019).
- Government of Canada (10.07.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 03-New Mandate of the Expert Mechanism. Available at  
<http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH9b3d/8df02324.dir/EM17Canada30710.pdf> (accessed 06.02.2019).
- Mission of New Zealand to the UN (20.07.2015): Statement to EMRIP. Delivered by Jarrod Clyne, First Secretary, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at  
<http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01ec/97e6d07b.dir/EM15jarrod036.pdf> (accessed 06.02.2019).
- Mission of New Zealand to the UN (11.07.2016): Statement to EMRIP. Delivered by Jarrod Clyne, First Secretary, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at  
<http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHe6d5/791b6ce9.dir/EM16Clyne018.pdf> (accessed 06.02.2019).
- Government of Russia (11.07.2016): Statement to EMRIP. Speaker not specified, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at  
<http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH6652/9a634a9e.dir/EM16Russia013.pdf> (accessed 06.02.2019).
- Government of Russia (10.07.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 03-New Mandate of the Expert Mechanism. Available at  
<http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH9b3d/8df02326.dir/EM17Russia30710.pdf> (accessed 06.02.2019).

Government of the United States (11.07.2016): Statement to EMRIP. Delivered by Anna Naimark, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0184/a4426a4a.dir/EM16USA020.pdf> (accessed 06.02.2019).

Government of the United States (10.07.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 3- New mandate of the Expert Mechanism on the Rights of Indigenous Peoples: Activities and methods of work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01e6/3b490597.dir/EM17USA30710.pdf> (accessed 06.02.2019).

### **States from Latin America (11 statements)**

Government of Bolivia (11.07.2016): Statement to EMRIP. Speaker not specified, on Agenda Item3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH011c/4800da86.dir/EM16Bolivia022.pdf> (accessed 06.02.2019).

Government of Bolivia (10.07.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 3- New mandate of the Expert Mechanism on the Rights of Indigenous Peoples: Activities and methods of work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH7f2b/370e5e10.dir/EM17Bolivia30710.pdf> (accessed 06.02.2019).

Mission of Brazil to the UN (11.07.2016): Statement to EMRIP. Speaker not specified, on Agenda Item3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH6621/72d1c251.dir/EM16Brazil028.pdf> (accessed 06.02.2019).

Government of Chile (2015): Statement to EMRIP. Speaker not specified, on Agenda Item3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH4c57/9303c506.dir/EM15chile241.pdf> (accessed 06.02.2019).

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Mission of Ecuador to the UN (12.7.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 7 - Participación de los pueblos indígenas en el sistema de las Naciones Unidas como seguimiento de la Conferencia Mundial sobre los Pueblos Indígenas. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0181/afd6f2f0.dir/EM17Ecuador70712.pdf> (accessed 06.02.2019).

Mission of Guatemala to the UN (11.07.2016): Statement to EMRIP. Speaker not specified, on Agenda Item Item3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHf828/1cd5ca17.dir/EM16Guatemala009a.pdf> (accessed 06.02.2019).



- Government of Guatemala (10.07.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 3- New mandate of the Expert Mechanism on the Rights of Indigenous Peoples: Activities and methods of work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0170/8fc8a525.dir/EM17Guatemala30710.pdf> (accessed 06.02.2019).
- Government of Mexico (2015): Statement to EMRIP. Speaker not specified, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01bc/c3ecd46f.dir/EM15mexico020.pdf> (accessed 06.02.2019).
- Government of Mexico (10.07.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 3- New mandate of the Expert Mechanism on the Rights of Indigenous Peoples: Activities and methods of work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH1b3d/8df02325.dir/EM17Mexico30710.pdf> (accessed 06.02.2019).
- Government of Peru (11.07.2016): Statement to EMRIP. Speaker not specified, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01b6/6b85a8ed.dir/EM16Perou026.pdf> (accessed 06.02.2019).

### **Asian States (8 statements)**

- Government of Indonesia (20.7.2015): Statement to EMRIP. Speaker not specified, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH2597/da502f7d.dir/EM15indonesia033.pdf> (accessed 06.02.2019).
- Government of Indonesia (12.7.2017): Statement to EMRIP. Speaker not specified, on Agenda 6 - Ten years of implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH6763/22ed3a7f.dir/EM17Indonesia60712.pdf> (accessed 06.02.2019).
- Government of Japan (10.7.2014): Statement to EMRIP. Speaker not specified, on Agenda Item 7- United Nations Declarations on the Rights of Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH012b/653c0221.dir/EM14masataka229.pdf> (accessed 06.02.2019).
- Government of Japan (20.7.2015): Statement to EMRIP. Speaker not specified, on Agenda Item 8 - United Nations Declarations on the Rights of Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH4472/a1937790.dir/EM15japan191.pdf> (accessed 06.02.2019).
- Government of Malaysia (13.7.2017): Statement to EMRIP. Delivered by H. E. Datuk Ginun Mattangai, Permanent Secretary, Ministry of Local Government and Housing, Sabah State Government, on Agenda Item 8 - Intersessional activities and follow-up to thematic studies. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH2c7c/5cf0a0f3.dir/EM17malaysia80713.pdf> (accessed 06.02.2019).
- Government of Nepal (10.7.2012): Statement to EMRIP. Speaker not specified, on Agenda Item 05-Study on the role of languages and culture in the promotion and protection of the rights and identity of Indigenous peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH4240/159b8eab.dir/EM12hari069.pdf> (accessed 06.02.2019).

Government of the Philippines (13.7.2010): Statement to EMRIP. Speaker not specified, on Agenda Item 3-Study on Indigenous peoples and the right to participate in decision-making. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0184/c8595187.dir/EM10jesus063.pdf> (accessed 06.02.2019).

Government of Viet Nam (10.7.2013): Statement to EMRIP. Speaker not specified, on Agenda Item 6-United Nations Declaration on the Rights of Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH9edc/a4c5e647.dir/EM13vietnam191.pdf> (accessed 06.02.2019).

### **African States (5 statements)**

Government of Algeria (2013): Statement to EMRIP. Speaker not specified, on Agenda Item 6-United Nations Declaration on the Rights of Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01be/138f8d63.dir/EM13algeria186.pdf> (accessed 06.02.2019).

Government of Algeria (14.7.2016): Statement to EMRIP. Speaker not specified, on Agenda Item 08-United Nations Declaration on the Rights of Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHa91a/6233776e.dir/EM16Algeria123.pdf> (accessed 06.02.2019).

Government of Burkina Faso (2010): Statement to EMRIP. Delivered by Sabine Bakyono Kanzie, on Agenda Item 03-Study on indigenous peoples and the right to participate in decision-making. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0131/5e28c356.dir/EM10sabine088.pdf> (accessed 06.02.2019).

Government of South Africa (10.07.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 3- New mandate of the Expert Mechanism on the Rights of Indigenous Peoples: Activities and methods of work. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHcedf/3c077702.dir/EM17SouthAfrica30710.pdf> (accessed 06.02.2019).

Government of South Africa (11.07.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 4 - Study and advice on good practices and challenges in business and in access to financial services by indigenous peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH016a/530d72b4.dir/EM17South%20Africa40711.pdf> (accessed 06.02.2019).

### **International Organizations**

ILO (2014): Statement to EMRIP. Delivered by Louise Nolle, on Agenda Item 5-Continuation of the study on access to justice in the promotion and protection of the rights of indigenous peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH348b/3874d7e4.dir/EM14louise079.pdf> (accessed 06.02.2019).

ILO (2017): Statement to EMRIP. Delivered by Shauna Olney, on Agenda Item 4- Study and advice on good practices and challenges in business and in access to financial services by indigenous peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0159/7197bdd0.dir/EM17Olney40711.pdf> (accessed 06.02.2019).

- OHCHR (2017): Joint statement with Secretariat of the PFII to EMRIP. Delivered by Broddi Sigurdarson and Samia Slimane, on Agenda Item 6 - Ten years of implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0102/46c494ca.dir/EM17Slimane60712.pdf> (accessed 06.02.2019).
- PAHO/ WHO (2016): Statement to EMRIP. Delivered by Sandra Del Pino, on Agenda Item 05 Study and advice on the right to health and indigenous peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH6604/f2e4461a.dir/EM16Paho-WHO078a.pdf> (accessed 06.02.2019).
- UNDP (14.7.2011): Statement to EMRIP. Delivered by Shireen Said, Policy Advisor on Human Rights, on Agenda Item 05-UN Declaration on the Rights of Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHb6a1/5ee9dfd9.dir/EM11undp163.pdf> (accessed 06.02.2019).
- UNESCO (2015): Statement to EMRIP. Speaker not specified, on Agenda Item 07-Study and advice on the promotion and protection of the rights of indigenous peoples with respect to their cultural heritage. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01bc/cdc5d426.dir/EM15unisco119.pdf> (accessed 06.02.2019).
- UNICEF (2013): Statement to EMRIP. Delivered by Nicoletta Moodie, on Agenda Item 05-Study on the access to justice in the promotion and protection of the rights of indigenous peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHb2ac/4c54cb54.dir/EM13nicoletta095.pdf> (accessed 06.02.2019).
- World Bank Group (2017): Statement to EMRIP. Speaker not specified, on Agenda Item 6 - Ten years of implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH787a/f684fd37.dir/EM17Worldbank60712.pdf> (accessed 06.02.2019).
- UN Indigenous Peoples' Partnership (8.07.2014): Statement to EMRIP. Delivered by Morse Caoagas Flores, UNIPP Technical Secretariat, on Agenda Item 5-Continuation of the study on access to justice in the promotion of the rights of indigenous peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHdb9e/76a0aed4.dir/EM14morse126.pdf> (accessed 06.02.2019).
- UN Indigenous Peoples' Partnership (2017): Statement to EMRIP. Delivered by UNDP, on Agenda Item 6 - Ten years of implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHed38/6a6978fc.dir/EM17UNDP60712.pdf> (accessed 06.02.2019).
- DESA (20.7.2015): Statement by Under-Secretary-General Mr Wu Hongbo to EMRIP. Delivered by Lenni Montiel, Assistant-Secretary-General for Economic Affairs, on Agenda Item Opening Session. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0147/831cb25f.dir/EM15lenni010.pdf> (accessed 06.02.2019).
- President of the HRC (7.7.2014): Statement to EMRIP by Baudelaire Ndong Ella, on Agenda Item Opening Session. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH2e12/1cc4c365.dir/EM14baudelaire006.pdf> (accessed 06.02.2019).

- President of the HRC (20.7.2015): Statement to EMRIP by Joachim Rucker, on Agenda Item Opening Session. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHc4ec/e9837243.dir/EM15joachim003.pdf> (accessed 06.02.2019).
- High Commissioner for Human Rights (20.7.2015): Statement to EMRIP by Mr. Zeid Ra'ad Al Ilusseini, on Agenda Item Opening Session. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0128/1863df95.dir/EM15zeid002.pdf> (accessed 06.02.2019).
- PFII (20.7.2015): Statement to EMRIP. Delivered by Chairperson Megan Davis, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH444b/a6fdc0f0.dir/EM15megan011.pdf> (accessed 06.02.2019).
- VFIP (2017): Statement to EMRIP. Delivered by Anne Nuorgam, Board of Trustees, on Agenda Item 7- Indigenous peoples' participation in the United Nations system. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH5c13/2c9cfa8e.dir/EM17UNVFIP70712.pdf> (accessed 06.02.2019).
- Special Rapporteur on the Rights of Indigenous Peoples (2015): Statement to EMRIP by Victoria Tauli-Corpuz, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH017e/4b7a9a6a.dir/EM15victoria032.pdf> (accessed 06.02.2019).
- CELAC (2016): Statement to EMRIP. Delivered by Mission of the Dominican Republic to the UN, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHe462/92b2b659.dir/EM16CELAC029.pdf> (accessed 06.02.2019).
- EU (11.7.2016): Statement to EMRIP. Speaker not specified, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0176/ad94c910.dir/EM16EU003.pdf> (accessed 06.02.2019).
- EU (10.7.2017): Statement to EMRIP. Speaker not specified, on Agenda Item 3 - New Mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01ab/4f852947.dir/EM17EU30710.pdf> (accessed 06.02.2019).

## **Indigenous Peoples' Organizations**

### **Caucus Statements (10 statements)**

- Global Caucus (10.7.2017): Statement to EMRIP. Delivered by Q'apaj Conde, on Agenda Item 3 - New Mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0104/7634c973/84ca2e9c.dir/EM17GIPC30710.pdf> (accessed 06.02.2019).
- Global Caucus (2017): Statement to EMRIP. Delivered by Dali Angel, on Agenda Item 6 - Ten years of implementation of the United Nations Declaration on the Rights of Indigenous Peoples: good practices and lessons learned. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH015d/b3e647b9.dir/EM17Angel60712.pdf> (accessed 06.02.2019).

- African Caucus (2015): Statement to EMRIP. Delivered by Sarah Fortune, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH4457/b6f5d6f0.dir/EM15sarah042.pdf> (accessed 06.02.2019).
- Arctic Caucus (2015): Statement to EMRIP. Delivered by Hjalmar Dahl, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH49e7/4d76c364.dir/EM15hjalmar023.pdf> (accessed 06.02.2019).
- Asian Caucus (11.7.2016): Statement to EMRIP. Delivered by Sanjeeb Drong, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHf735/5c168cea.dir/EM16Drong010.pdf> (accessed 06.02.2019).
- Asian Caucus (10.7.2017): Statement to EMRIP. Delivered by Monica Ndoen, on Agenda Item 3 - New Mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0104/7634c973.dir/EM17AIPC30710.pdf> (accessed 06.02.2019).
- North American Caucus (11.7.2011): Statement to EMRIP. Delivered by Kenneth Deer, on Agenda Item 3 - Follow up to Thematic Studies and Advice. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH019a/e5967edc.dir/EM11keneth016.pdf>
- Youth Caucus (10.7.2017): Statement to EMRIP. Delivered by Petra Laiti, on Agenda Item 3 - New Mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH0104/7634c973/84ca2fbc.dir/EM17GIYC30710.pdf> (accessed 06.02.2019).
- Disability Caucus (20.7.2015): Statement to EMRIP. Delivered by Olga Montufar Contreras, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH2eb1/437d2d3d.dir/EM15olga037.pdf> (accessed 06.02.2019).
- Disability Caucus (2016): Statement to EMRIP. Delivered by Pratima Gurung, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH01b6/5285039a.dir/EM16Gurung023.pdf> (accessed 06.02.2019).

### **Indigenous Peoples' Organizations (30 statements)**

- IITC and Tebtebba (2016): Statement to EMRIP. Delivered by Andrea Carmen, on Agenda Item 7 - The Sustainable Development Goals and the Rights of Indigenous Peoples. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASHeeca/768b840d.dir/EM16Carmen115.pdf> (accessed 06.02.2019).
- IITC (2016): Statement to EMRIP. Delivered by Andrea Carmen, on Agenda Item 3 - Follow up to the World Conference on Indigenous Peoples, including a review of the mandate of the Expert Mechanism. Available at <http://cendoc.docip.org/collect/cendocdo/index/assoc/HASH7512/82790aeb.dir/EM16Carmen012.pdf> (accessed 06.02.2019).

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