

**CONDITIONS APPLY:
NON-STATE ACTORS
CHALLENGING STATE SOVEREIGNTY
THROUGH
INTERGOVERNMENTAL ORGANIZATIONS**

**An Analysis of National Liberation Movements and Indigenous Peoples
at the United Nations**

by

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A Thesis Submitted in Partial Fulfillment of
the Requirements for the Degree of

Doctor of Philosophy

in

The Faculty of Graduate and Postdoctoral Studies
(Political Science)

The University of British Columbia

(Vancouver)

August 2016

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Abstract

This dissertation contributes to the study of Intergovernmental Organizations (IGOs), such as the United Nations, and demonstrates their important function to convene multiple actors engaged in normative contestation and change. It achieves this by offering a systematic theoretical and empirical account of how non-state actors (NSAs) challenge the institution of state sovereignty. The argument offered specifically seeks to answer how and under what conditions this challenge is possible, and whether and when states respond by limiting IGOs and/or NSAs. To answer this question, the dissertation analyzes the successes and failures of two sets of non-state actors that have sought to alter prevailing conceptions of state sovereignty: national liberation movements and indigenous peoples.

The dissertation's original contributions to existing knowledge are threefold. First, I build on existing constructivist theory to argue that state sovereignty is despite being resilient and hard to change, also a mutable and variable composite institution. I specify that state sovereignty's variance finds its clearest expression in three international norms that makes up the institution: territoriality, non-interference and self-determination. Second, I develop and apply the significance of three explanatory factors of non-state actors using IGOs to challenge and change the composite parts of state sovereignty: a) non-state actors require meaningful access and must expand participation capabilities to relevant venues within the nested structure of the IGO; b) non-state actors rely on the often essential role of allies active in the IGO to influence venue constraints and outcomes; c) non-state actors and their allies must find, create and/or be able to change relevant venues in order to advance collective goals through persuasion and social pressure tactics. I identify a particularly critical venue type which is coined *sheltered venue*. Sheltered venues establish a foot in the door to the IGO through which non-state actors deepen their interaction with states. Finally, I offer a detailed empirical investigation of national liberation movements and indigenous peoples interacting with the UN. No study of these actors in comparison exists to date. I, as such, explore how decisions and outcomes that benefited national liberation movements impacted indigenous peoples' engagement at the United Nations.

Preface

This is an original intellectual product of Jan Lüdert.

Research for this dissertation includes interviews that were approved by the University of British Columbia's Behavioral Research Ethics Board (BREB), certificate No. H13-02768

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List of Abbreviations

The American Bar Association	ABA
The African Group of States	AGS
The American Indian Movement	AIM
The Asian Indigenous and Tribal Peoples Network	AITPN
The African Liberation Committee	ALC
The African National Congress	ANC
The UN Committee on The Elimination of Racial Discrimination	CERD
The UN Commission on Human Rights	CHR
The Consejo Indio de Sud America	CISA
The Coordinadora de las Organizaciones Indegenas de la Cuenca Amazonia	COICA
The Expert Mechanism on The Rights of Indigenous Peoples	EMRIP
The National Liberation Front	FNLA
The Liberation Front of Mozambique	FRELIMO
General Assembly	GA
The Group of Latin American and Caribbean States	GRULAC
The UN Human Rights Committee	HRC
The Indigenous Caucus	IC
The Inuit Circumpolar Conference	ICC
The International Covenant on Civil and Political Rights	ICCPR
The International Convention on The Elimination of all forms of Racial Discrimination	ICERD
The International Covenant on Economic Social and Cultural Rights	ICESCR
The Indigenous Caucus Steering Committee	ICSC
Intergovernmental Organization	IGO
The International Indian Treaty Council	IITC
The International Indian Treaty Council Conference	IITCC
International Labor Organization	ILO
The Indian Law Resource Centre	ILRC
The International Organization of Indigenous Resource Development	IOIRD
The International Working Group on Indigenous Affairs	IWGIA
Jeunesse Démocratique Camerounaise	JDC
Popular Movement for The Liberation of Angola	MLPA
Non-governmental Organizations	NGOs
The National Indian BroTherhood	NIB
Non-state Actors	NSA
Non-Self Governing Territories	NSGTs
The Organization of African Unity	OAU
The Office of The High Commissioner for Human Rights	OHCHR

Office of Strategic Services	OSS
The African Party for The Independence of Guinea and Cape Verde	PAIGC
The South West Africa People's Organization	SWAPO
Transnational Advocacy Networks	TANs
Tanganyika African National Union	TANU
The Union Démocratique des Femmes Camerounaises	UDEFC
Universal Declaration of Human Rights	UDHR
United Nations	UN
The UN Conference on Environment and Development	UNCED
The UN Conference on International Organizations	UNCIO
The UN Declaration on the Rights of Indigenous Peoples	UNDRIP
The United National Independence Party	UNIP
The UN Permanent Forum on Indigenous Issues	UNPFII
The Union des Populations du Cameroun	UPC
The Universal Periodic Review	UPR
The World Conference on Human Rights	WCHR
The World Council of Indigenous Peoples	WCIP
UN Working Group on The Draft Declaration	WGDD
The UN Working Group on Indigenous Populations	WGIP
Zimbabwe African National Union	ZANU
Zimbabwe African People's Union	ZAPU
The UN Economic and Social Council	ECOSOC
Canada New Zealand The United States	CANZUS
The President of The General Assembly	PGA

Acknowledgements

This dissertation was written on the traditional, ancestral, unceded territory of the Musqueam Nation. I am grateful for the guidance, mentorship, and encouragement offered so generously to me over the course of my graduate degree and, especially through writing this dissertation at the University of British Columbia's Point Grey campus. I am indebted to Katharina Coleman, my advisor, champion, and mentor, for her unwavering support. Thank you Katia! Lisa McIntosh Sundstrom and Richard Price, my committee members, have provided invaluable comments, insights, and constructive feedback and challenging critiques on my work. I am forever grateful to them also because their teaching, research rigor, sharp minds and virtue have informed this dissertation. They all continue to inspire my work.

Along with my advisor and committee members, I was privileged to be taught by faculty members who in many ways shaped the thinking, research and writing of this thesis. I am thankful to Barbara Arneil, Bruce Baum, Erin Baines, Michael Byers, Arjun Chowdhury, Peter Dauvergne, Kurt Huebner, Sheryl Lightfoot, Alan Jacobs, Laura Janara, Brian Job, Richard Johnston, Jenny Peterson, Allen Sens and Mark Warren. I also want to thank my co-workers at the UBC Center for Teaching, Learning and Technology, and especially Joseph Topornycky. I thank Kerstin Lüttich at the Institute for European Studies. I thank the Liu Institute for Global Issues at UBC for having accepted me as a Liu scholar, for connecting me with other graduate students across disciplines and for funding research visits through the Bottom Billion Fieldwork Fund. Additional grants were provided by the UBC Four Year Fellowship for PhD students, the Faculty of Arts Graduate Award, the UBC Go Global Mobility Fund, and the Department of Political Science. At UBC during course work, preparing for comprehensive exams and prospectus writing I have benefited from the support of fellow graduate students. While I cannot list them all, I must thank Andrea Nuesser, Katrina Chapelas, Serbulent Turan, Brian Peeler, Derek Kornelsen, Kate Neville, Pascale Massot, Jen Allan, Jan Boesten, Shane Barter, Adam Bower, Augustin Goenaga Orrego, Jonathan Tomm, Yana Gorokhovskaia, and Conrad King.

The United Nations Dag Hammarskjöld Library in New York City has offered me a workspace on research visits throughout the years. I want to thank the UN Reference Team for helping me navigate my way through the labyrinth. I also thank Roland Burke from La Trobe University in Melbourne, Australia, who has graciously agreed to share with me difficult to come by archival material; while I shared my dataset with him. I thank doCip – the Indigenous Peoples' Center for Documentation, Research and Information, and especially Nathalie Gerber McCrae. I am also grateful to Lola Garcia-Alix and Annette Kjægaard from the International Working Group for Indigenous Affairs. I thank Brenda Burns from the Academic Council on the United Nations System for her help with accreditation to the United Nations in New York City.

My greatest debt is to those outside of the university and professional setting for keeping it real and me on task. I thank my parents Birgid and KaWi Lüdert for being the best friends I have and my brothers Jens-Uwe und Jörg Lüdert and their families for their support. I thank Susan Kathleen and John Shigeo Morita for having taken me into their family here in Vancouver. I am grateful to Carl Wiebe. There are not enough words to thank Jody Morita, Leon Berzen, Simon Garrett, Wesley Bresette, Kevin Chan, Daniel Hartung, Janece Keller, Kirsti Sampson, Megan Davis, Alex Loyd, and Grant Worth. Thank you Cara Dong - whose love I *so* deeply treasure.

für meine Familie

1. Introduction

State sovereignty remains a vigorously contested concept moored in a long practical and intellectual history. Its relevance to the discipline of International Relations is central and evident in all main theoretical approaches. Different International Relations theories define state sovereignty as being weak and waning or resilient and unchanged – a bifurcation that I argue is largely unhelpful.

The former characterization proposes that issues flowing from globalization, European integration, international human rights, humanitarian intervention, global governance and regionalization are proof of the declining influence of state sovereignty. The latter maintains that little, if anything has changed and sovereign states have remained the only influential actors on the global stage. When applied in this way, neither of these arguments is satisfactory. This is because on the one hand sovereignty continues to be challenged and fought over by both state and non-state actors and on the other hand sovereignty matters because states behave as if it matters and by fostering its resilience.

This dissertation offers a systematic theoretical and empirical account of how non-state actors (NSAs) challenge prevailing conceptions of state sovereignty in the contemporary international system. I am especially interested in the conditions under which non-state actors use the United Nations, an Intergovernmental Organization, to challenge state sovereignty. The dissertation's theoretical and empirical scope is concerned with questions of norm contestation by NSAs using IGO's. This is to say that while this analysis does speak to larger debates on decolonization and human rights advocacy, it primarily focuses on the processes of reshaping

international norms undergirding the institution of sovereignty.¹ More specifically I provide a comprehensive analysis on two sets of non-state actors: national liberation movements and indigenous peoples. The scope of this dissertation focuses on those movements and/or indigenous peoples that choose to use the UN in these ways, without claiming that all such groups do. Some do so by using the IGO, others choose different paths.² Still, understanding how these actors have accessed and participated in the venues of the UN and whether or not they challenge and change the institution of state sovereignty is important to understanding the evolving field of global politics, its actors and practices.

1.1 The Puzzle: Non-State Actors using the United Nations to Challenge State Sovereignty

The ambition of this dissertation is to address the puzzle of how non-state actors can use an Intergovernmental Organization to challenge a fundamental institution against the wishes and interests of dominant states. This project is inspired by a simple empirical observation: Intergovernmental Organizations are said to be state dominated, yet the United Nations from its very inception in 1945 was used by national liberation movements to challenge colonial states based on a universal demand for self-determination. These non-state actors drew on the UN to achieve sovereign statehood during the era of decolonization as provided for in the United Nations *Declaration on the Granting of Independence to Colonial Countries and Peoples*. Moreover, indigenous peoples also contest state sovereignty at the UN. Indigenous peoples continue to work through the IGO to keep states accountable for the implementation of collective rights to land, territories and self-determination as provided for in the United Nations

¹ Thus, for example, I do not claim to offer a full causal account for post-1945 decolonization, which would require a more extended discussion of the impact of the Cold War and of localized violence by some actors to achieve independence, as well as (potentially) other historical factors. Instead, I focus my argument more narrowly, and consider two specific instances of normative change engendered by NSAs using an IGO to alter prevailing conceptions of state sovereignty.

² Such paths may include accepting the status quo, violent conflict and/or resisting engagement with states.

Declaration on the Rights of Indigenous Peoples. Both of these non-state actors not only contest(ed) states domestically but decided to challenge existing conceptualizations and practices of state sovereignty through an Intergovernmental Organization.

These cases are foremost intriguing because the UN - as an organization of states - should not provide a framework within which non-state actors can challenge foundational institutions of states. Available scholarship often assumes that IGOs more generally, as established and legitimated by states, do not diverge from acting beyond limited mandates provided by states as their principals. Alternatively, they assume that IGOs act within a limited sphere of discretion because states purposefully designed them to advance state interests or make policy recommendations. Some scholars go so far as to argue that IGOs are epiphenomenal to or at best have minimal effect on state behavior and authority. If these assumptions hold, challenging sovereignty through IGOs would be an especially futile field for non-state actors to enter. Yet non-state actors do engage Intergovernmental Organizations and do so with varied success to alter the content and practices of state sovereignty. Certainly, national liberation movements and indigenous peoples encountered states' opposition and attempts to constrain their engagement with the UN. Despite these constraints the fact that these non-state actors have used and use the UN to challenge states sovereign authority presents an important puzzle that warrants a detailed analysis.

In both cases, prevailing conceptions and practices of state sovereignty were challenged. National liberation movements used the UN to end overseas colonial rule and gain sovereign statehood and indigenous peoples have entered the UN as more permanent actors with the stated purpose to engage states to adjust states' domestic authority structures and negotiate autonomy and self-government arrangements with indigenous peoples. Given these developments at the

UN, I challenge the assumption that IGOs, given their status as multilateral institutions of states, simply do not allow scrutinizing foundational institutions of the interstate system by non-state actors. I counter such arguments and investigate a particularly interesting puzzle because gaining insights into how non-state actors' use of an IGO impacts the resilient yet mutable nature of state sovereignty is a fundamental question for the study of International Relations. If non-state actors engage Intergovernmental Organizations to challenge one of its foundational institutions, we must ask *how and under what conditions this is possible and whether and when states respond by limiting IGOs and/or NSAs*. My goal is to identify exactly these conditions by focusing on the types of actors discussed.

1.2 The Argument

My argument can be summarized in two points. First, I demonstrate that both national liberation movements and indigenous peoples have indeed been able to challenge and change prevailing understandings of the composite institution of state sovereignty. Their challenge is in both cases based on a demand for a universal application of self-determination for all peoples and by grafting the norm of self-determination onto human rights norms. Each of these efforts altered conceptions of sovereignty by affecting one or several of its normative components (territoriality, non-interference, and self-determination). As a result, although state sovereignty remained in place as a resilient ordering principle of global politics, the prevailing conceptions of what state sovereignty is and entails underwent a significant change that affected the range of behavior regarded as appropriate and consistent with the institution of state sovereignty.

In the case of national liberation movements, the newly formed UN provided the main forum for contesting prevailing understandings of sovereignty by offering a fertile ground to develop the 'principle' of self-determination into a norm applicable to all peoples. This link

between self-determination and human rights created the central challenge to the institution of state sovereignty. In fact, the presumption that individuals and groups of peoples possess internationally protected human rights that states are not at liberty to override is a profound post-1945 development and focus of this dissertation. The norm of self-determination so constituted limited the ability of states to uphold the norm of non-interference. Colonial states' attempts to invoke the norm of non-interference were effectively thwarted by the growing consensus that overseas colonialism had to be brought to a swift and unconditional end. Moreover, while states could no longer effectively uphold the norm of non-interference to maintain control over their colonies - national liberation movements equally accepted that their independence would be based on existing borders, an acceptance which consequently fastened the then still developing norm of territorial integrity.

As these actors sought to establish a norm-based challenge to the composite institution of state sovereignty they helped advance the process of decolonization and, consequently, contributed to globalizing a reformulated institution of state sovereignty. National liberation movements transformed their status as non-state actors, and almost overnight, turned into state diplomats. As a result, the composition of the UN rapidly enlarged from fifty-one members at inception in 1945 to 76 members by 1955, then jumping to 99 member states by 1960 to 144 members by 1976. The challenge to state sovereignty engendered by national liberation movements was thus indicative of a changing United Nations, as an IGO. This was a momentous and unexpected outcome. It was an undesired development for colonial states, which they aimed to constrain at the UN but could ultimately not avert. The United Nations established its own relevance as an important arbiter to settle the consequences for the system of sovereign states, old and new alike.

Indigenous peoples also actively challenged understandings and expectations about states' authority with respect to practices affecting indigenous peoples. They used the United Nations to assert their status as "peoples" under international law which corrected integrationist terminology that labeled them "indigenous populations," a category which states had used to justify assimilationist or discriminatory policies against indigenous peoples. Indigenous peoples drew on the UN to graft a "non-statist" conception of self-determination onto existing human rights. This conception of self-determination also challenges the norm of non-interference. This is because indigenous peoples' self-determination implies that states have a normative obligation to adjust constitutional configurations and negotiate autonomy and self-government arrangements with indigenous peoples. This "non-statist" view of self-determination means that the indigenous peoples' rights condition, but do not restrict or deny the norm of territorial integrity.

Territory is internally divisible however. States are thus challenged to not only treat indigenous peoples within their borders on the basis of equality and non-discrimination, but to adjust constitutional arrangements in order to share authority with indigenous communities. Indigenous peoples' advocacy at the United Nations has thus far produced limited change to state practice. Still, indigenous peoples demand for self-determination must be viewed as a process that is ongoing and expansive. It is in this last context that, despite an evident gap in the domestic implementation of the rights of indigenous peoples, indigenous peoples as rights-holders continue to pursue the operationalization of their rights as active and more permanent actors through diverse UN venues and international mechanisms.

Second, both cases highlight the importance of accounting for how these non-state actors enter and participate in the UN. Indeed, the increase of their respective ability to access IGO

venues and capacity to participate in these venues fostered their agency and presence to achieve goals.

Non-state actors' ability to use an IGO in order to challenge fundamental norms is based on how they access the organization as competent actors and whether or not such access enables or constrains their effective participation alongside states. This dissertation makes this argument by conceiving of two primary dimensions that relate to the access of non-state actors to the UN: the formal and informal channels by which they enter as well as the status they are able to foster in the IGO. Depending on how non-state actors gain access to the IGO their participation as deliberative actors to challenge, develop and implement fundamental norms begin to matter. Apart from their own efforts to push for improved access and participation this dissertation also draws attention to two interrelated explanatory factors: the relevance of venues and the essential role of allies active in the IGO.

The evolution of access and participation by national liberation movements was primarily a function of state allies translating existing access and participatory mechanisms and by supplying venues to national liberation movements to keep colonial states accountable. Overall, the capacity of national liberation movements to take part in the United Nations changed substantially between 1945 until the mid 1970s. At first national liberation movements were severely restricted because colonial states denied them the right to access and participate in institution building venues in San Francisco. Despite this constraint, state allies realized limited access and participatory innovations for the peoples from so-called Trust Territories to petition the Trusteeship Council and to bring forward their claims for self-determination during visiting missions by the Trusteeship Council. In a second step, and with respect to the essential role of allies, newly independent states with their own history of national liberation, opened the IGO up

further by creating new venues – the Committee on Information and later on the Decolonization Committee. In so doing these state allies adopted and translated available access and participatory mechanism available to the peoples from Trust Territories to the majority of colonial territories, the so-called Non-Self-Governing Territories. Alongside these changes to enter the UN the status of national liberation movements at the IGO changed also. By the early 1970s the UN came to accept national liberation movements as the only legitimate representatives of NSGTs and by granting them standing observer status until they acceded to join the organization as state actors.

Indigenous peoples on the other hand, while also relying on allies to open channels for their access and participation to UN venues, were actively and directly involved in establishing their UN presence. The access and participation by indigenous peoples to the United Nations is thus better viewed as a function of a more sustained demand to access and participate in relevant UN venues. Initially, indigenous peoples benefited from the role of independent human rights experts who set precedents for their access and participation to a sheltered venue, the Working Group on Indigenous Populations. Indigenous peoples, in turn, participated as active standard-setters in the venue to establish a norm-based challenge to state sovereignty. In a next step, indigenous peoples used the precedents practiced in the sheltered venue to demand similar access and participation modalities for venues higher up in the UN hierarchy. To date, indigenous peoples have improved their overall status at the UN as more permanent actors and by staffing several accountability venues, such as the United Nations Permanent Forum on Indigenous Issues, responsible to follow up on the implementation of indigenous peoples' rights.

1.3 The Contributions of the Dissertation

This dissertation contributes to the study of Intergovernmental Organizations, such as the UN, and demonstrates their important function to convene multiple actors engaged in normative contestation, challenges and change. As this dissertation indicates the United Nations is neither epiphenomenal to the study of International Relations nor is it an irrelevant global organization. On the contrary, it proves to be an important forum for states, non-state actors, and others to deliberate and seek improved outcomes. Even so this dissertation finds that Intergovernmental Organizations are still very much controlled and dominated by states' interests I find that such interests are subject to change, in the long duré, and the United Nations especially offers important platforms through which such change occurs. As Risse remarked in a review most empirical work on transnational non-state actors "remains rather unidirectional by looking at the impact" of non-state actors on states, IGOs and international institutions but say little "about states and international organizations enabling and/or constraining" non-state actors (Risse 2002: 259). This dissertation speaks directly to these issues.

The dissertation's original contributions to existing knowledge are threefold. First, I build on existing constructivist theory and develop a novel theory of state sovereignty as a composite institution, which I define as the legal and political practices linking intersubjective ideas of legitimate authority to three fundamental norms that are resilient yet also mutable: territoriality, non-interference and self-determination. Second, this dissertation adds to constructivist debates on the co-constitution of agency and structure by bringing into sharp focus the significance of three explanatory factors of NSAs using IGOs to challenge all three composite parts of the institution of state sovereignty: a) NSAs require forms of agency by way of gaining meaningful access and by expanding participation capabilities to relevant IGO venues; b) and related, non-state actors rely on the often essential role of allies active in the IGO (including state delegates,

secretariat members and independent actors acting as norm entrepreneurs) to influence venue constraints and outcomes; c) non-state actors and their allies must find, create and/or be able to change relevant venues in order to advance collective goals through persuasion and social pressure tactics. Here I identify different types of venues but foremost identify what I coin *sheltered venues*. They are important to non-state actors as they allow non-state actors to establish a foot in the door to the IGO through which these actors establish and deepen their engagement. Third, I offer a detailed empirical investigation of national liberation movements and indigenous peoples interacting with the UN. No study of these NSAs in comparison exists to date. I explore how decisions and outcomes that benefited national liberation movements impacted indigenous peoples subsequent UN engagement.

1.4 The Research Design

This dissertation employs a qualitative case study design and research methods. My approach here is grounded theory, or the constant comparative method both within and across cases, in order to develop theory through an iterative process of empirical and theoretical analysis (Mills, Bonner & Francis 2006). I employ process tracing techniques that proceed through a combination of induction and deduction (Bennett & Checkel 2015, Jacobs 2015). I am concerned with specifying the conditions enabling and/or constraining NSAs to challenge sovereignty through the process of altering norms undergirding the institution of sovereignty at given historical junctures. Careful description is the foundation of process tracing which includes giving close attention to sequences of independent, dependent and intervening variables (Colliers 2011).³ Accordingly I document the change (or lack thereof) in the norms of territoriality, non-

³ As Collier notes: “Process tracing inherently analyzes trajectories of change and causation, but the analysis fails if the phenomena observed at each step in this trajectory are not adequately described. Hence, what in a sense is “static” description is a crucial building block in analyzing the processes being studied” (Collier 2011: 823).

interference and self-determination that I argue constitute the composite institution of state sovereignty, and trace the interactions of non-state actors, their secretariat allies and state actors within relevant venues of the United Nations to explain the pathway of changes. I also consider alternative explanations to verify the robustness of the three explanatory factors I propose.

I choose a case study approach because case studies are useful for the generation of new hypotheses (the "logic of discovery") as well as the confirmation of existing ones (the "logic of confirmation") (Sprinz & Wolinsky-Nahmias 2004). This is because detailed accounts of individual cases can give insights on the precise and fine-grained mechanisms of persuasion and social pressure NSAs and their allies deploy when challenging sovereignty in conjunction with IGOs. Case studies moreover are useful for my purposes because I intend tracing causation and interactions rather than establishing correlations.

Furthermore, case comparisons allow me to gain analytical leverage by comparing across as well as within these cases (over time). Limiting my analysis to two carefully selected cases therefore allows me to trace the respective interactions between national liberation movements and indigenous peoples using particular UN venues in greater detail. Consequently, I aim to provide systematic explanations that demonstrate exactly how the three explanatory factors of NSAs access and participation, role of allies and relevance of venues work and interact.

Ultimately, I offer an argument which investigates both cases not only in terms of norm-based challenges to state sovereignty (the dependent variable) but also in terms of within cases variation of relevant venues with whom non-state actors interact when moving through the UN hierarchy. This is necessary because the UN itself is not a static forum. On the contrary, non-state actors must adjust to intervening factors flowing from organizational adaptations,

uncertainty and venue shift in the UN as an evolving IGO. In fact, the activities of national liberation movements at the UN themselves, as I uncover, created specific constraints indigenous peoples subsequently had to and continue to grapple with.

In terms of data collection this dissertation primarily draws on original research conducted at the United Nations Dag Hammarskjöld Library in New York City. It also relies on other archival material especially the Indigenous Peoples' Center for Documentation, Research and Information based in Geneva. The archival material collected has been used to organize and build a comprehensive and original database of primary documents from all relevant UN venues this dissertation investigates.⁴ In Chapter 3, I have also drawn on archival material, especially verbatim records from the GA Third Committee, that Roland Burke from La Trobe University in Melbourne, Australia has graciously agreed to share with me while I provided my own dataset for his ongoing research. For Chapter 4, concerned with indigenous peoples, I triangulated primary and secondary sources with observations of the annual proceedings at the United Nations Permanent Forum on Indigenous Issues from 2009 to 2011 as well as in 2014. For this case study I also conducted seventeen semi-structured interviews with key actors.

This dissertation also brings into conversation different types of literatures. It draws on theoretical and empirical accounts of international law and international relations surrounding state sovereignty, literature concerned with Intergovernmental Organizations and their role in global governance, scholarship concerned with non-state actors and transnational movements as well as historical and personal accounts of actors involved in the process of post-1945 decolonization and indigenous peoples advocacy, respectively.

⁴ I used atlas.ti a qualitative data analysis and research software.

1.5 The Plan of the Dissertation

Four chapters follow this introduction. Chapter 2 outlines the theoretical framework and key conceptualizations of the dissertation. After defining the dependent variable – state sovereignty – as a composite institution I conceptualize challenges to state sovereignty as occurring through changes to its composite normative parts (self-determination, territoriality, non-interference). I develop a framework that describes the mutability of state sovereignty as a result of changes to the norm of self-determination. Alteration to the norm of self-determination created tensions and adjustments to the norm of non-interference as well as territoriality norms. Chapter 2 also introduces three explanatory factors NSAs must find, secure and expand in order to engage in these normative challenges through the UN. These three factors are related to NSAs access, and their participation capabilities, the role of allies and relevance of venues. Chapter 3 presents an empirical case study focusing in national liberation movements who used the UN to achieve independence from overseas colonialism following the Second World War. Chapter 4 offers an empirical account of indigenous peoples’ involvement in the UN. Chapter 5 summarizes the empirical findings of the previous chapters and outlines a set of implications of the dissertation’s results for three important areas of research: state sovereignty, the relevance of Intergovernmental Organizations and role of non-state actors in world politics.

2. Explaining Conditions for Challenging State Sovereignty: Conceptualizations and Theories

Under what conditions can non-state actors (NSAs) use the United Nations, an Intergovernmental Organization (IGO), to challenge state sovereignty? In this chapter, I develop a theoretical framework including key conceptualizations to answer this question. I introduce this framework in two steps. I first conceptualize state sovereignty as a composite institution, and outline the three central composite normative parts of the institution that are mutable: self-determination, non-interference and territoriality. In section two I identify three explanatory factors non-state actors must find, secure and expand in order to change these normative parts, namely, the key dimensions of a) access and participation by non-state actors in an IGO, b) the essential role of allies and c) relevance of venues to the former. I conclude this chapter by offering a dynamic theory statement with respect to these explanatory factors.

2.1 Defining State Sovereignty: A resilient yet mutable composite institution

Only a few decades ago, it was not uncommon for state sovereignty to be taken for granted by scholars and was not questioned because

just as we know a camel or a chair when we see one, so we know a sovereign state. It is a political entity which is treated as a sovereign state by other sovereign states (Miller 1981: 16).

A commonly cited definition of sovereignty states that it simply means, “that no final and absolute political authority exists” outside the state (Hinsley 1966: 26). For the neorealist and neoliberal schools, which focus on states as the central actors in international affairs, sovereignty has thus been seen as an ontological presupposition. States are understood to be politically independent within a given territory and that their security and survival or ability to co-operate depends on being an authoritative independent sovereign unit. Sovereignty, for these schools, is

an empirical and material fact that delimits the realm of international anarchy from domestic hierarchy. Sovereignty is understood as possessive in so far as a state either is or is not sovereign.

Scholars in both of these prominent theoretical traditions typically begin by specifying that sovereign states are the most relevant actors on the global stage and go on to explain that states pursue pre-given preferences by using their material capabilities. Neorealism is most clear about this as

to say that a state is sovereign means that it decides for itself how it will cope with its internal and external problems, including whether or not to seek assistance from others and in doing so to limit its freedom by making commitments to them (Waltz 1979: 96).⁵

In both schools, states are treated as rational and autonomous units that strive to maximize utility under systemic conditions of anarchy or in light of potential cooperation (interdependence under anarchy) with other states that are seeking to overcome sub-optimal outcomes. The differences between them are primarily found in a different focus on security and distributional conflicts versus the resolution of market failures and cooperation asymmetries (Krasner 1999: 45). Given their focus on the relations between states they both emphasize conditions of anarchy instead of problematizing sovereignty. These approaches are ultimately similar than because they tend to reify sovereignty. Both approaches view sovereignty as a rudimentary assumption of states as like units by ignoring its relational and historically contingent character. This view is most clear in such notorious formulation that have come to dominate the study of international affairs ever since it was declared that “a state *is* a state is a state” (Waltz 1979: 939). Such assumptions suffer from two key problems.

⁵ Waltz argues that sovereignty, within the constraints of the anarchical structure of the interstate system, means, “each state, like every other state, is a sovereign political unit” (ibid.).

First, if sovereignty is defined as an empirical and material fact it not only “confuses authority with power and control” but it also conflates the external and internal dimensions of state sovereignty (Aalberts 2012: 18). This conflation of ‘state’ and ‘sovereignty’ allows these theorists “to abstract, or simply ignore, problems in the domestic domain and to leave the assessment of problems of internal sovereignty to others” (Bierstecker & Weber 1996: 5). I contend that this conflation becomes even more problematic when non-state actors seek out international arenas, such Intergovernmental Organization (IGOs), to question the authority of states. Fundamentally, I posit that a fixed view of sovereignty, as absolute and indivisible, is ill-suited to explain changes that result from NSAs intentionally challenging the authority of states at the international level.⁶ Consequently, a key concern this dissertation seeks to address is what we can learn by appreciating that not all interesting actors active in the international arena are fully sovereign states.

Second and related, due to their preoccupation with anarchy, these scholars miss the relational aspect that sovereignty, as an institution, contributes to the achievement and maintenance of *both* domestic and international hierarchies (Lake 2003).⁷ That is to say that the relational aspect of sovereignty distinguishes - orders - those actors that are conferred with authority by others as sovereigns and those actors excluded from such recognition.⁸ Simply put where there are sovereigns there must be non-sovereigns. Yet who holds sovereign authority is

⁶ Sørensen produced an insightful treatment on sovereignty and changes in statehood but does not focus on non-state actor influence (Sørensen 2001).

⁷ If sovereignty is declared to mean the autonomy states possess and only states possess, sovereignty is merely an individual assertion of possession. A reification of the internal and external dimension of sovereignty overlooks the order and hierarchy present within anarchy (Wendt 1992). I also draw on the English School which finds sovereignty to be more than the demarcating line between international and domestic politics and emphasizes sovereignty as an institution that shapes the social interactions between states (See for an insightful discussion on institutions (Buzan: 2004; Bull 2002).

⁸ Sovereignty designates competent entities (states) that are collectively recognized and “thus involves not only possession of self and the exclusion of others but also the limitation of self in the respect of others, for its authority presupposes the recognition of others who, per force of their recognition, agree to be so excluded” (Ashley 1984: 272).

an empirical question that is subject to continuous challenge and potential change. I here built on David Lake who has aptly argued that we can extend the range of deviations from sovereignty

to include non-state political units – or polities – in relations of informal and formal empire and to states themselves, composed of subordinate polities of formerly or potentially sovereign units. In these cases, the relationship between a dominant and a subordinate polity is more hierarchical [...], as the latter unit loses its international personality or international legal sovereignty. In this way, states themselves become problematic [...] and can be understood as an extreme case of hierarchy (Lake 2003: 311).⁹

This means that the types of sovereign authorities states possess vary both vis-à-vis each other and towards those they govern (Lake 2003; Jackson 1990).¹⁰ These dynamics further demand analysis because states are aware of and react to these challenges. A focus on sovereignty, as this study will demonstrate, is therefore not only worth considering in light of non-state actors questioning sovereignty through IGOs but matters also because states in these forums behave as if it matters.

Constructivists have problematized several key concepts in world politics including sovereignty.¹¹ They have emphasized that sovereignty is a socially constructed trait – and better conceived of as a “social fact” (Searle 1995) or a “social kind” (Wendt 1999) – that is produced and reproduced through practice by states, and - as this dissertation proposes - also by non-state actors working through IGOs. I intend to build on scholars that argue that sovereignty is a type of

⁹ Formerly, relationships between polities vary along a continuum defined by the degree of hierarchy between two or more polities. The degree of hierarchy, in turn, is defined by the locus of rights of residual control, or less formally, by the decision-making authority possessed by each polity (Lake 1999: 24).

¹⁰ Jackson proposed that the post-1945 decolonization introduced a weak player into the system of sovereign states which he has called quasi-states referring to post-colonial states in Africa and Asia. Krasner in a similar vein distinguishes between for meanings of sovereignty: interdependence sovereignty which refers to the ability of states to control cross border movements of goods and services; domestic sovereignty refers to authority structures within states and the ability of these to regulate behavior effectively; Westphalian sovereignty refers to the exclusion of external sources of authority both *de jure* and *de facto*; and last international legal sovereignty which refers to international recognition (Krasner 1999).

¹¹ These varied approaches resulted in explosive and lively debates. The prevalence of the phrase “state sovereignty” in English publications more than doubled since 1980 (<https://books.google.com/ngrams/>). See for instance (Bierstecker & Weber 1996; Lyons & Mastanduno 1995; Philpott 2001; Reus-Smit 2013; Sørensen 2001; Wendt 1999).

authority relation that determines “who has the authority to decide what” (Lake 2003: 312) and propose to treat sovereignty as a composite institution that is both resilient and mutable.

Constructivists have taken sovereignty to be more than an ontological given and understand it as a flexible institution that is constituted by the shared actions of state and non-state actors. For the constructivist, sovereignty socializes states and their identities. Sovereignty is variable because it is also dependent upon the actions and uses by different actors that make and remake it. The key to understand state sovereignty as a social construct is to appreciate that states are not fully formed agents that interact with sovereignty, taken as a fully established institution or structure. Rather, a state, “as an identity or agent, and sovereignty, as an institution or discourse” is better understood to be in a constant and transformative process of mutual constitution (Bierstecker & Weber 1996: 11).¹²

Sovereignty is durable because as an institution it denotes a persistent set of formal and informal norms and rules that prescribes actors with behavioral roles, constrains their activity, and shapes actors’ expectations (Keohane 1989: 3). At the factual level sovereignty as an institution establishes international order(s), provides mutual authority and recognition but consequently excludes others from such a status. I argue that it is precisely this duality of inclusion and exclusion which is the seed for contestation and points towards the potential mutability of sovereignty.¹³ The contestation is engendered by non-state actors who aim to wrest independence or staggered forms authority including autonomy or self-government arrangements from states. This is because sovereignty, as a social construct, is produced by the actions of powerful agents (states) and the resistance of agents located at the margins of power (non-state

¹² Sovereignty is "about the social terms of individuality, not individuality per se, and in that sense it is an historically contingent [category] rather than an inherent quality of stateness" (Bierstecker & Weber 1996: 12; Wendt & Friedman 1996). See also Wendt 1999 especially Chapter 6: Three cultures of anarchy.

¹³ Sovereignty is a "social status that enables states as participants within a community of mutual recognition" (Strange 1996: 22) and only exists by "virtue of certain intersubjective understandings and expectations; there is no sovereignty without an other" (Wendt 1992:412).

actors) (Bierstecker & Weber 1996). Sovereignty is than also a mutable institution because actions and patters which flow from its persistent use are characterized and continuously judged in terms of “certain normative criteria” whose contestations function to mediate between the realm of “is” and the realm of “ought” of sovereignty (Kratochwil 1995: 21).¹⁴ I treat sovereignty accordingly as a central discursive mechanism linking intersubjective ideas of "legitimate statehood and rightful state action" with other fundamental norms (Reus-Smit 1997: 557).

To move away from issues of reification, conflation and single actor perspective I offer an alternative conceptualization of sovereignty as composite institution. Sovereignty is a primary composite institution upon which the current system of states is founded. It is also an institution, which is periodically renovated to align with new historical circumstances (Jackson 1999: 11). Like every political and legal institution, it carries the dual logic of both expected consequences and appropriateness (March & Olsen 1989). Sovereignty not only cuts across continuity and change of global politics, it also captures dimensions of the “is” and the “ought” of domestic political authority. Sovereignty as a political-legal concept is both a fact and an institution. It as such is jealously guarded by those possessing it and persistently challenged by political actors aiming to gain or fasten it.

In sum, my understanding of sovereignty as composite institution is based on processes of co-constitution between structures and agents. Constructivists focus on how interests and identities are socially constructed. Sovereignty constitutes a primary institutionalized structure of shared meanings and practices, making up distinct individual parts - states - within an

¹⁴ Like Janus, the ancient Roman deity, sovereignty is two-faced: one face points to its past - as part of an existing order - and the other, never fully realized, looks forward to new beginnings and transitions. It is both resilient - what states make of it - but also flexible in that states cannot fix it as other actors aim to capture and reformulate it.

international context of the society of states.¹⁵ There are also agents that operate in the structure of sovereignty with an ability to reinforce or reinterpret the identity of states. By influencing state identity, agents - including non-state actors - may change the social structures of sovereignty in which they exist (Hurd 2008: 303).¹⁶ Processes of co-constitution between agents and structures then suggests that the actions of agents - with their varying abilities - can contribute to the making and remaking of the composite institution of sovereignty. Such practices find their clearest expression in international norms that regulate the meaning of sovereignty at given historical junctures.

2.1.1 Explaining Changes to State Sovereignty through its Composite Normative Parts

The variance of state sovereignty is a result of alterations to three mutable composite normative parts that make up the institution: territoriality, non-interference and self-determination.¹⁷ These norms stand in tension to each other in the context of particular challenges to sovereignty. I therefore argue that investigating the contestations and compromises to which they lead, helps to reveal how sovereignty, as a composite institution, changes. As I demonstrate these three co-varying norms have their own history and while being temporally distinct from one another they are also historically intertwined with sovereignty. In order to address such an understanding, I limit my attention to the ways that non-state actors and their allies settle challenges of state sovereignty through venues of the United Nations (UN), an Intergovernmental Organization. I do

¹⁵ Sovereignty may well be viewed as one of the most deeply embedded structural principles “implicated in the reproduction of societal totalities,” and those practices have lasting extensions across space and time (Giddens 1984: 17). It is resilient because it is a deeply embedded institution and difficult to change: it is an expression of “forms of domination and power” (Giddens 1984: 18). Yet sovereignty need not to be equated with constraint alone. As Wendt puts it: “To say that structure “constrains” actors is to say that it only has behavioral effects. To say that a structure “constructs” actors is to say that it has property effects” (Wendt 1999: 26), which means that the structure of sovereignty exists, has effects, and changes “only because of agents and their practices” (Wendt 1999: 185).

¹⁶ Here, agency refers not to the “intentions people have in doing things but to their capability of doing those things in the first place” (Giddens 1984: 9). State sovereignty constitutes, delineates and organizes territory (territoriality), population and recognition (self-determination), authority and autonomy (non-interference).

¹⁷ These norms regulate behavior - what is permissible and are constitutive in terms - of what forms of actions and status are possible (Onuf 1989: 51). Norms can thus be more generally defined as a “standard of appropriate behavior for actors of a given identity” (Finnemore & Sikkink 1999: 251).

so because the UN distinguishes itself as a central convener on these matters. These latter points, of who is involved and where these changes are settled, are taken up in greater detail later, but first it is incumbent on me to outline what norms and which specific changes I intend to analyze.

There have been very substantial changes to the institution of sovereignty over time and across space. I am particularly interested in two instances of change. First, changes that resulted in globalizing the institution of state sovereignty after 1945 with national liberation movements achieving independence from colonial rule. Second, changes that took place from the 1970's onwards with indigenous peoples demanding a further differentiation of sovereignty toward achieving greater degrees of autonomy and self-government. The norms of territoriality, non-interference and self-determination in these two cases transformed in several ways.

The main normative demand pursued by National Liberation Movements and Indigenous Peoples concerns the norm of self-determination. At the same time, and contingent on changes to self-determination, the norm of non-interference has been contested in important ways and especially as a result of obligations contesting states practices of racial discrimination and unequal entitlements to rights. The norm of territoriality has equally undergone a transformation from territorial expansionism toward the strong codification of territorial inviolability of state borders from 1945 onwards. Today the norm of territoriality, while externally fixed, points towards internal territorial divisibility in relation to groups residing in states. As a guide the chart below offers an overview of the normative challenges, demands and changes during the two cases of my study.

Challengers/ Sovereignty Norms	Self-determination	Non-interference	Territoriality
Post-1945 National Liberation Movements	<p>Challenge: Unavailability for peoples outside Europe</p> <p>Demand: Universalization</p> <p>Change: Self-determination without distinction</p>	<p>Challenge: Unequal treatment of colonized peoples</p> <p>Demand: Independence/Self-Government</p> <p>Change: Racial Discrimination inappropriate</p>	<p>Challenge: Territorial colonial expansionism outdated</p> <p>Demand: Territorial Inviolability</p> <p>Change: Territorial Integrity globalizes</p>
Post-1970 Indigenous Peoples	<p>Challenge: Unavailability for Indigenous Peoples</p> <p>Demand: Universalization & Differentiation</p> <p>Change: Indigenous Peoples secure right to self-determination</p>	<p>Challenge: Discrimination of Indigenous Peoples (e.g. assimilation)</p> <p>Demand: Autonomy/Self-Government</p> <p>Change: Limited/Ongoing</p>	<p>Challenge: Internal Divisibility</p> <p>Demand: Territorial Divisibility</p> <p>Change: Limited/Ongoing</p>

Table 2.1 Modes of NSAs’ challenges, demands and changes to sovereignty norms

These modes of norm based challenge, demand and change are central to my argument and fundamental to understanding the *structuration* of sovereignty.¹⁸ In the case where composite norms transform it is these challenges, demands and changes which help specify the mutual constitution of structure and agency. These modes present a framework to investigate non-state actors use of opportunity structures, such as the venues of an IGO. They use these venues in

¹⁸ Analyzing structuration, Giddens argues, “means studying the modes in which such systems, grounded in the knowledgeable activities of situated actors who draw upon rules and resources in the diversity of action contexts, are produced and reproduced in interaction” (Giddens 1984: 25). According to Giddens, specifying modalities help explain the changing properties of a social structure such as the institution of sovereignty; in so far as the composite parts of sovereignty have both enabling as well as constraining qualities (Giddens 1984: 28). That is, there are limits that sovereignty norms places on agency causing states and non-state actors to behave in a certain way and at certain historical moments.

order to alter the composite norms that a given sovereignty complex imposes upon them. I begin by discussing the norm of self-determination.

2.1.1.1 The Norm of Self-Determination

A claim to self-determination has been the central demand for national liberation movements and indigenous peoples. Self-determination at its core relates to the relationship between peoples and governments. It requires that peoples must consent to the government under which they choose to be governed. It is a potent political idea that has become broader and deeper than it was after World War I when it was first proclaimed by Woodrow Wilson in his Fourteen Point speech (Manela 2007). The most momentous transformation of self-determination came after World War II, when it became a universal right for all peoples in all territories, and especially those in overseas colonial territories. Today self-determination in principle extends to all peoples suffering from oppression by subjugation or domination by others (McCorquodale 1996: 9). Self-determination is as such intimately linked with the development of human rights after 1945.

Self-determination has since been argued to constitute a precondition for all other human rights in both international human rights covenants, related treaties, optional protocols and other international declarations relating to human rights.¹⁹ This link between self-determination and human rights creates the central challenge to the institution of state sovereignty. In fact, the presumption that individuals and groups of peoples possess internationally protected human rights that states are not at liberty to override is a profound post-1945 development and focus of this dissertation.

If we want to understand how states came to accept such a challenge it is useful to understand how the development of the norm of self-determination and human rights unfolded. I

¹⁹ It is included as the first article of the two international human rights covenants: the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). (See more generally for the ratification status of human rights instruments Simmons 2009: 61).

propose that changes to the norm of self-determination and its link to human rights are usefully explained as a process of normative grafting by non-state actors and their allies. I borrow the notion of grafting from Richard Price “to refer to the combination of active, manipulative persuasion and the contingency of genealogical heritage in norm germination” (Price 1998: 617).²⁰ Key for my purposes is the idea of norm germination because the ‘seed’ of self-determination grew from its limited application in Europe after World War I and attained universal status during decolonization and was subsequently clarified by the United Nations to apply to indigenous peoples living within states.

This process of universalizing self-determination went hand in hand with grafting it onto human rights. Grafting is thus different from simply contesting the validity of prevailing norms as it involves displacing the scope and context, to whom and what the norm applies, and thereby 'grows' with given normative grafts. Grafting involves persuasion tactics of connecting, in incremental steps, and by associating a new norm or interpretation of an existing norm “with pre-existing norms in the same issue area, which makes a similar prohibition or injunction” (Acharya 2004: 244). Given this useful organic analogy I propose that self-determination (as a precondition) is the rootstock onto which newly developing human rights were grafted. I analyze two grafting instances in my empirical chapters.

First, allies of national liberation movements secured the inclusion of self-determination and human rights as guiding principles of the UN Charter. They thereby planted the normative seed for universalizing self-determination and grafting it onto human rights to all peoples and especially those peoples living in overseas colonies.²¹ The newly formed United Nations

²⁰ See also Farrell 2001; Cortell & Davies 2000

²¹ I substantiate insights such as those made by Reus-Smit who also argues that anti-colonial actors in the era of nationalism “reconstructed the collective rights to self-determination, arguing that it was a necessary prerequisite for the satisfaction of individuals civil and political rights. The net result was a tectonic shift in international legitimacy.

provided the main venue for challenging colonial understandings and practices of state sovereignty. It offered a critical space for actors to argue against the unavailability of self-determination to peoples outside of Europe and for universalizing the norm of self-determination while grafting it onto then developing human rights. Newly independent states from Africa and Asia (which more often than not had struggled for their own national liberation) and national liberation movements asserted that the peoples in the colonies were not second-class citizens of the colonies but were entitled to self-determination on the basis of equality and non-discrimination. Gradually, the norm of self-determination so constituted supported the decolonization of overseas colonies; its application meant independence. As more states gained independence, calls for self-determination by national liberation movements grew more common until the mid 1970's when the majority of overseas colonial territories had gained sovereign statehood.²²

Second, indigenous peoples drew on the United Nations to demand a “non-statist” conception of self-determination and grafted it onto existing human rights. This second grafting moment shifted existing UN interpretations of self-determination from a right for overseas colonies to gain independence towards affirming the right of indigenous peoples living within states to plural sovereignty arrangements, including the devolution of authority from the state to the governing structures of indigenous communities. These processes corrected the exclusion of indigenous peoples from bearing self-determining rights as “peoples.” States, until this point, held that self-determination was limited to national liberation movements who had been using this norm to attain independent statehood. The progressive “non-statist” conception in this

By pushing for the strong international codification of human rights, and by grafting the right to self-determination to these emergent norms post-colonial states not only reasserted this right in universal terms, they undermined the normative foundations of empire” (Reus-Smit 2013: 153).

²² I am not investigating the quality of empirical statehood which resulted from decolonization but how national liberation movements used the UN to achieve independence (see especially Jackson for the former 1990).

second motion was different and aimed at a conception of self-determination as the inherent right of indigenous peoples to determine their own institutions, their composition and their functions. Although this conception may encompass the possibility of choosing full independence, indigenous peoples often focus on achieving various other forms of self-determination, such as autonomy, self-government, self-management and participation within states.²³

2.1.1.2 The Norm of Non-Interference

The norm of non-interference is another central composite part of sovereignty because it provides the basic element of trust between states, allowing states to enter into agreements with each other while excluding external actors from intervening in a state's domestic authority structure (Mayall 1990: 20).²⁴ Simply put the norm of non-interference entails that no other state or actor has a right to interfere in the internal affairs of a state. Accordingly the norm of non-interference guarantees that states are nominally “free within the situation they find themselves which consists externally of other states” while also offering governments a level of autonomy to arrange political life domestically (Jackson 1990: 6).²⁵ Historically states thus drew a clear distinction between the domestic (internal) and the international (external) faces of sovereignty. This was based on the assumption that the state offers to its peoples a supply of political goods of

²³ Aldrich & Connell demonstrated that autonomy and self-government arrangements have not been an anomaly to the decolonization of Non-Self-Governing Territories either but where a frequent choice by the peoples of micro-states and small islands (Aldrich & Connell 1998).

²⁴ The norm of non-interference was first articulated by international legal scholars (De Vattel 1852: 155). Unlike the norm of territoriality, which I discuss below, the norm of non-interference “had virtually nothing to do with the Peace of Westphalia” and “was not clearly articulated until the end of the eighteenth century” (Krasner 1999: 20).

²⁵ Sovereign states share the interest to limit internal interference. Non-interference, in its external face, is a norm of *quid pro quo* between formally equal sovereignties (Sørensen 2001: 152). This is because states, as co-equals, require some kind of reciprocity for the system to be considered systemic or societal. I define reciprocity according to Keohane, as “exchanges of roughly equivalent values in which the actions of each party are contingent on the prior actions of the others in such a way that good is returned for good, and bad for bad” (Keohane 1986: 8).

order, stability, liberty and welfare from ruler to the ruled. In short, it was understood to secure the *good life* for its subjects.²⁶

In this view, sovereign states were “free political systems in the negative meaning of freedom: freedom from” external interference although enjoying such a right does not necessarily mean that there is “positive freedom: freedom to” act without constraint or obligation (Jackson 1999b: 455). The relationship between these positive and negative freedoms were recalibrated after World War II when the norm of non-interference transformed from an assertion by states only and also became contestable. Such contestations mainly refer to human rights violations committed by a government against its population or part of its population. Human rights foremost impact state autonomy, its claim to non-interference, because these rights stand in tension with state sovereignty. This is because the rights of individuals and groups limit what a state can do in its own jurisdiction (Falk 2000: 72).²⁷ Since then states can no longer simply declare a right to non-interference they also have duties and obligations that trump non-interference and prescribes that states must justify their behavior.²⁸ It is these duties that provide the main challenge to the norm of non-interference and can be changed when external actors, including non-state actors using IGOs, influence the authority structures of state’s.²⁹ As Krasner has put it:

²⁶ There is a clear link between self-determination and non-interference. Non-interference lies at the intersection of dynastic and popular sovereignty. In the former, sovereignty was autocratic and absolutist - non-interference was predominately an assurance against outside interference. But it was the latter which challenged dynastic and absolute monarchies through expressions of self-determination (Wight 1977: 159). Popular sovereignty intimately relates to the rise of national self-determination which first began in Europe and then elsewhere (Mayall 1990: 27).

²⁷ See also Brown 2002.

²⁸ It was not a new norm but was used by the United States, Central and South American states to proclaim and sustain independence from their colonial sovereigns. In doing so, these newly independent states wrested independence from the European powers by, on the one hand accepting the *status quo* by adhering to existing colonial administrative boundaries but, on the other, “also [excluding] the rights of conquest and occupation” amongst each other (Lalonde 2002: 28).

²⁹ Krasner (1999) is correct to note that such a challenge can be achieved through intervention (often by way of coercion) or by invitation (by way of state co-operation). I am particularly interested in the latter.

Global human rights norms are a direct challenge to one aspect of the authority of the state, its right to regulate relations between its subjects and their rulers free of external interference. [...] Universal human rights norms [...] prescribe standards that all regimes must honor. The state might be the only actor that can establish authoritative rules within its own borders, but universal human rights norms imply that it cannot set any rule that it pleases (Krasner 2001: 237).

When the ideal of state autonomy and the legitimation by its population, or part of its population, are in dispute the norm of non-interference is challenged. This is especially evident when non-state actors mobilize against gross human rights violations and when they contest the form of government as discriminatory. It is a challenge to non-interference because these actors foremost question the constitutional status of a given sovereign state. It is a challenge by non-state actors mobilizing against states to be accountable ‘from below,’ and the focus here ‘from above,’ to international human rights obligations to parts of the population (Simmons 2009, Keck & Sikkink 1998, Brysk 1993). As David Lake puts it

It is often possible to observe authority only in “out-of-equilibrium” situations when a subordinate challenges the dominant polity. But, paradoxically, it is precisely in these situations that authority has already started to break down (Lake 2003: 315).

Non-state actors challenging state sovereignty at its core comes in at least two types of interest to my study: claims by irredentist, secessionist or national liberation movements to independence and claims by ethnic minorities as well as indigenous peoples to varying forms of autonomy or self-government.³⁰ These actors draw on the norm of self-determination (as a human right) to

³⁰ States, in light of the primacy of safeguarding territorial integrity, have shown themselves “allergic” to allow for secession at all times (Kohen 2006: 3). Colonial subjects on the other hand were largely successful, not only because the accepted colonial borders, but also because the international context helped them to dislodge colonial attempts towards “gradual self-government” based on a “sacred trust” as unjust and outdated (Philpott 2001). Ethnic minorities claims were - especially after World War I - addressed, through limited special rights, by guaranteeing basic civil and political rights to them. States felt that minorities must be subordinated to the larger interest in “making the national state secure, and its institutions stable, even at the cost of obliterating minority cultures and imposing homogeneity upon the population” (Claude 1955: 80). Indigenous peoples’ measures at the time were largely paternalistic because indigenous groups were seen as unable to cope with the “strenuous conditions of modern life” until they were ready to stand on their own as equal and undifferentiated citizens of states (Kymlicka 2007: 32).

challenge the norm of non-interference domestically as well as externally, and especially through the United Nations. Yet as has been argued such claims can, but do not necessarily, change the institution of state sovereignty and depend on the legitimacy of NSAs, monitoring and enforcement procedures of the United Nations as well as the compliance by states with the IGO and NSAs (Krasner 1999: 118). The extent to whether or not a challenge to the norm of non-interference has an impact is an empirical question of norm consistent behavior.

I intend to build on insights that have demonstrated how international human rights affect domestic structural change, that is change to the norm of non-interference, via the so-called “norm life cycle” (Finnemore & Sikkink 1998). According to the authors the norm life cycle can be conceived of as a three-stage process. The first stage is characterized by “norm emergence,” the second stage involves broad norm acceptance, which they term a “norm cascade,” and the third stage involves the internalization and institutionalization of the norm.

In the first phase a characteristic mechanism involves persuasion by norm entrepreneurs and includes that non-state actors that are repressed by a given state seek out transnational contacts and/or activate links with Intergovernmental Organizations.

When channels between the state and its domestic actors are blocked, the boomerang pattern of influence characteristic of transnational networks may occur: domestic NGOs [read non-state actors] bypass their state and directly search out international allies to try to bring pressure on their states from outside (Keck & Sikkink 1998: 12).

In the second phase norm violating states are questioned by non-state actors and their allies in the international sphere and ‘almost always’ deny or refuse to accept the validity of non-state actor claims, countering that these matters are subject to a state’s domestic jurisdiction. At this point “norm leaders” seek to socialize others at the international level to comply (Keck & Sikkink

1998: 902).³¹ In the last phase norms take on a ‘prescriptive status’ and ‘taken-for-granted’ quality and states accept their validity. This may include that states no longer denounce criticism as interference in their internal affairs and that they alter their constitution or domestic law. In this last phase states exhibit ‘norm-consistent behavior’ and implement changes that non-state actors have pursued. This, in the case of national liberation movements, meant transferring sovereignty to colonial peoples from colonial rule and in the case of indigenous peoples to establish autonomy or self-government arrangements. Importantly, the “norm life cycle” is useful for my purpose because it does not assume evolutionary progress but recognizes that individual states may regress before fully moving from one phase to the next stage. In fact, they may not progress at all.³² What is more, by focusing on these three stages I can also identify dominant modes of interaction by different states at given moments of normative challenge, demand and change. I analyze two challenges to the norm of non-interference.

Obligations stemming from non-state groups that could interfere with the internal affairs of states were largely ignored by states up until the end of World War II. This trend continued after the war and the early years in the evolution of international human rights. The sponsoring states of the United Nations ensured that the new principles of human rights did not infringe on the domestic jurisdiction of any state (Normand & Zaidi 2008: 135). Notwithstanding, beginning in the 1950s and throughout the 1960s, colonial states’ attempts to uphold the norm of non-interference were effectively thwarted by the growing consensus that colonialism had to be brought to a swift and unconditional end. As a consequence, and with the acceptance of self-determination as a human right in the *Universal Declaration of Human Rights* and more specifically the landmark *Declaration on Granting Independence to Colonial Peoples and*

³¹ States begin to react under international pressure and seek “cosmetic changes” by way of tactical concessions.

³² See also the “spiral model” (Risse, Ropp & Sikkink 1999).

Territories in 1960, and by 1966 the two *Human Rights Covenants* the anti-colonial movement effectively limited the norm of non-interference colonial states had been able to uphold.

What types of human rights violations justify interference in the internal affairs of states has since been a subject of international debate, a debate that states continuously confront and especially in cases where the treatment of its population is enacted on the basis of racial discrimination and unequal availability to rights. In this way the challenge to the norm of non-interference, first engendered by national liberation movements, still persists as in the case of indigenous peoples. Especially with the adoption of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) in 2007 indigenous peoples now possess an international tool to contend that constitutional adjustments are necessary in order to overcome practices impeding on their ability to live and develop freely as distinct groups. As James Anaya the former *Special-Rapporteur on the Rights on Indigenous Peoples* put it:

UNDRIP conditions [...] or calls upon states to exercise their sovereignty in a certain way and in this case in a way that accommodates the rights of indigenous peoples which include their own rights of self-government. [It] is an international standard from outside the domestic political domain that calls upon states to organize that domestic political domain in a way, to accommodate internal self-government of indigenous peoples. [UNDRIP] requires recognition of sovereignties of indigenous peoples in particular (Interview Anaya 2014).

My discussion up to this point established that neither self-determination nor non-interference are static norms; both have been challenged and proven mutable over time and especially since 1945.³³ Moreover, taken together they pose a basic problem to investigate alterations to state sovereignty: Demands for self-determination by non-state actors engender tensions for states

³³ These are not the only instances of contestations related to the norm of non-interference. For example, Cynthia Weber provided a historical analysis of the “sovereignty/intervention boundary” (Weber 1995). Discussion on the Responsibility to Protect equally throw light on these questions.

aiming to uphold the norm of non-interference. This tensions also impacts the third composite norm of state sovereignty: territoriality.

2.1.1.3 The Territoriality Norm

State sovereignty is often equated with a fixed conception of territorial exclusivity.³⁴ In this extreme form, which Agnew called the territorial trap, scholars assume that states have authority - are sovereigns - over a geographically defined space within demarcated borders (Agnew 1994). State, territory and authority in these definitions are so tightly coupled that they become one and the same, they are reified. Such a view of territoriality is in my view highly problematic not because borders and political space are not important or a defining feature of states but because these accounts tell us nothing about how territoriality norms change. On the contrary my contention is that territoriality norms have changed substantially and continue to change.

First of all, to treat territoriality as a fixed characteristic of sovereignty constitutes a form of historical amnesia by obscuring how territorial exclusivity expanded outward during colonial expansion.³⁵ This is to say that especially European states may have shared a principle of territorial exclusivity amongst each other, but they did so by ignoring the territorial claims of those whom they colonized. From this perspective territorial conquest was the rule and territorial exclusivity the exception. Apart from entailing expansive use of force, European conquest and colonization in fact raised fundamental questions on how Europeans could “lawfully claim sovereignty” over the territories of non-Europeans. Europeans justified this by treating non-

³⁴ As Krasner argues “states exist in specific territories, within which domestic political authorities are the sole arbiters of legitimate behavior” (Krasner 1999: 20). This is corroborated by arguments stating that the concept of sovereignty “altered the structure of the international system by basing political authority on the principle of territorial exclusivity” (Spruyt 1994: 3).

³⁵ It was not until early nineteenth century that “rule came to be defined exclusively in terms of territories with boundaries between homogenous spatial authority claims” (Branch 2011: 6).

European territories as *territorium nullius* (Keal 2003: 50). Also known as *terra nullius*, it meant that

a tract of territory [that was judged as] not subject to any sovereignty - either because it has never been so subject, or, having once been in that condition, has been abandoned [is] open to acquisition by a process analogous to that by which property can be acquired in ownerless things (Lindley 1969: 10).

Such spurious legal claims allowed Europeans to occupy territory that was, in their minds, settled by “backward” peoples who did not conform to European understandings of sovereignty. Colonial powers later, in the nineteenth century, used the principle of *terra nullius* to challenge other colonial states to effectively having to occupy colonial territories. Particularly during the so-called Scramble for Africa, *terra nullius* served to “avoid conflict between European states” by providing a standard for having to physically occupy a given African colonial territory to claim sovereign rights to it (Keal 2003: 52). In fact, the vast majority of territorial demarcations were defined by European states in the *Berlin Act* of 1885 through an application of *terra nullius* and “drawing lines upon maps where no white man’s feet have ever trod” (quoted in Ajibola 1994: 53). Thus territoriality norms were justified through a logic of expansionism of space and not only of exclusivity *per se*.

Second, only by the end of the decolonization process did the norm of “territorial integrity” actually globalize for the first time when it took on a prescriptive status of who has the right to govern a given territory (Zacher 2001).³⁶ That is the idea that peoples should have the right to choose their government (by way of self-determination) which included that they should

³⁶ This "territorial integrity" norm was itself first articulated in the Covenant of the League of Nations after World War I and the Kellogg Briand Pact of 1928. The Kellogg-Briand Pact was the first to outlaw conquest and aggression.

also be free from territorial aggrandizement by other states (Antstis & Zacher 2010).³⁷ It was ultimately the devastation of the Second World War that had rested on wars of territorial expansion, which provided the norm of territorial integrity with a defining status for the relations amongst states - notably in the UN Charter Article 2(4). This was a sea change and ended that the territoriality norm entailed a right of conquest by the strong over the weak. Moreover, it went hand in hand with a decline of *terra nullius* as the principle of *uti possidetis, its possideatis* (“as you possess, so may you possess”) was applied to determine the territorial boundaries of newly independent states. As a consequence of this application colonial boundaries in the overseas colonies became “the almost exact basis for territorial division of independent Africa which would then be fossilized” by the resolution of the Organization of African Unity (OAU) in 1964 and further cemented in the UN Declaration on Friendly Relations and Peaceful Cooperation Amongst States in 1970 (Griffiths 1994: 51; Ayoob 1995).³⁸ In short, newly independent states first accepted and later on cemented the inviolability of colonial borders.

Third, as a result of fixing the territoriality integrity norm in this way the cultural diversity of peoples living in these demarcated territories was largely ignored. Little attention was paid to the culturally diverse character of the indigenous peoples of the non-European world.³⁹ Despite this it has been persuasively argued that territoriality norms do not need to be

³⁷ The authors argue that, similar to my own argument for the first case study, that there are four norms at the heart of the international territorial order since 1945: territorial integrity, *uti possidetis*, self-determination and human rights (Antstis & Zacher 2010: 306).

³⁸ *Uti possidetis, its possideatis* was also applied by the United States, Central and South American states to proclaim and sustain independence from their colonial sovereigns. These newly independent states wrested independence from the European powers by adhering to existing colonial administrative boundaries but also by excluding the rights of conquest and occupation amongst each other (Lalonde 2002: 28). They institutionalized that no territory could be considered *terra nullius*. In fact, even territories that had never been occupied were by “common consent deemed occupied in law from the first hour” (Schwarzberger 1957: 304). *Uti possidetis* was again applied during the decolonization of African and Asia post World War II.

³⁹ This in turn raises questions of whether or not the principle of territorial integrity actually guarantees a less conflictual world in the future. As Julius Nyerere, President of Tanzania, noted in 1969: “We must be more concerned about peace and justice [...] than we are about the sanctity of the boundaries we inherit” (quoted in Antstis

eternally fixed simply because “even where system of rule are territorial, and even where territoriality is relatively fixed” prevailing territoriality norms “need not entail mutual exclusion” (Ruggie 1993: 149). This insight can be observed domestically and internationally.

An unbundling of fixed territoriality is observable at the international level and pushed by developments making IGOs more authoritative on issues that are ultimately trans-territorial in nature. The applications of human rights regimes of indigenous peoples I am concerned with, for instance, offer evidence for “normative sovereignty as a counterpoint to the traditions of territorial sovereignty” (Falk 2000: 74). The unbundling of territoriality is equally evident in ongoing dynamics of domestic resistance by non-state actors; that is, by the dynamics of self-determination. These domestic and international developments point towards the devolution of territoriality towards non-state actors yet within a system that still maintains territorial integrity vis-à-vis other states. Such processes mean that territorial space can be divided and distributed “to create complex jurisdictional arrangements involving settlements that must be continuously renegotiated, as well as uncertainties that must be navigated by dialogue” (Inayatullah & Blaney 2004: 213). Here, although limited to date, devolving authority over territorial space to groups such as indigenous peoples, by way of differentiating sovereignty, can lead to further transformations of the norm of territorial integrity that dominates today.

2.2 Conceptualizing Conditions for Non-State Actors Challenging the Institution of State Sovereignty through United Nations Venues

The explicit analytical focus of this dissertation is to develop and apply three explanatory factors that non-state actors (NSAs) must find and expand in order to challenge the institution of state

& Zacher 2010: 319). A question that the international community undoubtedly will have to consider in light of demands by sub-state groups.

sovereignty through the United Nations, an Intergovernmental Organization.⁴⁰ This sections specifies first and foremost that non-state actors require meaningful access and participation capabilities to relevant UN venues. Second, such access and participation not only depends on non-state actors seeking access but involves the critical, even essential, role of allies and may include state diplomats, secretariat staff as well as independent experts active in the IGO. Third, non-state actors and allies' combined agency is most salient in the nested structure of IGO' venues. They essentially work to create and adapt venues in order to make access and participation channels available to non-state actors. This is to say that access and participation by non-state actors is a contingent function of more than their demand to access and participate in an IGO but it is also dependent on the role of allies and relates to the relevance of propitious venues in which non-state actors partake. I a) outline key terms including non-state actors, national liberation movements and indigenous peoples; b) offer conceptualizations for the dimensions of access and participation by these non-state actors; to c) address the relevance of venues in the nested structure of the UN; d) consider the specific role allies play and e) offer a dynamic theory statement of the above factors.

2.2.1 Defining Non-State Actors

Non-state actors are agents acting domestically and/or transnationally. I use the term non-state actors to denote those who mobilize in both realms and who exist within a global governance framework in order to challenge state sovereignty. This is to say, I acknowledge that not all non-state actors are transnational actors nor do they all challenge fundamental institutions. I am interested in those that do. They include actors such as citizens' movements and organized/mobilized indigenous peoples, ethnic minorities and non-governmental organizations (NGOs). They may also be individuals like human rights advocates, international lawyers,

⁴⁰ These conditions may also apply to other actors interested in influencing IGO policies and institutions in general.

members of epistemic communities comprised of academics and scientists (Haas 1992; Risse-Kappen 1995; Keck and Sikkink 1998, Barnett & Finnemore 2004).⁴¹ Whatever their differences they all interact across state borders and think and act as transnational actors with a core of set values and shared principled beliefs. As such non-state actors generally form networks of varying and overlapping types to pursue coordinated or collective action aimed at influencing international outcomes, domestic policies and state behavior and identities (Kahler 2009: 5). These networks tend to be non-hierarchical and converge around "voluntary, reciprocal, and horizontal patterns of communication and exchange" (Keck & Sikkink 1998: 8). Apart from these basic characteristics non-state actors can aim to alter not only domestic politics but also the structure of international politics in which states, NSAs and IGOs are embedded. This latter characteristic is especially the case for the two non-state actors I am concerned with here, namely national liberation movements and indigenous peoples.

I posit that both these NSAs must be distinguished from other non-state actors such as NGOs that organize around specific issues in their purview. First and foremost, neither national liberation movements nor indigenous peoples define themselves as NGOs but seek out international contacts as groups and collectivities of "peoples" claiming rights to self-determination. Second, while they may share the organizational characteristics of other NSAs they present specific types which not only challenge the behavior of states but question and contest states' very identity as sovereigns over them. They are, to varying degrees, moral, political and territorial contenders of state's and as such present especially hard cases of non-

⁴¹ This definition also excludes corporations and other entities such as criminal networks. The NSA's I am concerned with can be part of transnational advocacy networks (TANs) that share specific values, principled beliefs, and a common discourse (Keck & Sikkink 1998: 2). They may also organize around authoritative claims to consensual knowledge (Haas 1992).

state actors challenging state sovereignty through IGOs.⁴² In this connection it is equally important to recognize that both national liberation movements' and indigenous peoples' claims rest on the legacy of European colonialism and the deeply entrenched consequences of dispossession of non-European peoples around the world.

With this in mind I throughout the remainder of this dissertation use the term national liberation movements to refer to organized groups whose goal is to achieve national liberation of their peoples and their territories from colonial control and achieve independence.⁴³ National liberation movements lay claim to be the representatives of peoples not yet constituted as states. Critically, and important in light of my focus on the co-constitution of structure and agents, liberation movements who achieved independence therefore transitioned in status from non-state to state actors. As Clapham put it "they earned their independence, and with it the right to run the new government;" a government whose very identity was shaped by their struggle for national liberation (Clapham 2012: 3). This latter point is especially important to consider because as state diplomats of newly independent states former national liberation actors played critical roles to open the venues of the UN for other national liberation movements during the post-1945 decolonization era.

While recognizing the wide variety of definitional approaches to indigenous peoples I draw on the most widely cited and accepted working definition:

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

⁴² Other non-state actors, depending on the scope of their contestation, also challenge state sovereignty.

⁴³ Inherent in the movements of national liberation is "the existence of an historically constituted national entity [...] or the coming into existence of such an entity — through popular aspirations, forged in the struggle against an oppressive and irreducibly alien 'Other' (Gibson 1972: 3; See on nationalism Anderson 2006).

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 system (Cobo 1987: 42).

I do not intend to resolve the question of definition here.⁴⁴ As the empirical chapter demonstrates I find evidence for a constructivist reading in relation to defining indigenous peoples in so far as they assert the principle of self-definition and by having gained recognition of their legal personality and moved from object to subject in international law. They are, as such, also part of a constitutive processes of international recognition. With these working definitions of liberation movements and indigenous peoples I now turn to the conditions of access.

2.2.2 Conceptualizing Non-State Actor Access and Participation

The access of non-state actors to IGOs is different from their participation in IGOs, “even if the two often go together” (Tallberg et.al 2013: 8). By access I refer to the institutional mechanisms by which NSAs enter and take part in an IGO, participation in turn denotes the discursive activities and capabilities of NSAs using specific institutional venues. At its most basic level access is dependent both on the institutional design and the ongoing adaptation of institutional design features that afford non-state actors entry into the IGO. Access thereby preconditions the actual participation of NSA’s and can be enabling or constraining.

2.2.2.1 Non-State Actor Access: Form and Status

A key condition for the ability of non-state actors to use the United Nations in order to challenge state sovereignty is based on how they access the organization as competent actors and whether or not such access enables or constrains their ability to effectively participate in IGO venues.⁴⁵ I

⁴⁴ I discussed the role of IGOs in the evolution of the legal category of indigenous peoples elsewhere (Lüdert 2013).

⁴⁵ The number of non-state actors, especially of non-governmental organizations (NGOs), has increased tremendously in IGOs over the last decades. For example, in 1948 a total of 40 NGOs had consultative status in the

conceive of two primary dimensions that relate to the access of non-state actors to the UN: form and status.

By *form* I refer to the formal and informal channels by which NSAs enter. First, IGOs who grant institutional access to NSAs “should not be misunderstood as an exclusive focus on formal features” (Talberg et.al. 2013: 26). Rather, I agree with these scholars, and conceive of access in both formal and informal terms. Typically, IGO’s including the UN, determine the form of access to non-state actors through specific formal accreditation mechanisms (Vabulas 2011). Formal access is also often regulated by rules of procedures. Informal access is developed through customs, decisions, practices and precedent by states and authoritative actors such as chairpersons of specialized venues.

Moreover, the form of access prescribes and proscribes the field of action of non-state actors within an IGO.⁴⁶ Considering the form of access is then important because states are usually the decision-makers over granting access while non-state actors are more constrained and seek "access" to information or offer information to those that make decisions. Non-state actors may also seek physical access to plenary meetings, conference halls and official meetings so they can observe, monitor, petition and interact with states and other non-state actors in these proceedings. They may seek to access administrative offices in the secretariat and other agencies. They may also aim to circulate their own documents, to participate in meetings, to have access to documents and to gain entry to informal gatherings, preparatory meetings and hearings.

UN while approximately 3.900 are accredited today (E/2013/INF/6). The UN continued to revise these relationships over the years (Ziegler 1998: 30; Stephenson 2000: 273).

⁴⁶ States may promote or restrict the access by non-state actors to the UN. The IGO also attempts to control the character and activities of an actor by threatening to withdraw access when not approving of the actions or when perceiving undue criticism by a given NSA. Formal access is characterized by ambivalence because offering such opportunities to NSAs remains dependent on the impositions that the UN and especially those states serving on accreditation committees establish. To put differently, *formal* access relies in no small part on the political considerations driven by states. Recognition and status thus are determinants of informal decisions by states and formal IGO procedures.

The form of access is not a static one-off process of entry but depends on the ability of non-state actors to utilize and influence the opening up of existing formal and informal channels to particular IGO venues. That is a focus on access naturally generates a specific focus on venues to which access is gained rather than the IGO as a whole because access is typically particularized and something a non-state actor holds in relation to venue(s). In fact, changes in the form of access in one venue can have ramifications for non-state actors to move through the hierarchy of higher up venues. This is because the form of access first secured in one venue can impact and create expectations for uptake or translation of formal as well as informal rules and procedures across venues. This is because rules and procedures related to access are not only self-enforcing and stabilizing but also offer ideas for adaptations; ideas from which actors can take cues and rationales to translate existing forms of access. Such an evolution of access may indeed be called a foot in the door technique from which modest access can develop and expand over time.

Status is the second dimension in my conceptualization of access by non-state actors to IGOs.⁴⁷ It refers to the level of engagement by non-state actors and is distinguishable between secure status as direct, active and recognized or insecure status as indirect, passive and misrecognized. For instance, do all non-state actors seeking access have official status as active participants and are able to table proposals, make decisions and vote or are only some non-state actors equipped with *ad hoc* or passive status as observers? I conceptualize on a continuum from active and fully recognized status, over progressively more constraining status, to *ad hoc* and no status, and also specify what differences manifest in terms of status when NSAs move laterally between venues or up in the hierarchy of venues. The expectation here is that the quality of status, at least initially, varies from enabling to constraining as non-state actors move through the

⁴⁷ Tallberg et.al conceptualize the depth of access which is similar to what I coin status but does not capture the fundamental notion of mis-recognition (Tallberg et.al. 2013: 26).

hierarchy of UN venues. Or to put it differently if the form of access answers the question of how non-state actors enter the IGO a focus on status clarifies with what standing and powers they enter.

A consideration of the status of non-state actors is important for two additional reasons. First, it reveals how the IGO identifies the actor and second whether or not a given non-state actor agrees with the IGO's identification the same way as the actor understands its own status.⁴⁸ This is because the status of a non-state actor, particularly in IGOs, is as much the "cause and the consequence of the utterly political nature of subject-identification processes on the international plane" (d'Aspremont 2011: 2). The question of status is especially critical in my cases because national liberation movements and indigenous peoples seek to access the UN as "peoples" and not as NGOs or as "objects" over which states can claim unlimited authority.⁴⁹ The 'negative' term of *non*-state actor I deploy may thereby give the impression of affirming states as international subjects alone.⁵⁰ Yet it is a critical assumption of this dissertation that the activities of non-state actors in the fora of IGOs undermine the coherence of comprehending states as sole subjects of international law. A focus on the evolving *status* is than an important indicator on whether national liberation movements and indigenous peoples use of the IGO influenced their international status. Indeed, I claim that in order to comprehend a challenge to state sovereignty it is important to also focus on alterations in the status of non-state actors claiming self-determination. The implication of these two dimensions of non-state actors' access, summarized in the table below, is that the enabling form of access involves open channels for non-state actor entry, extends across venues, is durable, secure and difficult to deny. By contrast, access that is

⁴⁸ NSAs participation in IGOs, regardless of their (limited) form of access, matters precisely because they offer a norm-based counterweight to states. Such counterweight comes with important ramifications for contesting the status of actors.

⁴⁹ This is different from viewing states as sole "subjects" of international law – in which individuals are its "objects." Recognition in this view is determined by states vis-a-vis the society of states (Kleinlein 2011: 43).

⁵⁰ See for a discussion on the status of non-state actors under international law (Lindblom 2011).

constrained is characterized by constricted channels for non-state actor entry, extends only to few actors, is *ad hoc*, non-permanent, insecure and easily revoked.

Dimension	Type & Range	Examples
Form of Access	Formal/Informal	rules of procedures, official accreditation, informal decisions by venues
	Open/Closed	physical access, special invitation, visiting missions, receive official information, provide information only, restricted to states
Status	Active/Passive	ability to make statements, set the agenda, table and vote on proposals, observe only
	Direct/Indirect	access directly, through others (states or other NSAs)
	Recognized/Not-Recognized	identification is shared or contested

Table 2.2 Form of NSAs' Access and Status

Despite the utility this typology offers, and as I demonstrate in my empirical chapters, almost all UN venues exhibit a mix of enabled and constrained access across the two dimensions of form and status. The typology is nonetheless useful because it helps distinguish both similarities and differences between the access by non-state actors to UN venues as well as the progression or recession of access by non-state actors across venues. Following this conceptualization of access, I now turn to the participation of non-state actors.

2.2.2.2 The Tactical Repertoire of NSAs Participation

Depending on how non-state actors gain access to the IGO their participation as deliberative actors begins to matter. I draw on insights that produced important explanations of what non-state actors intend to do and how they pursue their goals when engaging IGO's. Keck and Sikkink for example demonstrated that non-state actors seek to get their demands heard and on the agenda of the IGO in order to influence the discourse and to alter the behavior and/identity of actors, in particular of states, but also of the IGO itself (Keck & Sikkink 1998). In the absence of

material resources, the central means for non-state actors to achieve goals in IGOs is through participation as deliberative actors. In fact, they typically offer and rely on expertise, information, moral authority, ethical arguments, and publicity. Non-state actors represent particular discourses as they “interact with each other and with centers of public authority such as states and international governmental organizations” (Dryzek 2012: 114). Discourses I expect can transform states and IGO preferences, and in the long run their identity. Finnemore posits that

normative claims become powerful and prevail by being persuasive; being persuasive means grounding claims in existing norms in ways that emphasize normative congruence and coherence (Finnemore 1996: 141; Risse 2000; Johnston 2001).

My conceptualization of participation then primarily relates to the discursive capabilities of non-state actors to change the composite norms of territoriality, non-interference and self-determination.

Non-state actors’ intentions to influence actors in an IGO can be pursued through various strategies. I draw on Keck and Sikkink who provide a useful set of tactics by non-state actors: information politics, symbolic politics, leverage politics, and accountability politics (Keck & Sikkink 1998: 16). Information politics refers to non-state actors and their ally’s ability to generate political salient information and draw on such information where it will have the most impact. Symbolic politics refers to the ability to call upon symbols, actions, or stories that influence or persuade other actors and especially states. Leverage politics refers to the ability to engage powerful actors (e.g states, IGO gatekeepers) to affect outcomes when non-state actors are less likely to have influence (e.g lack of formal access). Accountability politics, in turn, refers to the sustained efforts by non-state actors to hold powerful actors accountable to agreed

principles, rules and norms. Non-state actors draw on this entire tactical repertoire in order influence states as well as the IGO Secretariat.

Persuasion, based on deliberation, is the end point of social pressure. An actor influences with the goal to create agreement with the target audience. An actor uses existing values and beliefs that resonate with the audience as leverage to convince them. Persuasion therefore “involves changing minds, opinions, and attitudes about causality and affect (identity) in the absence of overtly material or mental coercion” (Johnston 2001: 496). Social pressure initially falls short of persuasion as it “elicits pro-norm behavior through the distribution of social rewards and punishments” (Johnston 2001: 499). Social pressure is more like bargaining and contains concessions and threats and intends to change behavior until persuasion occurs (Müller 2004: 397). Social rewards and sanctions than both lead to public conformity without necessary private acceptance, at least initially (Booster 1995: 96). In this way social pressure often, if not always, precedes or occurs alongside persuasion with some actors becoming convinced while others are not persuaded.

Conceptualizing social pressure as part of the process of persuasion is then important because it helps to distinguish how non-state actors are approved by the audience of states and/or secretariat members as a valuable and competent reference group and how different audiences extend “extant interests, attitudes, and beliefs” in accordance with non-state actors (Johnston 2001: 499). Social pressure, as exhibited in public conformity and rhetorical acceptance, helps to investigate when states and UN secretariat members change how they identify non-state actors and the process by which they accept their normative claims. Because states are seldom convinced by persuasive argumentation alone non-state actors rely heavily on tactics of social pressure, such as public shaming and naming, by building winning-coalitions or by raising

reputational costs for states also. I accordingly share assumptions found in more recent literature on norm contestation which suggests empirical research on “deeper, more fundamental, contextually-contingent processes by which the international system changes [...] as actors contest against one another in particular normative contexts” (Bloomfield 2015: 24; Wiener 2014; Deitelhoff & Zimmerman 2013). This is to say that the participatory outcomes of non-state actors’ influence in an IGO are ultimately process-dependent and need to be carefully traced by way of demonstrating how normative change within and across venues unfolds.

2.2.3 The Relevance of Venues: Stepping Stones or Veto Points

Venue constitutes a crucial intervening variable for the access and participation of non-state actors to the IGO. What is more, it has been aptly noted that constructivist theories on normative change have generated important insights on *who* is involved at the cost of *where* norm development takes place (Coleman 2011). Indeed, generic understandings of IGOs as an “organizational platform” for transnational actors (Finnemore & Sikkink 1998), as “forums” of deliberation (Hurd 2011), “talk-shops” for normative suasion and internalization (Checkel 2005) and as “islands of persuasion” (Deitelhoff 2009) have tended to focus on actor’s interaction but underspecified the impact of IGO venues on these very interactions.

By venue I refer to those specific institutional settings that are located in the nested structure of an IGO and through which actors engage.⁵¹ They include plenaries, such as the General Assembly, but also smaller venues such as working groups, committees, councils or forums located lower in the UN hierarchy. They may also include international conferences or multilateral meetings. Any venue can be distinguished by its specific venue characteristics which include features such as membership composition, mandate, rules and procedures and position within the hierarchy of an IGO.

⁵¹ See also Coleman 2011; Johnston 2001.

First, membership ties in with how actors access a venue and what their participatory capacities are in the venue (Berridge 2010: 149; Coleman 2011; Martens 2005). As previously noted non-state actors may access a venue through formal accreditation mechanisms or informally by way of precedent set by states or a venues' chairperson. Their participatory capacity may be restricted to observer status to provide information without a vote or they participate as consensus participants alongside states. Second, mandate refers to a venue's key purposes and objectives which can be narrowly defined or are much broader and deeper in scope (Kaufmann 1996). For instance, a venue may be responsible to draft standards and/or is responsible to collect information, make recommendations thereon to states and/or enforce obligations. Third, the rules and procedures determine how members fulfill the venue's mandate. Most crucially, rules and procedures determine who sets the agenda, how texts are drafted and how collective decisions are made (Coleman 2011: 6; Prendergast 1999; Burger 2006; Marshall 1997). Fourth, the position within the hierarchy of an IGO refers to where the venue is located and what its decision-making status is. For instance, venues may be relatively sheltered by their position in an IGO hierarchy and report to parent bodies who ultimately decide on a venue's outcomes. In fact, I expect that the ability of non-state actors to alter prevailing norms largely depends on whether or not they are able to move from relatively sheltered venues to more prominent ones.

My focus on venues seeks to foremost generate additional insights on the "distinctive dynamics of various venue types" (Coleman 2011: 5) by determining a venue's effect in the sustained process of non-state actors' engagement with an IGO. Venues may function as institutional design venues, standard-setting venues, accountability and/or implementation venues. I draw attention to the relevance of venues because they also promise to substantiate

micro-processes of what Deitelhoff calls “approximations of discourse in certain phases and between certain actors during negotiations” (Deitelhoff 2009: 45). I build on the available literature by positing that a focus on venues helps clarify how particular venue’s enable or constrain non-state actors. Indeed, some venues within the bureaucratic structure of an IGO are crucial stepping-stones for normative change while others are better conceived of as veto points that non-state actors need to overcome. Because NSAs often enter an IGO from below, and are limited to access some but not all venue’s, the combined venue characteristics implicate non-state actors’ overall agency.

I expect that when non-state actors participate as consensus participants in a venue their ability to persuade increases while in cases where a venue constrains their participation they are likely to draw on tactics of social pressure instead. This is because venues differ in terms of their receptiveness towards non-state actors as competent deliberative actors alongside states. These competencies are intimately related to the initial status of the NSA. I determine whether NSA’s have the ability to steer venue outcomes by taking part as active participants or whether they are excluded from making decisions. I therefore consider whether they participate as consent partners or whether they are more relegated actors offering testimony or information only. I also ask whether specific venue procedures are equitable and fair in terms of participatory rights, or whether they constrain non-state actors and favor states.

By paying attention to participatory processes in venues I can also determine whether non-state actors influence specific actors by screening for pivotal moments, that is, shifts in which actors’ discursive positions change. As Deitelhoff explains

turning points can indicate persuasion and discourse unless they can be explained by alternative factors, such as power, public pressure, side payments, issue linkages, or domestic factors such as as elections or protests (Deitelhoff 2009: 46).

I would expect that when non-state actors are able to persuade key actors in a venue these actors will exhibit pro-norm support and side more actively with non-state actors' normative demands. Conversely, in cases where key actors act as gatekeepers non-state actors may draw on social pressure tactics instead.

The first step is hence to detect the venues that non-state actors help create, identify or intend to use. From there I discuss characteristics in regards to how they access and participate in a venue. The participatory interactions and practices between non-state actors, states, and IGO secretariat members are then analyzed to figure out whether non-state actors induce change in the normative composite parts of sovereignty through outcome documents, resolutions and related statements. This step also involves to demonstrate the impact on state practice. Such changes are evident in states behavior in the venue itself but more crucially when states change constitutional arrangements, laws and other political and legal practices.

The final step which follows from a focus on venues is to determine whether venue characteristics change and whether such changes translate across venues. For instance, I expect that persuading key actors within venues, such as chairpersons or particular target states, is conducive to enabling non-state actors' overall agency and discursive capabilities in the UN more generally. Persuasion of key actors therefore may include change in terms of informal or formal access, consensus decision-making, informal negotiation procedures, and explicit recommendations by the venue for the normative claims by non-state actors or general support for non-state actors by the venue within the IGO hierarchy. The relative receptiveness of one venue indeed seems to be an especially important factor for NSAs when shifting between venues.⁵² Overall, I expect that those venues which allow for free, open and ongoing deliberation will exhibit higher degrees of persuasion than closed and limited venues in which

⁵² There may be lateral venue shift into related venues or horizontal shift upwards in the IGO.

tactics of social pressure may play a bigger role. Such a focus on venues matters, yet, I contend is incomplete without also focusing on the role of allies active in these venues.

2.2.4 The Essential Role of Allies

The ability of non-state actors to use an IGO is contingent on allies supporting their institutional access and participation to venues. By allies I refer to any actor active in an IGO with an interest and the ability to steer action that facilitates non-state actors' normative demands and goals. There are essentially three types of potential allies active in the United Nations: state diplomats, secretariat members and independent experts. State allies are part of the "first UN" of member state diplomats. State diplomats are the most useful allies to NSAs given their broad authorities and abilities to leverage outcomes as IGO principals. Secretariat allies, which Inis Claude has called the "second UN," are international civil servants and are important to NSAs because they possess forms of delegated authority as well as bureaucratic expertise (Claude 1996). Lastly, there are those allies who belong to the "third UN" and may include independent human rights experts, lawyers, NGOs and other individuals participating in the IGO (Weiss et.al. 2009). These allies are critical for non-state actors because they may act as norm entrepreneurs or norm leaders, they may offer forms of independent and impartial expert authority in support of non-state actors or they use their leverage to influence other actors.

First, I pay heed to the role of allies because relevant venues themselves exist, have effects, and evolve not only because of the agency of non-state actors but of other agents active in an IGO and their practices. One promising line of scholarship I intend to build on conceives of allies as "norm entrepreneurs" and "norm leaders" which refers to agents engaged in "moral proselytism" (Nadelbaum 1990; Finnemore & Sikkink 1998; Reich 2003). In other words, non-state actors may demand access and participation to relevant venues but implementing such

demand is essentially also a function of allies helping to supply and steer venue characteristics. I expect that allies play key roles in instances of institutional constraint leveled by states seeking to limit non-state actor influence. Allies can draw on their varying influence to directly or indirectly support the normative demands and goals non-state actors pursue. Allies are important for non-state actors because arguments and information supplied by different actors is judged by differentiating “in-group” (e.g. states, secretariat members) from “out-group” (NSAs).⁵³

Second, in-group arguments by a state ally are likely judged by target states to be more persuasive. States helping to convince other states indeed are useful ways for non-state actors to gain leverage to persuade other states to accept changes to the composite norms of sovereignty. In-groups are not limited to states only but may also be members of the IGO secretariat or independent experts who can act and use their bureaucratic authority or expert knowledge to facilitate the access and participation of non-state actors.⁵⁴ These latter allies can create institutional conditions, which non-state actors and other allies may build on. Overall, I expect that the overall quantity and quality of allies fosters “winning coalitions” and thereby impacts the agency of non-state actors to challenge fundamental norms. This is because non-state actors, as out-groups, rely on building coalitions with in-groups, which I expect, facilitate non-state actors leverage and discursive capabilities over time. The latter point suggests that the level of organization between non-state actor’s themselves in combination with the sustained interaction with allies (in IGO venues) are critical components for challenging fundamental norms.

⁵³ Content is based on the “merits” of the argument that is judged to be persuasive and plausible “given internalized standards for evaluating truth claims” (Johnston 2001: 496). The notion of merits can be likened to offering a set of shared implications that had not been considered fully or when actors were ignored or sidelined.

⁵⁴ Moreover, information from “culturally recognized authorities” can be more convincing than that, for instance, of novices who have little information or authority (Johnston 2001: 497).

2.2.5 Dynamic Theory Statement

The three explanatory factors outlined above generate the broad expectation that non-state actors will be able to engage states through an IGO with greater success when the form of their access is deep, their status is secure and their discursive capabilities are strong. Given that states typically constrain such access and participation by non-state actors in an IGO, I arrive at three nuanced dynamics in regards to a) the mobilization by non-state actors, b) the critical role of allies and c) the relevance of venues. These dynamics implicate each other in various ways and can be usefully distinguished by their relative importance during the three stages of the norm life cycle.

First, during the *norm emergence phase* non-state actors are more likely to secure initial access and participation to an IGO when they mobilize and organize larger movements that identify the IGO as a propitious forum for normative change. In cases where non-state actors form strong transnational and domestic linkages around core normative demands they are more likely to succeed in initializing a boomerang pattern as described by Keck and Sikkink (1998). Non-state actors who do not mobilize such linkages when reaching out to an IGO are, consequently, less likely to affect change through an IGO as their demands can be more easily dismissed or ignored. Moreover, I argue with regards to the role of allies that demands for access and participation are more likely to bear fruits if they are taken as cues for action by norm entrepreneurs active in an IGO. Out of the three potential groups of allies, I identify, state allies as the most critical at this stage. This is because they are able to set a precedent by attaching a non-state representative to their delegation or by using their leverage to propose procedures and create venue's which offers non-state actors the ability to enter and participate. Apart from state delegates both secretariat and other non-state actors (e.g. NGO's or independent experts with established IGO links) can also impact the demands for access and participation. Especially,

secretariat members can use their limited autonomy and bureaucratic knowledge to foster institutional interests that create access and participation opportunities for non-state actors. These actors do so by either exploiting available opportunities or by engaging other more influential actors, and especially state actors to create such structures. Other non-state actors with access to an IGO can also underwrite non-state actors' demands at this stage by forwarding these to states and secretariat members. The latter actors' influence is primarily based on symbolic pressure to keep states accountable and is based on the goal of opening the IGO up.

Relatedly, the relevance of venues is also important for non-state actors at this stage. This is because non-state actors and their allies can use available venues to initiate more sustained forms of IGO engagement. For instance, institution building conferences or *ad hoc* specialized international conferences to which non-state actors are party can be used to establish a foot in door to an IGO. Given that these venues are typically under public scrutiny non-state actors and their allies can draw on them to garner attention and set expectations for greater IGO engagement. Because these types of venues are often short-lived, to fulfill specific mandates, their key function is to create inroads for non-state actors. Indeed, I argue that even if only limited and seemingly inconsequential outcomes are achieved in these venues they are a necessary first step. This is because they allow non-state actors (or in their absence allies) to set into motion normative as well as procedural demands. Such venues help to create more permanent venues to which non-state actors have access and in which they can participate to engage states in setting standards and contesting norms.

Second, in the *standard setting phase* non-state actors are more likely to deepen their access and participation to an IGO when they organize their movement around core strategies and frames. For instance, non-state actors who jointly frame consensus positions, build coalitions

as well as bureaucratic expertise are more likely to achieve goals than loose networks of non-state actors who do not. These adjustments to non-state actors' organizational platforms and networks are further strengthened when they can mobilize key allies in the process. I argue that where non-state actors capture key allies their overall mobilization strengthens not only internally (within the movement) but also by fostering opportunities for persuasion and education with IGO "in-groups." Indeed, the sustained interactions between non-state actors and their allies to contest existing norms and/or set new standards can result in a growing status recognition of non-state actors in the IGO.

The role of allies during this stage cannot be overemphasized and is contingent on the quality of access non-state actors have achieved. This is because allies can further enable non-state actors in several important ways: they wrest concessions from states, they can seek the chairmanship of venues important to non-state actors, they may also influence chairpersons or other central gatekeepers, set precedents for furthering access and participation to venues, they can interpret rules and procedures, they can create discursive equality between non-state actors and states, they can keep states accountable, help bridge an impasse, or broker compromise positions. In short, they can draw on their varying agency to keep the process moving when states try to halt progress and/or seek to keep non-state actors out. In cases where the access of non-state actors is highly constrained allies may even step in to drive normative change itself while pushing for greater non-state actor participation. In cases where the access and participation of non-state actors is more established allies' role is equally important but is perhaps better understood as that of facilitators.

The relevance of what I coin sheltered venues in this stage is particularly salient. Sheltered venues are characterized by their relatively marginal position within the IGO and as

such offer non-state actors an entry point to the IGO from below. These venues are especially useful when states ignore standard-setting processes or when states feel that these venues can be easily contained. Sheltered venues are moreover important to non-state actors during moments of venue shift. Especially when non-state actors move up through the hierarchy of an IGO they are likely to encounter other venues that constitute veto points where states maintain greater control over process and outcomes. It is here that sheltered venues can create expectations for uptake in state driven venues and/or act as a model for other venues that lack mechanisms for non-state actors access and participation. Such expectations for uptake and processes of translation are, in instances of state opposition, undergirded by shifting venues away from the IGO. These venue shifts themselves can increase reputational costs for opposing states and/or the IGO itself and as such may contribute to carry over achievements from sheltered venues into state driven venues.

Third, in the *implementation phase* non-state actors are more likely to achieve their goals if their access and participation in the IGO diffuses horizontally across venues. I expect that the mobilization by non-state actors at the IGO becomes more entrenched and/or permanent at this stage. In fact, the number and quality of access points and participatory platforms available to non-state actors in this phase implicate their ability to use an IGO to evaluate the compliance and implementation of norms not only domestically but within the IGO also. For instance, they may first achieve the status of standing observers, as in the case of liberation movements, to in the end become state delegates. They may become part of the IGO and enter as chairpersons of venue's, independent experts, special rapporteurs or establish other more permanent links with the IGO by entering as indigenous parliamentarians for instance.

Flowing from the above I expect that the role of allies becomes less critical. This is not to say that allies drop out of the picture but that once non-state actors enter the IGO with greater

ease the role of allies necessarily changes. State allies may provide the IGO with examples of best practices in implementing norms, independent experts may continue to strategize with non-state actors or provide expertise, information and testimony to induce compliance from states with a wanting implementation record. In short allies, I expect hand over the baton to non-state actors were possible and use their agency when required.

At this stage the relevance of *permanent venues* matters to non-state actors as a vehicle for keeping states accountable, to provide expert expertise or make recommendations. In fact, if non-state actors first need to work through sheltered venues and overcome state driven venues the last stage should exhibit venues which non-state actors can more actively drawn on and through which they shape outcomes with greater direct input. This is because normative changes achieved in an IGO typically involves the creation of venue's which are equipped to monitor and evaluate the implementation of norms. Although it is true that these types of venues often lack strong enforcement mechanisms they, I argue, are nonetheless relevant to non-state actors whose goal is to achieve norm implementation through IGOs. Permanent venues offer non-state actors a means to take a lasting seat in the IGO or at least one that they can use and expand until it is no longer necessary.

2.3 Conclusion

In this chapter I outlined the theoretical framework of this dissertation in two steps. First, I offered a conceptualization of state sovereignty as a composite institution that is both resilient and mutable. I outlined a framework to demonstrate its mutability through challenges, demands and changes to three composite normative parts that undergird state sovereignty: self-determination, non-interference and territoriality. Second, I defined key concepts in regards to NSAs using IGOs to challenge state sovereignty. In this connection I also sketched out the

explanatory factors of access and participation by non-state actors as well as the relevance of venues and role of allies for the former. Throughout this discussion I specified that non-state actors can challenge the institution of state sovereignty when they are able to enter and move through relevant IGO venues as competent discursive actors. These interactions, given that states are likely to constrain such activities, are contingent on allies helping to support non-state actors' normative demands and by helping to shape venue's that non-state actors seek to access and participate in alongside states. In the following two chapters, I proceed to apply this framework and combined explanatory power first to liberations movements during the era of decolonization from 1945 until 1975 and second to indigenous peoples who engaged the UN actively since the mid 1970s.

3. National Liberation Movements at the UN

3.1 Introduction to the Chapter

This chapter substantiates the theoretical expectations of this dissertation by investigating the engagement of national liberation movements with the United Nations. It argues that these non-state actors drew on the Intergovernmental Organization to challenge colonial state sovereignty based on a universal demand for self-determination and human rights for all peoples. My key contribution to the available literature is to demonstrate the evolution of how liberation movements accessed and participated at the UN between 1945 to 1975. Relatedly, I also draw attention to how state allies worked from within the IGO to innovate and expand venues with the goal to open the UN up to those liberation movements which remained excluded. This introduction a) briefly situates the case study historically, b) outlines liberation movements' challenge to state sovereignty and c) offers an overview of the argument.

3.1.1 Historical Context

The ability of liberation movements to draw on UN venues to challenge existing conceptions of state sovereignty depended on first extending and then implementing normative arguments that were ongoing since at least the First World War. Self-determination, as Wilson proposed it in his fourteen points speech at the Treaty of Versailles, was confined to European peoples and territories. As Britain's Prime Minister Churchill insisted at the eve of World War II, it was not intended to apply to peoples in the colonies outside of Europe. Despite this, after the First World War

principles and beliefs that were essential elements of a decolonization regime - self-determination, nationalism, human rights, and an international interest in the affairs of colonial administration [came to structure international politics] (Crawford 2002: 264).⁵⁵

⁵⁵ The League of Nations “grew to be more than its framers [...] ultimately striking a wedge in the colonial system” (Crawford 2002: 264; Manela 2007).

The League of Nations Mandate System rested on unequal assumptions which put forward the view that peoples in the colonies were in need of “tutelage” and colonial oversight.⁵⁶ They were viewed as backward peoples and unfit for independence (Bain 2003). This meant that non-Europeans were “not only ineligible for the right to self-determination, there was not even a promise on the horizon” (Reus-Smit 2013: 174).⁵⁷ This delimited scope of self-determination effectively ended with the Second World War, as normative expectations for the universal application of self-determination increased and discussions to build a new Intergovernmental Organization (IGO) - the United Nations - began.

In 1941 stark differences of opinion of whether self-determination was to be delimited or universal in scope were reconciled by allowing the question of what self-determination meant ambiguous and to whom it would apply vague. Liberation movements were onlookers when the United States and Britain declared in their informal and unsigned Atlantic Charter that they would

respect the right of all peoples to choose the form of government under which they will live; and they wish to see sovereign rights and self government restored to those who have been forcibly deprived of them (Atlantic Charter 1941, Article 3; restated in the 1943 Cairo Declaration).

States differed markedly on the scope of application and route of implementation of self-determination. The US asserted that the Atlantic Charter was “a statement of basic principles and fundamental ideas and policies that are universal in their practical application” (Goodrich 1942: 12). The Soviet Union, under Stalin, echoed the US position. They proposed an Intergovernmental Organization under which all colonies should be placed “until they were

⁵⁶ The League of Nations, under the guise of “gradual development,” specified a “sacred trust” of responsibilities of the Mandatory states, including the prohibition of slavery, freedom of conscience and religion for the “subjects” of mandate territories (League of Nations: Article 22).

⁵⁷ Confining self-determination to a “civilized” peoples in Europe was left “morally and politically bankrupt” after 1945 (Reus-Smit 2013: 174; Hobsbawm 1990: 133).

ready for self-government” (Sherwood 1948: 362).⁵⁸ In contrast, British prime minister Winston Churchill vehemently opposed these positions, complaining that

states which have no overseas colonies or possessions are capable of rising to moods of great elevation and detachment about the affairs of those who have (Churchill 2002: 185).

At the Yalta Conference in February 1945, the winning allies reached a compromise by confirming the division of dependent territories into two categories: Trusteeship for the League of Nations mandate territories and Non-Self Governing Territories (NSGTs) for the majority of overseas colonies (Sady 1956: 138). The distinction between Trust and NSGTs, as I will show, could not be sustained by colonial states, however, because liberation movements and their allies at the UN successfully bridged this difference. While allied powers sought a compromise, liberation movements and their allies identified the yet to be established United Nations as a venue to challenge state sovereignty and to achieve independence from colonial rule. They began advancing their demands during the institutional design of the IGO at the UN’s founding conference in San Francisco in the spring of 1945.

3.1.2 National Liberation Movements’ Challenge to State Sovereignty

Central to challenging the composite institution of state sovereignty was a change to the norm of self-determination. This norm, to recall Finnemore and Sikkink’s definition, is a constitutive norm in so far as it sets up new actors, behaviors and interests (Finnemore and Sikkink 1998). The newly-formed United Nations provided the main forum for challenging the prevailing colonial understandings and practices of state sovereignty. The main reason to focus on the role of the UN is simple: UN involvement in these independence processes was the rule, while war was the exception. This is important because a focus on how non-state actors, such as liberation movements, are able to use an IGO without reverting to conflict is a central concern in the study

⁵⁸ See also Wright 1930: 72.

of International Relations. It also helps to substantiate our understanding of how multiple actors involve IGOs to reconstitute the understandings and practices of state sovereignty. The United Nations offered a critical forum for actors to argue in favor of universalizing the norm of self-determination and grafting it onto developing norms of human rights. The norm of self-determination so constituted provided an international context to stimulate and accelerate the process of decolonization on the ground.⁵⁹

What may be frequently overlooked in the available literature – when referring to the actions of ‘newly independent states’ at the UN - is that this co-constitutive process, in effect, meant that former non-state actors transformed in status and emerged to enter the UN as state diplomats. They used their status and acted as allies to open the UN up to other liberation movements, while working to persuade colonial states that the peoples in the colonies were not second-class citizens but rather were entitled to self-determination on the basis of equality and non-discrimination.⁶⁰ They challenged an outmoded form of state sovereignty and globalized a new composite institution of state sovereignty. This entailed contesting the norm of non-interference colonial states upheld. Moreover, with respect to the third composite part of state sovereignty, newly independent states and liberation movements did not question existing borders. The application of self-determination established “not only the categorical right to independence of colonial populations but the inviolability of the existing ex-colonial territories also” (Jackson 1990: 41). This acceptance effectively ended the era of territorial expansionism and bolstered the norm of territorial integrity (Zacher 2001).

⁵⁹ Decolonization was ultimately achieved in three interlocking ways: through the voluntary and negotiated transfer of sovereignty from colonial states to the formerly colonized peoples; through UN supervised processes that granted independence by way of plebiscite and/or elections; and through the political and/or military struggle of liberation movements against colonial control.

⁶⁰ See on the latter Reus-Smit 2011; Philpott 2001; Crawford 2002

This chapter therefore explores how the challenge to state sovereignty by liberation movements was limited by what has become known as the “saltwater” application. This application meant that self-determination was applied to peoples in Trust and Non-Self-Governing Territories separated by a body of water (an ocean) from the administering state. Internal groups that found themselves within the territorial boundaries of states were excluded from claiming self-determination. December 1960 defined the pivotal moment of consolidating the saltwater application. This was when the UN debates culminated in the historic adoption of the General Assembly’s Resolution 1514 the *Declaration on the Granting of Independence to Colonial Countries and Peoples*.⁶¹ Once the norm of self-determination became inscribed in this fashion and was consolidated by states, other calls for self-determination outside of this “statist” conception became synonymous with threats to state fragmentation. Developments during the post-war period thus had a paradoxical effect: it could be used by liberation movements as a challenge to the sovereignty of states as long as overseas empires existed; yet it was threatened with obsolescence as the process of “saltwater” decolonization reached completion. One of the most prevalent forms of European colonialism ended, yet only “peoples” within colonial territories were effectively entitled to self-determination. At this historical juncture, many others, including innumerable ethnic groups, indigenous peoples, nations and tribes, whether they lived in the colonies or in existing states, remained excluded. A matter that I take up in the next chapter concerned with indigenous peoples.

3.1.3 The Argument in Brief

Above all, I demonstrate how liberation movements accessed and participated at the UN. I draw attention to how relevant venues were used by state allies to expand and assist liberation movements to enter the UN, facilitating their direct participation and holding colonial states

⁶¹ The declaration has been called the “magna carta of decolonization” (Berat 1990: 143).

accountable. These combined dynamics drove the independence of nearly 750 million people living in Trust and Non-Self-Governing Territories.⁶² As these actors established a norm-based challenge they advanced the process of decolonization and, consequently, globalized a reformulated institution of state sovereignty. As a result, the composition of the UN rapidly enlarged from fifty-one members at inception in 1945 to 76 members by 1955, then jumping to 99 member states by 1960 to 144 members by 1976.

The challenge to state sovereignty this chapter is concerned with was thus indicative of the evolution of the UN, as an IGO itself. This process was a momentous and unexpected outcome. It was an undesired development that colonial states aimed to constrain at the UN but could ultimately not control. The United Nations established its own relevance as a central arbiter to settle the consequences for the sovereign system of states, old and new alike. I accordingly explain the mutability of the composite parts of the institution of state sovereignty, namely, self-determination, non-interference, territorial integrity. A focus on the UN is then also useful because changes to these norms show up as altered understandings of them translate into changing IGO practices. These practices, and in line with constructivist assumptions, are contingent on norm leaders reformulating and norm followers endorsing the reformulated substantive content of composite norms. Crucially, also enacting and accepting procedural rules and procedures through which these norms are established and implemented.

This chapter builds on existing accounts that have grappled with the United Nations role during the era of decolonization (Burke 2010; Crawford 2002; Philpott 2001; Jackson 1990; Reus-Smit 2013). In contrast to existing accounts, my main focus is to highlight how key allies

⁶² Britain's empire, by far the largest, included over 60 overseas colonies, mandates, or protectorates with 450 million people; France had over 30 colonies, mandates, or protectorates with 65 million people; the Netherlands colonized 53 million people in 3 colonies; followed by Belgium with 14 million people in two colonies; as well as Portugal with 11 million people in nine colonies and Spain with five colonies with over 1 million people (Chamberlain 1998).

introduced and non-state actors used normative as well as procedural institutional innovations at the UN. My key contribution to the available literature, apart from testing theoretical expectations, is to specify the influence of liberation movements advocacy with the actions by former non-state actors turned state allies through relevant United Nations venues. In this way I bring the above literature into a conversation with those accounts that are concerned with non-state actors' advocacy in IGO's (Keck and Sikkink 1998).

Specifically, I draw on Burke and Reus-Smit who demonstrated that self-determination and human rights were far from universal. These authors have shown that newly independent states used the General Assembly's Third Committee to link a universal norm of self-determination with the emerging human rights regime. I augment their work by considering additional venues responsible for driving the challenge to state sovereignty during this period. These include the General Assembly's Fourth Committee, the Committee on Information, the Trusteeship Council and the Decolonization Committee. Furthermore, I substantiate Neta Crawford's work which showed that ethical argument helped bring about the end of European overseas colonialism. By focusing on building a theory of persuasion and the use of argumentation Crawford does not give much attention to the tactics and conditions the liberation movements drew on nor how they benefited from the role of allies when using the above-mentioned venues.⁶³ I trace the dynamics by which liberation movements were able to use the UN in these ways by distinguishing three phases.

First, in the *norm emergence phase*, I demonstrate how liberation movements mobilized to access the UN as a propitious forum for change by establishing shadow venues. These venues

⁶³ An omission the author acknowledges (Crawford 2002: 5). This dissertation also differs from Robert Jackson. I am not concerned with the emergence of "quasi-states" but with how this change came about in the first place (Jackson 1990: 1). Philpott also informs this dissertation. His key focus is different from mine as he does not consider liberation movements nor those actors active in the UN but "decisions of heads of states [...] to lower their imperial flag" (Philpott 2001: 4).

created linkages with US civil society groups who had access to the institution building conference as so-called consultants. These combined actions initiated a boomerang pattern of liberation movements at the UN's inception (Keck & Sikkink 1998). Their lack of direct access, and imperfect influence through the consultants consequently meant that they relied heavily on state delegates, acting as norm entrepreneurs, in institutional design venues. These state allies, and with the impetus of the UN Secretariat, achieved three outcomes important to liberation movements: they secured the inclusion of the principle of self-determination into the UN Charter, innovated access and participatory mechanisms for peoples from Trust Territories and, more generally, kept colonial states accountable to list colonial territories for which they UN would assume responsibilities.

Second, in the *standard-setting phase*, I demonstrate how liberation movements challenged colonial state sovereignty directly in the context of accessing and participating through submitting written petitions, oral hearings and visiting missions through two accountability venues: the Trusteeship Council and the Fourth Committee. This section also emphasizes the essential role of state allies, emerging from a status as non-state actors, to drive normative and procedural change in instances of limited non-state actor access and participation to IGO's. I analyze how state allies worked against the interests of colonial states to keep access and participation mechanisms at bay for the majority of peoples in NSGTs. Key to this process was to unify UN Charter obligations which maintained a distinction between Trust and NSGTs. I substantiate empirically how state allies used a sheltered venue (the Third Committee) and discuss the relevance of the Committee on Information as an accountability venue. These activities affirmed self-determination as a universal norm and that was grafted onto the emergent human rights regime. Lastly, I examine an instance of venue shifting. I highlight how the

establishment of Non-Aligned Movement (NAM) starting with the Bandung conference in 1955 had reverberation effects at the UN (Alter & Meunier 2009). Venue shifting reinforced the challenge to state sovereignty and set precedents for liberation movements access and participation to international forums.

Third, the *norm cascading phase* began with the drafting, adoption and implementation of Resolution 1514, the *Declaration on the Granting of Independence of to Colonial Countries and Peoples* in December 1960. This last section underscores how a normative tipping point was reached and discusses the consolidation of the composite institution of state sovereignty at the UN, especially through the Decolonization Committee, until the mid 1970s. I emphasize the relevance of the so-called Decolonization Committee as an implementation venue. I demonstrate its relevance by offering how liberation movements used the venue's unprecedented open access and participatory mechanisms to realize their independence and bolster a new composite institution of state sovereignty. In short, this case study sheds new light on the decolonization process by highlighting how non-state actors and their allies drew on multiple UN venues to alter the composite institution of state sovereignty.

3.2 Norm Emergence Phase

This section focuses on the norm emergence phase within an IGO. In this case study the norm emergence phase coincided with the IGO's institutional design. Liberation movements mobilized to enter the UN as a propitious venue. They lacked meaningful access to the UN institution building conferences, but this IGO's institutional design phase offered a unique opportunity for non-state actors to seek out and establish links with state allies who are involved in shaping the organization purposes and procedures.

I draw attention to how allies - acting as norm entrepreneurs – set substantive and procedural inroads through three institutional design venues: 1) Committee II/4, as part of the *United Nations Conference on International Organizations* (UNCIO) in San Francisco and 2) ExCom, part of the *Preparatory Commission of the United Nations* and 3) the first General Assembly session held in London. These combined activities: (a) initiated a boomerang pattern of liberation movements at the UN; (b) resulted in limited access and participation opportunities through petitions and visiting missions for liberation movements from Trust Territories; (c) established the challenge to state sovereignty, by planting the normative seed for a universal recognition of self-determination and human rights into the UN Charter.

3.2.1 The National Liberation Movements Boomerang Pattern at the United Nations

After the Dumbarton Oak conference, and between April 25 until June 26, 1945, the principles and key institutions of the UN were finalized by state delegates at UNCIO in San Francisco. More than 6000 people attended UNCIO: 850 delegates from fifty states, 2600 media representatives, 1000 US citizens working in the secretariat, 300 security officers and 120 translators. An often overlooked aspect of UNCIO was that it also attracted some 1500 members of civil society organizations, individual activists and liberation movements.⁶⁴ They also included forty-two organizations being invited as “consultants” by the US State Department. These consultants were not included in the official UN listing of participants but engaged with the US delegation informally. Thus while state delegates framed the principles, procedures and powers of a new IGO

⁶⁴ 173 NGOs registered with the US state department, including the African American Organizations with a primary interest in the future colonized peoples. UNCIO generated interest by liberation movements including the Council on African Affairs, the West Indian National Council and the Ethiopian World Federation (Henry 1999: 137).

the international public witnessed as never before the daily welter of political negotiations and disputes between government representatives (Normand & Zaidi 2008: 122).⁶⁵

Liberation movements were part of this ‘international public.’ By identifying the UN as a venue for change they initiated a boomerang pattern at the UN’s inception. According to this pattern, when domestic avenues for non-state actors are blocked, these actors search out international partners who will pressure a state from outside the state (Keck & Sikkink 1998). Liberation movements sought out receptive allies at UNCIO to assert self-determination, drive decolonization and achieve independence. They did so by framing normative demands, by attracting public attention and by demanding action from the new IGO.

Only a few weeks before UNCIO, on April 6, 1945, the *National Association for the Advancement of Colored People* (NAACP), a US civil society organization, invited forty-nine delegates from Barbados, Burma, the Gold Coast, Guiana, India, Indonesia, Jamaica, Nigeria, Puerto Rico, and Uganda, to build a coalition of liberation movements, in Harlem New York. Notably, conference delegates included liberation leaders such as future presidents of, Ghana, Kwame Nkrumah, of Nigeria, Nnamdi Azikiwe, as well as Richard Moore and Charles Petioni, of the West Indies National Council. The conference was organized to build a coalition that was “to assemble, in clear and concise form, the essential facts concerning the colonies and their demands” (Harris 1998: 133). The Harlem participants unanimously decided to send a delegation to UNCIO to demand self-determination and human rights (Tillery 2011: 104). These coalition-building efforts highlighted that these actors employed tactics based on accountability and information politics (Keck & Sikkink 1998). Its members stressed

⁶⁵ It was attended by representatives of 50 states, including 9 European, 21 from North as well as Central and South America, 7 Middle Eastern states, 5 British Commonwealth nations, 2 Soviet republics (in addition to the USSR itself), 2 East Asian and 3 African states (Eagleton 1945: 935).

the importance of promoting wide discussion and the dissemination of information about the conference [and demanded] the establishment of a machinery within the international organization to speedily bring about [...] self-government for all non self-governing peoples (The Afro-American 1945: 15).

Their actions were based on a call for UN participation and foreshadowed the challenge to state sovereignty. Richard Moore, from the West Indies National Council, for example presented an *Appeal to the United Nations Conference on International Organization on Behalf of the Caribbean Peoples* which demanded

forthright recognition of the inalienable rights of the Caribbean people to self-government and self-determination [and] guarantees for the abolition of all discriminatory laws and practices (reprinted in Moore Turner & Burghardt Turner 1988: 270).

At UNCIO, liberation movements were confronted with a venue to which they lacked direct access, because they were deliberately refused entry by the colonial powers. For example, in March 1945, the Nigeria's Legislative Council requested the British government to "approve the appointment of a delegation of two unofficial (i.e., African) members to attend as observers." However, they were told by the colonial administration that "no such observers would be allowed" and that the UK was to be solely responsible for all matters affecting the colonies (cited in Sherwood 1996: 82). Nnamadi Azikiwe, the nationalist leader and future president of Nigeria, deplored this denial:

We are pessimistic because there is no new deal for the blackman [sic] in San Francisco. We are worried about San Francisco because colonialism and economic enslavement of the Negro are to be maintained. [...] We shall not be happy until the world is rescued from its half slavery and half freedom. God grant that this miracle happens at Frisco (ibid.).

Once in San Francisco liberation actors employed various tactics to apply public pressure. They "maintained a high level of agitation" through the use of telegrams, public meetings and press

conferences and, as one press observer put it: “came to form some kind of ‘conscience’ for the drafters of the Charter” (Sherwood 1996: 83). These findings affirm insights from the transnational movement literature. They run counter to existing arguments positing that the collective demands by liberation movements for self-determination and national sovereignty had no link to the emergent human rights regime (Moyn 2010: 84, Tsutsui, Whitliner & Lim 2012). The evidence supports the opposite: liberation movements initiated a boomerang pattern by mobilizing around the incipient IGO to challenge the institution of state sovereignty based on self-determination and human rights. Certainly, as a secret US report stressed, states perceived such advocacy by liberation actors as a challenge because they may

mobilize the more or less articulate masses behind them in opposition to what is considered the common oppressor. Such being the case, colonial officials watch them and whenever possible grant concessions. The power that they have and the threat which they represent do modify colonial policy (cited in Sherwood 1996: 94).

In addition to public pressure, liberation movements relied on allies with better access to the venue. In a first instance, this meant reliance on so-called consultants, especially the above-mentioned *National Association for the Advancement of Colored People* (NAACP).⁶⁶ This was the key-enabling factor allowing liberation movements to indirectly access UNCIO. Although consultants were excluded from decision-making they were given unprecedented access and participatory capacities.⁶⁷ Apart from allowing them to engage state delegates informally, consultants were given work spaces, copies of official documents and proposals, access to restricted areas and the ability to observe commission and conference meetings (Robins 1971: 105). Giving consultants this status was intended to garner wide domestic support for the new IGO in the US (Schlesinger 2003: 125). Consultants, despite this window dressing, used their

⁶⁶ Demands for self-determination paralleled with the NAACP’s domestic grievances, such as voting restrictions in the US South. The NAACP had 400,000 members and considerable support from the 13 million African Americans living in the USA (Anderson 2003: 40).

⁶⁷ Other active consultants were the *American Bar Association* (ABA) and the *Federal Council of Churches* calling for an “explicit statement of intent to develop and codify international law, and create an agency for hastening decolonization” (Rock 2011: 104).

contacts to pressure the US delegation to hold regular sessions with them. Colonial states questioned the participation by consultants. Lord Halifax, a British Foreign Office delegate, contested the United States' seeming democracy in appointing consultants

I am afraid [...] these people will know precisely what is happening in sub-committees [...] and will not hesitate to use this knowledge [...] for the purpose of grinding particular axes (cited in Sherwood 1996: 76).⁶⁸

With their status as UNCIO consultants the NAACP continued to play a particularly active role in bringing liberation movements demands to San Francisco. The organization, after they had officially been designated as consultants, sent Walther White, Mary McLeon Bethune, and W.E.B Du Bois to UNCIO.⁶⁹ They used their access to criticize the US delegation for retrenching from its former anti-colonial stance. The NAACP drew on symbolic politics when they surveyed 151 African American organizations on the issues and subjects to be addressed in San Francisco. Its respondents strongly supported to end colonialism and to formulate a bill of human rights affirming the equality and rights of self-determination of all peoples (Anderson 2003: 41).

The NAACP's lobbying effort indicated that liberation movements were able to indirectly present their demands via the consultants. Du Bois, with regards to seeking access by liberation movements to the UN, went on to urge the US delegation to establish an "international colonial commission with native representation to monitor all colonial administrations" (Aldridge III 2006: 100). Du Bois and White, in a "brutally frank" exchange with US Secretary of State Stettinius, contended that failing to provide such channels meant that millions had "died

⁶⁸ Another British Foreign Office official, in reference to liberation movements, telegraphed to London: "This is the craziest yet. I hope we shall deny these bands of lunatics any part in the conference on pain of ourselves going home" (ibid.).

⁶⁹ Walter Francis White headed the NAACP. Mary Jane McLeon Bethune William was the only African American women present in UNCIO. Du Bois was a co-founder of the organization.

in vain if the war had not been fought for human rights and self-determination” (Krenn 1998: 186).

Consultants further achieved the inclusion of human rights provisions in the UN charter. Clark Eichelberger, representing the *American Association for the United Nations*, “swung into action and within hours mobilized a team of consultants” to make the US delegation reverse its decision to not create a Human Rights Commission. He had done so by submitting a memorandum to the US delegation, signed by twenty other consultants. It asked for the inclusion of “human rights” in relevant parts of the UN Charter and to establish a Commission on Human Rights (CHR) (Robins 1971: 122).⁷⁰ US Secretary of State Stettinius acknowledged that he had “not realized the intensity of feeling on this subject” (Schlesinger 2003: 124). Within three days the US, Britain, France, and the Soviet Union, conceded and supported the human rights proposal. The UN Charter hence read: “We the people of the United Nations are determined [...] to reaffirm faith in fundamental human rights,” while mentioning clear human rights references seven times in the Charter text.

The moderate success liberation movements achieved through consultants owed much to the public pressure noted above, but they were also partly due to that states did not view these provisions as a threat to state authority.⁷¹ The US delegation’s key interest was to drive domestic support for a new UN. They rationalized that human rights concessions would “carry a great weight with American public opinion” (UNCIO Vol.III 1945: 532). Stettinius, as US Secretary of State, assured “consultants” that he would “back the proposal heartily even though they might

⁷⁰ Philip Murray of the Congress of Industrial Organizations helped mobilize other consultants. Signatories included Frederick Nolde of the Council of Churches and Judge Joseph Proskauer of the American Jewish Committee (Ishay 2008: 215).

⁷¹ They were understood to fall under the principle of non-interference in matters essentially in the domestic jurisdiction of member states. Human rights, states argued, were curtailed by the final authority of sovereign states domestically (Simmons 2009: 41).

fail eventually” (UNCIO Vol.III 1945: 532).⁷² Stettinius, agreeing to these concessions, made it clear that UNCIO was

exclusively a conference of governmental organizations [and not interested in] the negro question [or to allow something] as ludicrous as a delegation of American Indians to present a plea [...] for recognition for the independence of the Six Nations (The Iroquois) (cited in Anderson 2003: 41).

After the signing of the UN Charter in San Francisco liberation movements continued their efforts to enter the UN and to set a boomerang pattern into motion by traveling to subsequent institution building conferences. In particular, they created a *shadow venue*, in parallel to the *Preparatory Commission of the United Nations* in London, the Fifth Pan-African Congress in Manchester, England from 15 to 21 October 1945.⁷³ This shadow venue included liberation leaders from colonial territories including Sierra Leone, Nigeria, the Gold Coast (later Ghana), Gambia, Uganda, Kenya, Nyasaland (later Malawi), South Africa, Antigua, Barbados, Bahamas, Bermuda, British Guiana, British Honduras, Grenada, Jamaica, St. Kitts, St. Lucia, Trinidad and Tobago. Delegates included national liberation figures and future presidents such as Kwame Nkrumah (Ghana), Jomo Kenyatta (Kenya) and Hastings Banda (Malawi). The attending liberation actors used the conference to strengthen their network and to further mobilize for UN access.

First, they continued to demand UN access by presenting a joint *Memorandum to the first United Nations* which was formerly presented to the first Secretary General Trygve Lie on 18

⁷² Britain wanted to drop these provisions altogether.

⁷³ See the *Interim Arrangements Concluded by the Governments Represented at the United Nations Conference on International Organization* (PC/EX/113/Rev.1).

September 1946 by the Du Bois, the president of the NAACP.⁷⁴ The petition, using moral arguments, called “for adequate representation” at the UN:

It is just, proper, and necessary that provision be made for the participation of designated representatives of the African colonial peoples in such business of the United Nations as concerns them. The truth of this principle cannot be denied. Provision should be made for such participation to the maximum extent possible under the present charter of the United Nations, so that the grievances and demands of the Africans can be freely expressed (cited in Du Bois, Vol.III 1978: 154).

Second, with respect to non-state actors’ normative demands, delegates reiterated their call for a universal right to self-determination and human rights in the conference outcome document entitled, “The Challenge to the Colonial Powers:”

We are determined to be free. We want education. We want the right to earn a decent living; the right to express our thoughts and emotions, to adopt and create forms of beauty. We demand for Black Africa autonomy and independence (cited in Padmore 1947: 156).

These conscience-building arguments were forwarded to the Secretary-General by Du Bois, the head of the NAACP, warrants emphasis. Du Bois, clearly distinguished himself as an active non-state actor ally for liberation movements during this period. His limited access as a UNCTAD consultant allowed him to introduce the Memorandum to first Secretary-General Lie. Du Bois, in addition to lobbying the UN Secretariat, also created linkages with a former liberation leader turned state diplomat: Vijaya L. Nehru Pandit, of India. Du Bois lobbied her to see whether she “could do anything to see we get some chance for a hearing” to present the Memorandum before the General Assembly. He achieved a small victory when the UN Secretariat bypassed state opposition for such a delegation by informing him that the *Director of the Human Rights Division* would receive an informal delegation (Du Bois, Vol.III 1978: 180).

⁷⁴ Du Bois appealed to Lie that “you will realize how helpless and voiceless” the colonized peoples under colonial control are, and that they “at least” should have “the right to listen to the action of the [GA] if not the actual permission to speak” (Du Bois, Vol.III 1978: 153). There is no written record of a reply.

Notable, with respect to status change, was that Mrs. Pandit presented an early example of a main pattern: liberation actors transformed to become state delegates and IGO principals. Mrs. Pandit was, as a member of the Indian Nationalist Movement, excluded at UNCIO by the British but by 1946 led India's first delegation as an independent UN member state and become the first female President of the UN General Assembly by 1953. She, as Du Bois recognized, also sought to secure self-determination and human rights for colonized peoples when criticizing the drafters of the UN Charter:

all colonial powers, have proposed "self-government" as a substitute for "independence." What is the difference? The word independence means what it says and is clean-cut. The British formula of "self-government" – an ancient weasel word – was deliberately designed [...] to offer the shadow but never the substance of independence to subject peoples (cited in Bhagavan 2012: 1910).

Mrs. Pandit's status change offers insights into the co-constitution between agency and structure. Non-state actors emerged as state allies and, as I argue throughout this chapter, were essential in driving normative and procedural change in the IGO. They used their decision-making authority and votes to shape resolutions, create venues and, more generally, foster institutional interest in support of liberation movements demands. At the same time, and somewhat anomalous to a typical boomerang pattern of non-state actor involvement in an IGO, liberation leaders from the UN's very inception turned actor by actor into an IGO principal (Keck & Sikkink 1998). This type increasing leverage is of course less likely in other instances of non-state actors use of IGOs.⁷⁵

In summary, upon finding denied direct access, liberation movements explored access and participation through other non-state actors, the UN Secretariat and state delegates. Especially, US civil society actors with access as consultants achieved small successes by

⁷⁵ These state allies led a "revolt against the West" for "equal sovereignty" and "formal political independence" of the non-Western world (Bull 1984).

wresting concessions from states but foremost experienced limitations due to states unwillingness to take liberation movements' demands on more forcefully. Still, liberation movements efforts to influence the institutional design phase highlighted that they identified the UN as a venue to challenge prevailing conceptions of state sovereignty. With this in mind, the next section thus focuses on another and more influential dynamic during UNCIO and beyond: the role of state allies.

3.2.2 Norm Entrepreneurs: State Allies Using Institutional Design Venues

State delegates acting as allies for liberation movements achieved three outcomes during the institutional design phase: a) they secured the inclusion of self-determination into the UN Charter, b) they innovated limited access and participatory channels for liberation movements from Trust Territories and c) they kept colonial states accountable by putting on pressure to list both Trust and NSGTs for which they UN would assume responsibilities.

3.2.2.1 Including Self-Determination into the UN Charter

State allies acted as norm entrepreneurs when they sought to equip the UN with a system of international accountability and oversight over colonial territories based on the principle of self-determination. They did so through a critical UNCIO venue: Committee II/4.⁷⁶ Its debates focused on a new Trusteeship System which related to the political future of League of Nation Mandate Territories as well as on so-called Non-Self-Governing Territories (NSGTs).⁷⁷ The central difference between Trust Territories and NSGTs was that the former were explicitly destined for independence while the latter were intended to remain under colonial control indefinitely. Both terms were euphemisms for colonial territories where liberation movements

⁷⁶ Four main commissions with twelve technical committees framed the post-war IGO: the first drafted specific UN Charter sections including the Preamble, Trusteeship, and the Economic and Social Council, a second the General Assembly, a third the Security Council and a fourth the World Court.

⁷⁷ The US retreated from its anti-colonial stance and focused on security issues. The Soviet Union and China maintained a clear and strong anti-colonial stance.

sought independence. My focus on Committee II/4 is simple: it was a public venue in which all states could make decisions, and one which dealt with a separate matter from the already determined core UN structure.⁷⁸ An analysis of venue outcomes, in fact, specifies theoretical expectations that “all norm promoters at the international level need some kind of organizational platform from and through which they promote their norms” (Keck & Sikkink 1998: 899).⁷⁹

Since there were no specific proposals from the Dumbarton Oaks conference on the Trusteeship System; Committee II/4 became the key venue on drafting the relevant UN Charter articles. Crucially, in regards to venue characteristics, was that the powers and procedures of the Trusteeship System could still be shaped through Committee II/4, which was mandated, to prepare and recommend

draft provisions on principles and mechanisms of a system of international trusteeship for such dependent territories as may by subsequent agreement be placed thereunder (Gilchrist 1945: 984).⁸⁰

Two opposing camps emerged during the venue’s sixteen meetings: one colonial and the other anti-colonial. Notably state allies from the Soviet Union, Egypt, India, and Iraq introduced a proposal for the explicit and prominent inclusion of self-determination into UN Charter Article 1(2) and the section on economic and social cooperation (Article 55) (Nincic 1970: 221). Article 1(2) henceforward stated that the IGO was to

develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace (UN Charter Article 1(2)).

UNCIO also established that

⁷⁸ Committee II/4 attracted a “steady audience of delegates, advisers, and members of the Secretariat, and it met in the largest of the Committee rooms” (Gilchrist 1945: 984).

⁷⁹ Norm entrepreneurs may do so by speaking to universal “aspects of belief systems or life worlds that transcend a specific cultural or political context” (Boli & Thomas 1998: 907).

⁸⁰ The US Trusteeship draft was completed “at the eleventh hour” before UNCIO commenced by a “Technical Group” including Bunche, Gerig and Taussig of the State Departments Dependent Area Division (Chowdhuri 1955: 51). The UK, French, Chinese, Australian and Soviet Union drafts were submitted between 5 May to 11 May 1945 (UNCIO, Vol III: 604-619).

concerning the principle of self-determination, it was strongly emphasized [...] that this principle corresponds closely to the will and the desires of peoples everywhere [and] it was stated that the principle is conform to the purposes of the Charter only insofar as it implied the right of self-government of peoples, and not the right of secession (UNCIO VI 1945: 296).

These inclusions, even if limited at the time, marked the beginning of liberation movements norm based challenge to state sovereignty at the UN. They highlight that - in instance of limited non-state actors influence - a critical role of norm development falls onto sympathetic state allies. These allies put a universal demand for self-determination, away from its limited application in Europe towards a right for all peoples, on the agenda. The inclusion of Article 1(2) “had a snowball effect, for it lent moral and political force” to the aspirations of liberation movements and would eventually be used by them as a legal entitlement to decolonization, with the UN acting as a forum for determining the scope and overseeing the implementation of self-determination (Cassese 1995: 39).

Norm entrepreneurs’ proposals were opposed by colonial states as a challenge to their sovereign rights. The UK, France, Australia, Belgium, the Netherlands, New Zealand, Portugal, South Africa and the United States tried to limit the creation of accountability mechanisms and were determined to minimize the inclusion of principles of self-determination, equality and racial non-discrimination. The British led colonial states opposition and shunned ideas of independence as a universal goal of colonized peoples. Lord Cranborne warned that the inclusion of independence would result in a wave of “political uncertainty” in colonial territories. He threatened non-cooperation on these matters, as demands for independence, undermined colonial states willingness to provide “capital development” necessary in the development of colonial territories (UNCIO Vol. X 1945: 453). The French and Dutch delegation emphasized a different dimension of the composite institution of sovereignty by stating that for them the principle of

“non-intervention in the domestic affairs of member states” would be undermined with a strong mention of self-determination (UNCIO Vol. X 1945: 433).

Despite that the inclusion of self-determination into the UN Charter advanced norm entrepreneurs’ objectives, colonial states averted drastic change by asserting significant political and voting leverage. Most importantly, they maintained a distinction between “Trust Territories,” defined as the former League of Nations mandated territories for which the goal was independence; and “Non-Self-Governing Territories” (NSGTs) for which the goal was self-government. The notion of self-government was different from full independence because NSGTs were to remain subject to colonial state control. In short, Committee II/4 negotiations ended in a compromise whereby the UN Charter created a bifurcated Trusteeship System: Chapter XI outlined a “Declaration Regarding Non-Self-Governing Territories” on yet to be determined NSGTs, and Chapter XII which included the mandate for “International Trusteeship System” as well as Chapter XIII that stipulated the functions and powers of the “The Trusteeship Council.”

By creating this dual system colonial states’ interests of maintaining control over the colonies and minimizing the role of the UN was at this point confirmed. This was because the goal of independence for Trust Territories included only a small number of territories while the majority of Non-Self-Governing Territories were, under the guise of gradual development towards self-government, intended to remain under colonial states’ control indefinitely. At the same time norm entrepreneurs succeeded to wrest a vague concession to self-determination from colonial states by recognizing

the principle that the interests of the inhabitants of these territories is paramount [and that they would] develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions (UN Charter Article 73).

The challenge to state sovereignty this chapter is concerned with was still in its infancy. Especially deliberations conducted in Committee II/4 allowed norm entrepreneurs to wrest limited concession from colonial states. The inclusion of the principle of self-determination in the UN Charter, and especially its link to Trust and NSGTs, was thus certainly significant, and “in a sense also the most revolutionary, step accomplished at San Francisco” (Nincic 1970: 222). State allies set a normative frame important to liberation movements and one that went beyond colonial states’ interests by providing for a dual UN mandate “one involving obligations towards the indigenous inhabitants, and the other constituting obligations towards the world community” (El-Ayouty 1971: 27). Although, colonial states acknowledged norm entrepreneurs’ demand to improve “the treatment of colonial peoples, thought themselves well protected” against UN interference (Eagleton 1957: 351). In other words, the inclusion of the ‘principle’ of self-determination into the UN Charter did not challenge state sovereignty at a deep level. Colonial states conceded to the inclusion of self-determination, yet viewed it as “an unexpected and even an undesired development” that provoked a decolonization “spirit into action” (Cobban 1945: 123).

3.2.2.2 Innovating Access and Participatory Mechanisms

Apart from these substantive gains, state allies made key procedural gains important to liberation movements. Norm entrepreneurs, affirming theoretical expectations on their central role during the norm emergence phase, declared the need to create UN venues which included mechanisms for UN oversight over the developments in Trust and NSGTs and that would provide for access and participatory mechanisms to colonized peoples.⁸¹

⁸¹ See on the former Sikkink & Finnemore 1998: 909.

Carlos Peña Romulo, heading the Philippine delegation and an ardent supporter of national liberation, drew on symbolic politic' tactics - defined by Keck and Sikkink as the use of symbols, narratives etc. to connect with a variety of audiences - when speaking before Committee II/4 (Keck & Sikkink 1998). Romulo argued that the goal of independence for the colonies was as a logical extension to deliver the Atlantic Charter's 'promise' of self-determination. To do otherwise would constitute a betrayal, and would diminish the aspirations of millions of colonized people that were not represented at UNCIO (UNCIO Vol. X 1945: 440). In this connection, tackling issues of access and participation for non-state actors was understood to be critical by state allies using Committee II/4. Romulo asked, with respect to the creation venues useful to liberation movements, that "an entity independent of the administering authority should judge the degree of advancement of dependent people" (UNCIO Vol. III 1945: 428).⁸² Wellington Koo, heading the Chinese delegations, echoed these proposals and put forward a concrete proposal for the participation of "a representative of the people of a Trust Territory" in the work of the Trusteeship Council (UNCIO, Vol. III 1945: 617).

The most instrumental state actor for liberation movements was Ralph Johnson Bunche, a political scientist and only African American who served as expert for US delegate Harold Stassen heading the Committee II/4 delegation.⁸³ Bunche, first in his capacity as colonial expert in the US delegation, was one of the principal authors of Chapters XI, XII and XIII, and subsequently, as head of the Trusteeship Division in the UN Secretariat, played a key role in expanding institutional design features that allowed liberation movements to access and

⁸² The Soviet Union echoed that Trusteeship goals be based on self-determination and that full national independence necessitated colonized peoples' UN participation (UNCIO Vol. III 1945: 441).

⁸³ Ralph Bunche co-founded the National Negro Congress in 1936, which had links to the NAACP (Mitoma 2013: 71). Bunche combined his academic expertise with influencing UNCIO outcomes (Crawford 2010: 95). He had written his PhD dissertation on the League of Nations mandate system in 1934; entitled "French Administration in Togoland and Dahomey." In 1941, Bunche took a post at the then recently established Office of Strategic Services (OSS) as senior social scientist responsible for Africa and other colonial territories (Harris 1999: 170).

participate in the UN in later years.⁸⁴ He based his campaign in Committee II/4 on the assertion that “the interest of the peoples of the trust territories were, for the first time, paramount in importance” (Mann 1975: 147). Bunche’s role as norm entrepreneur was evident when he asserted a place for the UN as third party with some oversight providing for

international responsibility - not the customary conception of the colonial power itself unilaterally recognizing a moral trusteeship on behalf of its colonial subjects (Bunche 1947: 58).

Bunche had since Dumbarton Oaks been dissatisfied that the Trusteeship question had been derailed by US strategic considerations. He informally pressured his colleagues and superiors to consider procedural innovations and especially that the peoples from Trust Territories should have a voice at the UN. Bunche, although unable to influence his own delegation directly, succeeded when he slipped his own unauthorized Trusteeship proposal to the Australian delegation after the British delegation had introduced “a weak draft on trusteeship, hoping to forestall a stronger US proposal” (Henry 1999: 137). This “informal” campaign, launched by Bunche in Committee II/4, not only went against the US delegation’s interests but reintroduced his own version back into the deliberations (Urquhart 1993: 118). Bunche later accounted for his own campaign as follows:

Although not a member of the five-power group, Australia had also submitted to the Conference a trusteeship proposal which was very broad in some of its provisions and which at a late state of the deliberations of the Conference Committee on Trusteeship contributed no little to the provisions of Chapter XI of the Charter (Bunche 1946: 544).⁸⁵

⁸⁵ Romulo supported the Bunche/Australian proposal proclaiming that it carried “the spirit and meaning of independence” (UNCIO Vol. VIII: 56).

Bunche' actions secured that the UN Trusteeship Council would be able to connect with liberation movements. The venue, as will be discussed further below, could regularly visit and receive petitions from the peoples of the Trust Territories (UN Charter Article 87). By innovating these institutional design features Bunche played a pivotal role to establish access and participatory channels that "rather than exceptional or peripheral" would turn out to be critical for liberation movements to challenge state sovereignty (Terretta 2012: 358). Bunche's innovations benefited not only liberation movements from Trust Territories but, as I demonstrate later, came to offer a blueprint for establishing access and participation mechanisms for liberation movements from the much larger list of NSGTs. Apart from these mechanisms Bunche secured a degree of UN oversight over Trust Territories and NSGTs through an explicit demand to conclude Trust Territory agreements between colonial States and the UN (UN Charter Article 87 and 75), as well as the introduction of questionnaires assessing NSGTs development towards self-government (UN Charter Article 73(e)). Bunche, as head of the UN Trusteeship Division in 1947, emphasized the importance of access and participation for liberation movements ability to challenge state sovereignty via petitions and visiting missions:

The Trusteeship provisions in the Charter deal more positively with the promotion of the welfare of the inhabitants of the territories concerned than did the Mandates system. It calls specifically for the promotion of the advancement of the inhabitants, their development toward self-government or independence, and for the encouragement of respect for human rights and freedom without discrimination. Specific provisions are made for the right of petition, oral as well as written, and such petitions may come from any source whether in or outside the Trust Territories. Moreover, they may be submitted directly to the United Nations and need not be conveyed through the administering authorities. The new system also provides for periodic visits by the United Nations to the Trust Territories for purposes of on-the-spot inspection (Bunche 1947: 59).

These informal advances by Bunche in Committee II/4 were important because his expert knowledge on the League of Nations Mandate System converged with other norm entrepreneurs,

like Romulo and Koo, who also sought to establish procedures for colonized peoples to access and participate in the UN. To be sure, another likely reason for his success was that only a small number of eleven Trust Territories eventually fell under UN competence and especially because colonial states felt secure of maintaining effective control over processes and outcomes. This is because no Trust agreements had at this point been concluded, and the Trusteeship Council was not yet in operation. Notwithstanding Bunche's reformulations of the Trusteeship System had two important effects in the following years: a) they provided liberation movements from Trust Territories a direct channel to access and participate in the UN to challenge state sovereignty and b) offered state allies a model they sought to extend to liberation movements from NSGTs and against colonial states who aimed to exclude NSGTs from UN accountability mechanisms.

3.2.2.3 Pushing Through A Veto Point and Keeping States Accountable

Furthermore, and no longer in San Francisco but during the *Preparatory Commission of the United Nations* as well as during the inaugural General Assembly session in London, state allies asserted constant pressure on colonial states to begin negotiating individual Trusteeship Agreements, to co-operate in establishing the Trusteeship Council, to list all remaining NSGTs, and to agree to a new venue responsible for observing NSGTs eventual independence. As part of its first steps the Preparatory Commission also instituted an *Executive Committee* (hereafter ExCom). This venue was responsible for the organization of the inaugural sessions of the General Assembly, the Security Council, the Economic and Social Council, the Trusteeship Council and of establishing the UN Secretariat. Certainly, with respect to the relevance of venues, the *Preparatory Commission* presented a possible veto point for colonial states interested in backsliding from UNCIO commitments (PC/20).

ExCom's relevance was that it offered state allies an opportunity to seek voluntary compliance from colonial to list Trust Territories and to determine all remaining NSGTs. State allies, including China, the Soviet Union and Yugoslavia were able to do so because they held seats on the fourteen-member strong venue.⁸⁶ They benefited from one venue characteristic in particular - as its members had agreed that all deliberations were based "upon negotiations and "no objection" methods of agreement." Indeed, as one observer explained, the venue's "extremely flexible" methods of work and its lack of a formalized voting procedure kept colonial states in the fold (UNCIO 1945 Vol. I: 1434). This was because without this unanimity requirement colonial states could have voted against previous agreements. Pressure from anti-colonial states presumably stopped them from vetoing under these consensus modalities. ExCom, so constituted, "hotly debated" the implementation of the Trusteeship System between August and September of 1945 (Chowdhuri 1955: 71).⁸⁷

3.4.2.3.1 Listing Trust Territories and Approving Trust Agreements Based on Self-determination
The main sticking point between ExCom members was to agree on the modus operandi of foremost listing which territories were Trust and which were NSGTs.⁸⁸ Wellington Koo, ally since UNCIO and now as first chairman of ExCom, pushed the agenda on listing Trust Territories and supported a broad view of which states were to be "directly concerned" in overseeing Trust Territories' ultimate independence and NSGTs' goal of self-government. States from Africa and Asia, the Soviet Bloc and the Arab League, in fact all considered themselves "directly concerned," and supported Koo. These allies favored a simple invitation to list Trust

⁸⁶ ExCom members also included Australia, Brazil, Canada, Chile, Czechoslovakia, France, Iran, Mexico, the Netherlands, the UK, and the USA (Interim Arrangements: 1945).

⁸⁷ These debates took place in Sub-Committee 4. There were ten Sub-Committees in total and its recommendations were approved by the Executive Committee with some reservations (PC/20).

⁸⁸ According to Article 79 of the UN Charter no territory, whether it was a League of Nation mandate territory or not could come under the Trusteeship System except by "subsequent agreement" by the "states directly concerned, including the mandatory power." In the case of "strategic areas" trusteeship agreements were reached in the Security Council and for all others by the General Assembly (UNCIO Doc. 1010 II/4/37: para 4-10; UNCIO Doc. 812 II/437).

and NSGTs and negotiate individual Trusteeship agreements immediately but were refused by colonial states. Colonial powers effectively constrained allies' attempts to pressure them into listing territories during ExCom negotiations and maintained their right to submit territories on a unilateral and voluntary basis.

Despite this, state allies active in ExCom kept colonial states, instead of delaying the process, accountable during the institution building phase of the new IGO. Colonial states (except South Africa) followed ExCom recommendations and declared that they would list former League of Nations Mandate Territories as Trust Territories, if not immediately but by January 1946.⁸⁹ They adapted strategically to allies' pressure and also agreed to "undertake practical steps" towards concluding Trusteeship Agreements "preferably no later than by end of 1946" (A/258). This is more generally interesting because ExCom's unanimity requirement plausibly induced colonial states to make limited concessions by agreeing to do so "in concert with the other states directly concerned, for the conclusion of trusteeship agreements for approval" (PC/TC/41: Annex G)⁹⁰

State allies' influence and resolve to driving normative change was especially evident after they achieved amendments to the legally binding Trust Agreements during the inaugural GA session by the required two-thirds majority in 1946.⁹¹ They achieved that these documents would explicitly emphasize the development of free political institutions and entail assurances to progressively hand over government functions to the peoples in Trust Territories. They also ensured that colonial states would guarantee basic human rights, including freedom of speech, of

⁸⁹ The British first circulated draft agreements "for information" to the US, the Soviet Union and China, with Belgium and France following the same model (A/258; T/8). The key debates over approving individual Trust Agreements was, however, left to all member states of the General Assembly.

⁹⁰ See UN Preparatory Commission 1945: 1497; PC/TC/30; PC/TC/31; PC/TC/41 Annex E-F; Hall 1948: 286.

⁹¹ A total of 229 amendments were forwarded (A/258).

the press, of assembly, and of petition.⁹² In so doing allies linked independence, as a specific goal for Trust Agreements, to UN Charter Article 76(b) which stated that the basic objective was to

promote the political, economic, social, and educational advancement [and according to the] freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement (UN Charter Article 76(b)).

By forging this link the primary determinant of Trust Territories' political future was partially shifted from colonial states, as sole sovereign authorities, to the will of the people: their self-determination and independence which was to be supervised by the UN.

An analysis of colonial states' drafts and final Trusteeship Agreements reveals, moreover, that state allies were able to cement Ralph Bunche's procedural innovations previously discussed. Trusteeship Agreements affirmed that colonial states fully collaborate with the General Assembly and the Trusteeship Council. With respect to liberation movements ability to access and participate, colonial states also agreed to

promote the development of free political institutions [...]. To this end, the Administering Authority shall assure to the inhabitants [...] a progressively increasing share in the administrative and other services of the Territory; shall develop the participation of the inhabitants [...] in advisory and legislative bodies and in the government [of the Trust Territory].⁹³

These latter concessions, as I will demonstrate, provided liberation movements with tangible guarantees for political participation they could pursue domestically and demand before the UN through oral and written petitions as well as during visiting missions. Clearly these advances, although important, were at the time far from universally applicable but remained limited to a small number of eleven Trust territories: seven African territories and four from Oceania.⁹⁴ In

⁹² See T/8 for initial drafts and A/152; A/155, A/159, A/160 for GA changes. See also Hall 1948: Annex XII to XV.

⁹³ See Article 6 in Trusteeship Agreement for Tanganyika, British and French Togoland's, Ruanda-Urundi (reprinted in Hall 1948: Annex XIII).

⁹⁴ Togoland (UK), Togoland (French), Cameroons (French), Cameroons (UK), Tanganyika (UK), Ruanda-Urundi (Belgium), Western Samoa (New Zealand) and New Guinea (Australia), Nauru was added in 1947 (Australia, New Zealand and the UK), Somaliland (UK) was added in 1949.

time, however, as subsequent sections will explain, these limited advances acted as a model for the much larger list of NSGTs.

3.2.2.3.2 Delegated Authority by the Secretary General: Listing Non-Self-Governing Territories and Impetus for Venue Creation

This section draws analytical attention to the effects of the UN Secretariat to impact state action during the inaugural session of the General Assembly in 1946. First, key roles to determine the list of Non-Self-Governing Territories for which colonial states would accept responsibility fell on the first UN Secretary-General, Trygve Lie, a Norwegian lawyer. Second, the Secretary General also gave an impetus to state allies to create a new venue: the Committee on Information responsible for NSGTs.⁹⁵ This section thereby affirms that the Secretary-General, although lacking “formal authority and no material power,” wields persuasive influence “within an institutional and normative context that he helps shape” (Johnstone 2003: 441).

First, an important step in reaching these two outcomes came with the unanimous adoption of GA Resolution 9(I) on 9 February 1946 declaring both that

obligations under Chapter XI were already in full force [and that the UN was] keenly aware of the problems and political aspirations of the peoples who have not yet attained a full measure of self-government and who are not directly represented here (A/RES/9(I), para 1).

GA Resolution 9(1) was based on a Chinese draft proposal and the earliest effort by state allies from Africa and Asia to ensure the implementation of Article 73 of the UN Charter. Thus from the very beginning state allies put self-determination on the General Assembly’s agenda and lamented that access and participation of colonized peoples to the UN was lacking. What remained unresolved was to specify which territories would be categorized as non-self-governing. The Secretariat reacted to Resolution 9(1) by requesting states to list NSGTs and to determine a precise mandate for collecting and disseminating information on these territories.

⁹⁵ See for a discussion of delegated authority (Barnett & Finnemore 2004: 22).

Similar to state allies, during ExCom negotiations, the first UN Secretary General Trygve Lie emerged as an ally during the inaugural General Assembly session. He signaled responsiveness to liberation movements' demand for UN access and echoed sentiments of expediting the implementation of UN Charter obligations. He criticized colonial states when he acknowledged that

mechanical difficulties [of creating venues for Trust and NSGTs] inescapable as they may be [...] should not be permitted to prolong their practical realization (A/65: 33).

Lie, with respect to liberation movements' lack of UN access, invoked a "great moral responsibility" he, as the incumbent UN Secretary-General, had because on the one hand "the peoples concerned have no direct voice" and on the other hand "world public opinion may not easily comprehend explanations of protracted inaction" (A/65: 33).⁹⁶

The Secretary-General also took practical steps by sending a letter to all UN member states to ask for "their consideration of certain preliminary problems arising from" Resolution 9(1) (A/74). Lie's official address to the IGO principals was geared to clarify the ambiguous mandate outlined in Chapter XI, Article 73.⁹⁷ In particular, the letter asked UN member states to clarify:

1. The factors to be taken into account in determining which are the Non-Self-Governing Territories referred to in Chapter XI of the Charter.
2. An enumeration of the Non-Self-Governing Territories subject to their jurisdiction.

⁹⁶ This dovetails with more recent scholarship that demonstrates that IGO bureaucracies will support non-state actor participation "in order to confront external criticism of their perceived missing legitimacy" (Kissling & Steffek 2008: 210).

⁹⁷ The wording of UN Charter Chapter XI proved to be problematic for the UN Secretariat. Its members were uncertain about their tasks because Article 73 stipulated ambiguously that states "which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government [should] transmit regularly to the Secretary-General for information purposes [...] statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible" (UN Charter Article 73).

3. A general indication of the form in which they may desire to supply information or the form in which they think information may be most usefully transmitted by the Members directly concerned (A/74).

This letter proved to be consequential because it demonstrated the Secretariat's agency and use of delegated authority. States often delegate tasks to IGO's which are "vague, broad, conflicting" and on which they "might have very different interpretations" of how the IGO should tackle them (Barnett & Finnemore 2004: 22). Consequently, an IGO's Secretariat will interpret its mandate and may "heavily color any organization's response to delegated tasks" (Barnett & Finnemore 2004: 22). Lie sought to establish substantive and procedural means for the IGO to function by asking states to list NSGTs and to determine how the Secretariat was to handle information it would receive with respect to NSGTs. The Secretariat letter, in fact, made a concrete proposal by suggesting that states

will no doubt wish so far as is practicable to establish some uniformity in the form of the information supplied and to secure an adequate examination of the summaries to be made by the Secretary-General (A/74: 12; original emphasis).

The Secretary-General, further, reminded states that unless participation by the peoples from NSGTs at the UN

is permitted in the preparation, acceptance and execution of international obligations [the development of free political institutions and self-government in NSGTs] cannot be far-reaching (A/74: 14).

Replies to the letter were received from twenty-two states, ten of which commented on the proposals raised by the Secretariat. Colonial states responded to the Secretariats' request by listing a total of seventy-four Non-Self-Governing Territories for which they were prepared to transmit information under Article 73(e) (A/74/Add. 1 and 2, A/RES/66 (I)).⁹⁸ The act of listing

⁹⁸ Australia, Belgium, Denmark, France, the Netherlands, New Zealand, the UK, and the USA were cooperative.

NSGTs - together with the eleven Trust Territories discussed above – thereby effectively established the practical scope of challenging state sovereignty at the UN. Once the list of NSGTs was provided by colonial states, it was essentially not dislodged and only marginally amended.⁹⁹ A defining feature of the seventy-four NSGTs was that they conformed with what has become known as the salt-water doctrine of decolonization: they were territories that were geographically separated by an ocean from the colonial state.¹⁰⁰

State allies such as India's delegation to the UN, now under the lead of former liberation actor Mrs. Nehru Pandit, declared in their response to the letter that two critical considerations of listing NSGTs had to be met: The first was related to self-determination in so far as “the status and position of the people [...] their economic freedom, their liberty to enjoy fundamental human rights” constituted a key factor for being a NSGT. The second factor affirmed geographical separation by defining NSGTs

to mean and to include territories where the rights of the inhabitants, their economic status and social privileges are regulated by another State in charge of the administration of such a territory (A/74: 4-5).

State allies, with their own history of liberation, in other words considered the right of self-determination for colonized peoples on the basis of geographical separation and did not contest existing colonial borders.

⁹⁹ 11 NSGTs territories were taken off the list in 1948: Malta (UK); the Panama Canal Zone (US); French Guiana, Guadeloupe, Martinique, Indo-China, French Establishments in India and Oceania, New Caledonia, Reunion, and St. Pierre and Miquelon (France). 6 NSGTs were taken off in the early 1950s: Puerto Rico (US); Greenland (Denmark); the Netherlands Antilles and Surinam; and Alaska and Hawaii. The ability to take NSGTs off the list was restricted when state allies established factors for determining Colonial states obligations. This was necessary after Spain's entered the UN in 1955 and did not cooperate, and Portugal's and South Africa's denial to submit information on territories of the colonial type. Spain later reversed its position. In the case of Portugal, the GA enumerated nine Portuguese territories in 1960 (A/RES/1542 (XV)).

¹⁰⁰ The principle of *uti possidetis* was applied at the moment of independence where it “froze” Colonial borders. The holder of the right to self-determination was territorially defined and comprised of all inhabitants within the former colony.

Second, the Secretary-General's agency also gave an impetus to state allies to create the Committee on Information — a venue with mandates and functions not envisioned in the UN Charter. The Secretary-General, uncertain to what his office tasks were, asked states

for assistance in the preparation of his summary [on NSGTs and suggested that] the Assembly may well wish to examine this summary in the light of the commentary of an expert body [or] a committee or sub-committee of the Assembly (A/74: 13).

The Secretariat went further by presenting a working paper which proposed the creation of an *ad hoc* venue to examine information received under Article 73(e) and to determine the scope of Secretariat's summaries on the basis of such information (A/C.4/29).¹⁰¹ The Secretariat, by recommending a new venue, not only advised states of how to act but assumed a role which goes beyond that of an agent who depends on being furnished with tasks by states, as IGO principals.¹⁰²

Predictably, colonial states perceived the Secretariat's proposals for a new venue as a threat to their sovereignty and invoked the norm of non-interference. They contested that the GA was not authorized to establish such a venue, questioned who would examine the summary reports by the Secretary-General and aimed to limit the duration for such a venue. The British aimed to restrict UN oversight and stated that the venue should collect summaries "for information purposes" only. By contrast, anti-colonial states stepped in to contend that the venue should evaluate and judge the information on NSGTs and not just file it away (Sady 1956: 68).

India argued further that the

final object, which was the autonomy of those territories, should be clearly stated, and [...] the right of the natives to election and participation in the administration should be affirmed in detail. In particular, it should be explicitly stated that no racial discrimination, and no monopoly should be admitted in theory or in fact. Freedom of speech, freedom of

¹⁰¹ I could not determine who drafted the working paper; it is noteworthy that it carried the approval by Bunche who now acted as Director of the Trusteeship Division in 1946.

¹⁰² See more generally Barnett & Finnemore 2004: 22.

the press, freedom of assembly, and freedom to present petitions would have to be guaranteed (quoted in Murray 1957: 54).

Colonial states contested that creating a venue modified the UN Charter and that the GA - according to Article 22 - could establish a venue, if at all, only “for the duration of one session of the General Assembly and not for the next session” (A/C.4/79).¹⁰³ State allies, in turn, sought a permanent venue for as long as NSGTs existed and argued that it was “absolutely legal” to create a new venue as long as the GA deems it “necessary for the performance of its duties.”¹⁰⁴

The Secretariat’s involvement in these debates further dovetails with existing insights from the IGO literature that argues that bureaucratic staff will “likely to try to adjudicate between different interpretations held by member States” and draw on their delegated authority to “offer an authoritative response” to seek clarification on particular mandates and offer solutions (Barnett & Finnemore 2004: 22). This was apparent when Dr. Victor Hoo, Assistant to the Secretary-General, declared before the GA Fourth Committee that the Secretariat

should not carry the burden of political responsibilities which should be assumed by the bodies of a higher order [and reminded state delegates that] if the Secretariat was asked to do the work, it should be told what it could do; it was to summarize the information; but should it also analyze it and bring out the points of special interest? (A/C.4/29, para 24-35).

In the end, colonial states conceded to the Secretariats’ queries and under the pressure from state allies. They reluctantly agreed to a new venue with Resolution 66(I) entitled “Transmission of Information under Article 73(e) of the Charter” (A/RES/66(I)).¹⁰⁵ Resolution 66(I) asked the

¹⁰³ In a memorandum two days prior Mr. Benson, Co-Secretary of the Fourth Committee, noted that “the colonial powers in particular object to the creation of this committee on what are alleged to be constitutional grounds” (Benson to Cordier: 1).

¹⁰⁴ The legality of the Committee on Information was to my reading rightfully defended on the grounds that Article 22 provides that the GA may establish subsidiary organs as it deems necessary to perform its functions.

¹⁰⁵ An institutional mechanism emerged despite stark opposition by colonial powers invoking Article 2(7) as grounds to halt these accountability mechanisms. States from Africa and Asia voted for the creation while colonial

Secretary-General to convene “an *ad hoc* Committee composed in equal numbers” of Colonial states and of representatives elected, by the General Assembly, “on the basis of equitable geographical distribution” (ibid., para 4).¹⁰⁶ It also specified an annual date for submitting the most recent information on NSGTs to the Secretary-General while mandating the Secretariat to summarize, analyze and classify the information received. Unquestionably, draft proposals by state allies for the venue thus reflected a cognitive script of modeling the venue on the Trusteeship Council: it included calls for UN oversight and was composed on the basis of parity between colonial states and anti-colonial states.

In addition, the creation of the venue was a testament to actors resolve to establish mechanisms for peoples from NSGTs, including liberation movements, to access and participate in the UN when it stressed the

value of the association of Non-Self-Governing Territories in the work of the specialized agencies as a means of attaining the objectives of Chapter XI of the Charter (A/RES/66(I)).

Despite this, due to Colonial states’ opposition, the venue fell short of providing such access mechanisms at this stage. Allies did not push colonial states on these matters out of rational calculus, as they were fully aware that extending the mandate of the venue too far threatened the withdrawal of colonial states cooperation, which allies considered essential.¹⁰⁷ Regardless, state allies, and under the impetus of the Secretary-General established a venue responsible for seventy-four NSGTs that was unforeseen in the UN Charter. As will be demonstrated in subsequent sections, state allies continued to use the venue to overcome the distinction between

states and other Western allies abstained or voted against. By a show of hand, the whole draft resolution was adapted by 27 for, 7 against and 13 abstentions.

¹⁰⁶ Anti-colonial states elected to the venue were Brazil, China, Cuba, Egypt, India, Philippines, the Soviet Union and Uruguay with Australia, Belgium, Denmark, France, Netherlands, New Zealand, UK and US as Colonial states.

¹⁰⁷ The majority of state allies favored a permanent venue, yet equally recognized that the venue could not function effectively without the participation by colonial states (Sady 1956: 71).

Trust and NSGTs that colonial states had established during the institutional design phase. State allies used the venue to further extend accountability mechanisms available for Trust Territories to be applicable to NSGTs. By considering colonial states' cooperation essential state allies drove subsequent venue outcomes through moderate tactics of argumentation. They grounded these arguments in a universal demand for self-determination and human rights which to their mind applied to eleven Trust *and* seventy-four NSGTs.¹⁰⁸

In summary, the outcomes from the inaugural General Assembly plenary offer evidence on how the delegated authority of the UN Secretariat impacted normative and procedural change. The process of listing NSGTs as well creating the Committee on Information indicated how Secretariat and state allies converged around the larger objective of keeping Colonial states accountable. They shared a view that the UN ought to offer non-state actors a way to enter and be heard. This necessitated, in a first instance, to create a venue with a degree of UN oversight over NSGTs. It, as such, was a development colonial states would have preferred to have foreclosed in order to maintain the status quo as sole authorities over NSGTs.

Finally, the act of listing NSGTs also sheds light on the mutability of the composite norms of state sovereignty. As noted in the theory chapter, the emergent norm of territorial integrity espoused in the UN Charter effectively ended the era of territorial expansionism. It is here that the list of NSGTs came to channel subsequent demands for self-determination. Territorial integrity applied to existing sovereign state's and was at this point, in 1946, extended to Trust and NSGTs. This application is today known as the salt-water doctrine of decolonization

¹⁰⁸ Numerous resolutions encouraged the voluntary transmission on the political situation as well as the participation of inhabitants in NSGTs: See A/RES/142(II); A/RES/143(II); A/RES/144(II) and A/RES/146 (II).

which refers to the freezing of colonial borders post independence.¹⁰⁹ The challenge to state sovereignty engendered during this period thereby took a particularized application route. Liberation movements, seeking independence from colonial states, came to accept the initial list of NSGTs and refrained from contesting borders. Consequently, the practical realization of implementing a universal norm of self-determination thereby remained restricted to peoples within existing ‘overseas’ Trust and NSGTs. Only those liberation movements who accepted the territorial integrity norm could claim self-determination through the UN.¹¹⁰ The Secretariat’s letter, in short, may have supported national liberation movements’ demands but equally ignored others. A central issue that was ignored, and the focus of the next chapter, was that groups such as indigenous peoples with claims to self-determination were not considered in these debates.

3.3 Standard Setting Phase

This section focuses on the standard-setting phase at the UN between 1946 and 1960. I make this argument in three steps. First, I account for how liberation movements from Trust Territories directly challenged colonial state sovereignty by demanding self-determination and independence at the Trusteeship Council as well as the Fourth Committee. They did so by accessing and participating in these accountability venues through submitting written petitions, oral hearings and visiting missions.

Second, I account for how state allies worked against colonial states’ preferences to keep the above access and participation mechanisms at bay for the majority of peoples in NSGTs. This section foremost underscores the central role of state allies to drive normative and procedural change when the access and participation of non-state actor in IGO’s remains constrained. I

¹⁰⁹ Except when the UN followed inhabitants’ referenda votes, as in the case of the division of Ruanda-Urundi into Rwanda and Burundi or in the case of the unification of British and French Togoland. Secessionist movements such as those in Biafra and Katanga consequently failed to engage the UN.

¹¹⁰ The list of NSGTs acted as the institutional framework based on a territorial logic that did not end colonialism in all its manifestations but ended a particular type of overseas colonialism.

highlight how these actors, themselves emerging from a status as non-state actor to join the IGO as recognized self-governing states, drew on a specialized venue: the Third Committee. They used this venue to universalize the norm of self-determination and to graft it onto the emergent human rights regime. In addition, I analyze the relevance of the Committee on Information as an accountability venue. I show how state allies extended the venue's mandate to be based on self-determination and human rights. I demonstrate how state allies continued to draw on a blue print of available access and participatory procedures available for Trust Territories to be translated into the Committee on Information responsible for NSGTs.

Third, I analyze an instance of venue shifting that occurred during the second part of the standard-setting phase. I show how a growing coalition of newly independent states and liberation movements shifted venues by instituting the so-called Non-Aligned Movement (NAM) during the Bandung conference in 1955 and beyond. They did so in part because of colonial states refusal at the UN to accept the same obligations for NSGTs that were in place for Trust Territories. I highlight how this venue shift had reverberation effects at the UN, and consolidated the challenge to colonial state sovereignty. At the same time, they set precedents for the international recognition and support for access and participation of liberation movements to international fora.

3.3.1 National Liberation Movements Direct Challenge to State Sovereignty: Petitions and Visiting Missions from Trust Territories

The UN Charter was written under the banner of “we the peoples of the United Nations.” Despite the emphasis on “peoples” the UN Charter in effect allowed only states the right to be heard before its principal organs – except for peoples from Trust Territories.¹¹¹ In this section I analyze

¹¹¹ The Trusteeship Council suspended its operation in 1994, with the independence of Palau, the last remaining UN Trust Territory (T/RES/2200 (LXI)). Its successor role of the League of Nations Mandate System has been studied elsewhere (Murray 1957; Sady 1956; Chowdhuri 1955; McDonald 1949; Hall 1948).

how liberation movements from eleven Trust Territories challenged state sovereignty by voicing their calls for self-determination and independence through access and participatory mechanisms which actors like Ralph Bunche had secured during the IGO's institution building phase. These challenges were not only significant in themselves but, as I will show in the section concerned with the Committee on Information, provided a model for the much larger number of NSGTs.

For Trust Territories, the mechanisms enshrined in the Trusteeship Council equipped liberation movements with the ability to submit written petitions and be heard during oral hearings at the Trusteeship Council and as I explore, increasingly through the more sympathetic GA Fourth Committee. Moreover, the Trusteeship Council periodically visited Trust Territories to ascertain the wishes of the peoples. Such visits included fact finding missions and plebiscites. These visits were closely linked to the right to petition because UN delegations could hear petitioners on the spot and receive written statements from them (UN Charter Article 87).¹¹² Above all, these innovations turned the Trusteeship Council and the Fourth Committee into propitious venues for liberation movements. These venues played a dynamic role in bringing independence to Trust Territories and, especially, because they provided liberation movements with mechanisms to criticize administering states' lack of progress towards handing over sovereign rights.

Visiting missions, and through them the act of petitioning, merit analytical focus because they offered an unprecedented way for non-state actors to access and participate at the UN. Non-state actors used visiting missions to inform the IGO directly about the conditions and the aspirations of the peoples in Trust Territories. Analytical focus is particularly warranted as these mechanisms have received relatively little attention in the UN decolonization literature.¹¹³ Above

¹¹² See UN Charter Chapter XII and XIII especially Article 87 and 88. .

¹¹³ Except for Terretta 2012; Burke 2010 and Zuijdwijk 1982; Parson 1966

all, the act of petitioning through visiting missions substantiates insights on how non-state actors draw on a tactical repertoire of information, symbolic and accountability politics when engaging IGOs (Keck & Sikkink 1998). I augment existing arguments by paying attention to how Trusteeship Council and Fourth Committee venue characteristics enabled the use of petitions. Furthermore, I draw attention to the role of Secretariat and state allies to promote these mechanisms.

By being able to draw on these mechanisms liberation movements from Trust Territories affected the challenge to state sovereignty during the standard-setting phase in two ways. First, and foremost, their access to and participation at the UN was used to express their demand for independence based on self-determination and human rights. Second, liberation movements drew on information and symbolic politics to question state practices and to hold colonial states accountable when these very rights were violated. Although liberation movements used all three access and participatory channels concurrently I, for analytical clarity, first examine oral and then written petitions before attending to visiting missions.

3.3.1.1 Unchartered Ground: Trusteeship Petitioning Mechanisms

Non-state actors' ability to directly petition the United Nations was unchartered ground and required the elaboration of IGO rules and procedures for receiving and handling petitions. Interestingly, with respect to critical role of allies, was that this occurred under the purview of Ralph Bunche who became the first Director of the Trusteeship Division. This is more generally noteworthy because it indicated that a key state delegate active during the institution building phase shifted in status to join the UN Secretariat and help steer an IGO venue he had helped to set up. In fact, UN Secretary Lie's Executive Assistant, Andrew Cordier, commended on Bunche's active involvement:

if it had not been for your superlative services it is really doubtful whether we should have a Trusteeship Council at this moment (quoted in Henry 1999: 140).

The petition machinery carried Bunche's long-standing objectives of supporting people and in extension liberation movements' ability to participate at the UN Trusteeship Council. Petitions, more generally, are therefore usefully conceptualized as a form of "popular participation in politics" and especially by disenfranchised groups of peoples that "remained invisible because of our contemporary fixation on voting as the measure of political participation" (Mark 1998: 2153). Moreover, I treat the act of petitioning as a human right of individuals to be able to reach out to an IGO. It is a right which stands in direct conflict with Article 2(7), which upholds the norm of non-interference on "matters which are essentially within the domestic jurisdiction" of the state.¹¹⁴

Predictably, colonial states, fearing interference in their colonial affairs sought to limit receiving petitions while state allies from Africa and Asia sought to establish firm guarantees to enable petitioners to reach the Trusteeship Council "at any time and under any circumstances" (Thullen 1964: 75).¹¹⁵ In 1947 the Trusteeship Council outlined the basic procedures to deal with oral and written petitions when it adopted its own *Rules of Procedures*.¹¹⁶

Rule 76 of the *Rules of Procedure* provided that petitions may be accepted and examined if they concern the affairs of one or more Trust Territories or the operation of the Trusteeship System as a whole. Rule 79 stipulated that a written petition may be submitted by petitioners in

¹¹⁴ As Lauterpracht put it: "The Charter does not refer to the right of petition as a safeguard of human rights and fundamental freedoms. Yet this is a right which must be held to be implied in the Charter as the very minimum of the means of its implementation" (Lauterpracht 1950: 244).

¹¹⁵ Colonial states were required to submit annual reports based on detailed UN questionnaires on matters including: political, economic and social advancement, judicial organization, human rights, labor conditions and rights, public health, penal administration, and education.

¹¹⁶ UN Charter Article 87 (b) states that "the General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may: [...] b) accept petitions and examine them in consultation with the administering authority" and Article 87 c) "provide for periodic visits to the respective trust territories at a time agreed upon with the administering authority."

the form of a letter, telegram, memorandum or other document. According to Rule 77 petitioners “may be inhabitants of Trust Territories, or other parties” and following Rule 80 could be submitted orally

in support or elaboration of a previously submitted written petition [or] in exceptional cases [...] petitions which have not been previously submitted in writing [could also be brought before the Trusteeship Council] (T/1/Rev.6).¹¹⁷

These basic petitioning features remained the same, yet the process of examining petitions changed substantially both as a result of the enormous increase of liberation movements use of petitions and the shift from the Trusteeship Council to the Fourth Committee in examining them.¹¹⁸

3.3.1.1.1 National Liberation Movements’ Access and Participation Through Oral Hearings

The first direct access by a liberation movement to the UN originated when Sylvanus Olympio, heading the Comité de l’Unité Togolais and future first president of Togo, spoke before the Trusteeship Council in 1947. He participated by way of an oral petition and which he used to present “his people’s plea in impeccable English and French” (Armstrong 1947: 331).¹¹⁹ Olympio challenged state sovereignty when he complained about the lack of political progress because

French colonial policy of ultimate assimilation, unlike the British policy of eventual independence, was disrupting the ethnic fabric and compromising the political future of the Ewe people (T/PET.6/5).¹²⁰

That the Trusteeship Council offered a propitious venue to non-state actors was evident when Francis B. Sayre, the President of the Trusteeship Council, judged Olympio’s appeal to have “set

¹¹⁷ Petitions relating to strategic Trust Territories were handled by the Security Council.

¹¹⁸ One change was that petitions were preliminary examined and sorted by a Standing Committee from 1952 onwards. See on procedural developments with regards to petitions Thullen 1964 and Zuidwijk 1982.

¹¹⁹ He appeared annually until 1958 when he became Prime Minister, and then President, until his assassination in 1963. In 1951 he spoke before the Fourth Committee when he “managed to transfer the international arena of their struggle from the Trusteeship Council to the more spectacular and sympathetic surroundings” of the General Assembly’s Fourth Committee (Africa Today 1958).

¹²⁰ The Ewe people had been divided in 1920 when German Togoland was partitioned into French and British.

a record-breaking international precedent” and that it was a “live example of implementing” the goals of independence as set out in the UN Charter.¹²¹ Olympio invoked the norm of self-determination by requesting that a plebiscite be held in the French and British Togoland’s in order to ascertain the wishes of the people and that an on-the spot investigation by the Trusteeship Council should be dispatched (T/PET.6.5). By making these arguments he exemplified the use of information and symbolic politics. In response to his petition the British and French, although deploring the petition, admitted that problems in the territories existed and proposed a “joint programme designed to meet the Ewe demands.” Olympio rejected this proposal as “inadequate” and instead recommended that the British and French “assist and encourage the Ewe tribe of Togoland in developing their capacity for self-government” and to send a visiting mission to “study the problem” first hand (A/312).¹²²

After Olympio’s personal appearances by liberation movements from Somaliland, French Cameroon and Tanganyika

all bent on approximately the same goals [discovered that they were] listened to with attention and respect [and showed] that their skill in oratory and debate was more than a match for that of their rulers’ spokesman (Africa Today 1958: 14).¹²³

Apart from being able to offer information on the status of Trust Territories under discussion petitioners build informal contacts with state delegates during these hearings and deepened these linkages during periodic UN visiting missions. For instance, Julius Nyerere a national liberation

¹²¹ Quoted in an editorial without author: The Trust Territory of Togoland: An International Precedent: The International Law Quarterly, Vol. 2, No. 2 (Summer, 1948), pp. 257-260.

¹²² By 1961, Olympio as first as Prime Minister of Togoland, exemplified liberation movements strategy of accepting the territorial integrity norm as a corollary to achieving self-determination, when explaining that: “In their struggle against colonial powers, the new African states, arbitrary and unrealistic as their original boundaries may have been, managed at last to mobilize the will of their citizens toward the attainment of national independence” (Olympio 1961: 51).

¹²³ Um Nyobe (Cameroon) in 1952 and 1953, in 1954 Dorothy Kabua (Marshall Islands), Georges Aped Amah (Togoland) Mburumba Kerina (South Africa) in 1957 and Kozonguizi (South Africa) in 1959 (Chowdhury 1955: 243; Terretta 2014: 113).

leader from Tanganyika (later Tanzania) appeared before the Fourth Committee and Trusteeship Council in 1955, 1956 and 1957 and presented a strong case for independence and self-determination. He declared that Tanganyika shall become a democracy

and since 98 per cent of the population is African, this means that Tanganyika shall eventually become a self-governing African state (T/PV.592: 6).

Against these arguments Sir Alan Burns, the British delegate to the Trusteeship Council, maintained that colonial states insisted on upholding the norm of non-interference as the

administration of colonies was essentially a matter within the domestic jurisdiction of the metropolitan State concerned, and that the delicate relationship between [the colonial state] and the people being led towards self-government should not be disturbed by international interference (Burns 1957: 102).

Irrefutably, colonial states viewed the act of petitioning as a challenge to their sovereignty and forcibly contested its practice as

a dangerous tendency, which should be resisted by all means [because they] encouraged extremist movements in the territories from which they came, inflated the petitioners' own importance in the territories, and established a most undesirable direct contact between vociferous agitators from the territories and certain delegations [at the UN] in New York (quoted in Lohrmann 2007: 458).¹²⁴

By contrast, state allies from Africa and Asia, and some from Latin America, repeatedly defended liberation actors' participation through petitions. India, for instance, insisted that the UN was entitled to hear petitions and that petitioners had a right to be heard. Noteworthy, as such, was that points raised by oral petitioners were conceded by subsequent GA resolutions.¹²⁵

Liberation actors influence was evident when, for example, the GA endorsed a resolution in 1956

¹²⁴ A French statement during ministerial talks between the UK and France on colonial question in 1953.

¹²⁵ A key difference between the Fourth Committee and the GA was that decision were made by simple majority (by a minimum of one-third of state members having to be present) in the former in contrast to requiring a two-thirds majority in the latter (UN Charter Article 18(2)). State allies exploited the difference in these voting requirements by championing proposal in the Fourth Committee before seeking approval from a larger majority in the GA. It also meant that liberation leaders seeking to submit an oral petition were more likely to succeed to do so in the Fourth Committee.

supporting Nyerere's oral petition in the Fourth Committee in which he argued that Tanganyika should develop a democracy based on equal rights (A/RES/1065 (XI). Nyerere added in 1961, then as first prime minister of Tanganyika, that oral hearings had been an effective tool of symbolic politics because it influenced "world opinion," amplified the voices of colonized peoples, and simultaneously put pressure on colonial states through the UN (Nyerere 1966: 149).¹²⁶

It is important to note that by 1950 liberation actors made use of oral hearings not only in the Trusteeship Council but increasingly before the Fourth Committee of the General Assembly.¹²⁷ State allies were instrumental in asserting Fourth Committee competence in hearing petitioners by championing a series of thirteen GA resolutions which affirmed that the Trusteeship Council was under the authority of the General Assembly (see A/RES/431(V) to A/RES/443(V)). Moreover, Resolution 435(V) clarified the connection of petitions to self-determination and human rights because the right to petition is a "fundamental human right" and "essential, in the interest of the inhabitants of Trust Territories" (A/RES/435 (V)). A central reason for the Fourth Committee to hear petitioners was that state allies from Africa and Asia were dissatisfied with how the Trusteeship Council handled oral petitions. Their dissatisfaction was especially due to colonial states attempts to restrict granting oral hearings and to minimize petitioners' testimonies "rather than calling for vigorous action on behalf of the petitioners" (Thullen 1964: 76). Certainly, petitioners complained that they had turned to the Fourth Committee because colonial states had gained "a stranglehold of the Trusteeship Council." State allies reacted sympathetically to such criticism by maintaining that if the venue "did not perform

¹²⁶ See also Adullah Issa, a liberation actor from the Somali Youth League, who appeared before the Fourth Committee in 1953 (A.C.4/SR.377).

¹²⁷ State allies asserted Fourth Committee competence, according to Article 87, whereby all matters concerning Trust Territories fell under the supervision of the General Assembly's Fourth Committee.

the functions vested in it by the Charter, the General Assembly should exercise some of those functions itself” (A/C.4/SR.226: 164). Liberation movements could bypass the Trusteeship Council and take advantage of the more receptive Fourth Committee. The number of oral hearings in the venue, and despite colonial states repeatedly denouncing the practice, grew from eleven in 1952 to fifteen in 1954. By 1956 twenty-two liberation leaders and individuals petitioned the Trusteeship Council while forty-seven spoke before the Fourth Committee (A/2404).

Adaptation between venues of this kind are noteworthy because they highlight that state allies can draw on higher-up venue competencies to translate and take on access and participation mechanisms originally intended for venue’s lower in the IGO hierarchy. Liberation movements were ultimately empowered by being able to appeal directly to the Fourth Committee of the General Assembly. It allowed them to amplify their voice and make their cases in front of all UN member states and instead of having to go through the Trusteeship Council which colonial states sought to control. In addition, state delegates from Africa and Asia most active in the Fourth Committee could freely question and secure additional information from these petitioners and measure its consistency against colonial states’ reports submitted to the Trusteeship Council.

3.3.1.1.2 National Liberation Movements’ Access and Participation Through Written Petitions

Written petitions provided liberation movements from Trust Territories with another important access and participation mechanism. Written petitions were crucial in establishing a challenge to state sovereignty because they addressed not “a ruler or ruling body [...] but rather a third party” - the United Nations - thus integrating political demands for independence into a growing international movement and against prevailing sovereignty arrangements based on colonial states’ interests (Terretta 2013: 10). Written petitions, together with oral petitions and visiting

missions, to recall, presented a major achievement that Bunche and others had intended would give peoples from Trust Territories a direct voice at the UN.

First, and foremost, written petitions proved important for liberation movements. They used them to demand the implementation of self-determination, human rights and political participation in Trust Territories. Second, written petitions contributed to the amplification of liberation movements international voice and status. Overall, written petitions, just as oral petitions or direct contacts during visiting missions, strengthened linkages between liberation movements and state allies at the UN who were actively supporting their demands.

Written petitions could be submitted through three different channels: they could be sent directly to the Secretary-General, be submitted to one of the UN visiting missions or through the colonial administering authority. The first two channels were especially important because petitioners could forward their grievances and demands to the IGO without having them first screened by colonial authorities. Certainly, a right of petition that is first handled by authorities against which a petitioner makes claims is more likely to lead to a reluctance to file a petition. Such a petition is also likely ineffectual because it can be dismissed by state authorities receiving them.

However, written petitions soon fell victim to bureaucratic overload. The number of written petitions grew enormously throughout the years from less than fifty in 1947 to several thousand by the mid 1950's. In fact, between 1947 and 1961 the Trusteeship Council actively handled and responded to more than 16,500 written petitions.¹²⁸ The Trusteeship Council proved simply incapable of handling the sheer number of written petitions it received. Taken together

¹²⁸ This is an estimate because it is impossible to determine the exact number of written petitions. *The Repertory of Practice of the UN Organs* produced the most reliable figures: The Trusteeship Council received 1668 between 1945 and 1954. In 1955 the number doubled to 2624 petitions. From 1955 to 1960 some 12,276 petitions were received (T/1231 1956: 47; T/PET.4).

petitions contributed in no small measure to bolstering the international recognition of liberation movements and their demands with administering authorities finding it increasingly difficult to censor them. They were a participatory outlet that strengthened liberation movements boomerang pattern at the UN and one that helped transform the nature of a state's sovereign authority over part of its citizens (Keck & Sikkink 1998: 116). Given the lack of mobility of peoples in Trust Territories to appear at the IGO personally it was written petitions that connected liberation movements at the grassroots with international debates on the rights of self-determination and human rights.

Undoubtedly the biggest inflow of written petition occurred in 1956 when the Trusteeship Council was flooded with some 33,000 individual petitions from French Cameroon and British Cameroon. This increase seemed to have been stimulated by visiting missions and the fact that peoples in Trust Territories became aware being able to write petitions. After the Trusteeship Council classified these petitions by grouping five general themes were revealed: 21,848 petitions demanded immediate unification and independence of the two Trust Territories; 2,557 petitions complained that the French colonial administration had banned three liberation movements;¹²⁹ 467 petitions addressed the Council over loss of property and 5,170 expressions of loyalty with the French administration as well as 2,984 other demands and grievances (T/L.671: 3-9).¹³⁰

A myriad of other liberation movements also forwarded petitions during the 1950's. All indicated a growing appreciation of international politics and the United Nations' promotion of self-determination and human rights. The inflow of written petitions, as such, established a form

¹²⁹ The French banned the Union des Populations du Cameroun (UPC), Jeunesse Démocratique Camerounaise (JDC) and the Union Démocratique des Femmes Camerounaises (UDEFC).

¹³⁰ Individuals and groups used petitions to criticize colonial rule based on asserting equality and non-discrimination. Petitions included a wide range of topics of complaints against differences in pay between African and European workers, that Europeans were encroaching on their land, charging that a group was prevented from hearing the report of a person's UN mission as well as for having been dismissed for political activities (Sady 1956: 136).

of discursive participation by these non-state actors with the IGO. It was a means for these movements to draw on forms of symbolic and information politics under a larger demand for political change. And, crucially, not according to the interests of colonial states but according to peoples' own aspirations to organize their political fate as self-determined individuals and societies.

The compound impact of political mobilization by liberation movements in Trust Territories during visiting missions, discussed in detail below, and by reaching out to the UN through written petitions, indisputably contributed to colonial states yielding to political concessions and to ultimately transfer sovereignty to all African Trust Territories between 1957 and 1962.¹³¹ Written petitions were a channel that provided liberation movements a means to challenge prevailing sovereignty arrangements in the colonies.¹³² We can, in fact, raise a counterfactual argument by asking whether these new sovereign states would have emerged at quite the speed would it not have been for the ability of liberation movements to pressure states through the UN and by demanding to accelerate the implementation of self-determination. Written petitions before anything else were an example of expressing a human right and for self-determination by the peoples from Trust Territories. It was also a mechanism which created tensions for colonial states who held onto these territories by seeking to uphold the norm of non-interference.

3.3.1.1.3 National Liberation Movements' Access and Participation through Visiting Missions

A key mechanism to keep colonial states accountable was that liberation movements could access the UN not directly - at the IGO's headquarters - but through visiting missions by the Trusteeship Council. Or, as others have put it, the Trusteeship System "had teeth and it often bit"

¹³¹ Togoland joined Ghana after a UN organized plebiscite in 1957, French Cameroon became Cameroon in 1960, British Cameroon, following a UN supervised plebiscite joined, in the case of the North, Nigeria and, the South, independent Cameroon in 1961. Rwanda and Burundi became independent in 1962. New Guinea gained independence in 1975 (<http://www.un.org/en/decolonization/selfdet.shtml>).

¹³² The Togoland unification process presents a case in point.

(Louis 1978: 117). Liberation movements appeals during visiting missions gave the Trusteeship Council as well as the Fourth Committee “its most dramatic and perhaps most effective moments” (Africa Today 1958: 13). These visits proved to be a critical access channel for liberation movements to showcase their determination for independence and by offering information on the political conditions in the Trust Territory. Visiting missions served as participatory counterpoint to the annual reports administering authorities submitted to the Trusteeship Council in New York.

In 1947 a first visiting mission was sent to West Africa, and in 1948 to East Africa. A third visiting mission was sent to the Pacific Islands in 1949. From then onwards the UN dispatched a visiting mission to each of the eleven Trust Territories every three years. Each visiting mission consisted of four state delegates two of which were nominated by colonial states and the other two were nominated by non-administering states.

Similarly, to Fourth Committee and GA debates reflecting colonial states’ interests until the early 1950’s, visiting missions were initially conducted largely according to colonial authorities’ demands. Colonial states minimized the impact of visiting missions by seeking to control the composition of each mission, its terms of references, travel itineraries, by denying the registration of potential petitioners and by setting dates and pre-arranged interactions with the people in Trust Territories (Chowdhuri 1955: 216). They isolated the Trusteeship Council from interacting with liberation movements by using colonial infrastructure as meeting places for the visiting mission.¹³³ Regardless, liberation movements developed ways to connect with UN visiting missions and mobilized to make themselves heard by them. As a particularly effective example, I highlight the visiting missions to Tanganyika between 1948 and 1960.

¹³³ See visiting mission reports to Tanganyika in 1948, 1951 and 1954.

In 1948 there was no visible indication that Tanganyika was a UN Trust Territory unless a visiting mission was on tour. The UK's colonial administration held that the UN had no role in the administration of Trust Territories. They repeatedly denied attempts by the UN to establish an office and even fiercely resisted the requirement of flying the UN flag next to the Union Jack to indicate Tanganyika's status as a Trust Territory.¹³⁴ The right to petition visiting missions was, although formally accepted, seen as an undesired interference in British colonial affairs. John Fletcher-Cooke, the Deputy Governor of Tanganyika, clearly understood this when he observed that

all those with grievances, whether of private or public concern, naturally regard the arrival of the mission as a heaven-sent opportunity to ventilate such grievances (Fletcher-Cooke 1959: 428).

British colonial administrators therefore curtailed any contact between the Trusteeship Council visiting missions and liberation movements and their leaders. These constraints did not discourage liberation leaders. For instance, Saidi Ali Maswanya a liberation leader sought an oral hearing with the visiting mission to allege that the colonial administration was violating human rights. The issue was that the Tanganyika African National Union (TANU) — a liberation movement — was declined registration as a political party in some districts of the Trust Territory and without being given a reason by the colonial administration. Maswanya, and other liberation actors, sought contact with visiting missions to allege that their human rights were violated because

We [...] feel that by being refused the registration of our branch of TANU, a peaceful union, we have been refused one of the fundamentals [sic] of human rights [according to Article 20 of

¹³⁴ China, Costa Rica, Egypt, Liberia, Mexico and Philippines championed a proposal in 1949 that declared that the UN flag was “one of the most potent means of stimulating the interest and enlisting the cooperation of the peoples of the trust territories [by keeping] them constantly reminded of their political, economic, social and educational advancement and their full enjoyment of human rights and fundamental freedoms” (A/C.4/L.11). (See for a detailed account Thullen 1964: 91)

the UDHR which states that] everyone has the right to freedom of peaceful assembly and association (cited in Maguire 1969: 192).

A boomerang pattern of liberation movements using the Trusteeship Council to challenge state sovereignty was in place. Its effects did not go unnoticed with John Fletcher-Cooke, British Deputy Governor of Tanganyika, reacting to liberation movements allegations by stating that petitioning visiting missions were not adding

to the safeguards for ensuring no injustice is done [and argued instead that the colonial administration has effective mechanisms which provide that] any person in any dependent territory [...] has the right to address the Secretary of State, if he [sic] proper. Indeed, any person in a dependent territory has the right to make representations to the Governor (or through the Governor to Her Majesty the Queen) on any matter of a public or private nature, and these rights are formally recognized in colonial regulations (Fletcher-Cooke 1959: 425).

This evidence is consistent with what the transnational movement argues is a state of denial during which a repressive government refutes the validity of human rights violations while pointing towards domestic recourse mechanisms (Risse, Ropp & Sikkink 1999). British attitude was to uphold the norm of non-interference and to insist that the UN was meddling in its colonial affairs. At the same time as colonial administrators sought to minimize the relevance of these contacts they, presumably fearing reputational costs, did not openly oppose the right to petition visiting missions either.

Liberation leaders, undeterred, continued to challenge colonial authorities during visiting missions. Especially after 1954 TANU mobilized to make people aware of Tanganyika's Trust Territory status with increasing success. TANU, under the leadership of Julius Nyerere, who as noted was also appearing before the Trusteeship Council in New York, quickly grew into a popular movement that consciously built on Tanganyika's Trusteeship status. TANU declared to prepare the people of Tanganyika for self-government, and to fight relentlessly until Tanganyika

is self-governing and independent (Hiffe 1979: 432). Not only did TANU utilize available access and participation mechanism through direct oral hearings and written petitions, but they also organized mass meetings and speeches during visiting missions. This type of mobilization was evident when the Trusteeship Council visited Tanganyika in 1957. At this point the tide had irrevocably turned and TANU's public relations machinery outperformed British administrations' efforts to steer the visiting mission away from being in contact with the movement. Thousands of TANU supporters across the territory staged demonstrations and mobilized "not only at train stations or along the line, but anywhere the Mission was to pass" with Nyerere himself following the mission persistently (Lohrmann 2007: 123).

TANU's popular mobilization – itself an expression of self-determination - was an apparent threat to the British. Edward Twining, then Governor of Tanganyika, was troubled about TANU's growing political position and explained in a memorandum to the Colonial Office in London that:

There can be doubt that the activities of individual members of the Mission had a marked effect on would-be African politicians and self-seekers who have so far only a small backing in the territory and who in their attempts to attain some recognition as leaders from their fellow Africans and backing from outside the territory, are prone to seize on and distort any unpopular acts of the Government and to use popular catchwords [...] However, Tanganyika does not fear the annual inquisition of the Trusteeship Council nor the probing's of the tri-annual Visiting Missions, although it cannot be said that these Missions are welcomed, and the harm they can do is regretted (quoted in Lohrmann 2007: 112).

Visiting missions gave liberation movements the ability to challenge state sovereignty based on a demand for self-determination. Visiting missions, apart from gathering information and evaluating policies in Trust Territories, stimulated liberation movements' political mobilization. It fostered greater political participation not only in Trust Territories, but also in neighboring NSGTs. As was noted at the time:

The great increase in the petitions to visiting missions reveals the extent to which petitioners believe the U.N. to be the arbiter of their future. The missions have the insuperable task of weighing the extent to which the petitions and other manifestations of sentiment reflect public opinion generally in the territory (Sady 1956: 150).

This was especially evident in the case of Tanganyika. Following TANU's mobilization the British reluctantly conceded to take steps towards holding free elections in three phases in 1958, 1959 and 1960. TANU, far from having 'only a small backing,' won all thirty seats in Tanganyika's Legislative Council, with Nyerere being elected chief minister in 1960. The 1960 visiting mission report accordingly observed, that "there is a steady emotional pressure for *Uhuru*, for complete independence in the near future." TANU, by mobilizing around visiting missions, not only pushed for electoral reforms, but as the report concluded "found only one political organization in Tanganyika which gave proof of enjoying mass support, namely, TANU" (Report on Tanganyika 1960: para 44).

By the time the last visiting mission traveled to Tanganyika in 1960, colonial authorities were fully side-lined. There were inklings that colonial rule was quickly coming to an end. Remarkable, and a sign of ongoing co-constitutive processes, was that TANU no longer sought to petition the mission. They worked as a recognized actor through the mission and argued that the territory was ready for independence. A goal TANU achieved in 1961. Still, the number of peoples living in the other ten Trust Territories was comparatively small as "there were more than eight times as many NSGTs outside the trusteeship system, and they contained over ten times as many people" (Jacobsen 1962: 45). A limitation which other liberation movements realized and that state allies active in the UN aimed to remedy by driving normative change in the Third Committee and by equipping another venue – the Committee on Information – with similar access and participatory mechanisms for non-state actors from NSGTs.

3.3.2 Unifying UN Charter Obligations: State Allies Universalize Self-determination and Demand Access and Participatory Mechanisms for Non-Self Governing Territories

To take a step back after discussing liberation movements' use of Trusteeship Council mechanisms until the early 1960s. The main contestation at the United Nations until the mid 1950's must also be grasped as the attempt by colonial states to avert a challenge to state sovereignty by maintaining two normative and procedural systems. To recall, the *Declaration on Non-Self-Governing Territories* and the *Trusteeship System* distinguished Non-Self-Governing Territories (NSGTs) (Chapter XI) from Trust Territories (Chapters XII & XIII). Chapter XI, as noted, was a declaration of principles which intended to perpetuate colonial rule in seventy-four NSGTs indefinitely. Chapters XII and XIII, as analyzed above, assigned to the Trusteeship Council the specific task of supervising independence for eleven Trust Territories that Colonial states had placed under UN Trusteeship. It, as noted, entailed obligations for colonial states and procedures for UN oversight. Colonial states, fearing a challenge to their sovereignty, sought to minimize attempts by state delegates from Africa and Asia to translate access and participation mechanisms for liberation movements from Trust to NSGTs. An increasing number of liberation actors turned state delegates met this attempt with argumentative pressure. Not only did their transformation from non-state actor to IGO principal translate into voting leverage at the UN. These newly independent state actors also shared the view that the three UN Charter Chapters were a unitary set of procedures and obligations applying equally to Trust and NSGTs.

The debates on these matters passed through four key venues: the Committee on Information, the GA's Third and Fourth Committees as well as formal voting in the plenary of the General Assembly. Noteworthy, with regards to larger venue characteristics, was that the former venues approved decisions by simple majority while the General Assembly took decisions on all "questions relating to the operation of the trusteeship system" by a two-thirds

majority (UN Charter Article 18(2)). As a consequence, resolutions could pass with greater ease in the Committee on Information, the Third and Fourth Committee and would subsequently go through a series of amendments in the GA plenary. State delegates from Africa and Asia realized the advantage of these stepped voting rules and, from the outset, allocated most of their attention, given their often limited diplomatic resources, to venues below the GA. In time these voting rules became less important to state allies because by the mid 1950s former liberation actors turned state delegates held a majority vote in the UN, making the attainment of the requisite two-thirds majority more feasible.

My core argument in this section, accordingly, is that state allies worked to unify UN Charter obligations until the mid 1950s. These activities were intended to set universal normative standards based on self-determination and human rights for all dependent peoples. State allies thereby closed the gap colonial states had maintained during the norm emergence and institutional design phase. Throughout out the first half of the standard-setting phase state allies bolstered the challenge to states sovereignty by limiting the norm of non-interference, while also seeking to open the organization up to liberation movements from NSGTs. They were also intended to extend access and participatory mechanisms to liberation actors from NSGTs. I make this argument in two steps. First, I demonstrate how state allies drove normative change through the Third Committee by universalizing the norm of self-determination and grafting it onto the emergent human rights regime. Second, I analyze the relevance of the Committee on Information as an accountability venue. State allies used this venue based on a blueprint of procedures that existed for Trust Territories. They extended the venue's mandate while setting specific standards for NSGTs which were based on a grafted norm of self-determination.

3.3.2.1 Grafting the Norm of Self-Determination onto Human Rights

Colonial states considered themselves well protected by the norm of non-interference because Article 73(e) was “subject to such limitations such as security and constitutional considerations” which they argued meant that any information submitted to the UN on the conditions in NSGTs were voluntarily and could be refused. Yet again, UN member states also declared a commitment to the “principle of equal rights and self-determination of peoples” in the UN Charter. This principle established a challenge to the institution of state sovereignty - and with respect to NSGTs - only after newly independent states grafted it to international human rights during the early negotiations on the two Human Rights Covenants (Reus-Smit 2001: 534). Grafting here refers to processes of establishing an international norm that is linked to pre-existing and universally applicable social norms (Price 1998).¹³⁵ I advance this argument by highlighting how newly independent states acted as allies for liberation movements in the General Assembly’s Third Committee during the first part of the 1950’s. By drawing on this sheltered venue these actors elevated self-determination from ‘principle’ to ‘norm.’ It became a universal “right of peoples and nations to self-determination” and was understood to be “a prerequisite to the enjoyment of all fundamental human rights” (A/C.3/L.296).¹³⁶

These venue outcomes were indicative of substantive normative change. From then onward state delegates from Africa and Asia, who recently acted as liberation leaders in their own territories before, cemented the key challenge to state sovereignty. They equated self-determination with the demands by liberation movements in NSGTs for independence from colonial rule. Because non-state actors lacked access to the Third Committee standard-setting activities necessarily emphasized the essential role of state allies. This episode runs counter to

¹³⁵ Price demonstrates how norm entrepreneurs successfully ‘grafted’ a norm against land mines based on principles of a just war doctrine. Similarly, Sikkink argues that “[n]ew ideas are more likely to be influential if they ‘fit’ well with existing ideas and ideologies in a particular historical setting” (Sikkink 1996: 26).

¹³⁶ Amendment proposed by Jamil Baroody from Saudi Arabia.

more recent developments whereby non-state actors' involvement in IGO standard-setting activities has become more expansive and direct (Peters, Koechlin & Zinkernagel 2009).¹³⁷ In this case liberation movements that underwent a status change to state actor primarily shaped the standard-setting phase as norm entrepreneurs with liberation movements concurrently mobilizing domestically.

Grafting a norm of self-determination onto human rights was far from inevitable and needed elaboration, however. The inclusion of self-determination in the UN Charter was, as discussed, left ambiguous to accommodate the interests of the allied powers during the institution building phase. It was again rejected during the drafting of the *Declaration of the Universal Declaration of Human Rights* (UDHR) by the then preponderant colonial states in 1948 (Normand & Zaidi 2008: 243).¹³⁸

Colonial states maintained that self-determination and human rights are not applicable to peoples living in NSGTs. Delegates from Britain, Belgium and France upheld that the peoples of these territories could not claim self-determination and human rights because they were too “backward” for “Western” human rights (Burke 2010: 23, Hogan 2015). They lobbied for a colonial exemption clause that was to explicitly exclude peoples living in NSGTs from being able to claim human rights. René Cassin from France, a principal drafter of the UDHR, defended this view because it was

unwise [to hold] different peoples to uniform obligations [especially to human rights which] did not correspond [to peoples] real state of evolution (E/CN.4/SR.129: 16).

¹³⁷ A point that is further supported in the next chapter concerned with indigenous peoples who, as will be demonstrated, were directly involved in elaborating a second moment of grafting self-determination onto human rights.

¹³⁸ The UDHR strengthened the principle of self-determination as a human right only slightly. Article 2 declared that “everyone” is entitled to human rights “without distinction of any kinds” and that furthermore “no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty” (See also Article 21(3)).

State allies from Africa and Asia reacted strongly against these civilization and hierarchy based arguments. They used the GA Third Committee to universalize self-determination and include it in the human rights covenants.¹³⁹ The Third Committee's significance was that it constituted a sheltered venue at this point.¹⁴⁰ This was because it focused solely on setting human rights standards, and afforded state allies much greater active input than in the UN's security and political venues. John Humphrey, then director of the *UN Human Rights Division*, aptly described the status of the Third Committee as a sheltered venue as it was

easier for small delegations to play an important role in a committee which is not ostensibly dealing with the great issues that divide the communist and non-communist world. In the First and Ad Hoc committees [of the General Assembly] the small countries must be kept in line, in the Third [Committee] all inhibitions disappear (Humphrey 1994, Vol. III: 8).

State allies, acting as norm entrepreneurs, consistently exploited the venue to shape the direction of the debate. They used its sheltered position to shame colonial states for denying the peoples in the colonies a right to self-determination and for committing gross human rights violations in these territories. Jamil Baroody, as Saudi Arabia's delegate, challenged colonial states

to come down from their ivory tower, to face the realities of life and history, in short, to acknowledge that the current widespread bloodshed and revolutions were due to the fact that the fundamental right of self-determination of peoples was not being respected [and that] the exercise of human rights was in the first place dependent upon the liberation of oppressed peoples (A/C.3/SR.566, para 35).

By making these types of moral arguments actors from Cuba, China, Chile, India, Indonesia, Iraq, Lebanon, the Philippines levelled a consistent and direct challenge to prevalent forms of state sovereignty. They contended that "the individual could not enjoy full rights unless he was a

¹³⁹ The most outspoken actors were Jamil Baroody, (Saudi Arabia); Abdul Rahman Pazhwak, (Afghanistan); Jawdat Mufti, (Syria) delegate and Charles Malik and Karim Azkoul (Lebanon) (Burke 2010).

¹⁴⁰ To foreshadow the next chapter, and noteworthy, the Third Committee, in 2006, became a veto point for indigenous peoples when states from Africa protracted adoption of the *Declaration on the Rights of Indigenous Peoples*.

member of a self-determined society” (A/C.3/SR.569, para 21). Predictably, the attempt by colonial states to limit a universal application of human rights and self-determination through an exemption clause was forcefully rejected as there could not be a

second category of people in the world [who could be] regarded as unfit to enjoy the minimum rights which the covenant was to guarantee (A/C.3/SR.296, para 81).

State allies by using the Third Committee achieved significant substantive outcomes. They did so by championing and driving the adoption of a series of resolutions in the sheltered venue. Norm entrepreneurs repudiated the colonial exemption clause by a vote of 30 asking for its deletion, with 11 votes by colonial states to keep the clause intact, and 8 abstentions (A/C.3/SR.302; A/C.3/L.71/Rev.1). In addition, Resolution 421 entitled *Draft International Covenant on Human Rights and measures of implementation: future work of the Commission on Human Rights* requested ECOSOC “to study ways and means which would ensure the right of peoples and nations to self-determination” and Resolution 422 (V) entitled *Territorial application of the International Covenant on Human Rights* requested to explicitly extend human rights provisions

to or be applicable equally to a signatory metropolitan State and all the territories, be they Non-Self-Governing, Trust or Colonial Territories, which are being administered or governed by such metropolitan State” (A/RES/421(D); A/RES/422(V)).

Finally, Resolution 545 (VI), which was passed in 1952, indicated that UN members decided to include in the Human Rights Covenants an article stating that

all peoples have the right of self-determination [and specified] that all States, including those having responsibility for the administration of Non-Self-Governing Territories, shall promote the realization of that right [...] in relation to the peoples of such Territories (A/RES/545 (VI), Article 1).

These resolutions provide evidence for allies early success to graft self-determination with human rights and against colonial states' objections.¹⁴¹ These successive resolutions, apart from further consolidating the status of territorial integrity according to Resolution 545 (VI), underscored the process of grafting self-determination not as a principle but as a “right” to be enjoyed by all peoples, and as such elaborated its ambiguity and substantiated the status of Article 1(2) and 55 of the UN Charter which declared self-determination a principle means for “universal peace” and to the development of friendly state relations to be based on “the principle of equal rights and self-determination of peoples” (UN Charter, Article 1(2) and 55).

State delegates from Africa and Asia achieved this by uncovering the colonial exemption clause as exclusionary and discriminatory. Abdul Rahman Pazhwak from Afghanistan, for example, issued that

depriving peoples of their rights to govern themselves, colonial Powers had often violated [fundamental rights and deemed colonialism] a flagrant violation of the most sacred human rights (A/C.3/SR.296, para 83).

Nazir Pamontjak, an Indonesian national liberation leader who had been imprisoned by Dutch colonial authorities in the 1940s added, now in his capacity as a state delegate, that self-determination was

a *conditio sine qua non* of individual human rights [and that national liberation was not an end but] a means essential, as the experience of centuries had shown, for ensuring those very human rights with which the Third Committee was concerned (A/C.3/SR.401, para 45).

Colonial states' interests of limiting the affirmation of a universal recognition of self-determination and as a precondition for human rights did not change the direction of the Third

¹⁴¹ Iraq and Syria, amongst others, argued that self-determination had to be recognized universally before other human rights could be secured (A/C.3/SR.310-311).

Committee debate.¹⁴² A debate that allies pursued with purpose while more powerful states ceded to these demands in a sheltered venue. A US State Department report aptly described this mechanism in 1952:

It seems likely that, for the foreseeable future, our delegation will continue to be in the minority on many important issues in the Committee. In view of the overriding need of keeping the delegations of the free world united so far as possible in the Political Committees, the Delegation will have to be content to take occasional defeats in the Third Committee, and take them as graciously as possible (quoted in Burke 2010: 7).

These outcomes therefore affirm expectations of the human rights spiral model (Risse, Ropp & Sikkink 1999). They show how states shift from denial to tactical concessions during the norm elaboration and standard setting phase. Yet the evidence challenges the spiral model in one key aspect because, and unlike existing arguments of such concessions occurring in conjunction with Western states, the early human rights debate analyzed here paint an inverted picture of Non-western states - and who shared a history of national liberation – being the chief drivers of normative change and against the interests of Western states. In addition, and foreshadowing the next chapter concerned with indigenous peoples, these findings also run counter to claims that the transnational movement of indigenous peoples at the UN is unique in contesting and complicating the existing body of a “strictly, liberal, individual-rights constructions” of self-determination (Lightfoot 2009: 71).¹⁴³ On the contrary, the above evidence suggests that actors from the non-Western world were not only most active but largely responsible for establishing a collective norm of self-determination for all peoples. A norm one on which other individual and collective human rights rest.

¹⁴² These included splitting the covenants into separate political and economic components as well as to recognize the rights to self-determination via a declaration rather than in the covenants (Normand & Zaidi 2008: 220).

¹⁴³ The author fails to acknowledge that the “liberal foundations of the existing human rights consensus” in place today is itself a consequence of Non-Western actors turning hegemonic ideals against the ‘West’ by reformulating these in universal terms and from which Non-Western actors were excluded by Western states (ibid: 42). Lightfoot is correct, however, in arguing that indigenous peoples’ transnational advocacy broadened the collective right of self-determination considered here.

The normative status of self-determination and as a precondition for all other human right was shifted from a limited principle - and one that excluded peoples living in NSGTs - towards a universal norm applicable for all peoples. State delegates, acting as norm entrepreneurs, thereby proffered liberation movements agency. They signaled to them that the United Nations would offer substantive means to challenge prevailing sovereignty arrangements on this basis. State allies did so through levelling moral argumentation which uncovered colonial states' argumentative foundation as outdated while the colonial states arguments "proved utterly inadequate to counter it" (Jackson 1990: 76). Scholars like Jackson underreport, however, that norm entrepreneurs used their newly found status as sovereign equals to counter colonial states' hypocrisy. They contested that defending human rights for peoples in the colonial hub - yet aiming to withhold human rights from peoples living in Africa and Asia could not be sustained because it created a double-standard. They effectively held that colonial states could not guarantee respect for human rights under their colonial administrations because these regimes were based on inequality and discrimination. Protecting human rights, they claimed, would only be possible if the fundamental right of self-determination was universally recognized for all peoples. These actors advanced that:

The peoples of the Western democracies, justly proud of their free institutions, should realize that their way of life was still enjoyed by a few. Theirs was a democracy of an ivory tower, a democracy for the most fortunate [but that it was necessary to extend self-determination on a universal basis to] all peoples and all nations (A/C.3/SR.454, para 32).

3.3.2.2 The Committee on Information on Non-Self-Governing Territories: Accountability Politics By State Allies

Unlike liberation movements from the eleven Trust Territories, who could challenge state sovereignty at the Trusteeship Council through petitions and during visiting missions, the vast majority of liberation movements from the much larger list of NSGTs could not access the UN

and participate in its venues. State allies, who often had only recently emerged from colonial rule, sought to address this impediment by extending mechanisms of an accountability venue: the Committee on Information.

State allies used the venue to pressure colonial states to accept the same obligations and procedures for NSGTs as were in place for Trust Territories.¹⁴⁴ The argument here is that despite efforts by colonial states to first constrain the establishment of the venue and second contain its duration, function and powers that the venue helped to bridge the gulf between UN Charter obligations with respect to NSGTs and Trust Territories. In order to secure colonial states' cooperation state allies employed persuasion tactics steeped in moderation. State delegates drew on these tactics because they understood that by extending the powers of the venue too far threatened the withdrawal of colonial states cooperation which allies considered essential. They participated in the venue to draft and concretize standards with respect to NSGTs based on self-determination and human rights. State allies also expanded the mandates of the Committee on Information.¹⁴⁵ These concrete mandates allowed them to evaluate progress in NSGTs based on these developing human rights standards. The confluence of these venue outcomes thereby eroded colonial states' ability to uphold the norm of non-interference because their argument that the treatment and political aspirations of peoples in NSGTs constituted an interference in their domestic affairs was undermined.

First, state allies picked up on the Secretary-General's impetus for a new venue by turning to UN Charter Article 73(e) which stipulated that colonial states were to transmit

¹⁴⁴ Colonial states opposed proposals to elevate the Committee on Information to a subsidiary body of the GA.

¹⁴⁵ A contribution to the existing literature which focused on the Third Committee (Burke 2010 and Reus-Smit 2013).

regularly to the Secretary-General information relating to the conditions in NSGTs.¹⁴⁶ Article 73(e) was important because it extended the most concrete obligation under Chapter XI of the UN Charter declaring that UN members states accepted “as a sacred trust the obligation to promote to the utmost [...] the well-being of the inhabitants of these territories.” State allies from the outset interpreted this “sacred trust” to be applied through UN oversight “the *raison d’être* of which is [United Nations] supervision of the evolution towards self-government and independence” (El-Ayouty 1971: 50). They exploited the treaty-based inroad Article 73(e) provided to call for the establishment of an accountability venue that was not only unforeseen but one which was intended to keep colonial states accountable until liberation movements could access and participate in the IGO.¹⁴⁷

The venue’s creation was tied to the act of listing NSGTs, as previously discussed. States, to recall, reacted to the Secretariat’s impetus to list NSGTs and subsequently adopted Resolution 66(I) entitled *Transmission of Information under Article 73(e) of the Charter* in 1946. In this critical moment, if only temporary, the GA established an “*ad hoc* Committee” based on equal representation between newly independent states favoring unifying Chapter XI, XII and XIII and colonial states who sought to maintain the status quo as sole authorities over NSGTs (A/RES/66(I)). This ‘on parity’ venue composition itself, as I demonstrate in this section, was important because it afforded state allies a platform to keep colonial states accountable on the conditions in NSGTs.

The debates on establishing the venue also indicated state allies’ resolve to translate access and participation mechanism available to peoples from Trust to the peoples from NSGTs.

¹⁴⁶ Article 73(e) was a crucial addition Bunche achieved at the last minute in San Francisco. After the Bunche/Australian proposal was submitted in Committee 4/II, the US delegation - with Bunche as a delegate - introduced a sub-paragraph on submitting information on conditions in NSGTs to the Secretary-General under Article 73 on 18 June 1945 (A/AC.9/W.2: 12).

¹⁴⁷ The Philippines and India unsuccessfully motioned for an international conference on NSGTs (A/PV.64).

Resolution 67(I) stressed the need to create access and participation channels for peoples from NSGTs in the work of the UN. Mr. Romulo, from the Philippines, defended the value of accountability and information politics when he argued that the venue was intended to

perform a similar service with respect to Chapter XI [...] than those inhabiting Trust Territories [and that a new venue was necessary] not because we are inclined to distrust the information submitted by the metropolitan Powers [...] but because it would be in keeping with the principle of dispassionate enquiry to know all the pertinent facts and to secure the testimony of various witnesses [which included] that it was essential for the Non-Self-Governing Peoples be given an opportunity to submit the facts in their own lands as they know them, and to voice their own aspirations (A/PV.64, p.1238).

Colonial states opposed the creation of a venue with mechanisms for access and participation by liberation actors by invoking the norm of non-interference. The British argued that the UN Charter

provides no organ for the supervision of the application of Chapter XI. If it would have been the intention of the authors to provide such an organ, they would have done so, just as they have provided the Trusteeship Council [yet they] deliberately did not do so, and it is outside the Charter [because] it is an infringement of Article 2, paragraph 7 (A/PV.64, p.1336).

Colonial states understood that a new venue responsible for NSGTs would be used to challenge their sovereignty. France added that it was

prepared to accept certain limitations upon the Sovereignty of the States [but the UN was not a world government and] until that day comes, the safeguard of all of us is the maintenance and respect of the Charter (A/PV.64, p.1346).

State allies contested these arguments and asserted international accountability based on self-determination and human rights. India's UN delegation, now under the lead of former liberation actor Ms. Nehru Pandit, declared

The wishes and aspirations of peoples are no longer domestic. If they were domestic, this whole Charter would be but a scrap of paper. They are a fundamental concern, they are the fundamental rights of peoples (A/PV.64, p. 1338).¹⁴⁸

India's active role in driving accountability politics at this stage was particularly significant. A British Foreign Affairs official complained in 1953 that India

has had so much intimate experience of our susceptibilities on Colonial issues that she is able to put a finger on our weak spots with unerring accuracy [and that it should be] dissuaded from initiating or supporting a particular anti-Colonial manoeuvre [at the UN] (CO936/97/18).

The creation of the accountability venue is more generally interesting because it underscores available insights on the practice and social power of actors to shape normative structures through IGO's and, as I advance here, by creating new and unforeseen venue's (Checkel 1998; Thomson 1995). The establishment of the venue highlight mechanisms whereby an impetus by the Secretariat is taken up by former non-state actors turned state delegates to extend norms and procedural structures to other non-state actors who are denied access and the ability to participate in the IGO.

3.5.2.2.1 Allies Influence in Connecting the Committee on Information to Self-Determination and Human Rights

State allies' interest to broaden venue mandates reflected their goal of setting new standards based on higher order values, namely, the norm of self-determination and human rights. Seeking the implementation along these norms-based challenges was most obvious in the Committee on Information during the early 1950s debates relating to questions of discriminatory laws and practices in NSGTs. This section demonstrates that state allies transformed the Committee on Information into a venue responsible for implementing GA resolutions related to NSGTs. From

¹⁴⁸ A 1950 British government survey lamented "[UN] supervision is, however, the aim of many members of the United Nations; and the principle that Metropolitan Powers should, in their conduct of colonial affairs, be accountable to the United Nations is implicit in an increasing number of Assembly Resolutions" (CO537/5968, para 75).

then on the venue dealt with specific issues arising from colonial states' administration; including racial discrimination, technical assistance, education and human rights.¹⁴⁹ The venue, as I specify, was a procedural expression of what others loosely portrayed as “encroaching demands for accountability” in the IGO (Philpott 2001: 182).

Colonial states confronted by state allies in the venue found it increasingly difficult to defend their stance of denying peoples fundamental rights (A/AC.35/L.70). How far allies had pushed their goal of linking the venue's work with the norm of self-determination and human rights was plain in 1952 when a Committee on Information draft was adopted as Resolution 644 (VII) *Racial discrimination in Non-Self-Governing Territories* by the GA.¹⁵⁰ Introduced by Egypt, India, Indonesia and Pakistan it was the first resolution that explicitly connected issues of racial discrimination in NSGTs to the norm of self-determination and human rights. In it newly independent states wrested from colonial states a commitment to abolish discriminatory laws and practices in NSGTs.

This resolution, as drafted in the accountability venue, not only highlighted the venue's relevance of keeping colonial states accountable but was a major advance for liberation movements because it restricted colonial states' resort to uphold the norm of non-interference inscribed in UN Charter Article 2(7). Resolution 644 was a direct challenge to state sovereignty because it asked states to adjust “all laws, statues and ordinances, as well as their application” in all Non-Self-Governing Territories (A/RES/644 (VII)).¹⁵¹ The Resolution thereby offered liberation movements a concrete means to question domestic practices in the NSGT.¹⁵² Fundamentally, allies seeking to enhance UN support for liberation movements restricted

¹⁴⁹ GA Resolutions drafted in the venue on these and other human rights matters grew steadily: A/RES/327(IV) on the voluntary submission on NSGTs political progress, A/RES/328, A/RES/329 and A/RES/330(IV) affirmed human rights in NSGTs, namely equal treatment in education, language of instruction and eradication of illiteracy.

¹⁵⁰ Adopted by 51 votes in favor with 1 abstention.

¹⁵¹ A/RES/644(VII); (A/AC.35/SR.70: 8).

¹⁵² A/RES/645(VII)

colonial states ability to invoke Article 2(7) on matters relating to racial discrimination and other human rights violations. A restriction colonial states, judging in light of their vote on the resolution, gradually accepted.¹⁵³ This acceptance, more generally, confirms the insight that “norm-violating” states make tactical concessions to the international community during the standard setting phase and, with respect to non-state actors, “permits the domestic opposition to gain courage” and intensify its own process of social mobilization (Risse, Ropp & Sikking 1999: 238).

Perhaps the most significant reason for achieving normative change through the accountability venue was that a larger co-constitutive process tilted the majority composition of IGO principals to those who shared liberation movements’ interests and demands. This form of principled voting leverage was manifest with liberation leaders Sukarno, Salim and Hatta from Indonesia joining the UN as state diplomats in the early 1950’s. They not only deplored colonialism as outdated but enunciated their objective to open the IGO up to other non-state actors because of

[our] own colonial origins and its successful struggle for national independence, Indonesia cannot but regard other peoples striving to establish their own national existence with sympathy and understanding [and] therefore whole-heartedly welcomes every initiative by the United Nations designed to promote national independence in accordance with the provisions of the Charter relating to dependent peoples (A/PV.346).

With this purpose state allies focused on cementing the venue’s role in unifying UN Charter obligations. Beginning in the 1950s they, in a first instance, concentrated their attention on extending the venue’s duration and expanding its mandate (El-Ayouty 1971: 76).¹⁵⁴ For example, Resolution 332(IV), adopted in 1949, demonstrated the erosion of the normative and procedural

¹⁵³ A/RES/645(VII); (A/PV.263: 130)

¹⁵⁴ Fourth Committee debates concurrently argued that a “permanent Committee was essential” and that it should be able to evaluate information received from NSGTs (DC) (A/C.4/108; A/AC.9/SR.16; (A/424).

gulf between Trust and NSGTs. It equipped the venue with a three-year term renewal and linked the venue's work to a universal conception of self-determination and human rights as it was to

examine, in the spirit of paragraphs 3 and 4 of Article 1 and of Article 55 of the Charter, the summaries and analyses of information transmitted under Article 73(e), including specialized agencies' papers and any reports or information on measures taken in pursuance of the resolutions adopted by the Assembly concerning economic, social and educational conditions in the NSGTs (A/RES/332(IV), para 5).¹⁵⁵

In 1952 state allies, with GA membership having shifted fully in favor to them, made the Committee on Information permanent. Allies, from Egypt, aptly assessed the relevance of the accountability venue for liberation movements as it represented

in a modest way, the principle of international accountability for the peoples and lands [until] pending the day when those peoples should have progressed sufficiently to become independent (A/AC.28/SR.16: 3).

Colonial states reacted to state allies' attempts to broaden the venue's mandate by clinging to the norm of non-interference. The British, for example, were

disturbed to hear the Egyptian representative say that the Committee represented the principle of accountability [and contended that matters of policy in the NSGTs] were within its exclusive domestic jurisdiction (A/AC/28/SR.16: 5-6).

Allies contested these arguments and wrested further concessions from colonial states. In their view the venue was to keep colonial states accountable to the peoples of NSGTs. The Committee on Information, as Syria put forward,

was not simply an information agency [because] respect for human rights and the attainment of national sovereignty and independence by all peoples, had become questions which affected and interested the international community as a whole (A/PV.263: 105).

¹⁵⁵ Colonial states denied to offer political information to the venue until its dissolve in 1963 (A/RES/1700 (XI)).

By drafting standards in the Committee on Information during the first half of the 1950's state allies essentially acted on behalf of liberation movements who were denied access. They further equipped the venue with two concrete mandates that challenged colonial state's sovereign authority: a) the venue was empowered to define factors to determine the attainment of independence or other forms of self-government in both Trust and NSGTs¹⁵⁶ and b) was to built on the normative gains made in the Third Committee to assert these obligations with respect to peoples living in NSGTs. In part, and as a consequence of asserting international responsibility alongside these challenges, colonial powers ability to uphold the norm of non-interference was eroded while contemporaneously empowering liberation movements from NSGTs to call for self-determination and human rights domestically.¹⁵⁷

3.3.2.2.2 Allies Seeking to Extend Access and Participation to Liberation Movements in the Committee on Information

In addition to linking the venues tasks to self-determination and human rights allies also aimed to extend access and participation mechanisms to liberation movements. From 1952 onwards they first championed a resolution at the GA that asked the Committee on Information to “examine the possibility of associating” the people from NSGTs more “closely in its work and to report the results of the examination of this problem.” Although Resolution 566 (VI) did not refer directly to ‘liberation movements’ it still enhanced their status recognition because

the direct association of the Non-Self-Governing Territories in the work of the United Nations [...] is an effective means of promoting the progress of the peoples of those Territories towards a position of equality with Member States of the United Nations (A/RES/566 (VI)).

¹⁵⁶ A/RES/567 (VI); A/RES/637 (VII) The latter consists of three parts: A, B and C and were voted respectively with (A) 40 for, 14 against and 14 abstentions, (B) 39 for, 12 against and 5 abstentions, and (C) 42 for, 7 against and 8 abstentions.

¹⁵⁷ The norm of self-determination occurred more often in the GA Resolutions. They eroded the distinction between Trust and NSGTs A/RES/738 (VIII); (A/RES/742 (VIII), para 4)); A/RES/743 (VIII).

The UN Secretariat also echoed support for the participation by non-state actors because the “degree of participation of the inhabitants in the political institutions” of the NSGTs is “a key to the character of race relations and as solution for many of the problems” (A/AC.35/L.78: 4).

Resolution 566 (VI) also indicated how allies drew on Trust Territory procedures because it explicitly noted the existence of provision for access and participation of peoples in other specialized UN agencies (A/2119: 60).¹⁵⁸ This more generally highlights that venue characteristics made possible by norm entrepreneurs in one venue (the Trusteeship Council) can have repercussions and create demands for uptake in other venues (the Committee on Information). India added pressure, with reference to liberation movements own calls for access and participation, by observing that the resolutions was accompanied by

a growing interest in the peoples of the Territories and a progressively greater recognition of the Committee’s contribution [which peoples in NSGTs regarded as] their only line of communication [with the United Nations and that the Indian delegation] received many letters expressing their gratitude for the interest shown in improving their lot (A/AC.35/SR.67: 3).

State allies emphasized the need to find access and participation channels for peoples from NSGTs in the Committee on Information. In effect, state allies’ dissatisfaction with colonized peoples’ exclusion from the venue was part and parcel of decreasing the procedural gulf between Trust and NSGTs. Peoples from NSGTs should also be able to petition the UN. Newly independent states made these arguments by contending that if mechanisms existed that afforded peoples from Trust Territories’ UN access the same, or similar procedures, should be in place to the peoples from NSGTs.¹⁵⁹ Resolution 647 (VII) *Participation of Non-Self-Governing Territories*, adopted on 10 December 1952, found it

both possible and useful to associate Non-Self-Governing Territories [with the venue and considered it desirable] to associate qualified indigenous representatives [with the venue

¹⁵⁸ (A/C.4/L.221).

¹⁵⁹ (A/AC.35/L.112/Add.I).

and] invites the Administering Members to make such participation possible (A/RES/647 (VII)).¹⁶⁰

Some colonial states disputed these types of ‘invitations’ as a form of dual representation. Belgium considered such access and participatory channels “absurd” because the “administering states alone were answerable to the international organization” (A/AC.35/SR.69: 8).¹⁶¹ The British and France comprehended that their protracting tactics could not be sustained indefinitely. They conceded to pressure by agreeing that the Committee on Information may “invite” a representative from NSGTs as part of administering states delegations (A/AC.35/SR.128: 10). Given colonial states overall obstinate stance state allies were able to make only limited progress to translate existing mechanisms of sending visiting missions and hear oral and/or receive written petitioners from NSGTs akin to those in place for Trust Territories.¹⁶² Notwithstanding, state allies achieved smaller victories. Resolution 850 (IX) in 1954, for instance, provided that visiting missions may be sent to NSGTs

before or during the time when the population is called upon to decide on its future status or change in status - that is during elections and/or plebiscites [while requesting the Committee on Information] to consider the question of visiting mission further (A/RES/850 (IX)).¹⁶³

An indicator for deeper socialization was that some colonial states began to accept the venues competence. They were commended for having “included specialist advisers in their delegations to the Committee.” State allies from African and Asia used these admissions to raise reputational costs for other colonial states which have not found it

¹⁶⁰ A/RES/646 (VII); A/RES/645 (VII).

¹⁶¹ Allies blunted Colonial states opposition. India stated that participation was desirable to give NSGTs representatives “an opportunity to express their views, without giving them a right to vote” (ibid. 18). (A/C.4/L.221; A/C.4/L.228).

¹⁶² A/RES/942 (X); A/RES/943 (X); A/RES/939 (X); A/RES/936 (X); A/RES935(X) granted hearings to liberation actors including Michael Scott, Jariretundu Kozonguizi, Margery Perham and T.H Hambtumbangeles, Hosea Kutako, David Ross, Erastus Amgabeb. A/RES/1067 (XI) granted hearings to petitioners from the Cammeroons under French administration.

¹⁶³ A/RES/850(IX).

possible to do so, [and who] will find it appropriate to associate with their delegations persons [from NSGTs] specially qualified in the functional fields with the Committee's purview (A/RES/745 (VIII)).¹⁶⁴

In sum, and due to state allies consistent argumentative pressure, the venue transformed from an *ad hoc* technical committee into a durable venue that kept colonial states accountable. Despite its limitations the venue was important in the eyes of state allies acting as agents for liberation movements. They treated any information submitted on NSGTs as an admission of UN oversight over the future of peoples' in NSGTs. Without a doubt the critical relevance of venue's and the role of non-state actors turned state delegates was nowhere as apparent as in the case of the Committee on Information. The accountability venue was not foreseen in the UN Charter. Newly independent state delegates from Africa and Asia used it to steadily broaden UN oversight. The venue was a way for sympathetic states to implement normative change into standards and procedural means important to non-state actors residing in NSGTs. Although failing to extend access to liberation movements its key function was thus a sort of clearing house of establishing the basis of UN accountability during the first part of the standard-setting phase and with respect to colonial policy in NSGTs.

3.3.3 Venue Shift and Reverberation: The Non-Aligned Movement Asserting UN Relevance and Legitimizing Liberation Movements

Demands for self-determination and human rights also gained momentum elsewhere. Anti-colonial actors, including states and liberation movements, instituted the the so-called Non-Aligned Movement (NAM) through a series of international conferences.¹⁶⁵ A basic motivation

¹⁶⁴ See on the functional fields A/RES/743 (VIII). GA resolutions on NSGTs followed in quick succession: A/RES 845 (IX), A/RES/847 (IX), A/RES848 (IX), A/RES850 (IX)

¹⁶⁵ The NAM was as a coalition of actors linked shared normative principles on which their interest and identities converged, particularly those related to national independence, self-determination, racial equality, non-interference and territorial integrity (Singham & Hune 1986; Mayall 1990: 127).

for shifting venues to forums outside of the IGO lay in actors principled beliefs of universalizing the right of self-determination as well as achieving racial equality. More specifically the legacy of what has been called the “spirit of Bandung” - giving birth to NAM - and referring to the Asian-African meeting of 18-24 of April 1955 in Bandung, Indonesia further consolidated the challenge to state sovereignty, while setting precedents for the international recognition and support for liberation movements. By forming a coalition between like minded states and non-state actors in these international venues the pressure for colonial states to cooperate with the UN intensified. The “spirit of Bandung” is thus also a case of contested multilateralism because states and non-state actors shifted their focus from one existing institution (the UN) by mobilizing a coalition of like-minded actors (the Non-Aligned Movement) in order to contest the lack of UN’ effectiveness to grant liberation movements with mechanisms to access and participate in the IGO (Morse & Keohane 2014).¹⁶⁶

First, and in part as a reaction to slow progress at the UN, a group of twenty-nine states from Africa and Asia assembled in 1955 in Bandung.¹⁶⁷ Noteworthy, in terms of ongoing co-constitutive processes, was that the main drivers of the conference were former liberation turned state actors. They included prominent figures like Romulo from the Philippines, Nehru of India, Sukarno of Indonesia, Nasser of Egypt and Nkrumah of Ghana. The basic conference purposes and principles cemented ideas of national independence and were intended by its participants to determine sovereignty norms of a new era of international relations. Attending participants

¹⁶⁶ Contested multilateralism “involves the use of different multilateral institutions to challenge the rules, practices, or missions of existing multilateral institutions. More precisely, the phenomenon of contested multilateralism occurs when states and/or nonstate actors either shift their focus from one existing institution to another or create an alternative multilateral institution to compete with existing ones” (ibid: 5).

¹⁶⁷ The conference was representative of over half of the world’s population and, in a forceful display of unity, opposed colonialism, including neo-colonialism as practiced by the Soviet Union.

declared in the final outcome document their full support for a grafted version of self-determination and took note

of the United Nations resolutions on the rights of peoples and nations to self-determination, which is a pre-requisite of the full enjoyment of all fundamental Human Rights. [It outlined the challenge to state sovereignty succinctly when it] deplored the policies and practices of racial segregation and discrimination which form the basis of government and human relations in large regions of Africa and in other parts of the world. Such conduct is not only a gross violation of human rights, but also a denial of the dignity of man.¹⁶⁸

The Bandung conference, as such, represents an example of venue shifting during the standard-setting phase. It underscores insights from the existing literature that a coalition of states and non-state actors may shift venues in order to contest the performance of existing IGOs and are geared to assert modifications in the contested IGO itself (Helfer 2009).¹⁶⁹ This is to say that these actors not only reiterated normative and procedural achievements at the UN, but now sought to assert a more active role of the IGO to challenge prevailing conceptions of state sovereignty going forward.

Second, and noteworthy with regards to access and participation capabilities for non-state actors, was that the Bandung conference, and those that followed in Cairo in 1957 and in Belgrade in 1961, included not only newly independent states but a number of liberation movements also. These conferences invited liberation movements as active conference participants and as the only legitimate representatives of Trust and NSGTs. These linkages fostered the status recognition of liberation movements colonial states opposed at the UN. Starting with Bandung three members of the African National Congress (ANC) were present as well as Saleh ben Youssef, a national liberation leader from Tunisia, and Mohammed Yazid, an Algerian national liberation leader and post-independence cabinet member (Larkin 1971: 17). By

¹⁶⁸ Accessed online at http://franke.uchicago.edu/Final_Communique_Bandung_1955.pdf

¹⁶⁹ Helfer uses the term regime shift instead of venue shift.

1961, apart from twenty-eight state delegations, observers from nineteen liberation movements, all from Africa, actively participated in the *First Summit Conference of Non-Aligned Countries*, in Belgrade from 1 to 6 September 1961. Three years later NAM members decided that

all nationalist movements [and provisional governments] from Colonial territories which have not yet attained independence are welcome to present their views to the Conference (quoted in Singham & Hune 1986: 88).

On the basis of open access and active participation for these non-state actors NAM members concluded that a challenge to state sovereignty through the process of national liberation was not only “irresistible and irreversible” but indicative of extending broad support for non-state actors and against colonial states’ interests.

Third, and as intended by participants, these international conferences had a reverberation effect at the UN (Alter & Meunier 2009).¹⁷⁰ NAM members shifted venue’s in order to criticize the United Nations efficacy for not having extended access and participation capabilities to liberation movements from NSGTs and contested UN practice on these grounds as unrepresentative. Echoing others, John Kotelawala, a provisional government representative from Ceylon (later Sri Lanka), and not yet a UN member state, stated for instance that

what we of Asia and Africa can appropriately demand, is that the United Nations Organization should be so reconstituted as to become a fully representative organ in which all nations can meet on free and equal terms (quoted in Acharya 2011: 68).¹⁷¹

In other words, Bandung, along with its successor conferences, provided spaces to engage in the social construction and diffusion of sovereignty norms and one which included not only states

¹⁷⁰ Their investigation of complex international regimes found that “changes in one institution could reverberate across parallel institutions” (Alter & Meunier 2009: 18).

¹⁷¹ The NAM restated its critique of the UN as a tool of an anachronistic colonial sovereign structure; yet instead of viewing the UN as defunct sought to reform the IGO to become more representative.

but non-state actors.¹⁷² Participants, as such, “did not reject the UN’s authority and role as the key arbiter of sovereign status” but felt that it did not implement normative demands by liberation movements and for equality, self-determination and human rights sufficiently (Acharya 2011: 72). For instance, Carlos Peña Romulo who, as previously noted, was already instrumental during the San Francisco conference, felt that the UN did not have enough “teeth.”¹⁷³

That a mechanism of reverberation was playing out was evident when India and Iraq restated in the Committee on Information that Bandung conference delegates “unanimously demanded that colonialism in all its manifestations should be speedily brought to an end” and that sovereignty based on colonialism “had been rejected” (A/AC.35/SR.123: 13). These actors furthermore re-emphasized the role of the UN as a key arbiter over resolving challenges to the institution of state sovereignty. Burma observed, in the Committee on Information, that national liberation from colonialism can not be stopped but was “inevitable and the question might rather be how” the United Nations “could make the best use of the short time available to promote the advancement of their people” through implementing self-determination and by transferring sovereignty by peaceful means (A/AC.35/SR.124: 3).

The Bandung conference, and those that followed, had a dual purpose of questioning UN performance while supporting liberation movements access and participation in international affairs. They presented instances of venue shifting and reverberation, and as such, stimulated allies resolve to intensify their efforts and to become more forceful at the UN and beyond.¹⁷⁴

¹⁷² Indonesian President Sukarno, announced that Bandung was “a new departure in the history of the world,” with leaders from Africa and Asia meeting for the first time as the representatives of “free, sovereign and independent” peoples (quoted in Burke 2010: 16).

¹⁷³ Acharya notes that the norm of non-interference was further extended to include the “concept of non-involvement in superpower rivalry and membership in unequal multilateral security pacts” (ibid.)

¹⁷⁴ Bandung had a snowball effect with similar conferences following in Accra (1958), Tangiers and Maghreb (1961), Maghreb (Abrahams et. Al 1963).

NAM members signaled that they would exercise their agency - as sovereign equals - to support liberation movements as the legitimate representatives of Trust and NSGTs. A practice the UN, given colonial states opposition, at this point denied but later accepted. Yet, and instead of ignoring the UN, these actors re-emphasized the relevance of UN venues and viewed the IGO as the most important convener for implementing the norm of self-determination and for promoting the peaceful transfer of sovereignty from colonial states to the peoples of Trust and NSGTs.¹⁷⁵ The overarching effect of instituting the NAM in 1955 was that it further put colonial states on the defensive in the UN. It pressured them to accept UN supervision and acknowledge liberation movements demands for access and participation.

Still, and despite that grafting the norm of self-determination onto human rights had been achieved by the early 1950's, and was again affirmed by the Non-Aligned Movement in 1955, it took until 1960 when the *Declaration on the Granting of Independence to Colonial Countries and Peoples* became the definite standard by which the the General Assembly judged challenges to state sovereignty. The resolution, at this juncture, also clarified again that gaining independence meant accepting colonial borders (A/RES/1514(XV)).¹⁷⁶ Resolution 1514, as I pick up on below, also extended an active role to the UN by creating a new venue responsible for overseeing the implementation of self-determination in NSGTs. These outcomes settled the tensions between the composite norms of the institution of state sovereignty: At this historical juncture the norm of non-interference was offset by applying the norm of self-determination to

¹⁷⁵ A/C.4/L.393: 70.

¹⁷⁶ Stating that concerning "dependent peoples" the integrity of "their national territory shall be respected" while "any attempt aimed at the partial or total disruption of the national unity or territorial integrity of a country is incompatible with the purposes and principles of the Charter" (A/RES/1514(XV)).

Non-Self-Governing Territories. Liberation movements, by seeking independence for these NSGTs, reinforced the norm of territorial integrity.¹⁷⁷

3.4 Normative Tipping Point

This section offers an analysis of the the normative tipping point or threshold of subsequent normative consolidation of the challenge to state sovereignty at the UN from 1960 until the mid 1970s.¹⁷⁸ It demonstrates how the consolidation of a new composite institution based on a universal acceptance of self-determination and human rights was settled with respect to limiting the norm of non-interference and by strengthening the norm of territorial integrity. I make this argument in two steps.

First, I analyze the drafting and adoption process of Resolution 1514(XV) the *Declaration on the Granting of Independence to Colonial Countries and Peoples* as well as the, often unheeded, Resolution 1541(XV) entitled *Principles which should guide Members in determining whether or not an obligation exists to transmit information called for under Article 73 e of the Charter*.¹⁷⁹

Second, I demonstrate the process of norm cascading through an implementation venue: the Decolonization Committee. I emphasize, and an addition to existing literature, how the venue contributed to implementing a new sovereignty regime according to Resolution 1514 and the principles delineated in Resolution 1541. With respect to liberation movements, I further showcase how state allies succeeded to translate access and participation mechanisms from the Trusteeship Council and the Committee on Information, how these were further adapted to

¹⁷⁷ In 1970 the GA unequivocally affirmed the norms of self-determination and territorial integrity in the *Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States*.

¹⁷⁸ A tipping point is reached when a critical mass of actors accepts a new norm. It typically occurs between the norm emergence and cascading phases (Keck & Sikkink 1998: 896).

¹⁷⁹ Resolution 1541 restricted claims to self-determination to “territories which were known to be of the colonial type” and included all those NSGTs that were “geographically separate and is distinct ethnically and/or culturally from the country administering it” (A/RES/1541(XV)).

strengthen liberation movements ability to use them, while also analyzing the contribution of the venue to substantiate the status recognition of liberation movements at the UN.

3.4.1 Consolidating the Challenge to State Sovereignty: The Declaration on the Granting of Independence to Colonial Countries and Peoples

Colonial states, such as Britain and France, began “cashing out the promise” of independence not only to the peoples of Trust but to NSGTs also (Philpott 2001: 168). That a norm cascade was underway could be observed throughout the late 1950’s as the pace of transferring sovereignty from colonial states to the peoples of NSGTs picked up speed. In fact, from 1955 until 1960 a total of thirty-nine predominately African Trust and NSGTs achieved independence and joined the United Nations as newly independent states.¹⁸⁰

The majority of colonial states, and that had upheld the norm of non-interference in regards to colonial affairs, recognized a challenge to their sovereign authority by implementing liberation movements demand for self-determination. At this point newly independent states became increasingly concerned with the impact of the Cold War on their hard won and fragile sovereignty while Britain and France, which together held the majority of colonial possessions, signaled greater acceptance for a universal norm of self-determination. With US and Soviet tension on the rise liberation actors entering the IGO as new states sought to maintain their autonomy while continuing to support other liberation movements through incessantly questioning colonial states’ practices at the UN.

State allies did so not only by cementing the norm of self-determination in universal terms but by reconstructing the norm of non-interference as a “moral doctrine” aimed to protect weak from strong sovereign states (Acharya 2011). Distinct from Acharya’s focus on the consolidation of non-interference at the regional level I analyze how liberation movements

¹⁸⁰ In 1955 new admissions included colonial states Portugal and Spain and who remained reticent in accepting normative change much longer than the Dutch, the UK and France (See www.un.org/en/members/growth).

turned state delegates settled the consolidation of the composite institution of state sovereignty around self-determination, non-interference and territorial integrity at the UN. Specifically, I account for the critical developments at the UN General Assembly in 1960.

The drafting process of the *Declaration on the Granting of Independence to Colonial Countries and Peoples* presented a pivotal turning point of normative change and one which affirmed the relevance of the UN General Assembly as a central venue for restructuring fundamental international norms.¹⁸¹ Resolution 1514 announced a new departure in international relations that delegitimized the institution of sovereignty based on colonial empire(s) and by elevating self-determination to a universal norm for all peoples instead (Reus-Smit 2013). It unequivocally declared that

subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights [and asserted that the] process of liberation is irresistible and irreversible, [that] all peoples have an inalienable right to complete freedom [and therefore concluded that it was necessary to bring colonialism] to a speedy and unconditional end [while asserting that any impediments to implementing self-determination constituted a] serious threat to world peace (A/RES/1514 (XV)).

How far normative change had progressed since 1952 when self-determination was first elevated from principle to a right of all peoples, as noted earlier, was now evident in a General Assembly that had changed substantially in terms membership and one which colonial states no longer constrained. Certainly, an overwhelming majority of eighty-nine states voted in favor of Resolution 1514 with nine abstentions and no vote against (A/RES/1514 (XI)).

The process of how Resolution 1514 came about thus merits analytical attention.¹⁸²

Twenty-six states from African and Asia championed it but no longer sought to unify existing

¹⁸¹ See on discursive turning points (Deitelhoff 2009: 46)

¹⁸² Cambodia submitted the draft on behalf of Afghanistan, Burma, Cambodia, Ceylon, Chad, Ethiopia, Ghana, Guinea, India, Indonesia, Iran, Iraq, Jordan, Lebanon, Liberia, Libya, Morocco, Nepal, Nigeria, Pakistan, Saudi Arabia, Sudan, Togo, Tunisia and Turkey, joined by Cyprus, Mali, and the United Arab Republic (A/L.323 and

UN Charter obligations through accountability venues, as previously analyzed, but pushed beyond these.¹⁸³ The reverberation effects first engendered in Bandung were now bearing fruits. These newly independent states foremost realized that a new institutional arrangement was needed to make the IGO more effective in contesting prevailing conceptions and implementing new practices of state sovereignty.¹⁸⁴ The delegate from Ceylon, for instance, explained during the drafting process that his delegation found existing IGO obligations and procedures “wanting” and as a consequence engaged GA members in “trying to find a way out” (A/PV.926: para 125). Delegates from Liberia and Mali, also participating for the first time, used their new found status as IGO principals and emphasized their support for Resolution 1514 because

we have never asked for the final ending of colonialism in the UN [but that] we the peoples who were once colonized and dependent, and who are now peoples in their own right, are ready to give super-abundant testimony against the perpetuation of colonialism (A/PV.931: para 22-62).

These statements accentuate mechanisms of accountability politics and, as I argued throughout this chapter, underscore the importance of accounting for how non-state actors transitioning to become IGO principals drew on this long-denied status to consolidate norms and to open the UN up to other liberation movements in still dependent NSGTs. These developments more generally force us to refine static state-centric explanations on IGO decision-making.¹⁸⁵ By highlighting changes to actor’s status it becomes possible to reveal how an IGO is shaped by actors shared normative commitments and how these entail a drive to extend access and participation capabilities not to states *per se* but to non-state actors with statist aspirations.

A/PV.926). Newly independent states forwarded their own resolution to maintain distant and neutral from Cold War rivals after the Soviet Union unsuccessfully submitted its own anti-colonial resolution.

¹⁸³ For Quaison-Sackey from Ghana, chairing the Committee on Information, the distinction between Chapters XI, XII and XIII remained a “puzzle to his delegation” and “applied in full measure and equal intensity to all non-independent territories” (A/PV.927: para 51).

¹⁸⁴ Trusteeship Council’ petition and visiting mechanism and the Committee on Information were exhausted in the view of liberation actors turned states.

¹⁸⁵ As Jackson put it somewhat dismissively in his discussion on ‘quasi states:’ “To be a sovereign state today one needs only to have been a formal colony yesterday. All other considerations are irrelevant” (Jackson 1990: 17).

Additionally, and evidence for persuasion, was that the acceptance of a universal norm of self-determination gained traction amongst colonial powers who, as in the case of Britain, declared before the Fourth Committee that the UN Charter “should be viewed against the changing spirit of times” (El-Ayouty 1971: 180). Deeper persuasion and growing acceptance of liberation movements status was again professed the same year when British Prime Minister Macmillan acknowledged that

We have seen the awakening of national consciousness in peoples who have for centuries lived in dependence upon some other power. Fifteen years ago this movement spread through Asia. Many countries there, of different races and civilizations, pressed their claim to an independent national life. Today the same thing is happening in Africa, [in] different places it takes different forms, but it is happening everywhere. The wind of change is blowing through this continent and whether we like it or not, this growth of national consciousness is a political fact. We must all accept it as a fact, and our national policies must take account of it.”¹⁸⁶

Newly independent states, with respect to reconciling the tensions surrounding the composite institution of state sovereignty, asserted that implementing a universal norm of self-determination restricted colonial states’ ability to uphold the norm of non-interference. For instance, Omar, a delegate from Somalia, asserted that the norm of non-interferences “should not be used as a disguise for the continued domination of dependent peoples and the denial to them of the right of self-determination” (A/PV/945: para 24). Indeed, these actors affirmed the significance of the IGO to play a central role in settling these matters.

These debates affirm insights from more recent scholarship on norm contestation mechanisms in so far as “morally most broadly defined fundamental norms” are given *formal validity* and are “sustained through the formal framework of treaties, conventions or universal declarations within the framework” of IGOs (Wiener 2014: 37). In fact, contestations

¹⁸⁶ A speech made first on 10 January 1960 in Accra, Ghana (the first NSGT in Africa gaining independence in 1957) and a month later in Cape Town, South Africa at the House of Parliament (BBC recording <http://www.bbc.co.uk/archive/apartheid/7203.shtml>).

surrounding different understandings on the composite norms of state sovereignty were evident as Indonesia aptly explained how Resolution 1514 restricted an old and fashioned a new norm of non-interference as

an assertion of the fact that the relationship between colonial Powers and their dependent peoples is a matter of United Nations concern and action [and that the norm of non-interference as outlined in the UN Charter was] understood only as non-interference in the internal affairs of a sovereign State and, in particular, non-interference by colonial Powers in the internal affairs of their former dependent territories [but that] our declaration is, in fact, designed to obtain concerted action, through the United Nations, for the independence [of NSGT without any conditions or reservations] (A/PV.936: para 54).

France, perhaps fearing further reputational costs in this changing international environment, did not outright oppose these anti-colonial proposals but questioned the reformulated norm of non-interference that Resolution 1514 espoused on the grounds that

quite frankly, can it be claimed that the draft does not contain a whole series of admonitions which all constitute interference in the internal affairs of States? (A/PV.945: para 145)

This question, and an often overlooked aspect of normative contestation and change during this period, was essentially answered by way of adopting Resolution 1541.¹⁸⁷ It was adopted by a vote of 69 for, 21 abstentions and 2 against. Noteworthy was that Spain, a colonial state, changed its position from a negative vote to abstention during the Fourth Committee to General Assembly vote. Only Portugal and South Africa now opposed. This resolution presented the procedural counterpart to Resolution 1514 and acted as a practical guide for liberation movements from NSGTs seeking to implement self-determination and achieve independence. First, it cemented the territorial integrity norm when it defined the so-called salt water doctrine. Decolonization was accordingly applicable only to those territories which are geographically separated and

¹⁸⁷ It was adopted by a vote of 69 for, 21 abstentions and 2 against. Noteworthy was that Spain, a colonial state, changed its position from a negative vote to abstention during the Fourth Committee to General Assembly vote. Only Portugal and South Africa now opposed these conditions.

distinct ethnically and/or culturally from the country administering it. Second, it provided for an accountability mechanism in so far as colonial states have a *prima facie* obligation to inform the UN with respect to implementing self-determination in these NSGTs. It thereby restricted colonial states ability to resort to uphold the norm of non-interference according to UN Charter Article 2(7).¹⁸⁸ Colonial states, in effect, could no longer uphold that the political progress in NSGTs was a matter of domestic jurisdiction but had to accept UN supervision. Third, it outlined three possible implementation avenues. The peoples of NSGTs accordingly attained self-determination if they

- (a) emerged as a sovereign independent state;
- (b) freely chose to associate themselves with an already independent state; or
- (c) by integrating themselves with an independent state (UN/RES/1541(XV)).¹⁸⁹

Resolution 1541 altered the goal of “self-government” for NSGTs as stipulated in Article 73(e). It prioritized independence as the preferred route of application, provided a procedural guide to challenge state sovereignty and a mandate for the UN to supervise the implementation of self-determination in NSGTs on this ground.

The overwhelming acceptance of the universal norm of self-determination and by defining independence as a primary route of implementation, reflected not only the numerical advantage of newly independent states in the GA but indicated that the large majority of states came to accept the norm of self-determination as an integral composite part of state sovereignty. Colonial states, who previously denied a reconstructed view of the collective right to self-determination and its concomitant effect on the norm of non-interference, instead of paying the

¹⁸⁸ India, a major driver of the resolution, explained that “No consideration arising from the constitution of the metropolitan State can be sustained since international obligations of the Charter cannot be superseded by a national constitution” (A/AC.100/L.1: 8). Resolution 1541 also offset the security and constitutional consideration clause of Article 73(e).

¹⁸⁹ Further clarifying that these had to be determined through applying the norm of self-determination by way of “democratic means and constitutional processes” with the UN “when it deems necessary” supervising these on an individual basis.

“reputational costs of opposing the declaration” chose to abstain (Reus-Smit 2013: 191). Liberation movements participated in these debates, not as non-state actors, but by having to become a state. They used this status change and consolidated normative change in the GA. These dynamics not only changed the very composition and purposes of the UN but stimulated IGO action important to other liberation movements in a still dependent NSGTs. As a consequence, and important in light of my focus on indigenous peoples in the next chapter, the norm of self-determination was thereby codified as a collective right that was in principles available to all peoples yet the United Nations limited its application to peoples who fell within the saltwater doctrine; in so far as NSGTs were those which were separated by a body an ocean from the colonial hub.

Finally, 1960 was a remarkable year for affirming the IGO as a central convener in reconstructing state sovereignty. With respect to changes in status by liberation movements; a total of sixteen new Africa state delegations participated that year for the first time. In addition, almost fifty foreign ministers and a number of former liberation leaders turned heads of state took part in the 15th plenary of the General Assembly.¹⁹⁰ The GA session was more generally interesting because until this point non-state actors demands for UN access were effectively resolved by having to *become* a state actor.¹⁹¹ Starting in 1960 the IGO, after fifteen years of unwavering pressure, and especially due to the snowballing admission of newly independent states, adjusted existing access mechanisms and entered a phase of recognizing liberation movements as participants in UN decision making

somewhere between governments and non-governmental organizations [who] consider themselves as the precursor of the government of the territory they have set out to

¹⁹⁰ They included liberation leaders such as Nehru, Nkrumah, Nasser and Sukarno. They forwarded a resolution which called on the US and Soviet Union to decrease tensions and to respect the new nations emerging from colonialism and their right not to be drawn into Cold War politics.

¹⁹¹ With the exception of liberation leaders from the eleven Trust Territories.

liberate, and are recognized by (in some cases large numbers) of Member States of the United Nations (Kaufmann 1980: 95).

Recognizing liberation movements transient status at the IGO was intimately tied to the process of adopting Resolution 1514 (XV) the *Declaration on the Granting of Independence to Colonial Countries and Peoples* and the, often overlooked, Resolution 1541(XV) entitled *Principles which should guide Members in determining whether or not an obligation exists to transmit information called for under Article 73 e of the Charter*.¹⁹²

3.4.2 Norm Cascading through the Decolonization Committee: An Implementation Venue

This final section analyzes the process of norm cascading through an implementation venue.¹⁹³

In 1961 the UN established, by Resolution 1654 (XVI), the *Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples* (hereafter Decolonization Committee).¹⁹⁴ The relevance of the venue for liberation movements was twofold: a) it constituted an implementation venue responsible to realize a reformulated composite institution of state sovereignty as outlined in Resolution 1514 as well as according to the principles delineated in Resolution 1541 as noted above and b) it offered liberation movements unprecedented open access and participatory mechanisms. The venue ultimately reflected state allies long-standing objective to open the IGO up to liberation movements. In short, while 1960 had been the normative tipping point that had resulted in a consolidation of the composite institution of state sovereignty at the UN, it was the Decolonization Committee, that oversaw its practical implementation until the mid 1970s.

¹⁹² The resolution was based on recommendations by a six-member strong special committee, chaired by India, and composed of Mexico, Morocco, the Netherlands, the UK and the US (A/AC.100/L.1). Recommendations included input from the IGO Secretariat and twenty-six states (A/AC.100/SR.13; A/C.4/L.650).

¹⁹³ See on norm cascading (Finnemore & Sikkink 1998).

¹⁹⁴ A/RES/1654 (XVI) was sponsored by thirty-eight states from Africa and Asia. 96 states voted in favor and 4 abstained.

Liberation movements could draw on the implementation venue not to reformulate composite norms of state sovereignty but by preventing the most reticent colonial states from backsliding. Liberation movements used the venue to apply pressure to implement demands for a universal application of self-determination, accept restrictions on the norm of non-interference and to return sovereign authority to the peoples in Trust and NSGTs. This occurred under the incessant lead of liberation movements turned newly independent state allies.¹⁹⁵ The venue asserted moral pressure through gathering and disseminating information, with liberation movements adding such information through petitions and visiting missions; the passing of resolutions stressing the right of the colonial peoples to self-determination and independence; and the urging of negotiations for transferring sovereignty between colonial states and liberation movements. As a result of the liberation struggles on the ground and by seeking out international support through the Decolonization Committee liberation movements achieved independence for over thirty former Trust and NSGTs.¹⁹⁶ This last phase of challenging state sovereignty had repercussions for the IGO as a whole. The UN's membership of sovereign states almost tripled from the organizations inception, to 144 by 1975.

The venue, supported by existing literature, presents a case through which it becomes possible to analyze a process of norm cascading. While it is difficult to estimate the direct impact of the Decolonization Committee colonial states, with noted exceptions, were observed to more openly accept the reconstructed composite norms undergirding sovereignty. Liberation movements and state allies used the venue to pressure colonial states to conform with the new

¹⁹⁵ Eight of its seventeen members were from African and Asian states, two from the Soviet bloc plus Yugoslavia, two from Latin America, and two from Western Europe, plus the USA and Australia. In 1962 membership was enlarged by four Afro-Asian states, one Soviet bloc state, one Latin American, and one Scandinavian state. Venue members were nominated by the Secretary-General.

¹⁹⁶ A total of 55 Trust and NSGTs existed (33 small Caribbean and Pacific Islands, with populations between 80 (Pitcard Island) and less than 100,000, 17 had 500,000 inhabitants). See for population estimates the UN Demographic Yearbook, 1964 and a complete list of NSGTs www.un.org/en/decolonization/nonselgov.shtml.

norms of state sovereignty. They encouraged recognition of liberation movements as sovereign successors. By the mid 1960s, while not inferring direct causality but rather a correlation Belgium, France, the Netherlands, New Zealand, and Italy all returned sovereign authority to the peoples in a majority of NSGTs. Britain alone, and by far the largest colonial power, handed over sovereign rights to the peoples of a total of nineteen Trust and NSGTs between 1961 until 1968.

First, and with respect to the creation, mandate and overall venue characteristics, the venue was indicative of a new attitude in the IGO. Colonial states, which as noted, had first sought to control the Trusteeship Council and later aimed to limit the Committee on Information, now found that newly independent states were eager to move beyond these accountability venues. The delegate from the Philippines succinctly summarized state allies' interests to open the Decolonization Committee up to liberation movements

as the Committee on Information had limited terms of reference which obliged it to rely mainly on the information transmitted by the administering Powers and did not allow it to hear petitioners or, as a general rule, to consider Territories individually, his delegation considered that it would be in the interests of the Non-Self-Governing Territories to transfer that Committee's function at the appropriate time [to the implementation venue] (A/AC.35/SR.276: 14).

The Trusteeship Council and the Committee on Information had from their point of view outlived their utility. Consequently, liberation actors turned state delegates focused their attention on creating a more robust Decolonization Committee that was to be open to liberation movements without restrictions. Their interests no longer lay in setting standards to challenge prevailing conceptions and practices of state sovereignty but to oversee the application of a new composite institution of state sovereignty. The venue's mandate reflected this new attitude, and derived from Resolution 1514 (XV). Particularly with respect to state's administering Trust and

NSGTs the Resolution required them to take “immediate steps” to transfer “all power to the peoples” and

without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction to race, creed or colour, in order to enable them to enjoy complete independence and freedom (A/RES/1514(XV): para 5).

The mandate of the Decolonization Committee suggested its function for liberation movements.

A UN press release outlined the venue’s weight as an implementation venue

to expose the facts, analyze the problems, propose measures for their solutions, and mobilize world opinion and appropriate United Nations organs in favor of the speedy implementation of its recommendations (GA/COL/611).

In fact, and a basic condition allowing liberation movements to use the venue in these ways, was that it was given an unprecedented flexibility to set rules and procedures thus freeing the venue

to carry out its task by employment of all means which it will have at its disposal within the framework of the procedures and modalities which it shall adopt for the proper discharge of its functions (A/RES/1654(XVI): para 5).¹⁹⁷

Interestingly, and an indication for deeper socialization, was also that some colonial states who had abstained from voting on Resolution 1514, supported the creation of the new venue and openly recognized its mandate. The “climate of thought” as one United States delegate declared had changed (A/5238, para 22).¹⁹⁸ This is pertinent because it emphasized the role of state allies as norm leaders to socialize colonial states to change to norm followers by agreeing to the opening up of the IGO to non-state actors (Keck & Sikkink 1998: 895).

¹⁹⁷ A/RES/1810 (XVII) charged the venue with unprecedented functions to propose “specific measures” and to “continue to seek the most suitable ways and means for the speedy and total application” of Resolution 1514.

¹⁹⁸ The US, Belgium, Australia abstained from voting on A/RES/1514 (XV) but voted for the Decolonization Committee. See specifically debates on petitions, with Britain and the US seeing value in granting petitions and visiting missions (ibid., para 25).

Second, and in terms of its position, the venue became the sole IGO body concerned with matters relating to dependent territories.¹⁹⁹ The Decolonization Committee centralized UN oversight in implementing Resolutions 1514 by absorbing the Committee on Information, the three Sub-Committees on the Situation in Angola, Portuguese Territories and South Africa. The importance here is also that state allies achieved that the venue's position in the IGO hierarchy was elevated, as one of its subsidiary bodies of the General Assembly. This greatly improved the venue's rank compared to its predecessors.²⁰⁰

Third, the venue also differed markedly from its predecessors with respect to its composition. This was because the principle of equal representation of administering and non-administering states as practiced in the Committee on Information and the Trusteeship Council was exchanged by membership based on geographical representation. This change in composition essentially provided state allies of liberation movements a built-in majority in the venue. Membership composition was also larger than in the predecessor venues was composed of seventeen members and later enlarged to twenty-four members in 1962 (A/RES/1810 (XVII)). In addition, a further indication for the central role of state allies as "norm leaders," was that the chairperson leading the venue were predominately chosen from newly independent state delegates from Africa and Asia.²⁰¹ The role of chairperson's driving IGO venue outcomes, became generally more important, and evolved into a mechanism for change that will be argued in greater detail in the next chapter concerned with indigenous peoples.

Fourth, with regard to its adapted rules and procedures, the venue no longer relied on formal voting, as was practice in the Committee on Information, but took the majority of its

¹⁹⁹ The Trusteeship Council also reported to the venue. Nauru gained independence in 1968 and Palau in 1994.

²⁰⁰ By 1970 after most NSGTs achieved independence the venue was tasked to inform the Security Council about situations in Portuguese controlled territories (Santos 2012).

²⁰¹ 1962, C. Jha (India); 1963-1965, Sori Coulibaly (Mali); 1966 G.B.D Collier (Sierra Leone); 1967-1968 J. Malecela (Tanzania); 1969, M. Mestiri (Tunisia); 1967, D. Nicol (Sierra Leone); 1971, G. Nava Cariilo (Venezuela); and 1972-1975, Salim A Salim (Tanzania).

decisions through unanimous agreement.²⁰² This procedure in combination with taking verbatim records meant that colonial states had to declare their positions and could no longer rely on watering down draft resolutions by procedural and/or substantive amendments.²⁰³ These changes, and a general lesson, highlight how procedural alterations between venue's impact their respective capacity to be used as tools to assert moral pressure. This was especially evident as draft resolutions in support of liberation movements were no longer held back by colonial votes but were guaranteed to be passed onto the Fourth Committee and GA for adoption.²⁰⁴

Fifth, and with respect to the access and participation by liberation movements, the venue's expanded rules and procedures revealed state allies' success to translate Trusteeship Council mechanisms, as previously analyzed, to the Decolonization Committee. The venue took over petition and visiting mission mechanisms from the Trusteeship Council. Critical for liberation movements participation was that it applied it to all remaining dependent territories, and regardless of whether they were Trust Territories or NSGTs.²⁰⁵ Beyond translating existing procedures into its work, the venue was also authorized to meet away from UN headquarters, whenever and wherever such meetings were deemed necessary for the effective discharge of its functions. The venue was testament to state allies long-standing objective to open the IGO up to liberation movements, yet went beyond available petition and visiting mission mechanisms by holding sessions away from UN headquarters. It also sent visiting missions to liberated areas under the control of liberation movements, against colonial state's consent.

²⁰² States reserved their right to call for a vote or express their reservations.

²⁰³ Prepared as official summary records by the UN Secretariat.

²⁰⁴ By 1970 the General Assembly began to "deeply deplore" and "condemn" colonial states and white minorities governments lack of co-operation with the venue and "urged" states to follow the repeated recommendations of the Decolonization Committee to implement Resolution 1514 without delay (see for instance A/RES/2701(XXV)).

²⁰⁵ In 1962 a debate took place in the venue centering on two fundamental venue functions: the sources and procedures of information and petitions it was to handle (A/5238, para 112(c)).

This type of procedural translation as discussed in the five points above is more generally noteworthy because it illustrates how state actors interested in extending non-state actor access draw on existing procedures to extend these elsewhere in the IGO. In fact, and with respect to the co-constitution of agency and structure, liberation actors turned state allies argued that these participation channels had “proved useful” to their own liberation efforts and proposed that the venue adopt these in “accordance with practice followed by the Trusteeship Council” (A/5238, para 29-32).²⁰⁶ The translation of participatory mechanism from one venue to another thereby offers insights with respect to the nested nature of IGO venue’s: The Decolonization Committee was not only more robust than the Committee on Information but was based on a procedural blueprint that had been in place for the much smaller list of Trust Territories and that were under the purview of the Trusteeship Council.

The extensive use by liberation liberation movements of petitions, as a source of information and symbolic politics, stands out supported by the observation that

Many petitioners revealed an almost mystical faith in the powers of the U.N. to force the administering powers to grant them immediate independence (International Conciliation 1962: 66).

By 1974 the venue had handled a total of 1258 written and verbal petitions (A/6700/Rev.1., para 148).²⁰⁷ The majority of which were political statements made by liberation movements and that included proclamations made by national liberation parties, student and revolutionary movements seeking independence for a particular NSGT (Khol 1970: 42). As a consequence, the venue obtained first-hand information on conditions in still remaining NSGTs and no longer relied on information provided by colonial states alone. Liberation movements participated in the

²⁰⁶ They reasoned that since the Decolonization Committee was established by the GA it could employ and borrow the same procedures use by other GA committees and the Trusteeship Council.

²⁰⁷ In 1967, a highpoint of independence in Africa, the Decolonization Committee received 479 petitions. Petitions began to drop to only six by 1975 and three by 1976 (A/10023/Rev.1., para 52).

Decolonization Committee through petitions and oral hearings.²⁰⁸ Certainly, this indicated how Trusteeship Council procedures were finally translated to all NSGTs.

For example, Kenneth Kaunda the incumbent first president of Zambia, who had been imprisoned for his liberation activities, stated that he appeared before the venue for a simple reason as

no self-respecting African nationalist leader could remain passive while the rights of his people were trampled on [and that the] people of Northern Rhodesia were quite ready to rule themselves [by means of] one man, one vote, one value (A/5238: para 52-60).

Noteworthy, here and elsewhere, was that colonial states no longer denied colonized peoples self-determination and human rights - as they had a decade earlier when attempting to include the colonial exemption clause - but argued that they

had never claimed that relations between the races in Northern Rhodesia were perfect [and although] beyond the power of government action [the] declared objective of government policy was the abolition of discrimination based on equal rights (A/5238: 92).

State allies active in the venue, in turn, used this information to ascertain the wishes and political goals of peoples in NSGTs, contest colonial regimes and their human rights record in particular, and included this evidence in its recommendations to the GA for the speedy implementation of self-determination and independence. Decolonization Committee reports underlined petitioners' testimonies by observing, for instance, that

appalling conditions prevailed [and that] the will of the African people in Northern Rhodesia was denied expression, there was no universal and equal suffrage for the non-Whites, the electoral system made a mockery of democracy, people were grouped into upper and lower categories, and fundamental liberties, such as freedom of speech, of assembly or of movement, were not always available to the Africans and their leaders (A/5238: 106).

²⁰⁸ Liberation movements relished the venue's status and used it to reverse the "earlier master-servant relationship" (Barber 1975: 145).

Numerous GA resolutions, first drafted by the Decolonization Committee, repeatedly affirmed liberation movements interventions and prominently placed “having heard the statements of the petitioners” before “having also heard the statement of the representative of the administering Power.”²⁰⁹

Furthermore, the venue gave liberation movements not only greater participatory rights at the UN but in contrast to available, and by now exhausted venues, fostered a deeper international status recognition (A/8723/Rev.1, para 103). Venue members decided in 1972

to consider inviting, in connexion [sic] with its consideration of the relevant items, in consultation with the O.A.U and through it, the representatives of national liberation movements concerned, to participate, whenever necessary and in an observe capacity, in its proceedings relating to their respective countries (A/8723/Rev.1, para 103).

The GA affirmed the venue’s proposal in 1974. The UN thereby invited all liberation movements, recognized by the Organization of African Unity (OAU) to participate in the work of its main organs and subsidiary bodies and requested the Secretary-General to arrange “for their effective participation, including the requisite financial provisions” necessary (A/RES/3280 (XXIX), para 6). Most crucially was that the venue recognized liberation movements by granting their representatives official status as observers and by compensating them from UN funds to attend international conferences and, in some cases, invited them on the same basis as sovereign states (A/RES/3280 (XXIX), para 6). Liberation movements, in turn, drew on the venue to bolster their status as the only legitimate representatives of NSGTs. They could do so because the GA recognized

the legitimacy of the struggle by the peoples under colonial rule to exercise their right to self-determination and independence and invites all States to provide material and moral assistance to the national liberation movements in colonial Territories (A/RES/2105 (XX) (1965), para 10).

²⁰⁹ See for example A/RES/2184 (XXI) (1966); A/RES/2355 (XVII) (1967);

This shift in status recognition meant that they could actively participate in the IGO and without necessarily requiring colonial state's consent.²¹⁰ The venue's key function, in effect, was that it continued to facilitate liberation movements' entry into the UN as independent states. The GA consistently supported liberation movements while emphasizing the relevance of the Decolonization Committee when it stated that

national liberation movements in several colonial Territories, and particularly in Africa, require the urgent assistance of the specialized agencies [...] in their struggle to attain freedom and independence (A/RES/2426 (XXIII), page 2).

Taking the above points together, the implementation venue and under the lead of liberation movements turned state allies, provided an unprecedented open forum to liberation movements during the norm cascading phase. The Decolonization Committee, as I showcase through exemplary cases below, turned into the most active institutional arrangements in the IGO to implement a reformulated composite institution of state sovereignty as outlined in Resolution 1514 and according to the principles in Resolution 1541. The venue, as such, exerted consistent moral pressure together with the direct participation by liberation movements, against a small number of the most recalcitrant colonial states.

3.4.2.1 Access and Participation by Liberation Movements through the Implementation Venue: If not by Colonial State Consent then by Proxy

Perhaps the most effective adaptation of existing access and participation mechanisms was that venue members decided to hold meetings away from headquarters in order to connect liberation movements with the venue. Given that the most obstinate colonial states refused to co-operate with the venue's requests to visit certain NSGTs, venue members decided to hold Decolonization Committee meetings away from UN headquarters and in state's that supported direct contacts

²¹⁰ By the mid 1970s numerous liberation movements had participated as observers in the Decolonization Committee thus making the request for hearings or submissions of petitions obsolete as they effectively gained direct access to the debates short of voting (A/9023/Rev.1, para 88).

with liberation movements.²¹¹ In a departure from previous practice - whereby state allies viewed colonial state co-operation as essential - the implementation venue conducted three such meetings and for a total of three weeks in Tangier, Morocco; Dar es Salaam, Tanzania and Addis Ababa, Ethiopia.²¹² Venue delegates during these meetings heard petitions from seventeen liberation movements.²¹³ These liberation actors did not seek to alter the reformulated composite norms of state sovereignty but challenged the lack of compliance by colonial states intending to hold onto - by now outdated - colonial understandings of state sovereignty. They all gave lengthy statements on the political conditions in their respective territories and urged the Decolonization Committee to bring their demand for immediate self-determination and national independence before the GA.²¹⁴

Noteworthy, with respect to changing venue characteristics was, that these meetings were essentially an adaptation of existing access and participation mechanisms. By holding meetings in newly independent states, venue members side-stepped colonial states' refusal for visiting mission and, as venue members explained, sought redress to "one of the most effective means" to do its work (A/5800/Rev.1, para 159 and 162-165). The decision to hold meetings away from headquarters - and as a substitute for visiting missions - thereby affirm the centrality of processes that establish non-state actors access and participation to IGO venue's.

²¹¹ A/RES/1654 (XVI)

²¹² Tanzania stood out in this regard. The OAU established a Liberation Committee in Dar es Salaam in 1963. The Committee functions were: mobilization of resources for the liberation struggle; garnering support of international solidarity for liberation; assisting the liberation movements financially and materially. Tanzania gave refuge to the *South West Africa People's Organization* (SWAPO) the *Liberation Front of Mozambique* (FRELIMO) the *African National Congress* (ANC), the *People's Movement for the Liberation of Angola* (MPLA), the *Zimbabwe African People's Union* (ZAPU) (Williams 2011).

²¹³ Kenneth Kaunda future President of Zambia representing the *United National Independence Party* (UNIP); Joshua Nkomo, the leader of the *Zimbabwe African Peoples Union* (ZAPU); and others from Bechuanaland, Zanzibar, Kenya, Mozambique, and South West Africa (A/5238).

²¹⁴ They provided testimony on racial discrimination, human rights violations, deplored the continued existence of forced labor, political imprisonment, torture, laws which discriminated against Africans, the lack of universal suffrage, depriving the freedom of association and speech.

Venue members argued, with respect to access, that these meetings allowed them to get into closer contact with colonized peoples

thus placing it in a more favorable position to get a realistic view [of the problems in their progress towards self-government and independence. Moreover, they trusted that these linkages - apart from the] psychological impact on the African peoples who places so much hope on the work of the Committee [benefited liberation movements as they] also lighten the financial burden [and enable those to participate] who would otherwise have found it impossible to travel [to New York] (A/5238: 20).

Allies clearly understood that if visiting missions were not possible, then meetings away from headquarters still enabled the access and participation of liberation movements in the venue. This enhanced the level of moral pressure against colonial states.²¹⁵ Overall, these adaptations served as a catalytic tool for liberation movements ability to directly establish contact with the highly receptive Decolonization Committee which was responsible to implement the new and reformulated composite institution of state sovereignty.

Colonial states responses to these meetings away from headquarters and/or to allow the venue to send visiting missions to connect with liberation movements varied but by the early 1970s moved towards greater compliance. For example, as in the case of Aden, the Decolonization Committee at first decided to interview petitioners, including liberation leaders, sultans and members of the Aden Legislative Council – by proxy in the United Arab Republic - after Britain refused to permit a visiting mission in 1963 (Chang 1972: 47).²¹⁶ Subsequently, in 1966, Britain reversed its position, and declared that it would fully cooperate and support a visiting mission by the venue (A/6557, para 18).²¹⁷ Three years later the British agreed to a UN

²¹⁵ (A/5238: para 202-206).

²¹⁶ (A/AC.109/L.159).

²¹⁷ (A/RES/2183 (XXI, para 5; see also A/RES/1949 (XVIII)). See generally the United Nations Repertory of Practice on Article 73 and especially Supplement Number 3 to 5 covering the period of 1959 to 1978 (available online at www.un.org/law/repertory).

supervised plebiscite following liberation movements' increasingly militant demands on the ground (A/RES/1949 (XVIII)).

As the precedent set by the venue to meet away from headquarters - as a substitute for visiting missions - became more established, colonial states' resistance to visiting missions decreased. Consequently, the Decolonization Committee's ability to shape the empirical processes of implementing Resolution 1514 and to foster connections with liberation movements improved. For example, Spain – in attendance at the 1966 Decolonization Committee meeting in Algiers - agreed to a visiting mission to Equatorial Guinea (Fernando Póo and Río Muni) to verify the political situation on the spot (A/AC.109/SR.451). The visiting mission affirmed the overwhelming demands for decolonization by Guineans (A/AC.109/186). The visiting mission verified that liberation movements demanded to set a date for independence from Spain no later than July 1968 (A/C.4/SR.1748).²¹⁸ Accordingly, and under the supervision of the implementation venue, a referendum took place on 11 August 1968 followed on 22 September by elections, which was also supervised by the UN (A/7200/Rev.1). The venue's chairman lauded Spain's co-operation as a positive factor that enabled the IGO to play a significant and useful role in assisting a peaceful transition of Equatorial Guinea's independence on 12 October 1968 (A/RES/2384 (XXIII)).

From this point forward positions on the question of visiting missions began to change with Australia, France, New Zealand, the UK, Portugal, Spain and the US all agreeing to the practice of visiting missions by the Committee.²¹⁹ With the majority of NSGTs having gained independence reputational cost plausibly impacted even the most obstinate colonial states to

²¹⁸ The venue prepared for a constitutional conference and to supervise a referendum and general elections (A/AC.109/SR.635).

²¹⁹ (A/AC.109/450).

accept the implementation venue's role at this stage.²²⁰ Crucially, in this regard was that the universal right of self-determination was from 1970 linked with a threat to international security and was fully accepted as a part of the new composite institution to state sovereignty. The UN, in effect, declared that colonialism constituted a "crime" and upheld the right of peoples "by all necessary means at their disposal against colonial powers which suppress their aspirations for freedom and independence" (A/RES/2621). At this juncture the Decolonization Committee, begun to access so-called 'liberated territories' under the protection of liberation movements and no longer necessarily sought colonial state's co-operation.

The Decolonization Committee undertook its perhaps most dramatic visiting mission to the liberated areas of Guinea-Bissau in 1972 (A/8423/Rev.1). This decision was without precedent, not only because it went against Portugal's adamant objection, but because it occurred under the protection of a liberation movement; the *Partido Africano da Independência da Guiné e Cabo Verde* (PAIGC). To add insult to injury Portugal was delegitimized further when the GA declared, following the visiting mission, that the PAIGC was "the only authentic representative of the people of the territory" and affirmed that it exercised control over large portions of the territory (A/AC.109/400). Guinea-Bissau declared its independence on 24 September 1973 and within a month was given diplomatic recognition by over seventy UN member states. While the military struggle by the PAIGC was unquestionably a driving factor on the ground, the Decolonization Committee's visiting mission provided additional and irrefutable evidence as to the efficacy and veracity of the PAIGC and the illegitimate claims by Portugal. Portugal faced increasing international isolation, arms embargoes and other UN sanctions and finally curbed to

²²⁰ Spain, Portugal, Rhodesia and South Africa were left increasingly isolated at the UN.

pressure and accepted international obligations for its former colonies with Angola and Mozambique gaining independence in 1975.²²¹

The challenge to state sovereignty based on a universal application of self-determination in NSGTs, and under the scrutiny and supervision of the Decolonization Committee, was largely complete by the mid 1970s. After this stage, and often neglected by the decolonization literature, was that the Decolonization Committee's efforts to implement Resolutions 1514 and 1541 became difficult to expedite.²²² This was largely due to the fact that, following the rapid move to independence in Africa, the majority of remaining NSGTs were small islands in the Caribbean and the South Pacific which defied easy political transitions and accelerated independence processes.²²³ The Decolonization Committee no longer sought independence for these territories but began supporting other forms of achieving self-determination. As Aldrich and Connell have shown in their study of the "last colonies," colonial states went through great pains to demonstrate that these territories status was, if not always satisfactorily, at least approved and supported by the inhabitants. The significance of the Decolonization Committee consequently waned and today is considered an anachronism whose purpose has been fulfilled (Aldrich & Connell 1998: 158).²²⁴

²²¹ Portugal experienced a coup d'état in April 1974 which was linked to domestic grievances against the unpopular colonial wars in Africa.

²²² Southern Rhodesia (1980), Namibia (1990), South Africa (1994) (See on the latter Klotz 1995).

²²³ In 1991 the Decolonization Committee observed and the GA declared that remaining NSGTs "many of which are small island Territories, also suffer from handicaps arising from the interplay of such factors as their size, remoteness, geographical dispersion, vulnerability to natural disasters, the fragility of their ecosystems, constraints in transport and communications, great distances from market centres, a highly limited internal market, lack of natural resources, weak indigenous technological capacity, the acute problem of obtaining freshwater supplies, heavy dependence on imports and a small number of commodities, depletion of non-renewable resources, migration, particularly of personnel with high-level skills, shortage of administrative personnel and heavy financial burdens" (GA/REX47/70).

²²⁴ The venue continues to list a total of seventeen territories which are all small islands with the exception of the Western Sahara (See <http://www.un.org/en/decolonization/nonselvgovterritories.shtml>).

Most of these territories negotiated some form of constitutional relationship with existing state's and did not seek independence for pragmatic reasons.²²⁵ Liberation movements from these territories no longer sought independence *per se* but wanted alternative political outcomes. Notable, however, was that these outcomes were consistent with Resolution 1541 and often involved forms of expressing self-determination through free association or internal self-government with an existing state.²²⁶ What is more, colonial states co-operated with the Decolonization Committee. Beginning in 1971 state's agreed to a visiting mission to the Trust Territory of Papua and an additional fifteen visiting missions to other remaining NSGTs. Colonial states also submitted information to the venue in which they justified the political status of the territory and agreed to hold referenda and/or plebiscites on the future of the territory in question, some under UN supervision.²²⁷ Even with respect to these micro-states, the application of self-determination became the standard by which political aspirations of peoples came to be judged. Notwithstanding, this last episode is significant, as it foreshadows the next chapter concerned with indigenous peoples of whom many today also demand the application of self-determination through varied forms of self-government with existing state's.

3.5 Conclusion

This chapter analyzed the conditions that first constrained and later enabled liberation movements use of United Nations venues to challenge state sovereignty. I demonstrated the value of focusing on access and participatory mechanisms, the essential role of allies as well as the relevance of venues through analyzing a) the norm emergence phase which coincided with

²²⁵ A notable exception was the case of New Caledonia (See for a discussion Aldrich & Connell 1998: 131).

²²⁶ A precursor to this late stage of decolonization was established in 1965 with the Cook Islands entering into free association with New Zealand.

²²⁷ Referenda and plebiscites were conducted in Bermuda, Christmas Islands, Cocos (Keeling) Islands, Comoros, Curaçao, Gibraltar, Guam, Mayotte, Netherland Antilles, New Caledonia, Northern Marianas, Puerto Rico and the United States Virgin Islands.

the institutional design of the IGO, b) the standard-setting phase which highlighted the central role of liberation actors turned state allies as well as c) the norm cascading phase of consolidating and implementing a universal norm of self-determination and human rights with a special focus on the Decolonization Committee.

Above all else, I explained the process of universalizing self-determination and grafting to international human rights norms and concomitant challenges to state sovereignty. I accounted for the normative changes that delegitimized overseas colonialism and ushered in a fully global system of sovereign states. This process was illuminated through a focus on the interactions in the United Nations between drivers and opponents of such change. I analyzed the activities by liberation movements, non-state actors turned state diplomats from Africa and Asia, and the UN Secretariat staff in an attempt to account for the post-World War II alterations to state sovereignty.

More specifically, I further build on existing accounts and showcased that liberation movements were able to challenge understandings and expectations about colonial states' sovereign authority at the UN because state allies, who as I sought to substantiate were often former liberation leaders before, universalized the norm of self-determination from its limited application in Europe and grafted it as a collective human right to apply equally and a non-discriminatory basis to all peoples in overseas colonies. My objective, furthermore, was to explain how the growing influence of newly independent states from Africa and Asia - acting as allies - was procedurally based on utilizing GA decision-making procedures and driven through a number of successive resolutions clarifying and modifying UN Charter provisions. Critically, the co-constitutive transformation of formerly national liberation actors ascending to statehood transformed understandings and practices of state sovereignty as well as the identity of the UN. I

posited that enabling conditions surrounding institutional design features for holding colonial state's accountable, providing for UN oversight and liberation movements access and participation were first expanded during the institution building period at San Francisco in 1945.

The activities during the United Nations institutional design phase have received little systematic attention in the literature. The findings I discussed allow to draw some interesting lessons, however. Liberation movements activities in the lead up and during the San Francisco and London conferences demonstrated that they identified the new IGO as a propitious venue for change. Their influence itself was limited given that they lacked meaningful access and participatory capabilities. Under conditions of a lack of direct access and limited participatory capabilities the linkages between liberation movements and US civil society actors with access as formal consultants are particularly noteworthy. Their joint tactics of employing information and symbolic politics ensured that states, at minimum, vaguely committed to human rights and the principle of self-determination in the UN Charter. Perhaps their biggest achievement was that states reversed their position on the issue of human rights.

Concurrently and more influential at this stage was however the central role of norm entrepreneurs active in institutional design venues. State actors such as Bunche, Romulo, Koo and Pandit pushed liberation movements agenda in the UN along. They did so despite that the big five powers retained operational oversight and forwarded most Trusteeship proposals. The first Secretary-General Lie also impacted outcomes. With respect to the relevance of venues, especially Committee II/4 and ExCom enabled these norm entrepreneurs: a) they took advantage of the venue's mandates and exploited them to introduce informal proposals and b) they shifted the debate and prevented states from backsliding by concluding Trust Agreements.

Institutional design negotiations proved to be a catalyst for establishing a challenge to state sovereignty. Liberation movements drew on these achievements to accelerate their independence. A process that was largely complete within thirty years of the San Francisco Conference.

The challenge to state sovereignty, as discussed, came to be framed on the basis of territorial integrity *and* universal demands for self-determination and human rights. The question of enhancing UN oversight favored by allies still clashed with the assertions of the norm of non-interference colonial states wanted to maintain. Liberation movements, at this stage, largely depended on state allies who were able to draw on available institution building venues to set such a frame. While liberation movements garnered wide public attention, allies who shared a history of liberation kept colonial states accountable by pressuring them to list Trust and Non-Self-Governing Territories. Liberation movements attempts to enter the UN and allies constant pressure on colonial states to work towards implementing a universal norm of self-determination and human rights picked up during the standard-setting phase.

Until the mid 1950s state allies foremost worked to extend normative and procedural mechanisms available to liberation movements from Trust Territories to the much larger list of NSGTs. Key to this process was to break the artificial distinction colonial states had maintained and to unify UN Charter Chapters XI, XII and XIII. In fact, the translation of normative and procedural obligations from Trust to NSGTs by these actors was a necessary condition for other liberation movements from NSGTs to challenge state sovereignty through the IGO in later years. Most striking was that state allies achieved these outcomes through persuasion mechanisms that wrested concessions from colonial states through the Third Committee. They used the venue to draft the Human Rights Covenants that universalized the norm of self-determination and grafted

it onto the emergent human rights regime. Their actions repudiated colonial states' attempt to exclude the peoples from NSGTs from bearing these very rights. Concurrent procedural adaptations in the Committee on Information and above it, in the Fourth Committee, bolstered liberation movements recognition until they turned state actors. Allies, through their shared commitment to support liberation movements, actively shaped the accountability venue and linked its concrete work to the norm of self-determination and human rights. Their more forceful proposals to extend access and participation mechanisms from the Trusteeship Council to the Committee on Information, however, engendered strong colonial states' resistance and were accompanied by threats to walk out and revert to non-cooperation.

With these developments unfolding the UN constituency that challenged prevailing conceptions of state sovereignty grew steadily. In this connection it is important to appreciate that state delegates used their status as 'equal sovereigns' at the IGO to support liberations movements political activities in still dependent NSGTs. Liberation movements demand to access and participate was supplemented by state allies' activities to supply these mechanisms. These actors used their increasing voting leverage and affirmed UN authority to oversee the transferal of sovereignty from colonial rule to the peoples in NSGTs. By the mid 1950s newly state allies from Africa and Asia realized that colonial states would continue to hinder broader mandates for the Committee on Information. They correspondingly changed their approaches by questioning the role of the UN itself by shifting venue, as I analyzed with respect to the Non-Aligned Movement in Bandung and beyond. The reverberation effects the NAM had engendered a more active response by member states in the United Nations.

Lastly, and with regard to the norm cascading phase, I demonstrated that the universalization of the norm of self-determination and it having been grafted with the emergent

human rights regime provided liberation movements from remaining NSGTs with a normative means to challenge the most recalcitrant colonial states and to gain sovereign authority as independent new states. The consolidation of this challenge occurred during the drafting and adoption of the *Declaration on the Granting of Independence to Colonial Countries and Peoples* in 1960. Resolution 1514 announced a new departure in international relations that delegitimized state sovereignty based on colonial empire and by elevating self-determination from a principle to a norm for all peoples. On the whole, procedural changes between venue's also highlight the utility to perceive of IGOs as nested venue's and how actors may use and draw on them to adapt and translate rules and procedures to other venue's within the structure of an IGO. I demonstrated this by showcasing the translation of access and participation mechanisms from the Trusteeship Council to the Decolonization Committee. I further showed that the Decolonization Committee went beyond existing mechanisms by holding meetings away from headquarters. Ultimately, the access and participation by liberation movements through petitions and visiting missions equipped them to use the implementation venue as a propitious forum to hold colonial states accountable. Without a doubt, the Decolonization Committee played a key role to connect liberation movements call for independence on the basis of self-determination and human rights and later linked these to the arguably most central purpose of the UN itself, namely by declaring colonialism a crime that constituted a threat to international peace and security.

It was also an indication of how the UN itself emerged as a central arbiter through which former liberation movements ascending to statehood practiced, and against the by now outdated colonial norms of sovereignty, a composite institution of sovereignty based on formal equality, human rights and self-determination. The contestations of making the UN more representative, first formulated in Bandung, had found their perhaps clearest expression in the adoption of the

Declaration on the Granting of Independence to Colonial Countries and Peoples which provided an unprecedented mandate for the Decolonization Committee. The venue's work was a procedural testament to the profound normative change that had taken place. It demonstrated the final stage of going beyond state allies' objective of unifying UN Charter provisions. The venue pushed past of what these actors themselves considered possible only fifteen years prior. Liberation movements could rely on the UN to amplify their international voice while receiving an unprecedented level of moral and material support through the IGO, and the Decolonization Committee in particular. Especially former liberation movements, becoming state delegates, devoted immense energies and efforts through the Decolonization Committee to open the venue up to other liberation movements and support the independence of peoples in still existing NSGTs.

Generally speaking, it is clear that petitions and visiting missions in particular had an indisputable value for liberation movements as a means of providing information on conditions in NSGTs and of voicing their views, wishes and aspirations of applying self-determination and achieving independence for NSGTs inhabitants. The ability to offer first-hand information had been useful for liberation movements from Trust Territories during the standard-setting phase and was subsequently used by other liberation movements from NSGTs during the norm cascading phase. These access and participation mechanisms, in turn, made it possible for the Decolonization Committee to formulate concrete proposals for implementing Resolution 1514 and according to the principles outlined in Resolution 1541. Over the years, and following the venue's recommendations, the GA kept the challenge to state sovereignty constant and adopted a multitude of resolutions stressing the urgency of transferring sovereignty to the peoples in a

dwindling number of NSGTs. In fact, with less and less liberation movements needing its assistance the venue became effectively unnecessary by the mid 1970s.

4. Indigenous Peoples at the UN

4.1 Introduction to the Chapter

This chapter applies the theoretical framework of this dissertation by analyzing how indigenous peoples have used and continue to use the United Nations. It argues that these non-state actors drew on the Intergovernmental Organization to challenge the consolidated institution of state sovereignty analyzed in the previous chapter. Indigenous peoples also based their demands on self-determination and human rights from which they had been excluded. My key contribution to the available literature is to demonstrate the evolution of how indigenous peoples accessed and participated at the UN from the early 1970s to date. Relatedly, I also draw attention to how independent human rights experts, UN Secretary staff and state allies worked from within the IGO to support indigenous peoples' advocacy. This short introduction a) briefly situates the case study historically, b) sketches indigenous peoples' challenge to state sovereignty and c) provides an outline of the argument.

4.1.1 Historical Context

Indigenous peoples attempting to claim rights through Intergovernmental Organizations (IGOs) have historically been unsuccessful. Their first attempt to engage an IGO dates back to the League of Nations. Levi General Deskaheh, chief of the Younger Bear clan of the Cayuga Nation and spokesperson of the Six Nations of the Grand River Land, Ontario, traveled to the League of Nations in Geneva, Switzerland in 1923 to demand sovereign statehood but his attempts to establish contacts with the IGO failed. One year later, Maori leader Ratana also appealed to the IGO but his complaint about violations of the Waitangi Treaty was not heard either (Dahl 2012: 26). The denial of states to allow indigenous peoples access to the forum remained a major stumbling block that thwarted effective indigenous advocacy in the IGO. The

League of Nations was not receptive to sovereignty claims conflicting with the interest of states and clarified that the assembly

while recognizing the fundamental right of minorities to be protected [...] against oppression, insists on the duty which is incumbent upon persons belonging to minorities of race, religion, or language to cooperate as citizen loyal to the nation to which they now belong (cited in Niezen 2003:34).

In 1948, it appeared that the newly created United Nations (UN) might offer a venue for the evolution of indigenous peoples' rights. Bolivia proposed to establish a Sub-Commission under the GA's Third Committee to study the situation of the "aboriginal populations of the American continent" (Stamatopoulou 1994: 66).²²⁸ Several states, including the USA, Brazil, Chile, France, Peru, and Venezuela objected because UN Resolution 275(III) stated that indigenous peoples could request an inquiry through their participation in the *Instituto Indigenista Interamericano*. These States denied indigenous peoples access to the UN by banning any such studies unless requested by a member state (Barsh 1986:370).

The UN did not take action until 1970 when ECOSOC requested a different sub-organ under the Commission on Human Rights (CHR), the *Sub-Commission on Prevention of Discrimination and Protection of Minorities*, to prepare a *Study on the Problem of Discrimination Against Indigenous Populations*. One indigenous delegate involved in engaging the UN summarizes this period as follows:

If you go to begin with 1923 and you go to 1977 there is a dark period, meaning there is a silent period where our voice is not heard. Consequently, two things are happening. One is your voice is not being heard when you try to raise concerns about treaty violation, for example, so wilfully violations are going on and the second part [...] is that in 1948, the human rights charter or the Universal Declaration on Human Rights is debated [and] passed

²²⁸ Bolivia's resolution asked ECOSOC to collaborate with the *Instituto Indigenista Interamericano*, to which indigenous peoples had access (Hannum 1988). The Institute was established in 1940 by the Unión Panamericana to research the 'development' of indigenous peoples. The main objective was "a more profitable utilization of the resources of America to the advantage of the world" achieved through "the material and cultural development of these populations" (A/RES/275(III)).

but indigenous peoples are excluded [...] We are not there, we are not present, we are not mentioned [...] that is why one of the significant reasons from 1977 on is that we had to argue that we need our own declaration to recognize that we are peoples and to recognize we have human rights so that we can catch up to 1948 when we were excluded (Anonymous Interview 2014).

My case study begins when this "dark period" of excluding indigenous peoples ended. I show how indigenous peoples challenged understandings and expectations about states' sovereign authority in regards to practices affecting indigenous peoples.

4.1.2 Indigenous Peoples' Challenge to State Sovereignty

Indigenous peoples used the UN for two key purposes. First, they drew on the IGO to assert their status as "peoples" under international law. This corrected terminology that had labeled them "indigenous populations," a category which states used to justify assimilationist and discriminatory policies. Second, and following on from the previous chapter, they developed a "non-statist" conception of self-determination. This conception of self-determination, and its link to existing international human rights, challenges the norm of non-interference because it implies that states have an international obligation to adjust constitutional configurations and negotiate autonomy and self-government arrangements with indigenous peoples.²²⁹

This chapter's primary focus is to analyze the co-constitutive process of indigenous peoples' as recognized international actors and one that shifted existing interpretations of self-determination from a right for overseas colonies to gain independence, the focus of the previous chapter, towards the affirmation of the rights of indigenous peoples rights to plural sovereignty arrangements. I demonstrate how a "non-statist" norm of self-determination was grafted onto the existing human rights regime and established that indigenous peoples' rights condition, but do not restrict, the norm of territorial integrity, which is a matter of great importance to states.

²²⁹ Indigenous peoples right of self-determination is expansive and a dynamic incremental process which involves autonomy over political, social, cultural, and economic matters and control over territories, land and resources.

Notwithstanding, states are challenged to not only treat indigenous peoples within their borders on the basis of equality and non-discrimination, but also to devolve authority to Indigenous communities, including territorial control. Given the gap in domestic implementation, indigenous peoples, as rights-holders, continue to contest the lack of compliance of states through the UN.

4.1.3 The Argument in Brief

The history of indigenous peoples' advocacy at the UN is relatively well documented (Wilmer 1993; Brysk 2001; Keal 2003; Lightfoot 2009; Dahl 2012). My key contribution, apart from testing theoretical expectations, is to demonstrate the convergence of indigenous peoples' advocacy with the actions by UN allies through relevant venues. In particular, I demonstrate how early interactions helped indigenous peoples to gain access and participation at the UN. I also augment existing accounts by offering a detailed analysis on the final adoption process and concomitant institutionalization of indigenous peoples' rights by drawing on first-person accounts that have only recently become available and by triangulating these with archival material and semi-structured interviews with key actors.

More specifically, I trace the evolution of establishing a challenge to state sovereignty by focusing on three phases. First, in the *norm emergence phase*, indigenous peoples needed to identify existing institutional interests and locate receptive venues for tabling their rights claims. Beginning in the early 1970's UN allies started to focus on indigenous peoples on the basis of human rights concerns under the *Sub-Commission on Prevention of Discrimination and Protection of Minorities* (hereafter the Sub-Commission). Indigenous peoples, excluded from the UN, formed transnational coalitions and sought formal access to the UN. Adding to existing literature, I show how receptive venues were formed in response to the demands of indigenous

peoples' coalitions and through the active support of the UN secretariat and state allies. The confluence of these actions initiated an indigenous peoples' boomerang pattern at the UN.

Second, identifying available venues and creating new ones was a precondition for indigenous peoples' access and participation in the *standard-setting phase*. The standard-setting phase had two moments. The first began in the 1980s when five members of the *UN Working Group on Indigenous Populations* (WGIP) began devising new human rights standards. I posit that the WGIP constituted a sheltered venue. It provided open access and offered indigenous peoples the ability to participate alongside states as active standard setters. These encounters culminated in a *Draft Declaration on the Rights of Indigenous Peoples* in 1994. I show that open access was made possible by the venue's chairperson, acting as a norm entrepreneur, and that this open access in combination with the establishment of an Indigenous Caucus (IC) strengthened indigenous peoples' participatory capacity in the sheltered venue. The role of allies was furthermore significant to strengthen their participation in the sheltered venue over time because the WGIP chairperson innovated new models of deliberation. The confluence of open access, cohesive participation by indigenous peoples and innovations for improved participation by the venue's chair, all impacted standard-setting activities. Following these activities, indigenous peoples shifted their engagement to a state-driven venue one level further up in the UN hierarchy. From 1994 to 2006, indigenous peoples and states participating in the *UN Working Group on the Draft Declaration* (WGDD), established a declaration text to be forwarded to the UN General Assembly. My contribution here is to demonstrate how indigenous peoples asserted the validity of their normative claims by establishing the WGIP Draft Declaration as the basis for negotiations through a tactic that has become known as the "no change" strategy. In other words, with respect to access and participation, I analyze how

indigenous peoples secured the translation of mechanism from the WGIP, a sheltered venue, to the WGDD, a state driven venue and veto point. Given these more constrained conditions, I further analyse how state allies and the WGDD chairperson used their leverage to secure forward momentum and helped built winning coalitions that led to the adoption of the declaration in the General Assembly in 2007.

Third, the *institutionalization phase* began with the adoption of the *UN Declaration on the Rights of Indigenous peoples* (UNDRIP) in 2007. My argument here is to show how indigenous peoples have strengthened their international status and contributed to the horizontal as well as vertical diffusion of indigenous peoples' rights through their permanent access and participation in several UN venues.²³⁰ Indigenous peoples participate in these venues in order to challenge state sovereignty and drive the implementation of UNDRIP. Despite the fact that these venues are marginalized by their particular positions in the UN hierarchy, the permanent presence of indigenous peoples continues to cement their agency and helps them shape outcomes with greater direct input. Specifically, I demonstrate how indigenous peoples continue to deepen and strengthen their access and participation to UN venues, and how they use their agency to equip these venues with greater responsibilities to oversee the implementation of indigenous peoples' rights and to hold states accountable.

This chapter provides a detailed analysis of how these three phases unfolded over a forty-year process. In doing so, it highlights the complex interactions of indigenous peoples, secretariat members, independent human rights experts, non-governmental organizations and states. Such a focus on multiple actors, as this chapter demonstrates, is central to explaining the dynamic role of evolving access and participation by non-state actors, the enabling and even essential support

²³⁰ State compliance with UNDRIP remains problematic especially given its legal status as a declaration. The *Permanent Forum on Indigenous Issues* (UNPFII), the *Expert Mechanism on the Rights of Indigenous peoples* and the *Special Rapporteur on the Rights of Indigenous peoples* and other related UN venues.

of allies to address state restrictions, and lastly how the combined activities of these actors involve the creation and utilization of venue's within the nested structure of IGO's to alter and contest prevailing understanding and practices of state sovereignty.

4.2 Norm Emergence Phase: Establishing Conditions for Access and Participation

This section focuses on the norm emergence phase of establishing indigenous peoples' rights at the UN during the 1970s and the early 1980s. First, I demonstrate the role of allies that facilitated the access and participation of indigenous peoples. Second, I analyze indigenous peoples' coalition-building and 'venue-shopping' efforts; efforts that resulted in the initialization of an indigenous peoples' boomerang pattern at the UN. Finally, I discuss the formation of the Working Group on Indigenous Populations, a sheltered venue, that would be responsible for setting standards for the human rights of indigenous peoples and one which would establish a challenge to state sovereignty within the UN.

4.2.1 Information Politics by Norm Entrepreneurs

The first step for indigenous peoples to challenge state sovereignty through the UN was to create institutional interest and to facilitate the access of indigenous peoples to UN venues. It began in the 1970s and depended on the intentional actions of the UN Secretariat and state allies. By drawing attention to the essential role of allies this section thereby adds to scholarship that offers insights on indigenous peoples' UN advocacy.²³¹ Allies pursued two objectives through lobbying other Secretariat members and diplomats active in the UN human rights system. First, in terms the status of indigenous peoples, they sought to collect information and initiated a thematic study that considered indigenous peoples as distinct from ethnic minorities. Second, they created opportunities for indigenous peoples' access by internally recommending a UN Working Group

²³¹ See on the latter for instance Xanthaki 2007, Lightfoot 2009, Dahl 2012.

on Indigenous Populations. Taking together, these early activities by allies have striking similarities to the initial conditions and developments discussed in the previous chapter.

These allies interacted in several venues: the UN *Commission on Human Rights* (CHR), a charter-based venue, as well as the UN *Sub-Commission on Prevention of Discrimination and Protection of Minorities* (the Sub-Commission), which consisted of twenty-six independent human rights experts. Another venue was added in 1976 with the establishment of the UN *Human Rights Committee* (HRC), with eighteen human rights experts.²³² These venues became more active in the 1970s under the influence of new rules which provided mandates to investigate consistent patterns of gross human rights violations (E/RES/1235 (XLII); E/RES/1503 (XLVIII)). These venues were relevant as they created focal points for allies interested in fostering the development of indigenous peoples' rights.

My contribution here is to demonstrate how a Secretariat member acted as a norm entrepreneur, which steered UN institutional interests on indigenous peoples' rights and their access. It is a story about Augusto Willemssen-Diaz, a lawyer from Guatemala and UN secretariat member in the CHR in Geneva. Willemssen-Diaz achieved goals by exploiting venue opportunities which gave him some freedom of action. This was because, as a member of the CHR Secretariat, Willemssen-Diaz was expected to remain neutral; but in reality, he carried out work for the independent human rights experts in the Sub-Commission. Beginning in the late 1960s he routed concerns over racial discrimination against indigenous peoples in the Americas

²³² The *Covenant for Civil and Political Rights*, and the *Covenant for Economic, Social, and Cultural Rights* were drafted by 1954, as noted, but not approved by the GA until 1966. In 1976 the HRC was established and composed of 18 independent experts after the covenants reached the required number of state ratification (<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>).

through the Sub-Commission, a venue which was able to criticize states' human rights records.²³³ He was aided by two further allies: Theo Van Boven and Carlos García Bauer.

As Willemsen-Diaz's superior, van Boven supported developing indigenous peoples' rights and their access. Van Boven was, from 1970 until 1975, the Netherlands' delegate to the CHR and, from 1977 until 1982, Director of the UN Human Rights Division in Geneva (today the Office of the High Commissioner for Human Rights (OHCHR)). He was a vehement promoter of NSA access to the UN, as they provided necessary information and because the CHR lacked both resources and staff to collect such information. The UN Secretariat, as a result of his efforts to create stronger linkages with civil society actors, yielded to state pressure and terminated his position in 1982 (Keck & Sikkink 1998: 97).²³⁴

Bauer was a fellow Guatemalan diplomat, and a respected drafting member of the *Universal Declaration of Human Rights*. Willemsen-Diaz convinced Bauer to make a statement in the Sub-Commission that indigenous peoples were mistakenly considered "minority groups," when in Bolivia and Guatemala they represented vast majorities (Minde 2008: 53). Bauer, in his capacity as state delegate, went on to suggest

a complete and comprehensive study of the nature and extent of the problem of discrimination against indigenous populations, [and which should include recommendations for] national and international measures for eliminating such discrimination (RES/4B(XXIII)1970, para 6).

Bauer's proposal passed the Sub-Commission and was taken up by ECOSOC, which, in turn authorized a thematic study with Resolution 1589 (L). The evidence here demonstrates the role

²³³ Indigenous peoples were determined to "work on recognition and respect for indigenous rights [...] I devoted myself to this issue [...] while fulfilling my obligations" in the UN Secretariat (Willemsen-Diaz 2009:18).

²³⁴ States criticized van Boven and claimed that the CHR was working too closely with NGOs.

of norm entrepreneurs, in so far as a secretariat member engaged a state delegate; to draw on an inconsistency in official UN statistics in order to justify IGO action.²³⁵

Against prevalent views on foreclosing indigenous peoples' rights, Willemsen-Diaz succeeded in getting a UN study underway that was not subsumed under the category of ethnic minority groups. In 1971, the Sub-Commission began to conduct a *Study on the Problems of Discrimination against Indigenous Populations*.²³⁶ It placed the responsibility of drafting the study with one of its independent expert members, Ricardo Martínez Cobo, who, in turn, asked Willemsen-Diaz to become its principal author and prepare the report that would become known as the "Cobo Study" (E/CN.4/Sub.2/476). Thereby, and often overlooked in the available literature, Willemsen-Diaz had not only justified IGO action, but was now also authoring a UN study and was "free to determine the content and order of the information obtained" (Willemsen-Diaz 2009:24).²³⁷

This independent drafting capacity allowed him to pursue substantive goals. This was because the study, although not officially finalized until 1984, produced preliminary draft chapters that were discussed by the Sub-Commission between 1973 and 1980 (Eide 1985:202). Preliminary drafts fostered institutional interest on indigenous peoples' rights in the UN in three ways.

First, in regards to the status of indigenous peoples, these drafts advanced the argument that indigenous peoples were distinct from ethnic minorities and, consequently, required distinctive UN focus. Contrary to Willemsen-Diaz's endeavor to use the more appropriate term indigenous peoples, the IGO continued using "indigenous populations" as its working

²³⁵ The ECOSOC resolution passed without significant state opposition because states maintained authority over whether or not to provide information. A/RES/1589 ensured that critiquing States was possible, however, as independent expert conducted the studies (A/RES/RES/1503 (1970)).

²³⁶ E/CN.4/Sub.2/1982/2 and E/CN.4/Sub.2/1983/21.

²³⁷ I triangulated his claims with Eide 1985 and Minde 2008.

terminology, however. His views are important to note because it highlights that UN allies shared the understanding with indigenous peoples of their misrecognized status. Willemsen-Diaz, by making this distinction, contested the then authorized category as it constituted incorrect and manipulated terminology.²³⁸ He again drew on information politics, because existing documents by the International Labor Organization (ILO) on indigenous labour rights had established this terminology under a guise of "protection" and "integration."²³⁹ A category that, he explained, "we knew full well" was contested by indigenous peoples because it allowed states to entrench practices of assimilation (Willemsen-Diaz 2009:19).²⁴⁰

Second, the Cobo Study, akin to mechanisms available to liberation movements, provided indigenous peoples' access. This was because eleven of the 37 States considered by the study were also being visited. Visits connected indigenous peoples with UN allies to offer information and thereby influenced the content of study drafts (Stamatopoulou 1994: 67). These drafts uncovered gross human rights violations while noting that the UN had ignored indigenous peoples as beneficiaries of the inherent right of self-determination. This is interesting with respect to recent scholarship concerned with the inclusion of non-state actors as "intended beneficiaries" into global governance regimes (Tenove 2015: 98). Indeed, it clarifies the role of UN Secretariat staff in promoting processes of inclusion with respect to indigenous peoples.

²³⁸ He used the term "peoples" in the *Special Study on Racial Discrimination in the Political, Economic, Social and Cultural Spheres*, for which he wrote Chapter IX "Measures adopted in relation to the protection of indigenous peoples," only to have Hernán Santa Cruz, a Chilean diplomat responsible for the study, to change his terminology to "populations" (Minde et.al. 2007:13).

²³⁹ The ILO asserted that indigenous populations "remained withdrawn from the currents which have carried these countries forward [...] because his is a haphazard existence, a continuous dependence on circumstance, with no thrift or concentration of effort as might make improvements possible" (ILO 1949: 18).

²⁴⁰ States limited indigenous peoples' rights as an internal matter without international oversight. The ILO offered state-driven action without access to indigenous peoples (Lüdert 2013). It produced a study on indigenous peoples' working conditions in 1952. In 1957 member states signed the *Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries*, known as ILO Convention 107, which 27 states ratified. It was replaced in 1989 by the Indigenous and Tribal Peoples Convention, known as ILO 169 (see for an authoritative study Rodríguez-Piñero 2005).

Crucially, Article 580 of the Cobo Study, which Willemsen-Diaz was drafting, stated from its earliest drafts since 1973 that:

Self-determination, in its many forms, must be recognized as the basic precondition for the enjoyment by indigenous peoples of their fundamental rights and the determination of their own future (Cobo 1987:42).²⁴¹

Early 1970s drafts, therefore, linked existing international law on the right of self-determination of all peoples, as previously analyzed in Chapter 3, to indigenous peoples. This highlights a central contribution of this dissertation. It demonstrates, and under conditions of a lack of access by non-state actors, that UN Secretariat staff can set into motion normative change in an IGO, and here specifically with respect to further developing the norm of self-determination as a human rights for indigenous peoples. As subsequent sections will highlight, the gradual acceptance of indigenous peoples' self-determination came to be specified by indigenous peoples active in the UN to include plural sovereignty arrangements.

Third, Willemsen-Diaz pushed for new venues that would provide indigenous peoples' access and participation. His rationale was to circumvent state constraints which he encountered during the drafting of the Study. After realizing that the Secretariat and the independent human rights experts had difficulties gathering valid, if any, information through sending out questionnaires on "indigenous populations" to states, he decided to connect with indigenous peoples. This is not evidence for the use of information politics but demonstrates that he sought to circumvent states lack of co-operation by encouraging indigenous peoples to seek NGO access in the UN system and to form transnational organizations.²⁴² He also recommended the establishment of a Working Group with a mandate to articulate and monitor human rights

²⁴¹ See further Articles 386-412; 578-581 (Cobo 1987).

²⁴² In a speech at the *North American Conference on the Protection of Human Rights for Indian and Inuit's* in 1973. The conference was convened by the Johnson Foundation at Wingspread, a privately funded organization and the Commission to Study the Organization of Peace.

standards for indigenous peoples. In 1974, at an international conference in Cambridge, Willemsen-Diaz called for

a UN Working Group to cover all sectors and shades of opinion and the different problems involved, as well as solutions envisaged as suitable by the indigenous populations themselves.²⁴³

In summary, UN secretariat staff and state diplomats created organizational interest on indigenous peoples' rights in the first part of the 1970s through the hitherto inactive Sub-Commission and the CHR. Allies, acting as norm entrepreneurs, initiated a thematic study that found it necessary to develop indigenous peoples' rights. This included the suggestion of a venue that was to be open to its intended beneficiaries: indigenous peoples. The evidence, consistent with available literature, highlights the limited but nonetheless significant autonomy exercised by actors working in IGO Secretariats. Willemsen-Diaz's role in setting the Cobo Study in motion particularly underscores the "social construction power" of IGO actors to "decide if there is a problem at all, what kind of problem it is, and whose responsibility it is to solve it" (Barnett & Finnemore 2004: 7). Above all, this episode underscores that not only states but also members of an IGO's Secretariat can create opportunities for non-state actors to challenge international norms through an IGO.

4.2.2 Initializing the Indigenous Peoples' Boomerang Pattern

While norm entrepreneurs used the Cobo Study to create institutional interests, it was not in itself sufficient to establish indigenous peoples' access. The interests of allies to foster such access coalesced when an already existing transnational indigenous movement identified the Sub-Commission as an appropriate venue. I first discuss the impact of indigenous peoples' transnational coalition-building, and second, demonstrate how constraints to UN access were overcome when these coalitions gained NGO consultative status under ECOSOC.

²⁴³ According to a Confidential Note (SO.234 (18-1)) of Willemsen-Diaz 23 January 1975 (Minde 2007:15).

Indigenous peoples thereby initialized a boomerang pattern at the UN. They used available access mechanisms to organize two UN conferences in 1977 and 1981, with the support of UN allies, to frame issues "to make them comprehensible to target audiences, to attract attention and encourage action, and to "fit" with favourable institutional venues" (Keck & Sikkink 1998: 3). The Sub-Commission, as conference sponsor, offered a receptive venue that resonated with the interests of indigenous peoples' coalitions. The involvement of indigenous peoples in these conferences is therefore also an example of venue shopping, as it involved identifying an organizational platform to present their human rights grievances and normative claims (Baumgartner & Jones 2009; Coleman 2011).

4.2.2.1 Transnational Coalition Building

In the later half of the 1960s, indigenous peoples organized regionally and built transnational coalitions.²⁴⁴ As a result of their shared experiences they began to focus on defending human rights, including recognition and respect for their status as peoples, cultures and territories.²⁴⁵ These coalitions became more internationally focused by the mid-1970s.²⁴⁶ They did so in part to establish UN access and to influence the preliminary draft reports of the Cobo Study. Two coalition-building events calling for links with the UN stand out.

First, in June 1974, the International Indian Treaty Council Conference (IITCC) convened with over five thousand delegates from ninety-seven Indian tribes and nations from

²⁴⁴ For example, the Sámi Council (1956), the Alaska Federation of Natives (1966), the National Indian Brotherhood (NIB) in 1968, the American Indian Movement (AIM) in 1968, the Inuit Tapirissat of Canada in 1971, the Inuit Circumpolar Conference (ICC) in 1977, the Consejo Indio de Sud America (CISA) in 1980, the Coordinadora de las Organizaciones Indegenas de la Cuenca Amazonia (COICA) in 1984 and the Grand Council of Cree in 1987 (Dahl 2012: 22-23).

²⁴⁵ The Inuit proposed their own territory in Northern Canada, Nunavut (1976), and the Greenlanders claimed Home Rule from Denmark in 1973 (Loukacheva 2007).

²⁴⁶ The Arctic Peoples' Conference was held in Copenhagen in late 1973, and AIM formed its international arm the International Indian Treaty Council (IITC) in 1974.

North and South America on the territories of the Standing Rock Sioux Tribe. The delegates declared that they would:

establish offices in Washington, D.C. and New York City to approach [...] international forces necessary to obtain the recognition of our treaties [and] an initial system of communications among Native nations to disseminate information, getting a general consensus of concerning issues, developments and any legislative attempts affecting Native Nations by the United States of America.²⁴⁷

Second, in October 1975, the National Indian Brotherhood (NIB) held the *International Conference of Indigenous Peoples* at the Tseshaht Reservation in Port Alberni, British Columbia, Canada.²⁴⁸ This meeting established the *World Council of Indigenous Peoples* (WCIP) and had 260 participants, including 52 indigenous delegates from the Americas, Scandinavia, Greenland, Australia, and New Zealand. Sharing a common experience, WCIP participants vowed to create transnational coalitions because:

to act solely on the basis of tribal groups was ineffective. Their efforts would be dismissed as disunited. To effect change [...] alliance of Indigenous peoples within the new national boundaries promised to be more effective (Sanders 1977:5).

²⁴⁷ *The Declaration of Continuing Independence by the First International Indian Treaty Council at Standing Rock Indian Country* (<http://www.iitc.org/about-iitc/the-declaration-of-continuing-independence-june-1974/>).

²⁴⁸ Preceded by two preparatory meetings in Georgetown (Guyana) and Copenhagen (Denmark). George Manuel, the first NIB president, recognized that indigenous peoples had little domestic recourse but could pursue their goals through the human rights framework (Interview Carlos 2014). He outlined a transnational strategy in the *The Fourth World: An Indian Reality* (Manuel 1974).

Both the IITCC and the WCIP are instances of indigenous peoples' coalition-building. They created transnational contacts and framed core demands around a unified voice that indigenous peoples could raise internationally. This type of coalition-building, as Sanders aptly noted, also indicates that indigenous peoples were astute that their varied realities were affected by the territorial integrity frame under which they were subsumed. Indigenous peoples recognized that in order to effect change, they had to form networks within their respective domestic realms as well as beyond.²⁴⁹

4.2.2.2 Formal Access and Venue Shopping

In order to gain IGO access, it was necessary for the IITC and the WCIP to achieve consultative NGO status with ECOSOC. In 1974, the NIB gained NGO consultative status and transferred this status to the WCIP in 1977. The IITC was the first international indigenous organization to gain consultative status in 1977. No official record exists on the decisions by which the IITC and the WCIP were accredited but it is clear that the Carter administration in the USA and the Canadian government did not use their ability to oppose access for these coalitions.²⁵⁰ Andrea Carmen of the IITC gives the following explanation for seeking formal access:

We were the first indigenous organization to get consultative status in 1977 under ECOSOC because that was really the only opportunity for participation in a formal way within the [UN] system. We decided to get general consultative status because it provides more access, and because we were working in so many fora which were outside of [the traditional UN human rights system] (Interview Carmen 2014).

With this formal access the IITC and WCIP began to advocate for indigenous peoples' rights. Accessing the UN as an NGO with consultative status was, as discussed in the previous chapter, an outcome that non-state consultants secured during the UN's institution building in San Francisco. The more immediate lesson here is that NSAs may decide to secure formal access,

²⁴⁹ These links were influenced by the globalization of state sovereignty itself; by which the ILO and UN provided legal categories on indigenous populations (Lüdert 2013).

²⁵⁰ Article 71 of the UN Charter outlines formal accreditation between ECOSOC and NGOs (UN Charter, Art.71).

even if limited in terms of their status recognition, in order to get a foot in the door. From there NSAs can more actively promote the creation of venues, frame issues and participate in standard-setting activities.

This mechanism was apparent in two UN-sponsored conferences: *The International NGO Conference on Discrimination against Indigenous Populations in the Americas*, held in 1977, and the *International NGO Conference on Indigenous peoples and Land*, held in 1981.²⁵¹ Secretariat allies helped.²⁵² The IITC together with Willemsen-Diaz proposed the 1977 conference to the *UN Sub-Committee on Racism, Racial Discrimination, Apartheid, and Decolonization of the Special Committee for Non-governmental Organizations on Human Rights* to sponsor the event.²⁵³ The "political breakthrough" came a year later at the *World Conference to Combat Racism and Racial Discrimination*, of which the 1977 UN Conference was part (Minde 2008: 65). In its plan of action, it urged states to facilitate and support the opening up of the UN to indigenous peoples (E/RES/1982/32).

This meant that the internal push by allies active in the IGO for a new venue, a *UN Working Group of Indigenous Populations*, gained traction as indigenous peoples' coalitions actively lobbied for its establishment through UN conferences. This coalescing development between non-state actors demanding access and allies from within the IGO encouraging their participation in a new venue set into motion the indigenous peoples' boomerang pattern.²⁵⁴ Indigenous peoples, and confirming insights from the transnational movement literature, formed coalitions in order to "bypass their state and directly search out international allies to try to bring

²⁵¹ Requested by the Haudenosaunee (Iroquois), the Indian Law Centre and the Lakota Treaty Council; who had petitioned the CHR in 1980 (Dahl 2012:28).

²⁵² Theo van Boven remarked that without NGOs "as active partners in the promotion [...] of human rights, the UN can hardly function in a satisfactory manner in its efforts to enhance the rights of peoples and persons" (Treaty Council News 1977:3).

²⁵³ The Sub-Committee was "enthusiastic about the idea" (Willemsen-Diaz 2009:21).

²⁵⁴ The IITC appointed most of the participants and organized the conference. The American Indian Law Resource Centre and the World Peace Council supported the organization (Dunbar-Ortiz 2006).

pressure on their states from outside" (Keck & Sikkink 1998: 12). My contribution to the existing scholarship is to not only show that non-state actors need organizational platforms to access an IGO but demonstrates how these platforms are themselves established through the combined actions of non-state actors and allies, and importantly, how these are used to promote adaptations in the institutional make up of an IGO.

The *World Conference to Combat Racism and Racial Discrimination* had the most significant participation "that had ever gathered at any international conference," with about 400 people attending, "including over 100 delegates and participants from the Indigenous peoples and nations of the Americas," as well as sixty NGOs and forty governments (Treaty Council News 1977: 30). Participants produced a *Draft Declaration of Principles* that founded the global indigenous rights movement at the UN (Dunbar-Ortiz 2006:67).²⁵⁵ The conference had a twin effect: it strengthened indigenous peoples' coalitions and provided a venue for interaction with states. With respect to norm development of establishing indigenous peoples' self-determination, the conference reported that indigenous peoples:

gave evidence to the international community of the way in which discrimination, genocide and ethnocide operated. While the situation may vary from country to country, the roots are common to all; they include the brutal colonization [and] the denial of self-determination of indigenous nations and peoples destroying their value system and their social and cultural fabric (Treaty Council News 1977:22).

By setting the indigenous peoples' boomerang pattern into motion an "important shift in international relations" occurred as one that involved framing the self-determination of indigenous peoples to include "group rights and plural sovereignty arrangements" (Lightfoot 2009:81). More specifically, with respect to the composite norms of state sovereignty, the

²⁵⁵ It contains 13 statements of indigenous peoples' rights: Recognition of Indigenous Nations, Subject of International Law, Guarantee of Rights, Accordance of Independence, Treaties and Agreements, Abrogation of Treaties and Other Rights, Jurisdiction, Claims to Territory, Settlement of Disputes, National and Cultural integrity, Environmental Protection, Indigenous Membership and a Conclusion.

conference in a 300-page *Legal Commission Report* foreshadowed two principal tensions indigenous peoples' advocacy engendered.

First, the Commission found that the rights to self-determination of indigenous peoples appeared to be “contrary to the principle of territorial integrity embodied in the UN Charter and elsewhere” and that the extent to which such a right exists, it “has never been authoritatively defined.” Second, the report justified UN action because legal discrimination against indigenous peoples “is institutionalized in all states” and carried out under the guise of “assimilation,” “integration,” and “incorporation” policies. These realities, the report concluded, hampered the “right of indigenous peoples and nations to have authority over their own affairs” and necessitated that a “Declaration be brought to the attention of the appropriate organs” of the UN (Treaty Council News 1977:19-21). This is more generally noteworthy because non-state actors and state actors at this point begun, what Wiener calls, engaging in a practical social activity of contesting fundamental institutions, such as sovereignty (Wiener 2014).²⁵⁶

In terms of venue creation, the Norwegian Deputy Minister of Foreign Affairs, Thorvald Stoltenberg, supported a UN Working Group that offered access to indigenous peoples.²⁵⁷ Stoltenberg led a delegation to the 1981 *World Conference to Combat Racism and Racial Discrimination*, which included Asbjørn Eide, Norway's human rights expert in the Sub-Commission, and Aslak Nils Sara, a Sámi delegate who was active in the WCIP.²⁵⁸ Sara, capitalizing on being attached to a state delegation, proposed the formation of a UN Working Group during one of the conference sessions. The session was chaired by Erica-Irene Daes, a

²⁵⁶ See on more recent literature proposing a ‘practice turn’ for instance Adler and Pouliot 2011.

²⁵⁷ State allies from Norway, the Netherlands and Denmark advocated for indigenous human rights to be taken up by the UN Sub-Commission.

²⁵⁸ Stoltenberg stated: “Sovereignty is an obstacle to international action for minority rights. International action, which seeks to eliminate racial discrimination, should therefore not be seen as a violation of the sovereignty of the state concerned, or as an intervention in its internal affairs - it should rather be seen as a contribution to the strengthening of sovereignty” (cited in Dahl 2009: 42).

Greek human rights expert. Asbjørn Eide, in turn, became the first chairperson of the UN Working Group on Indigenous Populations (WGIP), a venue Sara had just proposed.²⁵⁹ I demonstrate later how Eide and Daes, in their capacities as WGIP chairpersons, went on to be influential allies in this standard-setting venue that was now officially requested by Sara, an indigenous activist and WCIP member. An examination of the confluence of state allies lending their support together with the coalitions of indigenous peoples that led towards the creation of a venue with participation of indigenous peoples provides insight into the process of venue-shopping.

The 1981 *International NGO Conference on Indigenous peoples and Land* further advanced the progress of indigenous peoples' venue-shopping. The conference outcome document reiterated Sara's proposal and "strongly" supported the creation of a venue. It also encouraged indigenous peoples to "undertake the greatest efforts to urge" the CHR and ECOSOC to adopt a decision to form such a Working Group (World Federation of Democratic Youth 1981:11-16).²⁶⁰ Apart from indicating that indigenous peoples had identified receptive venues, it also strengthened their coalition, leaving

no doubt that from the point of view of the participation of Indigenous peoples, the 1981 conference was the biggest and most significant ever held (World Federation of Democratic Youth 1981).

In sum, apart from demonstrating that non-state actors attached to state delegations can impact an IGO's venue formation, the evidence underscores the deepening of shared interests of indigenous actors and UN allies. These coalescing efforts initialized the indigenous peoples

²⁵⁹ Eide spoke on behalf of Norway and worked with Sara on proposals. He supported indigenous peoples' access and that the UN focus on minority rights "had to be modified due to the insistences of the indigenous organizations themselves" (Eide 2006: 164; see also Minde et.al. 2007: 65).

²⁶⁰ Romesh Mantra, the conference president, acknowledged that: "The success of the Conference was particularly due to the very thorough preparations prior to the conference on the part of the indigenous peoples' organizations and non-governmental organizations [...]" (World Federation of Democratic Youth 1981:6).

boomerang pattern. Indigenous peoples built coalitions, sought official UN accreditation and used two UN conferences as *ad hoc* forums to venue shop. These outcomes are consistent with mechanisms established in the literature of transnational movements. First, these venues connected UN allies with transnationally organized indigenous actors. Early proposals for the formation of a Working Group, by Secretariat members Willemsen-Diaz and van Boven, were officially tabled by Sara, a WCIP activist attached to Norway's state delegation. Second, these encounters sharpened the Sub-commission's institutional interests already articulated by the preliminary drafts of the Cobo Study.

4.2.3 Venue Formation and Indigenous Peoples' Status

A UN Working Group offering access and participation to Indigenous peoples still needed to be authorized by states as IGO principals. Allies addressed this impediment in the 1981 Sub-Commission session (E/CN.4/Sub.2/SR.905-09).²⁶¹ Eide, as newly elected Sub-Commission member, forwarded Sara's proposal to his Sub-Commission colleagues. The twenty-six Sub-Commission members, serving in an independent capacity, supported Eide. They requested that the CHR endorse, and that ECOSOC approve, forming a venue,

which would meet prior to each Sub-Commission session to review and discuss material received from governments and NGOs [and to include] a text containing draft principles relating to the rights of indigenous populations (Gardeniers, Hannum & Kruger 1982: 407).

In spite of a lack of records on the actual deliberations, it is evident that UN allies were successful in driving the formation of a venue that provided access to and the participation of indigenous peoples. The CHR Secretariat, with Van Boven as its director, lent its endorsement in

²⁶¹ Theo van Boven, supported a venue in his opening speech (E/CN.4/SR.1592). Syria, Uruguay, Argentina, the Soviet Union, Poland, India, Cuba and France critiqued the CHR a few months prior which resulted in a "somewhat less activist session than might have been expected" (Gardeniers, Hannum & Kruger 1982: 405; E/CN.4/SR.1592, para 2-13).

March 1982. ECOSOC then instructed the Sub-Commission to establish the UN Working Group on Indigenous Populations (WGIP) on 7 May 1982. In regards to the participation of indigenous peoples the resolution stated that the new venue was to pay special attention

to appropriate avenues of recourse and include information from non-governmental organizations in consultative status, particularly those of indigenous peoples (E/CN.4/Sub.2/1982/33)²⁶²

The authorization by ECOSOC of a venue with the participation of indigenous peoples demonstrates how lobbying by UN allies evolved alongside an emergent transnational indigenous movement. While Scandinavian states, such as Norway, reinforced these processes, other states saw these developments as a strategic tool, or simply ignored them altogether. The Soviet Union, for instance, acted strategically to deflect attention from its own human rights violations and supported indigenous issues in order to critique Western States, and the Reagan administration in the US in particular (Sanders 1989:416). The US administration, put on the defensive, was unwilling to block the formation of a new venue with access for indigenous peoples and instead reverted to tactics of harassing the Sub-Commission.²⁶³ Yes, this a target state re: Boomerang pattern. Despite these pressures, and likely due to the general lack of interest on the parts of other states, the Sub-Commission was able to form the WGIP²⁶⁴

A key constraint to access for indigenous peoples was that states classified them as "populations." The fact that they were permitted limited access as NGOs with consultative status, although accepted as a means to enter the UN, distorted indigenous peoples' status as belonging

²⁶² ECOSOC decided that the venue "give special attention to the evolution of standards concerning the rights of indigenous populations, taking account of both the similarities and the differences in the situations and aspirations of indigenous populations throughout the world" (E/RES/1982/34).

²⁶³ Van Boven "was promptly pushed out of his post by the Reagan administration due to his advocacy" for improved non-state actors' relations (Dunbar-Ortiz 2006: 69).

²⁶⁴ African and Asian states accepted these early developments by assuming that indigenous issues did not apply to them (Muehlebach 2001: 436).

to indigenous tribes and nations. This misrecognition led Jimmie Durham, a Cherokee organizer of the 1977 conference, to affirm indigenous peoples' international status as peoples through the new venue:

If you are not officially classified [...] as colonized peoples, there is no way that you can come to the [UN] unless you are recognized as a state [...] So we will still have no way to enter the [UN] and it is necessary for in a 10-year period to change the [UN] and that is what we are up to (Ziegler & Birraux 1984).

An immediate lesson here is that indigenous peoples got a foot in the door of the IGO as NGOs. Although linkages with UN allies provided indigenous peoples with access to a new venue, the IGO was not equipped to fully recognize indigenous peoples. Instead the organization followed states' interests and routed access through NGO accreditation channels. Henceforth, indigenous peoples used the new venue to not only denounce human rights violations committed by states, but more fundamentally to assert their right of self-determination as *peoples*. This episode highlights the utility of distinguishing the form of NSA's access from their initial IGO status. In fact, the mismatch between the demand of indigenous peoples to be recognized as peoples and the institutional constraints and misrecognition they faced at the IGO are central aspects of the constitutive process that this chapter is concerned with. Indigenous peoples asserted that only by participating in the UN as self-determining peoples, and not as sub-state populations, or as civil society actors forming NGOs, would their claims to plural sovereignty arrangements be meaningful.

4.3 Standard Setting Phase in the UN Working Group on Indigenous Populations: A Sheltered Venue

This section focuses on the standard-setting phase in the Working Group on Indigenous Populations (WGIP). The WGIP was a sheltered venue as it was given a marginal position within the UN system. A factor that, I argue, worked in favor of indigenous advocacy by offering an

entry point to the IGO from below, and without overt states interference. WGIP recommendations had to travel upward for approval through the Sub-Commission, the CHR and ECOSOC before reaching the UNGA.²⁶⁵ Its five members were selected on four-year terms from the twenty-six members of the Sub-Commission. They acted in an independent, non-partisan capacity as human rights experts. The Sub-Commission was the only venue in the UN hierarchy where individual experts, and not diplomats or secretariat staff, led deliberations with indigenous peoples. Indeed, they are actors that Weiss has called the *third UN* and who often effect shifts in ideas, policies, priorities, and practices that are seen as “undesirable or problematic” by states (Weiss et.al. 2009).²⁶⁶ The WGIP met for up to two weeks a year, in Geneva, until it was discontinued in 2006.²⁶⁷

Initially, indigenous delegates had to gain meaningful access to and participatory capabilities within this sheltered venue. They had to persuade and educate human rights experts who knew little about indigenous peoples. My main contribution in this section is to show that indigenous delegates and the independent experts influenced states through two mechanisms: the institutionalization of the Indigenous Caucus in 1985 and the innovation of novel modes of deliberation by the WGIP experts in 1990. Kenneth Deer, a Mohawk delegate, outlines the substantive outcomes in the sheltered venue:

[We] were not really dealing with states, we were still deliberating in a Working Group of five experts and even then we had to convince them that we were peoples, and we had a right of self-determination. The last Article that the experts agreed to was Article 3 on the rights of Indigenous peoples' self-determination and that was in 1993. [...] There are no giant leaps from not being recognized all the way to being recognized. There is no great big leap from not being subjugated and oppressed all the way to having a full right

²⁶⁵ The CHR, the parent body to the Sub-Commission (later the Human Rights Council), in turn, is one of the six functional commissions under ECOSOC.

²⁶⁶ There is lively debate in the global governance literature on the influence these types actors have in IGOs and global governance (see for instance Bueger 2015; Convergne 2016; Karlsrud 2014; Thakur 2015; Jönson 2013). What is missing, and a potentially rich field for future studies, is to map the history and role of human rights experts in the Sub-Commission in particular.

²⁶⁷ Except for 1986 when the UN had budgetary constraints and the fifth WGIP session was postponed by a year.

of self-determination. All these things happen in increments, slow steps, piece by piece (Interview Deer 2014).

Indigenous peoples used the venue to assert their status as *peoples* and to graft a *non-statist* conception of self-determination, consistent with existing human rights norms and treaty law. This conception broke new ground in international relations because it distinguished between "external" and "internal" self-determination, with the latter involving the right to participate as *peoples* in the structure of indigenous governments *and* with states on an ongoing basis. External self-determination is markedly different, as analyzed in the preceding chapter, as it was narrowly applied as a right of peoples in Non-Self Governing Territories that was "consumed in the act" of gaining independence from colonial rule (Stavenhagen 1996: 5).

The discursive dynamics in the WGIP can be divided into two periods. From 1982 to 1990, deliberations focused on establishing access and participation modalities as well as substantive bargaining amongst the actors. From 1990 to 1994, WGIP human rights experts produced a draft text converging indigenous peoples and state positions. In it the five WGIP members accepted indigenous peoples' status as *peoples* and outlined a *non-statist* version of self-determination that was consistent with human rights and treaty law. They sent this Draft for approval and technical review to the Sub-Commission.

4.3.1 Norm Entrepreneurship: Informal Access and Participatory Capabilities

In 1982, at its first session, the WGIP discussed its overall mandate, which centred around addressing two substantive issues: how to define "indigenous populations" and "the right to self-determination" (E/CN.4/Sub.2/1982/33).²⁶⁸ WGIP members also acknowledged the necessity of

²⁶⁸ Seven areas were outlined: the right to life; to physical integrity, and to security of indigenous communities; the right to self-determination; the right to develop their own culture, traditions, language, and way of life; the right to freedom of religion and traditional resources; civil and political rights; the rights of education and other rights.

taking into account indigenous peoples' collective rights. This meant that they "had a standard-setting mandate, which was not shared by other Working Groups."²⁶⁹ Setting the standards on these matters proved highly controversial as they clashed with the traditional liberal human rights paradigm, whereby individuals alone are human rights claimants. Because indigenous peoples experience human rights violations collectively they therefore regard the protection of individual rights as insufficient (Morgan 2013: 89).²⁷⁰ In light of the above, and their implications for state sovereignty, WGIP members suggested "drafting one or more declarations on the rights of indigenous populations" (E/CN.4/Sub.2/1982/33, para 126).²⁷¹ Before any of these substantive matters could be addressed, indigenous peoples' access to participation within the venue had to be secured. I demonstrate the role of the first WGIP chairperson (Åsbjørn Eide) in providing informal access and show how his successor deepened the participation of indigenous peoples as active standard-setters.

First, Eide, who as previously discussed had helped create the venue, was elected as the first chairperson of the WGIP by his colleagues in the Sub-Commission in 1982. This ensured that an ally led a venue that was located at the lowest level of UN human rights standard-setting bodies. The one crucial mechanism of control that states did exercise was that indigenous peoples' organizations had to be formally accredited to WGIP sessions.²⁷² This impediment to access meant that only three indigenous peoples' organizations had attained consultative status

Argentina, Australia, Brazil, Canada, India, Morocco, New Zealand, Nicaragua, Panama, Sweden, the USA, North Yemen, the PLO, and several UN agencies were present. (E/CN.4/Sub.2/1982/33).

²⁶⁹ The "general provisions on human rights [...] were applicable equally to members of indigenous populations," in practice, however, "it was not advisable to rely solely on principles such as equality" (E/CN.4/Sub.2/1982/33, para 63).

²⁷⁰ The WGIP noted this in response to the Indian Law Resource Centre (ILRC) submission "The Principles for Guiding the Deliberations of the Working Group." It argued that equality was not sufficient because "Indigenous peoples qualify as peoples possessing a right of self-determination [...] that is, to possess whatever degree of self-government in their territories the indigenous peoples may choose" (E/CN.4/Sub.2/AC.4/1982/R.1).

²⁷¹ Three possibilities were tabled: a statement of principles, a non-legally binding declaration or an international convention (E/CN.4Sub.2/1982/33, para 54).

²⁷² If they applied as NGOs in accordance with ECOSOC Resolution 1982/34.

with ECOSOC by 1982, with at least three more awaiting accreditation.²⁷³ Indigenous peoples seeking access contested this requirement, as it ignored their status as peoples and required an arduous application process and approval by states.

Eide acted as a norm entrepreneur. He decided to break with official UN rules and broadened access for indigenous delegates who did not hold consultative status.²⁷⁴ The venue thereby diverged from the UN rules and procedures established by states under Articles 70 and 71 of the UN Charter. Eide's rationale was that it was necessary to have the "best experts present, and the best experts were the indigenous representatives themselves" (Eide 2009: 34).²⁷⁵ His agency had repercussions for the attendance of indigenous peoples who did not hold consultative status and that outgrew those of all other delegations. Formal attempts to seek accreditation stagnated.²⁷⁶ His decision fostered the "most inclusive and open forum in the UN system" for indigenous peoples (Corntassel 2007: 141). In hindsight he realized that the opening up of the WGIP to indigenous peoples "turned out to have far greater consequences," as it provided a forum for the global indigenous movement at the UN to evolve (Eide 2009: 34).

His decision was consistent with what available literature describes as "norm entrepreneurship." This refers to agents engaged in "moral proselytism" (Nadelbaum 1990; Finnemore & Sikkink 1998; Reich 2003). This type of agency, and the dissatisfaction it engendered among states, was

²⁷³ In 1983 three existing indigenous peoples' organizations with consultative status (IITC, WCIP and Indian Law Resource Centre) were joined by the Four Directions Council, the Inuit Circumpolar Conference (ICC) the Indian Council of South America (CISA) the Sámi Council, and the National Indian Youth Council (in 1984), the National Aboriginal and Islanders Legal Service Secretariat, the Indigenous World Association (in 1985) and the Grand Council of the Cree's (in 1987).

²⁷⁴ Julian Burger did "not recall any government objecting to that decision taken by the WGIP, it was kind of, relatively easy to do, and the [experts] could really decide how to best fulfill their mandate" (Interview Burger 2014).

²⁷⁵ Willemsen-Diaz found it "absurd, and contradictory in the extreme" to have a venue to listen to Indigenous peoples and "then to demand that they have consultative status before they could participate" (Willemsen-Diaz 2009: 26). Van Bowen supported Eide also (Minde 2009: 34).

²⁷⁶ Participation increased from about 25 delegates in 1982 to almost 1,000 at the 1999 session. Delegates first came predominately from Australia, North America, Scandinavia and Aotearoa/New Zealand with those from Latin America, and Africa, Asia increasingly attending.

further evidenced when he was “gunned down” by states who blocked his re-election to the Sub-Committee (Interview Burger 2014).²⁷⁷ I conclude after reviewing the literature, that Eide’s decision, underscores how moral entrepreneurs drive not only normative change but that they use their agency to create non-state actors access to IGO venues also.²⁷⁸

States, with their reputation at stake, did not insist on maintaining control over access, and accepted Eide’s decision. They felt protected by the marginal position of the venue, whose recommendations could be ignored and access to indigenous peoples revoked.²⁷⁹ States did not fully realize that the opening up of a sheltered venue fostered subsequent expectations for access of indigenous peoples to other venues. I elaborate on this later. A lesson here is that the agency of a chairperson in a sheltered venue may create opportunities for access, thereby allowing non-state actors to set the agenda at lower levels in the UN system more easily than at higher levels; where states maintain greater control.

Second, with regard to participation, the WGIP members also affirmed indigenous peoples as active standard-setters when they declared that "the views of the populations affected should be sought at the same time as the comments of the Governments" (E/CN.4/Sub.2/1982/33, para 46).²⁸⁰ This type of participation by non-state actors is not ordinarily permitted further up in the UN hierarchy. The chairperson’s flexibility to provide open access through a sheltered venue engendered participation that was “frank and fearless” (Davis

²⁷⁷ Eide re-entered as Norway’s state delegate and was re-elected to the Sub-Commission in the next cycle.

²⁷⁸ WGIP members decided that “organizations of indigenous populations which did not have consultative status, other organizations without such a status, and experts and recognized authorities, the chairman might request that copies of information supplied by them be made available in its original language to those attending” (E/CN.4/Sub.2/1982/33, para 23).

²⁷⁹ States endorsed Eide’s decision as "an outlet for the direct expression of indigenous concerns" (E/CN.4/Sub.2/1982/33, para 24). Some states interfered, denying travel visa and other restrictions, including imprisonment of indigenous peoples, however.

²⁸⁰ Despite the “explosive and sensitive issues” discussed the WGIP was characterized by “a remarkable unanimity” (Durnbar-Ortiz 2006: 70). The Sub-Commission authorized the WGIP to draft a *Body of Principles of Indigenous Rights* (Res.1984/35 B).

2008: 6).²⁸¹ Indigenous peoples, so equipped, realized that the WGIP was not a perfect venue especially because of the prevailing misrecognition of their status. Rather, it was quite fair "as an arbiter [...] if they give five minutes to indigenous peoples they give five minutes to governments" (Interview Burger 2014). This kind of "on parity" participation, as will be shown, provided Indigenous peoples a participatory model for future UN venues.

The incoming chairperson Erica Daes affirmed Indigenous peoples' participation as active standard-setters, after Eide's departure in 1983. Daes, as mentioned, was a human rights lawyer from Greece. During her twenty-year tenure as chair, Daes would become the principal architect of the *UN Draft Declaration on the Rights of Indigenous peoples*. Indigenous delegates describe her as "our greatest champion at the UN" (Interview Deer 2014). I will demonstrate throughout this chapter that her consistent presence and intimate involvement with indigenous peoples was a major factor in the evolution of indigenous peoples' rights.

Daes accepted indigenous proposals as a basis for drafting indigenous peoples' rights. She made this decision after attending the *World Council of Indigenous Peoples* (WCIP) conference in Panama in 1984.²⁸² Substantively the Panama conference adopted a 17-point Declaration of Principles. She declared this Declaration as a "basis" of the Body of Principles that the WGIP was mandated to formulate (Res.1984/35 B; Daes 2009: 49).²⁸³ These contacts by WGIP human rights experts outside of the halls of the UN are frequently missed in the relevant literature but prove that indigenous peoples actively engaged key venue members to frame human rights

²⁸¹ Indigenous peoples pushed for further procedural changes. They requested that sessions be extended from one to two weeks (E/CN.4/Sub.2/1985/22, para 93). This demand was achieved by 1990. They also convinced WGIP members to act contrary to UN rules and allow indigenous prayers and ceremonies as an "act of respect" (Muehlebach 2001: 427). These changes show how informal access engendered indigenous peoples participatory influence vis-a-vis states.

²⁸² Daes recalls: "I met with hundreds of indigenous peoples [...] who demanded that the UN should formally recognize and protect their basic rights and fundamental freedoms" (Daes 2009: 49).

²⁸³ Douglas Sanders drafted an *International Covenant on the Rights of Indigenous peoples* in preparation for the WCIP gathering of 1981 in Canberra, Australia. A revised version of the draft was submitted by the Nordic Sámi Council in Panama in 1984 (Minde 2008: 73).

standards. These outside linkages created momentum, with Daes declaring that standard-setting efforts would "intensify" and that "new standards" had to be formulated (E/CN.4/Sub.2/1985/22, para 14 and 57).²⁸⁴

Informal access of non-state actors and their participation as active standard-setters presents a key difference to the previous case study, where grafting self-determination onto human rights was achieved by newly independent states with limited access and participation by liberation movements. In the present case non-state actors participated as active standard setters with the involvement of WGIP human rights experts. The evidence suggests that this difference arose because states were not the decision makers over granting access but independent human rights experts working through a sheltered venue. It more generally is in line with what scholars identified as a new norm of participatory governance in world politics, and in IGO's particular (Tallberg et.al. 2013). The evidence speaks to claims, such as those made by Lightfoot (2009), that the opening up of an IGO is primarily a product of transnational advocacy. The empirical evidence suggest a more nuanced picture and shows that especially allies active in sheltered venue's can function as early enablers of stimulating the mobilization by non-state actors in an IGO.

4.3.2 The Indigenous Caucus: Deepening Indigenous Peoples' Participation

Indigenous peoples influence in the standard-setting activities depended on building a consensus platform known as the Indigenous Caucus (IC). The IC led to an overall stronger position of the indigenous movement at the WGIP after 1985. I posit that, by forming core positions and strategies, the IC provided a mechanism for persuading WGIP members and pressuring states to

²⁸⁴ See ECOSOC Resolution 1982/34; Sub-Commission Resolution 1984/35B and HRC Resolution 1985/21. Australia and Canada tabled these resolutions in the Sub-Commission. Daes was supported by WGIP members Mrs. Gu Yijie and Mr. Kwesi B.S. Simpson. Mr. Migueal Alfonso Martínez and Mr. Ivan Toševski were opposed (E/CN.4/Sub.2/1985/22, para 59-61, Barsh 1986; Sanders: 1989: 409).

accept the rights of indigenous peoples.²⁸⁵ As an organizational platform it provided a persuasion mechanism that bound "delegates into one fairly unitary argumentative thrust" (Muehlebach 2001: 416). Key to this was that the IC organized indigenous peoples. The IC also exhibited a high level of lateral cohesion between different indigenous delegates and flexibility that, given the diversity of the experiences of indigenous peoples, is a remarkable feature of the indigenous movement.

The IC, presents a form of transnational movement adaptation, and grew out of "preliminary meetings" by indigenous delegates working on consensus positions that could be brought to bear in joint statements at the 1985 WGIP sessions.²⁸⁶ The IC was a focal point for indigenous peoples and open to all indigenous delegations without discrimination and had "close to 100, in rare cases, even more" indigenous participants (Dahl 2012: 110). Early participants realized that these gatherings were "a very effective way of getting people organized" and considered extending their reach (Interview Deer 2014).²⁸⁷ The IC's first success to influence the debate began in 1985 and increased after 1987, when it became a permanent forum.

By reaching consensus in the caucus, shared core principles were solidified which fostered cohesive positions. Furthermore, caucusing provided leverage to pressure and persuade states whose positions were contradictory, less unified or scant. More generally, the evidence supports insights from the social movement literature that posits that adapting to political opportunity structures, defined as those circumstances surrounding a political landscape, can enhance transnational advocacy (Tarrow 1998; Bandy & Smith 2005). The IC characteristics of garnering indigenous peoples' influence into a caucus to frame issues in directions favourable to adopting

²⁸⁵ The IC maintained core demands, yet shifted tactics according to participants "own history" and "cultural strategies for survival as well as specific relations with governments" (Dahl & Gray 1997: 289).

²⁸⁶ IC meetings were held in the UN buildings and initially included delegates from the Indian Law Resource Center, the Grand Council of the Cree, the Inuit Circumpolar Conference and others.

²⁸⁷ Others were encouraged to join and that "there should be a purely Indigenous peoples' meeting in Geneva one week prior to the Working Groups session" (Akwesane Notes 1985: 14).

relevant norms through a sheltered UN venue, indeed has striking similarities to existing UN caucuses, such as the Non-Aligned Movement previously discussed, or the African Group of States(AGS) and the Latin American and Caribbean Group of States (LCGS). The IC provided indigenous peoples leverage to act as cohesive bloc and was especially important to graft a “non-statist” conception of self-determination onto the existing human rights regime. Rights, that indigenous peoples argued, were universal but needed to be differentiated. As I demonstrate in detail below the IC solidified indigenous peoples core principles of asserting their right to self-identification as “peoples” and against the attempts of states to define them as "indigenous populations."

4.3.2.1 Asserting Self-Definition as Peoples

Indigenous peoples’ assertions to hold rights as “peoples” and to define themselves who they are presented necessary steps in the process of grafting self-determination onto human rights. The point in this section is to underscore how indigenous peoples, now organized in the IC, gained recognition of their legal personality with the active support of UN allies.²⁸⁸

Willemsen-Diaz followed indigenous peoples’ assertions and not those by states when he presented a revised "working definition" of indigenous peoples to the Cobo Study - a definition that he explained was to be developed and modified.²⁸⁹ As discussed previously, he could do so because he was free to draft the Cobo Study. This revision was broader and more fluid than his 1972 definition. It deleted the term "populations" and emphasized elements of self-definition:

Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed in their territories, consider themselves distinct from other sectors of the societies now prevailing in those

²⁸⁸ An important distinction because as "populations" indigenous peoples were the objects of states. As self-identified “peoples,” however, they can make claims as subjects under international law who can oppose state policies and take decisions on their own affairs (Barsh 1994).

²⁸⁹ Eide, as Norway’s state delegate to the WCIP “relied on the Secretariat’s working definition.” The revised working definition "satisfied" states who sought "adequate limits" be set (Barsh 1986: 374).

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 existences as peoples, in accordance with their own cultural patterns, social institutions and legal systems (Cobo 1987: 42; Article 379).

A fundamental aspect for indigenous peoples was that the revised definition no longer referred to a "population" but to "communities, peoples and nations" (E/CN.4/Sub.2/1983/21, para 379). He further clarified, with respect to the principle of self-definition, that

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) (ibid.)

Moreover, the revised definition linked the basis of self-identification to self-determination. It "preserves for these communities the sovereign right and power to decide who belongs to them, without external interference" (E/CN.4/Sub.2/1983/21, para 381-382).²⁹⁰

The WGIP debates themselves centered mainly on this revision and the problems posed by defining indigenous peoples. What was clear that WGIP reports, and the above revised UN "working definition" Willemsen-Diaz presented to the Sub-Commission in 1983, accepted indigenous peoples demand to define themselves.²⁹¹ WGIP members, after noting proposal on the question of definition made by indigenous peoples,

stressed that some of the main problems with existing definitions were that they had not been formulated by the indigenous populations themselves or with their significant participation. In order to attain meaningful definitions it was indispensable to have a significant indigenous input (E/CN.4/Sub.2/1982/33, para 37).²⁹²

This was important for indigenous peoples who insisted on self-identifying. Indigenous peoples pressed the WGIP to rely on the new "working definition" and stressed that the term "indigenous

²⁹⁰ See also E/CN.4/Sub.2/1984/20 Annex III.

²⁹¹ Eide asked for moderation on the matter out of worry that states close the venue (E/CN.4/Sub.2/1983/22, para 100). Tactfulness, aside, Eide engaged UN allies.

²⁹² The matter of definition was to be "constantly under discussion" and "elaborated by, or with the intervention of the indigenous populations themselves;" including subjective and objective elements such as self-identification (E/CN.4/Sub.2/1982/33, para 42).

populations" should be changed to "indigenous peoples" because it more "accurately reflected their reality" and that the right to self-determination was "tied to indigenous peoples" (E/CN.4/Sub.2/1984/20, para 105; E/CN.4/Sub.2/1987/22, para 53).²⁹³

States, on the other hand, were less unified and can be usefully divided into three groups. States from Scandinavia (except for Sweden) and from Latin America accepted the new definition. Other states contested it. Asian states, in particular, aimed to emphasize a distinction between "indigenous" and "colonized" peoples. Bangladesh, for example, insisted that their population was entirely indigenous and that only in states where racially distinct people, had come from overseas, established colonies, and subjugated others could, be considered to have indigenous peoples.²⁹⁴ Other states, for instance Canada, sought to maintain the status of "peoples" without distinction. Canada contested the new working definition because:

International law was created by states through agreements and practice, and there were no indications that states recognized indigenous peoples and nations as subjects of international law (E/CN.4/Sub.2/1985/22, para 83).²⁹⁵

There is a substantial body of literature discussing the definition of "indigenous peoples." There are debates for and against a universal definition. Some find this category unsustainable because a 'global category' of

indigenous peoples makes it increasingly difficult – morally, conceptually, and politically – to sustain the legal firewall between indigenous peoples and other homeland minorities [...] in the face of intense but contradictory pressures to expand and contract the category of indigenous peoples [...] beyond the core case of New World Settler states [...] and will likely lead to a retrenchment of the indigenous track (Kymlicka 2007: 289).

²⁹³And suggested to change the title of the Working Group accordingly, without success (E/CN.4/Sub.2/AC.4/1984/NGO/2).

²⁹⁴ The Soviet Union, India and China supported Bangladesh's reasoning and maintained that there are no "indigenous" peoples in Asia, only minorities and "Indigenous peoples" only existed in settler states (Barsh 1986: 375).

²⁹⁵ See for attribution of delegate to Canada (Daes 2009: 59).

Another group of scholars criticizes a universal definition, because they believe it is an attempt to co-opt indigenous groups into accepting an IGO-driven category (Corntassel & Primeau 1995; Corntassel 2003). Another line of scholarship views the definition as an evolving process by which indigenous peoples transition from being objects to subjects in international law (Anaya 2004; Holm, Pearson & Chavis 2003; Kingsbury 1998). The evidence analyzed in this chapter finds support for the latter constructivist argument. Indigenous peoples asserted that they determined who they are.²⁹⁶ They used the WGIP to challenge states as sole subjects of international law. UN allies shared their demand for self-definition. They acted against states pressure to maintain the existing definitions of “indigenous populations” and came to support a new definition of “indigenous peoples.”²⁹⁷

States intending to deny indigenous peoples a status as “peoples” were undermined because WGIP members began to implement IGO practice by accepting the term “indigenous peoples” as appropriate and evolving.²⁹⁸ WGIP members accepted that indigenous peoples constituted a “peoples” after they reached a consensus in 1988.²⁹⁹ The WGIP report stated that the use of the term was welcomed by

²⁹⁶ I observed an instance whereby a group of ‘druids’ from Europe sought to access the *United Nations Permanent Forum on Indigenous Issues* as “indigenous peoples” with indigenous delegates questioning them diplomatically; yet sternly on their decision.

²⁹⁷ NGOs supported indigenous assertions of self-definition. The International Working Group on Indigenous Affairs (IWGIA) was particularly active (Dahl 2009: 153). ILO Convention 169, which went into force in 1989, in Article 1, Section 2 affirmed “self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply” (ILO 1989).

²⁹⁸ WGIP members first avoided using the term consistently, seemingly concerned with pushback from States. They expressed their views in 1985. Miguel Alfonso Martínez, from Cuba, argued that the term “indigenous” was an evolving, even if undefined, legal category for peoples. The Chinese member, Gu Yijie, supported the revised working definition because it was related to “peoples” and not “minorities” (ibid, para 65). Mr. Ivan Toševski, from Yugoslavia, was hesitant to define the term “people” arguing that the UN “managed for 40 years without a definition” (E/CN.4/Sub.2/1985/22, para 64). Mr. Kwesi B.S. Simpson added that international law recognizing “peoples” as well as “minorities” and that “indigenous” are therefore one or the other.

²⁹⁹ WGIP members reached a quorum in 1988 (E/CN.4/Sub.2/1988/24, para 74, 75, 76). One important change, to my reading was, that Ivan Toševski was exchanged due to his absence in 1987. The Sub-Commission appointed, Danilo Türk, who build consensus (E/CN.4/Sub.2/1987/22, para 2). This was an unprecedented decision, recognizing (absent) alternates as equal to the independent experts, as no rules for selecting alternates existed. States

indigenous and governmental representatives, as well as by members of the Working Group [and] emphasized that indigenous peoples were clearly distinct from minorities or other tribal or ethnic groups [and that the term "peoples" was in] conformity with United Nations terminology (E/CN.4/Sub.2/1988/24, para 78).

Daes, in her capacity as chairperson, stands out as an early adopter of the new working definition. WGIP members had entrusted Daes with the responsibility of preparing a full draft text of a *Declaration on the Rights of Indigenous Peoples* by 1988. She pointed out that her draft "included crucial issues" such as the use of the term of indigenous peoples. This was a position she took despite the opposition of Sweden and Canada, who had declared that indigenous peoples were not "peoples" with a right of self-determination under Article 1 of the *UN Covenant on Civil and Political Rights* (E/CN.4/Sub.2/1988/24, para 68).³⁰⁰ Daes, a few years later, openly came to critique states when she declared that "any inconsistency or imprecision in previous efforts to clarify the concept" was due to the efforts of some governments to limit its global reach, or of other governments to build a high conceptual wall between "indigenous" and "peoples" and/or Non-Self-Governing Territories (E/CN.4/Sub.2/AC.4/1996/2., para 73). Instead she explained that the WGIP

has indeed adopted a flexible approach to determining the eligibility to participate in its annual sessions, relying upon organizations of indigenous peoples themselves to draw attention to any improper assertions of the right to participate as "indigenous" peoples (ibid., para 68).³⁰¹

This development demonstrates the willingness of WGIP members to accept and more actively side with the indigenous peoples' views. In addition, the normative change present in universalizing the application of self-determination for all peoples, as discussed in the previous

often appointed diplomats to serve instead of experts "thereby eroding the independent and less political make up of the Sub-Commission" (Rosen & Weissbrodt 1988: 489; See RES/1983/21). See also (Daes 2009: 64).

³⁰⁰ Also accepting the combination of individual and collective rights "with a special emphasis on the latter as an inherent and essential element of indigenous rights" (ibid.).

³⁰¹ On the whole, this has been successful, and shows that the concept of "indigenous" in practice, and in cooperation with indigenous peoples themselves, is sufficiently practical and effective (Ibid., para 68).

chapter, was therefore impacting the evolution of self-determination sought by indigenous peoples. Indigenous peoples sought to address their exclusion and used the WGIP to foster a rationale for their status as "peoples" and not as sub-state "populations" as the basis for grafting indigenous peoples' self-determination onto human rights norms. WGIP members accepted their demand for self-identification, over time, and against unconvincing and divided state opposition. Through practice in a sheltered UN venue, a limited status recognition of indigenous peoples as subjects under international law was achieved and, as subsequent sections will show, began to diffuse through the IGO.

4.3.2.2 Grafting a Non-Statist Conception of Self-Determination

Throughout the standard-setting activities of the WGIP, two main views of self-determination clashed. The first one was a - by now - conservative interpretation made by states and the other was a progressive "non-statist" conception forwarded by the IC. States held that self-determination was limited to peoples from Non-Self-Governing Territories and those liberation movements who had been using this norm to attain independent statehood from overseas colonialism. The progressive "non-statist" conception forwarded by the IC was different and aimed at an indigenous peoples' conception and that

self-determination should mean the freedom of indigenous peoples to determine the form of institutions, their composition and their functions, also in self-governance relationships with states [that] ought to encompass the possibility of choosing full independence, but various other forms of the right, such as autonomy, self-government, self-management and participation in the political processes of States (E/CN.4/Sub.2/1987/22, para 52).³⁰²

Grafting a "non-statist" conception of self-determination onto existing human rights was a two-pronged process. Indigenous peoples persuaded the WGIP members responsible for the draft declaration to accept that a "non-statist" conception was a progressive interpretation. But they

³⁰² Of course, and as I have demonstrated, autonomy and self-government arrangements were equally available to NSGTs.

continued to face serious state opposition. States feared waves of secession, and as result sought assurances from indigenous peoples, that it would not promote this. In the end, a convergence of indigenous peoples' self-determination and the norm of territorial integrity, occurred. Ultimately sovereignty, and especially the norm of non-interference, was challenged, because states have a duty to accommodate indigenous peoples

through constitutional reform designed to share power democratically. It also means that Indigenous peoples have the duty to try to reach an agreement, in good faith, on sharing power within the existing State, and to exercise their right to self-determination by the means to the extent possible (E/CN.4/Sub.2/1993/26/Add.1, para 25).

First, I analyze how chairperson Daes's draft versions were influenced by the IC from 1985 until 1990 to include a "non-statist" conception of self-determination. The IC agreed on a coherent bargaining position and insisted on legal consistency with existing human rights. This was key. The second step involved finalizing the draft declaration between 1990 and 1993 before it was sent to the Sub-Commission for approval and technical review in 1994. I posit that the grafting process succeeded because the WGIP members innovated novel modes of deliberation, by having set up informal drafting groups. These groups constituted a fundamental venue adjustment and helped Daes to identify major fault-lines. In addition, they allowed for the maintenance of consistency within existing international human rights law. This drew states into existing UN standard-setting principles.

4.3.2.3 The Indigenous Caucus: Influencing Norm Development in a Sheltered Venue

The grafting process could already be observed in 1985 when the WGIP accepted two draft texts by indigenous peoples as a basis for a UN declaration. The first was a *Declaration of Principles* ("Panama Draft") submitted by the *World Council of Indigenous Peoples* (WCIP). The Panama Draft was, as mentioned, based on a text adopted a year prior by the WCIP in Panama and with

Daes's involvement (E/CN.4/Sub.2/1985/22 Annex III). The second draft version was an iteration of the Panama Draft. It became the focus of strategy discussions in Geneva before the WGIP session in 1985 (Barsh 1986: 381). These "preliminary discussions," by the emerging IC, resulted in an additional consensus draft of principles, here referred to as the "Geneva Draft." (E/CN.4/Sub.2/1985/22 Annex IV). Both draft texts made the right of self-determination their main subject. The Panama Draft stated as a first principle:

All indigenous peoples have the right of self-determination. By virtue of this right they may freely determine their political status and freely pursue their economic, social, religious and cultural development (E/CN.4/Sub.2/1985/22, Annex III, 1 and 2).

The Geneva draft stated that:

Indigenous nations and peoples have the right to self-determination, by virtue of which they have the right to whatever degree of autonomy or self-government they choose. This includes the right to freely determine their political status, freely pursue their own economic, social, religious and cultural development, and determine their own membership and/or citizenship, without external interference (E/CN.4/Sub.2/1985/22, para 73; Annex III and IV).

Despite their similarities, it has been noted that the Geneva Draft employed "a more sophisticated legal, UN style, reflecting the international and UN experience and expertise" of indigenous peoples (Lightfoot 2009: 106). While this is an apt observation, I contend that it is critical to note that these were not distinct drafts but rather different iterations of the same demands for self-determination.³⁰³ These drafts indicated how an emergent set of core demands was shared by an ever-increasing number of indigenous delegations. Specifically, the manner in which these Drafts built on each other underscores that indigenous delegates recognized the value of organizing around the emergent IC. In addition, they appreciated that to move the

³⁰³ The Indian Law Resource Center, the Four Directions Council, the National Aboriginal and Islander and Legal Service, the National Indian Youth Council, the Inuit Circumpolar Conference submitted the second draft (E/CN.4/Sub.2/1985/22, para 73)

standard-setting activities forward, they needed to act jointly as international indigenous lawmakers.

WGIP members acknowledged the Drafts key demand of self-determination in its *Plan of Action from 1986 Onwards* because indigenous peoples participated as active standard-setters (E/CN.4/Sub.2/1985/22, Annex I).³⁰⁴ They emphasized that indigenous peoples "right to autonomy, self-government and self-determination, including political representations and institutions" was as a matter of first priority. The WGIP equally linked self-determination to "universally recognized human rights and fundamental freedoms" (ibid., para 3).³⁰⁵ These considerations for future deliberations centered the IC's bargaining position in pursuit of grafting a "non-statist" conception of self-determination onto existing human rights.³⁰⁶

My argument differs from existing accounts which contend that Daes "was interested in maintaining the international status quo or at least minimizing change to the international order" (Lightfoot 2009:117). I contend that Daes and other WGIP members, instead of siding with states, acted as indigenous peoples' allies. Daes anticipated future state opposition when she drew attention to GA Resolution 41/120 of December 1986 entitled *Setting International Standards in the Field of Human Rights*. The resolution requested that UN standard-setting venues had to be consistent with existing human rights law and provide sufficient precision and

³⁰⁴ Seven draft principles of indigenous peoples' rights were proposed: to be free from discrimination; the collective right to exist, to be free from genocide, the right to life, liberty, and security; rights to freedom on religion and ceremonies; rights to own language and education and to cultural identity and traditions. The seven draft principles were submitted to the Sub-Commission, the CHR and ECOSOC.

³⁰⁵ Due to UN funding cuts, as noted, the WGIP did not meet in 1986. WGIP members Daes and Türk still participated in a World Council of Indigenous Peoples workshop where three additional principles were elaborated: state measures of improved social and economic conditions based on indigenous peoples' consent; rights to traditional subsistence and traditional economic activities and rights to determine, plan and implement all health, housing, and other social and economic programs (E/CN.4/Sub.2/1987/WP.4/Add.1/Annex.1).

³⁰⁶ With no legal instruments available a link to existing human rights was a necessary step for defending indigenous peoples' rights.

effective implementation strategies (A/RES/41/120).³⁰⁷ This decision, and as later sections substantiate, suggests that Daes chose to reference GA Resolution 41/120 so that the standard-setting activities would not be jeopardized or halted by states claiming formalistic inconsistencies.

The WGIP complied with the resolution and requested authorization from the CHR to prepare a draft declaration (E/CN.4/RES/1987/34).³⁰⁸ With the authorization from the CHR, the WGIP was then authorized "to produce, as a first formal step, a draft declaration on indigenous rights which may be proclaimed by the General Assembly."³⁰⁹ These steps set a procedural framework for drafting standards according to guidelines states themselves had accepted. The WGIP would follow procedural demands that states stipulated for UN standard-setting activities, crucially drawing states into accepting evolving indigenous peoples' rights.

In 1987, the recognition of the right of indigenous peoples to self-determination as "peoples" was the most strident and persistently declared demand voiced before the WGIP (Lâm 2000: 52). The IC, for the first time jointly, presented 22 Draft Declaration principles prepared by the *Indigenous People's Preparatory Meeting* in July of 1987. The IC merged the Panama and Geneva Drafts by "consensus" and underscored that "all peoples have the right to self-determination" and that "indigenous nations and peoples are subjects of international law" (E/CN.4/Sub.2/1987/22, Annex V).³¹⁰ WGIP member Danillo Türk throughout his engagement became persuaded and emerged as an ally. Indigenous peoples, he argued, were justified in their demands because the UN had so far addressed human rights only through "an individualistic

³⁰⁷ Adopted without a vote. GA Resolution 41/120 entailed to pay "due regard" to the established international legal framework and future human rights instruments.

³⁰⁸ Endorsed by the Sub-Commission (RES/1985/22) and the CHR (RES/1986/27).

³⁰⁹ On consistency with existing human rights see E/CN.4/Sub.2/1987/22, para 42.

³¹⁰ Indigenous delegates tied the right to self-determination to collective rights "to exist as communities, nations and peoples, the right to self-definition, the maintenance of historical continuity and national and cultural identity" (E/CN.4/Sub.2/1987/22, para 53).

approach." This approach he stated was, however, overshadowed by "debates on self-determination" in relation to "colonization" and "foreign occupation" (ibid, para 49).

Participating states opposed the IC's Draft Declaration. They countered that the "principle of self-determination" applied "within the context of colonial and foreign occupation" only. They, fearing conflicts with respect to the norm of territorial integrity, contended that it should not be "utilized to support secessionist or separatist moves." The term "peoples" should not be confused with "other entities such as indigenous populations or national ethnic, religious and linguistic minorities" (ibid, para 56). The clash between the two conceptions of self-determination tabled at the WGIP was evident. Indigenous peoples focused their attention on persuading Daes and the other WGIP members, while states had to agree that a progressive interpretation of self-determination did not pose a threat to secession.

The IC achieved these objectives through building on Daes's own insistence that the rights of indigenous peoples had to be consistent with existing human rights law and according to GA Resolution 41/120. The IC deployed this formal demand after Daes presented the first "reading draft text" in 1988. This draft used the term "indigenous peoples" instead of "indigenous populations" (E/CN.4/Sub.2/1988/24, Annex II).³¹¹ Daes was trying to curb state opposition while aiming to drive consensus towards a progressive "non-statist" conception of self-determination and away from the status quo.³¹² Daes supported the IC's formal demand because she recognized indigenous peoples'

³¹¹ The IC supported the Draft Declaration of 22 Principles and asked to "fully address" the collective right to lands and territories which meant that "self-determination and self-government" be "fundamental principles of the draft declaration" (E/CN.4/Sub.2/1988/24, para 79, 80).

³¹² Daes expressed the "expectation that agreement could be reached" and while this may take time "was definitely worthwhile" to facilitate "quick acceptance by the parent bodies" (E/CN.4/Sub.2/1988/24, para 68). Her revised reading draft stated "that nothing in this Declaration may be used as a justification for denying to any people [...] its right to self-determination" (E/CN.4/Sub.2/1989/33; E/CN.4/Sub.2/1990/42, Annex II).

collective right to autonomy in matters relating to their own internal and local affairs [in her Draft Text,] with a special emphasis on collective rights as an inherent and essential element of indigenous rights (E/CN.4/Sub.2/1988/24, para 68).³¹³

These revisions constituted a step in the direction favoured by indigenous peoples. The IC, through their cohesive participation as outlined in the 22 Draft Principles, influenced Daes to accept the validity of a grafted version. She expressly attempted to assuage state opposition by explaining that, in the case of indigenous peoples, the interpretation of the term "self-determination" specifically excludes the right of "secession."³¹⁴ She continued to declare that a "non-statist" conception of self-determination meant that autonomy or self-government were forms of "internal self-determination" suitable "for application in States where indigenous peoples live" and thus did not undermine the norm of territorial integrity (Daes 1989: 48). However, deliberations hardened along the two conceptions of self-determination. The red line for states was that they viewed the "non-statist" conception of self-determination as a threat to the norm of territorial integrity.³¹⁵ Positions between indigenous peoples and states seemed intractable. Daes attempted to ensure forward momentum by emphasizing that "consensus" was to a large degree dependent upon "the opportunity to enter into trilateral dialogue" between indigenous peoples, states and the WGIP members (ibid, para 50).

³¹³ WGIP members and indigenous delegates emphasized a "distinction be made between autonomy and independence" and that "collective rights should not be considered as contrary to already existing individual rights, but rather complementary and supportive of those" and that the term "peoples" was in "conformity" with United Nations terminology (E/CN.4/Sub.2/1988/24, para 73, 77, 78).

³¹⁴ One observer found that states interpreted self-determination only as "territorial sovereignty, a notion which has never animated indigenous peoples' use of this term" (E/CN.4/Sub.2/1990/42, para 130). WGIP members shared Daes opinion that indigenous peoples did not seek a right of secession (Daes 2009: 64).

³¹⁵ Two state observers pointed out that the term "self-determination" was unacceptable because of its relation to colonialism. One state delegate stated self-determination was acceptable if it did not imply independent statehood (E/CN.4/Sub.2/1990/42, para 114).

4.3.2.4 The Role of Allies: Bridging the Impasse through Novel Modes of Deliberation

Daes faced a delicate situation: approving a draft declaration that was not accepted by states may be withheld or watered down higher up in the IGO hierarchy versus one that was not agreed to by indigenous peoples participating as active standard-setters alongside states. She sought to build a compromise draft declaration that could both weather states opposition *and* that would be accepted by indigenous peoples. Daes achieved this by using her discretion as chair and proposed "three informal and open-ended drafting groups" (E/CN.4/Sub.2/1990/42, para 14).³¹⁶ Delegates accepted her proposal with three drafting groups deliberating in the first week and presenting their results to the entire WGIP in the second week in open plenary.³¹⁷ The chairpersons role allows to draw a more general lesson. In so far as it clearly maps onto the findings discussed in the previous chapter where non-state actors' ability to influence outcomes remained contingent on allies active within IGO venue's supporting and driving normative change.

The relevance of informal drafting groups has received little attention in the literature but they were a unique innovation. These informal drafting groups helped bridge the impasse, because through these micro-venues, WGIP members could identify areas of understanding and differentiate what was acceptable to indigenous peoples and states. They were a novel innovation by the WGIP chair. Until this point, standard-setting activities were conducted in open plenary, with delegates making official statements and submitting proposals. Informal discussions amongst UN delegations were not uncommon, of course, because generally "at least as much activity occurs outside as inside the negotiation room" and they are often used "to discuss details

³¹⁶ She anticipated that drafting groups facilitate and accelerate the process (E/CN.4/Sub.2/1990/42, para 14).

³¹⁷ This informal to formal progression was open to all participants. Delegates could check progress in all three groups and participate in open plenary with all delegates present.

and shape compromises on sensitive issues" (Burger 2006: 55). Daes's key innovation was that she combined the benefits of formal plenary negotiations with informal deliberations.

Informal drafting groups were led by individual WGIP members and divided according to substantive articles and paragraphs of the revised Draft.³¹⁸ Most critically, self-determination was discussed in great detail and was given its separate space of deliberation, and following chairperson Daes's suggestion, under the facilitation of WGIP member Türk and whom had already distinguished himself as an ally. This was important because all other draft articles, although pertaining to self-determination, would be preconditioned on the actual conception of self-determination. Moreover, Türk proposed to use Daes's revised draft text as "the basis and framework for the Group's own deliberations;" which gave concrete focus based on existing text and foreclosed the possibility of introducing new proposals (E/CN.4/Sub.2/AC.4/1990/7/Add.1, para 5). It was evident that drafting groups bridged stark opposition.³¹⁹ Türk, to my reading, achieved this by driving deliberations based on "ideas which attracted the widest expression of support, and in most if not all cases, no strong expression of opposition" (E/CN.4/Sub.2/AC.4/1990/7/Add.1, para 7-10). He reported that participants agreed that a new operative paragraph be placed at "the very beginning of the operative part of the Declaration" that should read:

Indigenous peoples have the right of self-determination, by virtue of which they may freely determine their political status and institutions and pursue their own economic, social, religious and cultural development (E/CN.4/Sub.2/AC.4/1990/7/Add.1).³²⁰

³¹⁸ The first group chaired by WGIP members Martínez considered land and resources provisions. The second group, chaired by Türk, considered the right to self-determination. The third group, under the lead of Daes, considered all other draft text provisions (E/CN.4/Sub.2/1990/42, para 14).

³¹⁹ He represented "ideas which attracted the widest expression of support, and in most if not all cases, no strong expression of opposition" (E/CN.4/Sub.2/AC.4/1990/7/Add.1, para 7-10).

³²⁰ Consistent with the UDHR the Draft Article 2 formulated the equality of indigenous individuals with all other people (E/CN.4/Sub.2/1992/33; E/CN.4/Sub.2/1993/29, Annex I).

Türk acknowledged the influence of indigenous peoples in driving normative change. He drew "attention to an important academic statement by one indigenous representative" James Anaya who had

pointed out that the concept of self-determination would only in rare instances imply the right to independent statehood; rather, an indigenous, non-statist conception of self-determination implies substantive rights to the economic, political and social means for indigenous modes of life, and procedural rights to shape decisions [of indigenous peoples in their varying contexts] E/CN.4/Sub.2/1990/42, para 126).

A "non-statist" conception of self-determination was taking root in the WGIP' standard-setting activities.³²¹ The informal drafting groups, within a sheltered venue, provided as space for achieving a compromise. The wording of a new operative paragraph was itself testament to the process of grafting as it was close to verbatim to the relevant paragraph of the 22 Draft Principles submitted by the IC three years prior.³²² It was equally consistent with Article 1 of the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* (A/RES/2200 (XXI)). Indigenous peoples and state's positions converged on recognizing indigenous peoples' self-determination and, as states insisted, at the intersection of the sacrosanct norm of territorial integrity. Türk's statements highlight the impact of informal drafting groups to push the process along, and one that "incorporated many of these substantive and procedural rights" which, as he made equally clear, "condition but in no way deny the principle of territorial integrity" (E/CN.4/Sub.2/1990/42, para 127).

³²¹ He stated that "time has now come to give some fresh thought to the concept of self-determination" as evolving and that the venue would help shape such "concepts which are of relevance" to Indigenous peoples (E/CN.4/Sub.2/AC.4/1990/7/Add.1).

³²² See E/CN.4/Sub.2/1987/22, Annex V, para 2). It was shorter and differed, in so far, as it excluded the principle of determining indigenous peoples' self-determination "without external interference."

To sum up, WGIP members accepted two key demands voiced by indigenous peoples: First, indigenous peoples constituted “peoples” and second, they held a right to self-determination. I demonstrated that persuasion via the informal drafting groups contributed to an evolving conception of self-determination *and* its curtailment by the norm of territorial integrity. This innovation, by a venue’s chairperson, opened up discursive potentials.³²³ Informal drafting groups bridged stark opposition and helped form compromise solutions that could be agreed to in the plenary. Ultimately, I find that drafting groups drew states into the deliberations, were they had to contend with the positions of indigenous peoples. In fact, focusing on lower level IGO drafting work suggests a potentially rich research field for tracing normative change by non-state actors in similar venue’s elsewhere.

The overarching lesson here is that a process of addressing the exclusion of indigenous peoples from bearing a right to self-determination was underway, and one which is anomalous to international standard-setting processes that generally seek to define subjects and respective state obligations with precision (Abbott et.al. 2000: 30; Chayes & Chayes 1998).³²⁴ Imprecision, of course, allows states to lower the cost of defection through “self-serving auto-interpretation” of international obligations (Guzman 2008).³²⁵ This outcome is than not without problems. It gives states the ability to deny the existence of indigenous peoples in their borders, yet on balance, affirms indigenous peoples as “peoples’ to which the norm of self-determination applies. In

³²³ Daes’ autonomy to adjust WGIP venue characteristics bridged disagreements. Standard-setting activities progressed outside of the ponderous formalities of the plenary. Informal drafting groups differed, allowing for interactive discussions.

³²⁴ Much of international law is “quite precise” and designed to “increase determinacy and narrow issues of interpretation”. They argue that extensive noncompliance comes from imprecision with ambiguity and indeterminacy lying “at the root of much of the behavior that may seem to violate treaty requirements” (Chayes & Chayes 1998: 10).

³²⁵ Indigenous peoples, as active standard-setters, framed the “non-statist” conception of self-determination in universal terms, that was not be qualified as lesser or inferior but an already guaranteed right, by virtue of two existing human rights Covenants from which Indigenous peoples had been excluded, and for which States accepted responsibilities

addition, and given the high variability of indigenous peoples and state relations it should come as no surprise that precision of defining indigenous peoples undermines the entire project of overcoming the denial of self-determination in the first place.³²⁶ It would, therefore, be false to attribute the content of WGIP' draft texts to the viewpoint of indigenous peoples alone. They were a unique convergence of the perspectives of indigenous peoples, states and the independent WGIP human rights experts (Henderson 2008: 51).

4.3.2.5 Finalizing the Draft Declaration on the Rights of Indigenous Peoples

In 1991 Daes again used her delegated agency by explaining that "we must now approach the elaboration [...] in a less discursive and more concrete manner," and to remain in plenary (E/CN.4/Sub.2/1991/40, Annex IV).³²⁷ This is interesting because it highlights how a independent expert, and chairperson in a sheltered venue, can direct and shape participatory venue characteristics that involves non-state actors and states from session to session. This type of limited autonomy was evident also in a table with her own revisions along the major fault lines identified in the informal drafting groups.³²⁸ Her approach is consistent with a persuasion mechanism because the draft from then forward progressed.³²⁹

Daes faced delicate political choices. Each revision which was more favourable to indigenous peoples was opposed by states and vice versa. She concretized the "non-statist" conception of self-determination, in relation to autonomy and self-government, in her second reading draft. This validated indigenous peoples' demand of establishing a clear link with

³²⁶ It is important to recall that the WGIP did not include a definition but supported indigenous peoples right to define themselves.

³²⁷ Daes set the tone: "If there is unanimity, I hope that there can be fairly rapid adoption" and urged "everybody to address the language of the articles under discussion and not allow themselves to be diverted " (E/CN.4/Sub.2/1991/40, Annex IV). She set a time for a "workable, balanced and consensus text" to be submitted by 1993.

³²⁸ The relationship between these actors, as demonstrated, did not remain constant but "evolved through mutual criticism, accommodation, and perhaps also appreciation" (Lâm 1992: 1992).

³²⁹ See more generally on concretization as a necessary condition in standard-setting processes (Goodman & Jinks 2013: 113).

existing international law "similar to that found in the first article common to the International Covenants on Human Rights" in 1992 (E/CN.4/Sub.2/1992/33, para 54).³³⁰ Daes thereby deterred the most vehement state opposition of denying indigenous peoples the right of self-determination. The revised Draft stated in operative paragraph 1 that:

Indigenous peoples have the right of self-determination, in accordance with international law by virtue of which they may freely determine their political status and institutions and freely pursue their economic, social and cultural development. An integral part of this is the right to autonomy and self-government (E/CN.4/Sub.2/1992/33, Annex I).³³¹

I posit that Daes could do so because she learned the extent to which different wordings elicited broad support or hardened disagreement. Especially the link to existing international law, and according to Resolution 40/120 as noted previously, drew states into her evolving formulations. Her consistency as chair since 1984 was, as mentioned previously, a definite asset because she was able to anticipate responses from the various delegations.³³² This allowed her to constrict opposition and facilitate progress under the pressure of deliberations in open plenary. I make this argument building on Julian Burger who more generally observed that:

Introducing less precise wording may fatally weaken a standard's effect; but, if well-crafted, [here via a link to existing human right law] vaguely worded text may protect essential principles or objectives. Throughout, those involved [...] see their interests retreat or advance as the text evolves, and alliances and relationships fluctuate accordingly. [These dynamics need] the most careful attention [by drafters] (Burger 2006: 59).

States were drawn in because Resolution 40/120 guided the process, and instead of demanding conceptual clarity on the "non-statist" conception of self-determination, proceeded to offer

³³⁰ She highlighted the "particularly stimulating and productive debate" on "self-determination" which was now reflected in a "full draft declaration," and "agreed" to by WGIP members, to which delegates could submit their "comments and amendments" (E/CN.4/Sub.2/1992/33, para 40).

³³¹ The new draft used the "right of self-determination" which did not foreclose the right to secession but was mainly understood in its "non-statist" form (E/CN.4/Sub.2/1992/33; E/CN.4/Sub.2/1993/29, Annex I).

³³² Deer observed that Daes "had a lot to do with the change because she was leading that group [...] from 1984 all the way to 2006 together with Martínez [...] they all changed but those two were constant" (Interview Deer 2014).

qualifications.³³³ New Zealand emphasized that the draft definition was a "matter of compatibility with national laws" (E/CN.4/Sub.2/1992/33, para, 47). The US felt that the Draft declaration "require States to assume overbroad and unrealistic duties" and that the "concepts like "self-determination," "peoples," "land rights" etc.," should "have been conceived as desired objectives rather than rights" (ibid, para 52). States evidently, after a concrete link to international human rights law was made by Daes, felt challenged as a "reference to self-determination could not only lead to conflict with international law, but also undermine State sovereignty" (ibid, para 65). Daes still acted against state interests and clarified that the WGIP understood self-determination of indigenous peoples "in its internal character, that is short of any implications which might encourage the formation of independent states" (ibid, para 67).

Indigenous peoples, and with the support of Daes as key drafter, had framed self-determination in universal terms that was not to be qualified but was an already guaranteed right, by virtue of existing human rights Covenants from which Indigenous peoples had been excluded.³³⁴ The Indigenous Caucus of "thirty-four indigenous peoples' organizations, including eight with consultative status" recommended finalizing the draft to be "submitted for technical review by the Secretariat" (E/CN.4/Sub.2/1992/33, para 59). This episode demonstrates a striking similarity to the previous chapter concerned with liberation movements, in so far as specifying peoples right of self-determination created tensions for states aiming to uphold the norm of non-interference. It, as such, must be viewed as the "recognition of the rights of Indigenous peoples was part of the unfinished business of decolonization" (Henderson 2008: 34).

³³³ Canada argued that "clarity of language and avoidance of redundancy would be two essential prerequisites for ensuring an easier and faster negotiation process" in the Sub-Commission and HRC (E/CN.4/Sub.2/1992/33, para 49).

³³⁴ Indigenous peoples lauded Daes' explicit link with international law and that despite "consensus" had not progressed "as far as indigenous peoples' expectations, satisfaction should indeed be felt," as "consensus now existed on a defined set of principles" (E/CN.4/Sub.2/1992/33, para 59).

On the other hand, indigenous peoples' self-determination differed from the statist definition that had prevailed since 1960 when it was used by National Liberation Movements to achieve independence from overseas colonial rule. Daes aptly outlined this new “non-statist” conception of self-determination and its link to the prevailing understanding in 1993:

[Indigenous peoples] self-determination should ordinarily be interpreted as the right of these peoples to negotiate freely their political status and representation in the states in which they live. This process might best be described as a kind of belated state-building, through which indigenous peoples are able to join with all the other peoples that make up the state on mutually-agreed upon and just terms, after many years of isolation and exclusion. This process does not require the assimilation of individuals, as citizens like all others, but the recognition and incorporation of distinct peoples in the fabric of the state, on agreed terms (Daes 1993: 9).

These interpretations challenge state sovereignty. The “non-statist” conception may foreclose state fragmentation – as secession – yet creates demands for the internal divisibility of territoriality as well as being a challenge to the norm of non-interference.³³⁵ In regards to territorial integrity the "majority of the governmental observers expressed reservations on the issue of self-determination" and stated that indigenous peoples' self-determination was subordinate to the territorial integrity of sovereign states (E/CN.4/Sub.2/1993/29, para 50 to 55). Crucially, however, states no longer upheld, at least relative to before, the position that indigenous peoples' rights were solely a matter of states domestic affairs.³³⁶ Instead, they advanced concerns over how to implement extended duties to accommodate claims to autonomy or self-government through constitutional reform. This kind of duty challenges the norm of non-

³³⁵ Yet, as Daes explained, a “State may sometimes abuse this right of its citizens so grievously and irreparably that the situation is tantamount to classic colonialism, and may have the same legal consequences. The international community discourages secession as a remedy for the abuse of fundamental rights, but [...] does not rule out this remedy completely in all cases” (Daes 1993: 8).

³³⁶ Canada was alarmed because it “was not clear how the concepts of self-determination, self-government and autonomy [...] interrelated and what range of powers of indigenous governments would be and how they would relate to the jurisdiction of existing States” (E/CN.4/Sub.2/1993/29, para 50).

interference and, in extension the territorial integrity (as internally divisible), and as such limit state's ability to assert unlimited authority over matters affecting indigenous peoples.³³⁷

In the end, Daes and the other WGIP members agreed with the arguments made by indigenous peoples and after careful consideration unanimously agreed to Article 3 of the draft declaration which unambiguously stated:

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (E/CN.4/Sub.2/1993/29, Annex I, Article 3).³³⁸

She also justified the WGIP position on the status of indigenous peoples as “peoples” against

certain Governments who have sought to narrow the definition of "peoples" in order to limit the number of groups entitled to exercise a claim to self-determination. On the contrary, indigenous groups [...] have pressed for a broader application of the term "peoples" before different forums of the [UN and the WGIP in particular] (E/CN.4/Sub.2/1993/26/Add.1, para 4).

She stressed, in line with the argument offered here, that indigenous peoples are "unquestionably "peoples" in every political, social, cultural and ethnological meaning of this term" and that indigenous peoples "have insisted, and rightly so, on the right to self-determination" (ibid, para 7).

These statements are, to reiterate, important for my argument on grafting not only because it followed standard-setting procedures according to Resolution 40/120 but because Article 3 reproduces the existing language of Common Article 1 of the two *International Human Rights*

³³⁷ The USA, Canada and New Zealand expressed concerns over the compatibility with their respective domestic law (E/CN.4/Sub.2/1993/29). Chile stated that the declaration should “recognize the right to self-determination as it currently existed in international law, a right...which carried a right of secession, and a proposed modern interpretation of self-determination within the bounds of a nation State” (E/CN.4/Sub.2/1993/29, para 53).

³³⁸ International lawyers supported these views. Professors Lâm, Thornberry and Anaya stressed that indigenous peoples' self-determination had the status of *jus cogens* and was therefore not subject to changes by states (E/CN.4/Sub.2/1993/29, para 61).

Covenants of 1966 on the right of peoples to self-determination. It fulfilled a primary objective by indigenous peoples who greeted its inclusion as a major development.³³⁹

As Daes later explained it was "greeted with a standing ovation from indigenous participants and a conciliatory response from many of the governments" (Daes 2009: 72).

Although Article 3 is the same as that of the two human rights Covenants, it was made clear that self-determination of indigenous peoples did not equate with a right to secede.³⁴⁰ The WGIP elucidated this view by including Article 31 that specified the "non-statist" scope of self-determination stating that

Indigenous peoples, as a specific form of exercising their right to self-determination, have the right to autonomy and self-government in matters relating to their internal and local affairs, including culture, religion, education, information, media, health, housing, employment, social welfare, economic activities, land and resource management, environment and entry by non-members, as well as ways and means for financing these autonomous functions. (E/CN.4/Sub.2/1993/29, Annex I, Article 31).

It is this latter component that makes the WGIP Draft an ambitious text that challenges state sovereignty at a "deep level" because it implies the devolution of sovereignty to indigenous peoples within the states borders (Xanthaki 2007:102).³⁴¹

It is critical to note that the final Draft was not formally adopted, but finalized by the five WGIP members in private consultation on 17 August 1993.³⁴² The Sub-Commission, as parent body, agreed with WGIP members that further changes would be superfluous as higher UN

³³⁹ The IC, with Moana Jackson as its spokesperson, forwarded that indigenous peoples self-determination should be prominently placed in Draft Declaration "along the lines of the two International Covenants on Human Rights" (E/CN.4/Sub.2.1993/29, para 56).

³⁴⁰ The Aboriginal and Torres Strait Islander Commission stated that "self-determination" meant to seek increasing autonomy but was "not understood as mandate for secession." James Anaya, a human rights lawyer of Apache and Purépecha ancestry, added that "secession was not usually desirable and could in many cases prove to be detrimental to the interests of indigenous peoples" (E/CN.4/Sub.2.1993/29, para 59 and 61).

³⁴¹ Article 31 defines "the maximum scope of self-determination in the twenty-first-century" and has been judged expansive in light of the varied backgrounds of indigenous peoples (Hannum 2006: 76).

³⁴² *Draft Declaration as Agreed upon by the Members of the Working Group at its Eleventh Sessions to the Sub-Commission* (E/CN.4/Sub.2/1993/29, para 209).

bodies would consider amendments. With such an understanding, the Sub-Commission adopted, without a vote, the *Draft Declaration on the Rights of Indigenous Peoples* in August 1994 and conducted a technical review of the text.³⁴³ The Sub-Commission supported Daes' strategy of drawing states into following existing human rights standard-setting procedures. It explained that the technical review was guided by the GA Resolution 41/120 with particular attention given "to the consistency and accuracy of the language" (E/CN.4/Sub.2/1994/2, para 5). Daes thus correctly anticipated, as early as 1987, that Resolution 41/120 would be significant once the draft went for consideration to the parent body. Indigenous peoples' success in driving normative change was evident as the UN Secretary-General requested that a technical review be prepared by the Centre for Human Rights (E/CN.4/Sub.2/1993/2, para 2)). The review made three noteworthy points.

First, it supported a "non-statist" conception of self-determination by pointing toward Daes's explanatory note, which outlined the scope and meaning of "peoples" and "self-determination" according to Article 31, noted above.³⁴⁴ Second, it affirmed indigenous peoples' demand to apply the principle of self-identification and supported the Cobo-Study "working definition." Third, although commenting at length on all other 45 articles, the technical review simply noted consistency with existing international law by which Article 3 on self-

³⁴³ The 45 Articles recognized a range of collective rights, including protection from genocide and ethnocide (Articles 6 and 7), the right to practice and develop Indigenous peoples culture (Article 12, 13 and 14), the right to control lands, territories, and resources (Articles. 25, 26, 27, 28 and 30), the protection of intellectual property (Article 29), and the explicit recognition of Indigenous peoples' legal and political systems (Article 31 and 33). It included twenty-three preambular paragraphs, outlining the purposes and guidelines for interpreting the articles, and was as such, "unusually long - undoubtedly a result" to encompass Indigenous peoples' diversity (Burger 1998: 210).

³⁴⁴ It further noted that Article 31 was based on a *Report of the Meeting of Experts to Review the Experience of Countries in the Operation of Schemes of Internal Self-government for Indigenous Peoples*, held in Nuuk, Greenland, in September 1992 (E/CN.4/1992/42).

determination "is precisely based on article 1, paragraph 1, of the two International Covenants" (E/CN.4/Sub.2/1994/2, para 30; E/CN.4/Sub.2/1993/26/Add.1).³⁴⁵

Indigenous peoples succeeded in working through the WGIP, a sheltered venue. The standard-setting phase demonstrated how UN allies, and WGIP chairpersons Eide and Daes in particular, came to be persuaded by Indigenous peoples' normative demands pursued through the IC.³⁴⁶ The IC persuaded the independent human right experts who affirmed their status as peoples and who had come to support a grafted "non-statist" conception of self-determination which was consistent with existing human rights law. With the adoption of the draft declaration by the Sub-Commission, indigenous peoples shifted their attention upward in the UN machinery.

4.4 Elaboration Phase in the Working Group on the Draft Declaration: A State Driven Venue

This section provides an analysis on the elaboration phase in the Commission on Human Rights' (CHR) open-ended inter-sessional *Working Group on the Draft Declaration on the Rights of Indigenous peoples*, (hereafter the WGDD) from 1995 until 2006. These activities were, given the implications for the composite institution of state sovereignty, some of the most complex activities in the evolution of human rights. How far indigenous peoples had come, of establishing agency and altering prevailing norms, was evident as they participated in the venue alongside states. By 2006 these negotiations culminated in the adoption of the Draft Declaration by the Human Rights Council (HRC).

The CHR was comprised of 53 States and did not reach agreement on the Draft Declaration as received from the Sub-Commission. Some States supported approval without amendment of

³⁴⁵ The title was changed to *UN Declaration on the Rights of Indigenous peoples* (E/CN.4/Sub.2/1993/L.47).

³⁴⁶ Daes explained that the Draft Declaration "truly reflects the values, beliefs and aspirations of the peoples concerned. More than that, it has come to be regarded, by Indigenous peoples themselves, as their own [...] they have dared to be visionary, in the true original spirit" of the UN (Daes 1996).

the Draft Declaration and others voiced doubts about key provisions.³⁴⁷ As a result it decided on 3 March 1995 to establish the WGDD with the "sole purpose of elaborating" the Draft Declaration for adoption by the GA (E/CN.4/RES/1995/32).³⁴⁸ The venue differed more fundamentally because the WGDD was a State driven venue, that lacked the mediation of independent human rights experts. Indigenous peoples had to contest States directly over content and process. Similar to initial conditions in the WGIP before, WGDD' deliberations did not enjoy an auspicious start in terms of access and participation of indigenous peoples. Despite these constraints the CHR was still the most open forum within the UN system because organizations with formal ECOSOC NGO status had access to the plenary sessions, and could submit statements to its Sub-Committees and Working Groups.

Under these mixed venue characteristics indigenous peoples were able to drive progress due to three primary factors. First, the UN, under the influence of indigenous peoples' advocacy, developed a greater institutional interest in indigenous peoples' rights. Second, with regards to access to the WGDD, indigenous peoples with ECOSOC consultative status to the CHR pressured states to open access to those indigenous peoples that were formerly excluded. Third, and in relation to indigenous peoples' participation, a walk out in combination with expectations established at the WGIP influenced the first chairperson of the WGDD to accept indigenous peoples as consensus participants. These types of consensus modalities were an adaptation because they are typically reserved for states in CHR working group elaborations. In short, and

³⁴⁷ Some States opposed self-determination, which they could not reconcile with their territorial integrity, control over land and resources, and collective rights more generally. The US and Japan did not accept the Draft Declaration as "a reasonable evolution from existing human rights law" and viewed it as too intrusive for their domestic legal systems (Barsh 1996: 788). Argentina argued for a more conservative declaration because, even if nonbonding, it would eventually reach customary status. Brazil stated that the Draft Text did not reflect the views of all States that took part in the WGIP standard-setting activities.

³⁴⁸ States not on the CHR roster had unrestricted access but no voting power.

with respect to the overarching relevance of venue's, the WGDD constituted a veto point that indigenous peoples had to overcome and shape.

4.4.1 Growing Institutional Interest in Indigenous Peoples' Rights

The 1990s saw a considerable growth in international recognition and participation of indigenous peoples outside of the WGIP. For instance, the *UN Conference on Environment and Development* (UNCED) held the Earth Summit in Rio de Janeiro in 1992. The summit produced a declaration on sustainability and development requirements that were enshrined in the *Rio Declaration*. In 1993 the *World Conference on Human Rights* (WCHR) adopted the *Vienna Declaration and Program of Action*. Important for my argument was that these conferences acknowledged the contribution of “indigenous people” in their outcome documents and suggested to deepen their participation in the UN system.³⁴⁹ The GA responded and proclaimed the *International Year of the World's Indigenous People* in 1992 and a *Decade of the World's Indigenous People* two years later with the goal of establishing a permanent UN venue for indigenous peoples (A/RES/45/164; A/C.3/48/163; A/C.4/1995/26). These developments were testament to the progress indigenous peoples had made in engaging the international community. In 1992 Mary Simon, an Inuk leader from Nunavik, declared before the UN General Assembly: “We are no longer merely objects of international law; we are subjects of international law.”³⁵⁰

What was most striking, with regards to the norm of self-determination, was that indigenous delegates used the UN's existing normative framework to justify their challenge to state sovereignty. The Indigenous Caucus achieved this, and leading on from the previous analysis, by foremost turning to the universal language of the two Human Rights Covenants. Ted Moses, a member of the North American Indigenous Caucus, stated at the WCHR:

³⁴⁹ UNCED, principle 22 (www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163) and WCHR, para 22 (<http://www.ohchr.org/Documents/ProfessionalInterest/vienna.pdf>).

³⁵⁰ See for transcript (<http://www.dialoguebetweennations.com/ddd/MarySimonUN1992-3.htm>).

The International Covenants state that “all peoples” have the right of self-determination. [They] were drafted to protect peoples, all peoples, without exception. There is no provision whereby these protections may be applied selectively to certain peoples and denied to other peoples. The Covenants are explicit: they apply to “all peoples.” The Universal Declaration is also explicit: international human rights protections are to apply universally and indivisibly [...] What will the world think, when they hear that the human rights which apply universally, somehow they do not apply in the same way to the world's indigenous peoples? How will you explain this?³⁵¹

Their demand for self-determination succeeded at the UN because of its link to existing IGO norms. Norms which states have accepted but which are at the same time inimical to state interests; and especially due to the tensions they create for upholding the norm of non-interference. Especially the second part of this statement underscores that this process was linked to a customary principle of non-discrimination that cannot be easily set aside by states (Brownlie 1998:515). Indeed, indigenous peoples used the UN to maintain that a denial of indigenous peoples' self-determination would create a double-standard in international human rights law. They contended that to declare a universal recognition of self-determination for all peoples and to deny such a right to indigenous peoples surely offends the prohibition of racial discrimination.

In light of such a well-defined normative frame the UN renewed its relevance as an IGO and formally recognized indigenous delegates. The UN Secretariat as well as member states signalled to indigenous peoples that they were willing to expand access and participation to the IGO in a spirit of “cooperation” and “partnership.”³⁵² Sovereignty concerns remained an important constraint, however, yet these concerns, at least relative to before, were less intense when extending non-state actor access to IGOs (Tallberg et.al 2013: 16). Organizational theorists have argued that adaptation of this kind is explained by incremental changes to organizational access and participation over time leading to expansion in organizational forms (March 1981;

³⁵¹ See for transcript (<http://www.gcc.ca/archive/article.php?id=69>).

³⁵² The end of the Cold War renewed expectations of a new phase in human rights.

Martens 2006).³⁵³ Indigenous peoples working through the WGIP affirms this, yet, I contend need to be augmented by an additional exogenous factor. The rapid geo-political changes of the early 1990s created uncertainty for the UN and consequent willingness to redefine its relevance. The IGO, in its function as global forum, moved away from expressing the interests of states alone and actively established itself as focal point to deliberate norms and human rights amongst multiple actors.³⁵⁴ These cumulative effects, as background conditions, were reinforced by the WGIP standard-setting processes where UN' allies worked with indigenous peoples. Under these conditions a causal environment solidified which supported more permanent access and participation of Indigenous peoples at the UN more generally.

My argument challenges assumptions that IGOs only defend state interests and are intransigent when faced with with challenges by non-state actors.³⁵⁵ Instead it demonstrates that NSAs access and participation through a sheltered venue, combined with exogenous factors of IGO uncertainty can generate demands for adaptations in IGO's institutional design. Indigenous peoples had first benefited from allies' informal modifications to access and participate in the WGIP, a sheltered venue, and from there intensified their participation at other UN venues. That said, indigenous peoples' greater global recognition did not result in a linear upward mechanism of improved access and participation. Their mobilization at the CHR, and the effects, on the elaboration of the Draft Declaration in the WGDD, must therefore be analyzed.

³⁵³ March argued that organizations, such as IGO's, are not rigid and inflexible, but that they are "impressively imaginative" and change "in response to their environments, but they rarely change in a way that fulfills the intentions of a particular group of actors" (March 1981).

³⁵⁴ The UN embarked on a full review of its relations with NSAs (Willets 2000). UN Secretary General Boutros Boutros-Ghali rationalized, in his *1992 Agenda for Peace*, to open the UN up to NSAs to strengthen the "ability to reflect the concerns and interests of its widest constituency, and those who become more involved can carry the word of United Nations initiatives and build a deeper understanding of its work" (A/47/277, para 84). See also *Arrangements and Practices for the Interaction of Non-Governmental organizations in All Activities of the United Nations System: Report of the Secretary-General* (A/53/170, (1998)).

³⁵⁵ I thank Lisa Sundstrom for pushing me on this point.

4.4.2 Indigenous Peoples with Consultative Status: Shaming States to Secure Access

This section analyses how indigenous peoples with formal consultative status pressured states to establish broad access for indigenous peoples without such a status. The CHR added “indigenous issues” as a new agenda item to its 1995 session. This item was subject to a heated debate. A major sticking point was due to certain state’s continued reluctance to accept the status of indigenous peoples as “peoples.” This contestation has aptly been called the battle of the “s” (Barsh 1995). Some states avoided the term “peoples” when referring to indigenous people, in the singular, instead. Indigenous peoples opposed these omissions. They drew on social pressure tactics, in form of symbolic politics, to shame states that Indigenous peoples are “peoples” with a right to self-determination. Canada for instance, leading up to the formation of the WGDD, only referred to “indigenous people” at the 1993 World Conference on Human Rights (WCHR). Indigenous delegates responded Canada’s denial of not recognizing them as “peoples,” in the plural, by drawing “large “S”s on sheets of paper and [pinned] them to their clothing” and raising these over their heads whenever Canada took the floor (Niezen 2003: 163). Ted Moses, an indigenous delegate at the WCHR, shamed states to have

called us populations, ‘communities,’ ‘groups,’ ‘societies,’ in the singular. In short, they will use any name they can think of, as long as it is not peoples with an ‘s.’ They are willing to turn universality on its head to avoid our right to self-determination (cited in Thornberry 2002: 42).

The significance here is that these actors continued to drive the process of norm acceptance; not only in the sheltered venue of the WGIP but beyond. Indigenous peoples, with support from allies, thereby also reinforced the role of the IGO itself as a venue for contestation with states.³⁵⁶

Moreover these debates are consistent with more recent constructivist literature, that argues that processes of norm contestation are not only useful to explain norm erosion but that a focus on the

³⁵⁶ Daes, present at the WCHR, emphasized indigenous peoples’ right to self-determination and critiqued states of “twisting” international law to deny them a status as peoples (Barsh 1996: 51). The WCHR in 1993 expressed consensus on the universality of human rights as being beyond question.

“norm contestedness” sheds light their quality as “both structuring and socially constructed through interaction in context” (Wiener 2014: 27; also Deithelhoff & Zimmermann 2013).³⁵⁷ Norm contestation, than, is a necessary component of raising the level of norm acceptance (Wiener & Puetter 2009).

The impact of contesting recalcitrant states, through shaming them, was partially successful when Australia, Canada, Denmark, Finland, New Zealand and Norway submitted a resolution to consider the draft “declaration on the rights of indigenous peoples” in 1995 (E/CN.4/1995/L.61; E/CN.4/1995/L.62). The “s” had now been accepted by Canada and other states. At the same time states avoided outright mention of “indigenous peoples” in the WGDD title. It became cryptically called the “working group established in accordance with Commission on Human Rights resolution 1995/32” because, at least in part, states continued to resist recognizing indigenous peoples. What is more, adding “indigenous issues” as a separate agenda item may seem a small matter, yet I contend, was significant because it emphasized indigenous peoples’ rights as part of the CHR workload.³⁵⁸ With a standalone agenda item, indigenous delegates with formal consultative status could address states directly and submit oral and written proposals.

The CHR, in this connection, debated on special access and participation modalities for indigenous peoples in the WGDD. My contribution here is to demonstrate that formal access by indigenous peoples’ organizations with ECOCOSC NGO status was critical for those indigenous peoples formally excluded at this veto point; one level up in the UN hierarchy. This was evident as twelve indigenous peoples’ organizations with formal access as “observers” in the CHR

³⁵⁷ I find support in their critique that “the enduring structuralism of norm research results in a narrow understanding of norms that equates their existence and validity with their uncontestedness” (Deitelhoff & Zimmermann 2013: 4).

³⁵⁸ I observed that indigenous delegates contest the very notion of “indigenous issues” stating that they are “peoples and not “issues.”

pressed for special measures for indigenous peoples' access without such a status. They used their formal access to keep states accountable and raise institutional legitimacy costs by referencing states commitment during the ongoing *UN Decade of Indigenous People* by which states committed themselves to: "A new relationship: partnership in action."³⁵⁹ The International Organization of Indigenous Resource Development (IOIRD), for instance, reiterated that access "at all levels" in the IGO was necessary because

indigenous peoples are the ones who must live with these laws; consequently it is very important that we be able to decide on the process and content, to determine our own destiny (E/CN.4/1995/NGO/48, para 4).³⁶⁰

What is more, with respect to the influence of modalities established in sheltered venue's, the Sub-Commission under which the WGIP was subsumed supported these demands as it recommended that the UN

take special measures to enable indigenous peoples to participate fully and effectively, without regard to consultative status, in the considerations of the draft UN declaration, as they have contributed to the work of the Working Group (E/CN.4/Sub.2/1993/L.47; E/CN.4/Sub.2/1994/30, para 63)

As explained by Zürn, IGOs finding themselves in a context that is politicized "respond by giving greater access to transnational non-state actors as a move to increase legitimacy" (Zürn 2012: 25).³⁶¹ Typically one would assume that state driven venues would not make radical changes, and go as far as NSAs demand, but adjust access and participation modalities according to existing bureaucratic models (Tallberg et.al 2013: 35).³⁶² The evidence, with regards to the WGDD, affirm these expectations. In addition to these, I specify that formal access by some

³⁵⁹ They also asked for immediate approval of the Draft Declaration itself.

³⁶⁰ The CHR heard statements by the Indian Law Resource Centre, Indigenous World Association, International Indian Treaty Council, the Saami Council and others. Indigenous peoples without consultative status also drew on WGIP allies who informed the CHR that 17 telefaxes were received requesting access (E/CN.4/1995/159).

³⁶¹ According to this argument, an analytical starting point is Weber's notion that venues like the WGDD are created, in part, to enhance an IGOs own legitimacy (Weber 1972: 548).

³⁶² See also Kissling & Steffek 2008.

members of a coalition of non-state actors may be crucial to raise legitimacy costs during moments of shifting from a sheltered venue to a state driven venue.

Yielding to pressure, states agreed to special procedures by which indigenous peoples had to submit applications to access the WGDD.³⁶³ These special procedures, although novel by introducing a new category of “Indigenous peoples organizations,” stopped short of deeper institutional design adjustments.³⁶⁴ The CHR was more restrictive than the WGIP because it did not admit Indigenous peoples unless they first obtained ECOSOC consultative status.³⁶⁵ As a consequence, the numerical advantage Indigenous peoples enjoyed in the WGIP decreased while a greater number of States leveled influence over content and process.³⁶⁶ This suggest that States conceded strategically and to legitimize the elaboration process; but, were reluctant to open the door to Indigenous peoples quite as wide as the WGIP had. Still a lesson here is that access to the sheltered WGIP now resulted in pressure to translate these upward in the IGO, at the WGDD.³⁶⁷ Formal access by some indigenous peoples’ organizations at the CHR mattered to broaden access and was especially crucial during this moment of venue shift. What is more it this section has similarities with findings from the previous chapter where the limited access and participation by liberation movements from Trust Territories impacted the translation of access and participatory capabilities for liberation movements from Non-Self-Governing Territories.

³⁶³ Indigenous peoples had to submit a statement of objectives of the organization, information on their activities and location to the “Coordinator of the International Decade of the World’s Indigenous peoples.” Subsequently the Committee on NGOs consulted with states and made its recommendation "in accordance with rules 75 and 76 of the rules and procedures of the functional commission" of ECOSOC (Res. 1995/32, para 4-7).

³⁶⁴ Denmark pressured the NGO Committee to expedite accreditation. 78 delegations were approved with 21 pending (E/CN.4/1996/84, para 4).

³⁶⁵ WGIP’ allies and indigenous peoples pressed for continued access and participation (E/CN.4/Sub.2/1993/L.54, para 3; E/CN.4/Sub.2/1994/30, para 63).

³⁶⁶ 31 Indigenous peoples’ organizations admitted by the special procedure, 10 Indigenous peoples’ organizations and 23 NGOs who were already in consultative status attended the first WGDD session. 61 States attended. Some states delayed or refused accreditation because their government did not recognize them as indigenous peoples (Interview Burger 2014). Others included an indigenous delegate to their envoys: Bolivia, Canada, Colombia, New Zealand, Norway, and Peru. Bolivia and Colombia extended free participation of indigenous delegates residing in these states (Barsh 1996: 786).

³⁶⁷ The IC deplored the failure of the accreditation process and asked to ensure open access (Venne 1997: 206).

4.4.3 Affirming Indigenous Peoples as Consensus Participants

This section analyses how indigenous peoples fostered a position as consensus participants in the WGDD between 1995-1998. The explanation offered relates to two aspects of accountability politics. First, I draw attention to the role of the WGDD chairperson as an influential gatekeeper for the participation of non-state actors in a state driven venues. Second, I demonstrate how indigenous peoples used a walk out to influence the chair to accept indigenous peoples as consensus participants alongside States.

The selection of chairpersons in multilateral negotiations is, as this section suggests, important because much of the input by non-state actors is left to the discretion, decisions and skills of the chair (Jönsson & Tallberg 2010).³⁶⁸ As venue gatekeepers chairpersons can work to the detriment of non-state actors' participation, yet when using their delegated authority they can also steer progress in directions favorable to non-state actors. Indeed, the importance of a chairperson begins with the selection process. This is because there exists a particular danger is to alienate delegates active in venues, whether they are states or non-state actors from nominating chairperson's. In cases where selecting a chair becomes a source of controversy subsequent decisions of multilateral deliberations are obviously tainted.³⁶⁹

First, in regards to the initial participation by non-state actors in the WGDD, it was evident that the selection of the chairperson was viewed as important by indigenous peoples and states. The selection of the chairperson was essentially a first litmus test for the participation of indigenous peoples. Until this point CHR decisions were, as a matter of practice, taken by

³⁶⁸ Chairpersons according the *Rules of Procedures of the Functional Commissions of ECOSOC* "direct discussions, ensure observance of these rules, accord the right to speak, put questions to the vote and announce decisions," they further "shall have complete control of the proceedings," "rule on points of order," "propose [...] the closure of the list of speakers," put a "limitation on the time [...] and on the number of times the representative [...] may speak, and suspend or adjourn a meeting" (Rule 41). Rule 43 provides that: "No one may address the commission without having previously obtained the permission of the Chairman."

³⁶⁹ In fact, the facilitation skills of the second WGDD chairperson, as I discuss later, were consequential in enabling indigenous peoples' efficacious participation.

consensus amongst states on the roster (retaining a right to veto) with NGOs in consultative status participating as “observers” only.³⁷⁰ States excluded indigenous peoples from selecting the first WGDD chair. They, following private consultations, appointed José Urrutia, the *Permanent Representative of Peru*, in Geneva (Chávez 2009: 99).³⁷¹ Chairperson Urrutia’s tenure was short lived after he announced not be available for re-election in 1998, however. He was replaced by Luis Enrique Chávez, a Peruvian diplomat.³⁷² States did not include indigenous peoples in the selection of a new WGDD chair, but seemed more sensitive to selecting a chair that would not undermine the legitimacy of the WGDD further. They, consequently, restricted the search to Latin American state diplomats; partly because states perceived that indigenous peoples would accept such a candidate given that indigenous peoples enjoyed more political dialogue with governments in the region than elsewhere (Chávez 2009: 100).³⁷³

At the same time, indigenous peoples kept the WGDD chairperson Urrutia and states accountable by staging a walk out from the plenary. This tactic secured an informal agreement with Urrutia; guaranteeing their position as consensus participants. Russell Barsh summarized the modalities of work adopted by Urrutia leading up to the walk out as follows:

Urrutia implemented practical procedural equality for indigenous peoples [...] much as Daes has done in the WGIP. However, the real test of indigenous peoples’ standing will come only after the drafting process begins in earnest. The chair must then decide whether indigenous NGOs [sic] must support a proposal in order for there to be a consensus (Barsh 1996: 786).

³⁷⁰ Observers are admitted if they are in consultative status in category I (General) or II (Special). Those in category III (Roster) may be present “when matters within their field of competence are being discussed” (Rule 75). Rule 76 stipulates that the CHR “may consult” with those in category I or II directly or through “committees established for the purpose” (E/RES/1296 (XLIV)).

³⁷¹ The chair *pro tem*, representing the CHR Secretariat, refused Russell Barsh to nominate Ted Moses, a Cree, as chair until immediately following the appointment of Chávez.

³⁷² The relationship between Chávez and indigenous delegates was at first fraught with difficulties because he was inconsistent and gave excessive weight to the objections of the CANZUS group (Davis 2008:447).

³⁷³ Most Latin American States ratified Convention ILO 169, the only international treaty concerned with indigenous peoples in existence at the time.

Barsh correctly predicted this real test. It unfolded when the WGDD reconvened for the second time on 21 October 1996. Moana Jackson, as spokesperson for the IC, requested that

there be a plenary consensus on a change of the internal rules of procedure guiding the Working Group, specifically providing for the equal and full participation of Indigenous peoples in its deliberations, including full participation as partners in the decision-making authority of the Working Group.³⁷⁴

Urrutia did not respond, prompting Wilton Littlechild, a Cree, to motion for adoption of Jackson's request. The chairperson acted as gatekeeper stating that indigenous peoples “did not have the right to make motions, which was a prerogative of governments” (Dahl 2012: 182).

After he concluded this statement indigenous delegates jointly walked out of the room in protest.

Andrea Carmen, from the IITC, explains the accountability tactic poignantly:

[We demanded] that we were not just observers [...] but that we were full participants. And we actually achieved that through that process because for 3 or 4 days States were in the room talking to each other without Indigenous peoples and that also was unacceptable for them. Everyone knew this would not have any legitimacy. So the agreement was that we would be equally part of the consensus to agreeing to any changes or any new text or to the adoption of the text coming out of the WGIP, and the Sub-Commission (Interview Carmen 2014).

Indigenous peoples used the walk out to demand action from a central gatekeeper. It was Urrutia who could ensure that they were treated as equal participants. The walk out, with regards participation by non-state actors, was intended to secure discursive equality. The chair, in a meeting with the Indigenous Caucus, in effect declared that: "I will stress that consensus is the consensus by both governments and indigenous peoples" (Dahl 2012: 127).³⁷⁵ Indigenous peoples, with this guarantee, ended the walk out and returned to the plenary. Where Urrutia

³⁷⁴ See (E/CN.4/1996/WG.15/CRP.7, para 7) for the full statement. Indigenous peoples were not “observers” and should have full input in the drafting of WGDD reports, equal rights to recommend methods of work and to table agenda items (E/CN.4/1997/102, para 36).

³⁷⁵ The WGDD never clearly stipulated in detail what it meant by indigenous peoples having to “agree” on the Draft Declaration. Neither did the IC which decided not to address this “delicate matter” (Åhrén 2007: 86).

extended to indigenous peoples the right to speak and have their statements reflected in the final report (Gray & Dahl 1998: 348). Urrutia formalized the basis of consensus decision-making at the third WGDD session in 1997.³⁷⁶ This procedural guarantee, he outlined, meant that otherwise "formal meetings should be limited to the adoption of articles agreed upon by consensus in informal plenary meetings" (E/CN.4/1998/106, para 18).³⁷⁷ Altogether, the walk out had tremendous ramifications in the elaboration phase; resulting in "a ground-breaking and confidence-building victory, ensuring that Indigenous peoples would be equal participants in reaching a consensus" on the Draft Declaration (Carmen 2009: 90).³⁷⁸

Chairperson Urrutia agreed because accountability politics heightened social pressure and the walk out, as a tool of resistance, garnered public attention. The IC prepared a press release for immediate release titled *Indigenous peoples walk out at the UN* on 22 October 1996 in which they deplored the chairperson's refusal to accept their consensus participation.³⁷⁹ His decision was then based on a strategic calculus to minimize further legitimacy costs.³⁸⁰ Kenneth Deer, a Mohawk, recalls: "We had some leverage in this because without indigenous participation, the WGDD lacked credibility (Interview Deer 2014). Especially two factors made the walk out an effective tool. First, as discussed, the UN had committed to work with indigenous peoples in a

³⁷⁶ One change appears to have influenced Urrutia's decision: ECOSOC revised its rules and procedures on consultative relations in Resolution 1996/31, para 29: "organizations in general consultative status and special consultative status may designate authorized representatives to sit as observers at public meetings of the Council and its subsidiary bodies. Those on the Roster may have representatives present at such meetings concerned with matters within their field of competence. These attendance arrangements may be supplemented to include other modalities of participation" (emphasis added by author) (E/CN.4/1998/106, para 18).

³⁷⁷ Based on suggestions made in the technical review of the draft declaration (E/CN.4/Sub.2/1994/2; E/CN.4/1997/102, para 18).

³⁷⁸ The Sámi Council and Inuit Circumpolar Conference stressed that consensus be in accordance with RES/1835 (LVI) from 1974. Stating that "every effort is to be made to achieve unanimous agreement; but if that could not be done, those dissenting from the general trend were prepared simply to make their position or reservations known and placed on the record" (E/CN.4/2001/85, para 29-37).

³⁷⁹ Available online at <https://nettime.org/Lists-Archives/nettime-l-9610/msg00076.html>

³⁸⁰ Kenneth Deer, explains further: "What they did was they agreed that we would be part of the consensus and the informal discussion, which 99% of all negotiations were informal [...] would be voted on in formal session without change. So that was a major breakthrough at that time" (Interview Deer 2014).

framework of partnership. This meant that the WGDD was challenged to put declared IGO' commitments into action. Second, precedents and practice set in the WGIP, as previously analyzed, established indigenous peoples as part of the consensus, which consequently heightened expectations that the same participation would be applied at the WGDD. The success of the walk out, more generally, confirms explanations that have shown that an act of withdrawal can amplify "voice" for participants facing institutional constraint (Hirschman 1970; Helfer 2005).³⁸¹ The lesson here is that non-state actors' participatory practices, established in a sheltered venue by independent human rights experts, traveled upward. They did so in spite that they contravened CHR venue characteristics which limited consensus participation to states.

4.4.4 Teaching as Social Pressure: The Indigenous Caucus No Change Strategy

The Indigenous Caucus maintained unanimous support for the Sub-Commission Draft Text and pushed for its approval without amendment. A position that would become known as the "no change" strategy. The strategy was held firm from 1995 to 2001. The IC adopted this social pressure tactic to teach states, and was based on their principled demand, to use the Sub-Commission's Draft Declaration as the basis for the WGDD' elaborations.³⁸² States were less unified and fell into three fairly distinct groups. Some States, from Latin America and Scandinavia, supported Indigenous peoples' intransigence. Others, including the United States and Canada, perceived a deep challenge to state sovereignty and called for clarifications or voiced serious reservations regarding the Draft Text altogether.³⁸³ Again, other states entering

³⁸¹Actors threaten to exit and use their voice to exert influence from within the institution (Helfer 2005: 1588).

³⁸²They cemented their grafting argument as self-determination was established in international law (E/CN.4/1999/82, para 70)

³⁸³ The main sticking point for opposing states was that they interpreted the right of self-determination according to three lines of argumentation: (1) self-determination only applied to the "entire peoples of a State;" (2) self-determination needed to be defined and "clarified further;" and (3) self-determination could be supported "without prejudice to the sovereignty and territorial integrity of a State" (E/CN.4/1999/82, para 68).

negotiations remained in background with their position being largely unknown. The various arguments and strategies by states during this period were of course not new:

What was new was that they had to listen to our responses. In the political hierarchy of the nation-state, we were ignored; in the working group, these same governments had to live with our visions and our voices. We forced a debate on their historical denial of our humanity [...] our exclusion from the category of human rights [...] we clashed over whether we were a "peoples" under existing international UN Human Rights Covenants (Henderson 2008:52).

It could be argued that the "no change" strategy needlessly protracted WGDD' elaborations; yet, on the contrary this strategy had two important effects. First, it affirmed the centrality of the Draft Declaration as the basis for WGDD discussions. It gave indigenous peoples leverage as it prevented opposing states from watering down the Draft Declaration or by promoting new draft proposals on equal footing with the Sub-Commission text.³⁸⁴ A single text, more generally, serves the vital function of pulling delegations away from their varied positions towards a common position (Buzan 1981: 332). Indigenous peoples' success in establishing the Draft Declaration as the basis for discussion provided them with leverage for future WGDD' elaborations. It served as a validated basis, developed in a sheltered venue before, upon which the IC sought to anchor WGDD' elaborations; while blocking the most reticent states from cluttering the WGDD by introducing contending positions.

Second, and related, the evidence suggests that the "no change" strategy was intended to influence and persuade States.³⁸⁵ Indigenous peoples, to borrow from Finnemore, acted as "active teachers with well-defined lesson plans for their pupils" (Finnemore 1996: 12). They

³⁸⁴One incident that affirmed the importance of holding to the Sub-Commission text emerged after Chávez "received an informal paper" drafted by some States on articles 15 to 18 (E/CN.4/1999/82, para 73-74). The IC voiced "grave concern" because they undermined the transparency of the consensus process and produced alternative text (E/CN.4/1999/82, para 80).

³⁸⁵ Finnemore posits that "normative claims become powerful and prevail by being persuasive; being persuasive means grounding claims in existing norms in ways that emphasize normative congruence and coherence. Persuasiveness and logical coherence of normative claims are important politically, but are essential and must be explicit in law" (Finnemore 1996: 141; Risse 2000; Johnston 2001).

used the WGDD as a venue, or classroom, with the Draft Declaration as required reading for states. The role of indigenous peoples as teachers did not go unnoticed amongst states. An Australian delegate, for instance, noted:

Adoption of a declaration would be meaningless if that process did not lead to an understanding on the part of indigenous and non-Indigenous peoples and Governments of the contents of the draft and the reasoning and necessity behind it. Growing international and national awareness of indigenous issues had led to a steady progress but problems remained which required further consultation and perhaps education (E/CN.4/1997/102, para 22).

The IC used the strategy to explicate their core arguments surrounding a grafted version of self-determination. Arguments that are intended to influence and persuade actors "often have one or more of the characteristics of being emotionally appealing, accounting for evidence, and addressing the concerns raised by counter-arguments"; they may also be "consistent with pre-existing beliefs" or be convincing "simply because the frame has been set so well by advocates that no other argument seems plausible" (Crawford 2002: 36). Indigenous peoples' "no change" strategy constituted such a well defined frame and an attempt to persuade or, at minimum, influence states to elicit pro-norm support.³⁸⁶

Indigenous peoples drew on the strategy to induce states to question prevailing interests and beliefs about the appropriateness of integrationist or assimilationist state policies, unnecessary fears about secession, and above all to accept indigenous peoples as "peoples" with a right to self-determination.³⁸⁷ The IC did so by arguing that the Draft Declaration was the product of a decade long standard-setting process which was judged by the technical review of the Sub-Commission to be consistent with standards articulated in other human rights

³⁸⁶ "[We] delayed [so] that governments would become better educated about the inherent rights of Indigenous peoples and be less threatened by the wording" (Deer 2010: 22).

³⁸⁷ Matthias Åhren, head of the Sámi Council Human Rights Unit, assessed: "I think it was a good strategy for some time to establish the prominence of the draft and that is particularly with regard to the difficult rights such as self-determination and land rights" (Interview Åhren 2014).

documents. They argued compellingly that indigenous peoples' self-determination was "consistent with pre-existing beliefs" because it was a nonnegotiable universal right enshrined in existing international treaties, namely the two International Covenants, and must therefore apply on a non-discriminatory basis to all peoples. Crucially, Indigenous peoples contested that the WGDD needed to view the Sub-Commission text with "a high presumption of validity" and that "any proposed changes had to be reasonable and necessary" and that self-determination was a fundamental right that undergirded all other provisions.³⁸⁸ The contribution to existing accounts here is that the "no change" strategy maps onto the burgeoning focus in constructivist scholarship on norm contestation. Indigenous peoples, to borrow from Bloomfield, employed the "no change" strategy in order to contest those states that act as "antipreneurs," or those states here, "who defend the entrenched normative status quo against challengers" (Bloomfield 2016: 12).

I claim further that the "no change" strategy forced the WGDD' chair to seek a solution to the divergent positions. Noteworthy, was foremost that he followed a precedent set by WGIP chair Daes when he decided to propose informal working groups.³⁸⁹ Consequently, the WGDD began deliberating Draft Declaration articles according to degrees of contestation in informal groups.³⁹⁰ This adjustment to participation practices helped facilitate indigenous peoples' attempts to persuade states. The deliberation in these informal meetings engendered an atmosphere that allowed for constructive dialogue between states and indigenous representatives outside the formal plenary which followed prepared interventions. This, according to a state

³⁸⁸ Observers from the Sub-Commission (presumably WGIP members) advising the WGDD supported the adoption (E/CN.4/1998/106, para 20, 39).

³⁸⁹ The adjustment of venue characteristics by deliberating Articles in informal groups was, to recall, a practice WGIP' chair Daes had introduced in 1987. It was presented by the chair in conjunction with the Sub-Commission's technical review (E/CN.4/Sub.2/1994/2).

³⁹⁰ Urrutia first suggested to re-cluster the Articles. This altered WGDD elaborations up to the very end of the process in 2006. It allowed "soft rights" relating to culture, tradition, language, religion and identity to be discussed before before deliberating on "hard rights" such as self-determination, land and territories (Lightfoot 2007: 65).

delegate from Brazil, meant “[t]he more we talk, the more we understand one another” (cited in Pritchard 1997).

That the “no-change” strategy of Indigenous peoples helped influence and blunt counter-arguments forwarded by states is evidenced in greater acceptance by states, at least officially, during this period. Chávez, for example affirmed the principle of self-definition, when he noted in 1999 that no "agreement on the question of definition" of the term "indigenous peoples" was necessary as "most Governments" recognized the indigenous peoples right to define themselves (E/CN.4/1999/82, para 65-67).³⁹¹ Participants’ positions after concluding the informal drafting groups, Chávez summarized in 2000, had “moved closer, particularly when compared to previous years.” He affirmed that WGDD’ participants

agreed that the right to self-determination was the cornerstone of the draft declaration [and that its application was not to be confined to] "colonial contexts," [but an] “evolving” [norm that could be exercised without being a] "detriment of the independence and territorial integrity of States" [and not intended by Indigenous peoples to] “imply a right to secession” (E/CN.4/2000/84, para 82-85).

The decision to facilitate deliberations through in informal groups and by accepting the status of the Sub-Commission Draft Text as basis for these, the evidence suggests, influenced an increasing number of states to, at minimum, declare pro-norm support for the “non-statist” conception of self-determination that had been achieved in the WGIP were state participation was scancer. Essentially, the no change strategy established the prominence of the Sub-Commission text as a basis for elaborations. It was sufficiently clear to states that indigenous peoples were not willing to elaborate human rights standards without their core demand of indigenous peoples constituting “peoples” with a right of self-determination being unequivocally affirmed. Substantively, however, the WGDD by the end of 2000 reached consensus on 2 of 45

³⁹¹ Only the United States and China openly opposed this view (E/CN.4/1999/82, para 40; 46).

articles only.³⁹² The “no-change” strategy, although supporting the outcomes discussed, had also consumed half of the mandated sessions.

4.4.5 Towards Compromise: Leverage Politics in the WGDD

Indigenous peoples were able to foster their demands for fundamental principles surrounding a grafted version of self-determination but, as this section demonstrates, not without agreeing to amendments on the Draft Declaration. In 2006 Chávez presented a revised chairman’s text “as a final compromise text” to be forwarded for adoption (E/CN.4/2006/79, para 30).³⁹³ Three interrelated factors led to this outcome:

First, with consensus lacking, indigenous delegates shifted tactics realizing that the “no change” strategy had exhausted its usefulness. This shift entailed IC venue adjustments and social pressure tactics.³⁹⁴ Second, the role of state allies became more pronounced, when Norway, Guatemala and Mexico, used their leverage to drive progress through influencing the chair and by facilitating informal discussions. Indigenous peoples benefited from these informal deliberations because they fostered winning coalitions while sidelining the most obstructionist States. Third, I demonstrate a venue constraint. This is because larger transformations, of the CHR transitioning to the Human Rights Council (HRC), impacted the adoption. These combined pressures prompted Chávez to produce a chairman’s text. A text that demonstrated systematic progress and provided a rationale to renew the venue’s mandate toward finalization.

³⁹² Article 43, guaranteeing gender equality to indigenous persons, and Article 5, concerned with the right of indigenous individuals to a nationality by 1997. No further articles were adopted until 2004.

³⁹³ The WGDD was expected to show tangible results during the *International Decade of the World’s Indigenous People*, ending in 2005, and there was uncertainty whether the WGDD mandate would be extended if no progress was made.

³⁹⁴ They were prepared to consider amendments if these strengthened and/or clarified the text, respected the principles of equality, upheld the absolute prohibition of racial discrimination and recognized Indigenous peoples’ self-determination (Henriksen 2009: 82; Pritchard 2001; Åhrén 2007)

4.4.5.1 Abandoning the No-Change Strategy

The first decisive factor that contributed to progress in the WGDD was that indigenous peoples began considering amendments. They realized that if they adhered to the “no-change” strategy, they would, to some degree, play into the hands of those states who hoped that the Declaration would fail and not be adopted at all. Some of the IC members began to consider changes while others held firm to the “no change” strategy.³⁹⁵ Internal IC deliberations on considering amendments were blocked by those who objected to any changes with others arguing that the text should and could be strengthened.³⁹⁶ As a result, two camps formed by 2003. The so-called Copenhagen Group which was in favour of negotiating the text and engaging states, and a group predominately made up of delegates from North-America, which objected to any amendments.³⁹⁷ Despite these divergent views the IC "held together with an overall purpose, internal protocol and sense of principal, despite differences in objectives, approaches and strategies" (Carmen 2009: 90). The Asian Indigenous and Tribal Peoples Network (AITPN) warned that the WGDD will end as a "damp squib" as long as it is

caught between the State's obduracy not to grant minimum rights to Indigenous peoples and Indigenous peoples obstinacy not to follow UN rules of procedures and past practices on international standard setting processes (E/CN.4/2004/NGO/138).

The AITPN went on to argue that the “no-change” strategy "appears to be unreasonable, even to sympathetic countries," and declared that it is a "delusion" to think that the Indigenous peoples' cause is “advanced by sticking to the present stalemate situation" (ibid.). Such frankness struck a cord amongst the majority of indigenous delegates. Forty indigenous peoples' organizations

³⁹⁵ The group that held onto the "no change" strategy was led by the International Indian Treaty Council and other North American indigenous delegations. Those first willing to accept changes included the Indian Law Resource Centre, Aboriginal and Torres Strait Islanders Commission, and the Sámi Council (Dahl 2012).

³⁹⁶ The task of redirecting the IC fell on a “very small number of indigenous organizations, in a caucus where the atmosphere at the time was harsh to say the least, in respect of those that dissented with the majority” (Åhren 2007: 121).

³⁹⁷ The Copenhagen Group formed after the International Working Group on Indigenous Affairs (IWGIA) convened a meeting in Copenhagen in May 2003. See for a list of participants (Dahl 2009: 195).

stated that they would consider amendments with three others stating that they “did not associate themselves with that statement” (E/CN.4/2004/81, para 14).

Moving away from the “no change” strategy highlighted the possibility of fragmentation amongst IC members. Instead of fragmentation, however, it prompted network adjustments. The IC decided to create an additional organizational layer by establishing regional caucus meetings. These adjustments are consisted with what the scholarship describes as “internal structuration” which refers a process of non-state actors network formalization and professionalization (Kahler 2009; Della Porta & Diani 1999).³⁹⁸ This reorganization, apart from mapping onto existing scholarship, underscores the constitutive argument of this chapter, as it indicated a deepening of the global nature of the indigenous movements.³⁹⁹ This innovation averted IC’ fragmentation because it acknowledged indigenous peoples’ various contexts. This is because regional groups could meet and connect between WGDD meetings with greater ease, formulate specific proposals emerging in their regions, and formulate positions before tabling and merging these at the IC.⁴⁰⁰ With this adjustment, and an overarching lesson for other non-state actors, the IC found new momentum without which the IC “would probably never have been able to agree on the final text and the Declaration would thus never have been adopted” (Dahl 2012: 47).⁴⁰¹

Fragmentation did not occur because the no-change strategy was not abruptly discarded but lost traction over time and, as shown below, because it followed proven standard-setting

³⁹⁸ Della Porta & Diani further indicate that professionalization leads to dampening a movements radicalism, a finding which is however inconsistent with the transnational indigenous movement, as I observed during several *UN Permanent Forum on Indigenous Issues* meetings.

³⁹⁹ It, as such, runs counter to arguments made Kymlicka who foresees a retrenchment of the indigenous track (Kymlicka 2007).

⁴⁰⁰ Indigenous Regional Caucus meetings are since organized around eight geographic regions: Africa, Arctic, Asia, Latin America, North America, Russia and Eastern Europe and the Pacific Region. In 2007 the IC established a permanent bureau in New York.

⁴⁰¹ Andrea Carmen, a member of the IC, reflected: “Could we maintain a collective position in the caucus to defend core rights and would we even agree on what those were? [...] all the strategies before us entailed tremendous risks. The stakes [...] were so high, and we had dedicated so many years of our lives to this process” (Carmen 2009: 88).

principles.⁴⁰² Those considering amendments, build on a proposal by Mick Dodson, a respected member of the IC.⁴⁰³ He suggested drawing on, already noted Resolution 40/120, standard-setting principles when considering amendments (Davis 2008: 451).⁴⁰⁴ Indigenous delegates, my research suggest, reintroduced these principles because an increasing number of IC members either openly or privately questioned the sustainability of the "no-change" strategy. Dodson's proposal was critical for the IC to leave the "no change" strategy behind because it reintroduced WGIP chair Daes's successful strategy, as previously analyzed. Any changes to the Draft Declaration, to recall, had to be reasonable, necessary and strengthen existing draft text (A/RES/41/120; E/CN.4/2001/NGO/54). These principles gave the IC a tool to draw states back into following UN standard setting practices *and* abated obstructionist States' ability to water the Draft Text down.⁴⁰⁵

4.4.5.2 Consensus does not mean Unanimity

The Indigenous Caucus targeted chairperson Chávez by sharply criticizing his methods of work through two social pressure tactics. First, in July 2004, they argued that his lack of leadership as chair contributed directly to the lack of progress. The IC deployed a social pressure tactic in a letter to Chávez:

There is no clarity on this issue yet we are aware of the fact that the Working Group is not bound by unanimity in decision making in the CHR. The rules of procedure reflect that consensus does not mean unanimity. Therefore, we should not be drafting based upon the lowest common denominator. Rather, we have had a number of opportunities last year and previously wherein it was possible to 'provisionally' adopt article and allowing States to register their provisos. That is what provisional adoption actually is (cited in Davis 2008: 449).

⁴⁰² A small number of Indigenous peoples felt alienated and left altogether; never to return.

⁴⁰³ He was the Human Rights and Equal Opportunity Commission Aboriginal and a Torres Strait Islander Social Justice Commissioner.

⁴⁰⁴ Dodson argued that amendments were predicated on the integrity or presumption of validity of the Sub-Commission Text and according to GA Resolution 41/120.

⁴⁰⁵ One reason to reintroduce these principles may have been that more states participated than had at the WGIP.

They used procedural rules to pressure the chair to use his discretionary agency and provisionally adopt articles, once considerable convergence of opinions existed, and even if consensus was lacking. The essence of this demand was that the IC put chairperson Chávez into a position to draft a chairman's text. A primary reason to shift tactics by the majority of the IC was the conclusion that a declaration would never be adopted by state consensus. They correctly assessed that, rather than unanimity, a more likely scenario would be a chairman's text; enjoying substantial support by WGDD participants. This text could then be forwarded for adoption to the GA, where it would be put for a vote to all UN member states.

Second, on 29 November 2004 six indigenous delegates added pressure by beginning a hunger strike that ended on 2 December 2004.⁴⁰⁶ The purpose of the hunger strike was to call attention "to the continued attempts by some states, as well as the UN process itself, to weaken and undermine the Draft Declaration."⁴⁰⁷ One of the indigenous delegates participating in the hunger strike recalls its impact:

Chairman Chávez allowed us to remain sitting on our white blanket in the back of the room despite requests from both the US and the Russian Federation to have us physically removed as "protestors" [...] later the Chair and several states told me and others that this was a turning point for them, and that it had helped open their eyes as well, as it underscored our level of commitment to our rights and the vital importance of the declaration to Indigenous peoples (Carmen 2009: 91).

The reputational costs of these social pressure tactics plausibly influenced Chávez to be persuaded and assume a more active role and to begin drafting a chairman's text.⁴⁰⁸ The IC strategy henceforward was to strengthen the provisions and secure the core demand of indigenous peoples' self-determination. Critically, indigenous peoples of the Copenhagen camp

⁴⁰⁶ The six indigenous delegates were Adelard Blackman, Andrea Carmen, Alexis Tiouka, Charmaine White Face, Danny Illie and Saul Vincent.

⁴⁰⁷ Press Release: Hunger Strike by Indigenous peoples' Representatives at the United Nations (2009).

⁴⁰⁸ It ended when the UN High Commissioner on Human Rights and the CHR Vice President assured Indigenous peoples that the Sub-Commission text was the basis for the WGDD. The UN declared a Second UN Decade on the World's Indigenous peoples (A/RES/59/174, para 12).

decided to “focus on isolating” the most obstructionist States while aiming to prevent other states from backsliding (Åhren 2007:91).

4.4.5.3 Building Winning Coalitions

The second factor that influenced Chávez’s leadership role was that state’ allies built winning coalitions. Norway, in an imaginative diplomatic move, lobbied Chávez in 2005 to use his capacity as chair and suggest to Guatemala and Mexico that they conduct informal consultations pertaining to the fundamental aspects of the declaration, namely self-determination and the provisions on lands, territories and natural resources (E/CN.4/2005/89, para 23). These informal working groups allowed frank off the record encounters. The venue adjustments, of setting up small deliberative venues and according to level of contestation of articles, made progress in the large WGDD plenary easier.

More specifically, Norway influenced Chávez to use his limited autonomy to activate known state’ allies into becoming active facilitators. Guatemala and Mexico, as major supporters of the “no change” strategy, were now asked to leave their passive role behind and built winning coalitions. A knock on effect was that Chávez himself became a surprising ally for indigenous delegates.⁴⁰⁹ He begun to consistently compare proposed changes to the Draft Declaration, while engaging indigenous delegates to allow for their significant input. Chávez further sidelined obstructionist States. He, for instance, noted that a proposal made by Australia, endorsed by Canada and the USA, "differed from the wording of the draft" and instead suggested discussing relevant articles "as originally drafted" (E/CN.4/2004/81, para 109).

⁴⁰⁹ Matthias Åhren, head of the Sámi Council Human Rights Unit, assessed State’ allies and Chávez’s changing roles: “Norway, Mexico and Guatemala all of a sudden found themselves little bit in the driver’s seat [...] From then on, I think, the relationship with Chavez improved and I think many of us including myself participating in the process were thinking he did a good job” (Interview Åhren 2014).

Mexico, in its new role as active facilitator, also helped build winning coalitions by shifting venues. It invited WGDD' participants to a workshop in Pátzcuaro, Mexico from 26 to 30 September 2005 (E/CN.4/2005/89, para 16). About ninety delegates participated, including 15 States, 34 indigenous representatives and several IGOs as well as academics.⁴¹⁰ Gustavo Torres Cisneros, Mexico's state delegate recalls:

The Pátzcuaro Workshop enabled frank and sincere discussions that produced a better understanding and offered ideas on how to bridge opposing positions (Interview Torres-Cisneros 2014).

Temporary, venue shifting of this kind offered additional time and an informal discursive space to realize "that there was more agreement than disagreement" and that, "with effort, it would be possible to find the necessary solutions to reach a compromise" (de Alba 2009: 113). In essence, the Pátzcuaro Workshop contributed to building winning coalitions between states and indigenous peoples by producing three outcomes. First, it affirmed Mexico as a lead ally in the declaration process, a role it held until the adoption of the Declaration in 2007. Second, the meeting provided Chávez with a set of consensus positions that he could draw on when producing his chairperson text (E/CN.4/2005/WG.15/CRP.1).⁴¹¹ Third, state allies, like Guatemala, used the workshop to address and mitigate specific state opposition through bilateral discussions.⁴¹²

⁴¹⁰ All members of the Copenhagen group were present and "constituted a clear majority of the indigenous participants" (Åhren 2007: 100). Erica-Irene Daes, Augusto Willemsen-Diaz, James Anaya, Julian Burger and other long standing advocates for indigenous peoples' rights also participated (E/CN.4/2005/WG.15/CRP.1).

⁴¹¹ Key agreements were formulated: 1) "It is feasible to reach an agreement based upon the current text of article 3, insofar as the right to self-determination of Indigenous peoples is no longer questioned. Precision and nuances could be introduced, preferably in other parts of the Declaration." 2) "It is evident that the category of "territories", as demanded by the Indigenous peoples [...] does not jeopardize the territorial integrity of states." 3) "In regards to the issue of collective rights, [...] the debate should be centered on the enhancement of the current system of human rights and on how best it could be expanded to favor collective rights" (E/CN.4/2005/WG.15/CRP.1).

⁴¹² Guatemala lobbied the UK which secured the EU bloc to support the declaration (Åhren 2007: 102).

4.4.5.4 Sidelining Obstructionist States

Considerable uncertainty emerged in April 2005 when the CHR debated extending the WGDD mandate. Obstructionist States, especially the USA and Australia, intended to halt the adoption of the Draft Declaration.⁴¹³ They were rebutted because a large majority of states in the CHR converged with state allies and extended the WGDD mandate for a two-year period.⁴¹⁴ The venue consequently began its work under great pressure to finalize a chairman's Draft Declaration.⁴¹⁵ Two factors strengthened Chávez position to formulate such a text.

First, WGDD participants accepted the chairman's text as a basic working document. To recall Indigenous peoples provided Chávez with the ability to present a chairman's text as long as it was based on the Sub-Commission Draft Declaration.⁴¹⁶ Second, state' allies, such as Norway and Mexico, entrenched Chávez's agency as chief mediator and helped sideline the most obstructionist states. Chávez implemented more effective conference room techniques such as the use of

an overhead projector and pen to highlight agreed language [and devising four small working groups] to work on clusters of articles [which involved deliberately coupling] those states and indigenous observers together who were most diametrically opposed to each others' position (Davis 2008: 453).⁴¹⁷

I add here that this meant borrowing established modes of deliberations from the WGIP as previously discussed. The informal group, now with greater state participation, again, considered

⁴¹³ This tactical manoeuvre, in hindsight, uncovers their interests to halt the adoption because they here sought to place time restrictions on the WGDD and later requested additional time to complete the negotiations in the HRC.

⁴¹⁴ Ten extra days were mandated by a vote of 52 in favor, none against, with the US abstaining (RES 2005/50; E/CN.4/2005/87, para 13). The US unsuccessfully tried to force an adoption in 2006. But was defeated by a vote of 49 for to two against (Australia and USA), with two abstentions (Romania and Togo).

⁴¹⁵ Chávez said that the "Time had come for concrete solutions based on texts." He asked all delegations to agree to the largest number of articles, and "if possible on the whole declaration" (E/CN.4/2006/79, para 7). The last WGDD session was divided into two sessions, from 5 to 16 December 2005 and from 30 January to 3 February 2006, including nineteen informal meetings.

⁴¹⁶ Chávez pointed out that his chairman's text "could be used as the basis for consensus, as it was as close to the original text as possible" and that the plenary "focus on his proposals" (E/CN.4/2006/79, para 8).

⁴¹⁷ Although, I am not an expert, this tactic of coupling opposed actors seems to be supported by recent social psychology scholarship proposing that face to face diplomacy "leads to better intention understanding" amongst deliberating parties (Holmes 2013: 840, see for a critique Hickok 2014).

the most contentious articles of self-determination and lands, territories and natural resources “in informal plenary meetings” (E/CN.4/2006/79, para 9-10). This method of work helped the WGDD to preliminarily adopt less sensitive draft articles under the lead facilitation of Norway.⁴¹⁸ By the end of 2005 substantial progress was evident, when 16 preambular paragraphs and 21 articles were preliminarily adopted in the first chairman’s text (E/CN.4/2006/79, para 11-12).

The greatest impasse, in February 2006, lay in the operative part of Article 3 on the right of self-determination. State allies, and Mexico in particular, underscored that the Pátzcuaro Workshop had reached an agreement that Article 3 would not be amended and that indigenous peoples accepted that the “non-statist” conception of self-determination does not clash with the norm of territorial integrity (E/CN.4/2006/79, para 22).⁴¹⁹ The last WGDD, in short, highlighted that state allies and indigenous peoples now actively steered the process towards a compromise chairman’s text, while protecting key objectives of a “non-statist” conception of self-determination that was grafted on universal human rights (E/CN.4/2005/WG.15/CRP.2; E/CN.4/2005/WG.15/CRP.3). Overt intransigence now lay solely with a small group of states.

New Zealand closed ranks with Australia and the US opposing strong wording of self-determination and rights relating to land and territories.⁴²⁰ These states aimed to make Article 3 subservient to the norm of non-interference:

Indigenous peoples have the right of self-determination. By virtue of that right they freely determine, within constitutional provision of states concerned or other positive arrangements, their political status and freely pursue their economic, social and cultural development (E/CN.4/2004/WG.15/CRP.1).

⁴¹⁸ States led five groups: on lands, territories and resources (Brazil); on the question of self-determination (Canada), concerning provisional adoption of articles (Norway); cross-cutting issues (Spain); article 36 related to treaties (Canada) (E/CN.4/2005/89).

⁴¹⁹ Julian Burger, who on behalf of the OHCHR opened the WGDD, recalled that the outcomes reached at the Pátzcuaro Workshop guided participants (Interview Burger 2014).

⁴²⁰ Canada, entirely unknown then, lobbied behind the scene against the adoption (Joffe 2010).

These extreme positions, aiming to limit self-determination to fall “within constitutional provisions of the state,” were at this stage no longer consequential. The joint proposal to limit Indigenous peoples’ self-determination was not considered by Chávez.⁴²¹ He was able to resist obstructionist States attempts because Mexico in particular strengthened his position as chief mediator. Luis Alfonso de Alba, Mexico’s chief diplomat, influenced Chávez to ignore these proposals as they did not represent the majority of WGDD’ delegates preference.⁴²²

Chávez’s unequivocally affirmed that Indigenous peoples have a right of self-determination under international law and clarified that such a right could be achieved through autonomy and self-government arrangements.⁴²³ Article 3 on Indigenous peoples’ self-determination remained unchanged in the chairperson text and thus true to the wording of Article 3 of the Sub-Commission Text. Noteworthy was that by replacing Article 31, that defined the scope of indigenous peoples’ self-determination and as previously noted, with the a more prominent Article 3bis, Chavez affirmed the “non-statist” conception of self-determination that defined autonomy and self-government arrangements as primary implementation mechanisms:

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions (E/CN.4/2006/79).⁴²⁴

WGDD’ elaborations concluded without reaching unanimity but instead produced a compromise chairman’s text (E/CN.4/2006/79, para 30).⁴²⁵ Chávez took this decision because considerable

⁴²¹ The proposal suggested to alter Article 3 to deviate from common article 1 of the 1966 Covenants (E/CN.4/2004/79, page 21).

⁴²² Chávez tried to defer considering the joint proposal on the basis that it had only been circulated in English. De Alba recalls: “I found myself forced to indicate [to Chávez] that we did not need a translation to express our absolute rejection of the proposal” (de Alba 2009:114).

⁴²³ Norway first proposed the amendment which was now widely excepted. Other forms of exercising indigenous self-determination were still available given the link to international law.

⁴²⁴ This formulation expanded the scope of self-determination relative to the wording Norway returned with from the informal discussion because the qualifier “specific” was deleted (E/CN.4/2006/79). Russia’s proposal to amend Article 3bis (former Article 31) to be “exercised in accordance with the rule of law, with due respect to legal procedures and arrangements in good faith” was disregarded by Chávez (E/CN.4/2004/79).

uncertainty existed about whether the WGDD mandate would be extended. This was due to a general sense of confusion about whether the newly established Human Rights Council or the old CHR would take charge.

Indigenous peoples after considering the chairman's text for a few weeks lent their support. According to Andrea Carmen, delegate of the IITC, the final chairman's text "went 80% our way, we were pretty happy with it compared to what it could have been" (Interview Carmen 2014).⁴²⁶ States also largely supported the chairman's text, with Australia, New Zealand, Russia and the USA predictably denouncing it publicly. What was most surprising was that Canada now also opposed the chairman's text; a major shift as Canada had been an active facilitator in this last phase. WGDD' elaborations on the *UN Draft Declaration on the Rights of Indigenous peoples* had come to end. The state driven venue, to my reading, had simply reached its natural limits. Many constraints were overcome, adversarial positions bridged through compromise, yet fundamental contestations by a small group of states remained.

The main factors enabling Indigenous peoples to achieve their core objectives was the abandonment of the "no change" strategy and the facilitation by state allies which enabled Chávez to produce a chairman's text. The time constraints imposed on the WGDD motivated indigenous peoples to exercise direct influence over Chávez to raise his level of activity and use

⁴²⁵ The IC was "relatively satisfied" and did not open up further discussions (Interview Åhren 2014). Two outstanding issues were collective rights and rights to land territories and resources. None constituted deal breakers. Article 1 and 2 and preambular paragraph 18bis were amended in accordance with the bilateral agreement during the Pátzcuaro Workshop (E/CN.4/2006/79; Annex). This wording, was a form of "constructive ambiguity" because France, Sweden, and the UK contended that international law does not acknowledge collective human rights (Francioni & Scheinin 2008: 114). States aimed to agree only to rights to land and territories that indigenous peoples used but not those which they no longer hold formal title to. Indigenous delegates rejected such limitations. The formulation "traditionally used" land, territories and resources in Article 26 which included rights to "restitution" in Article 28 were found. Although lacking detail on sub-surface resource rights, these formulations kept the most fundamental indigenous demands of free prior informed consent intact (Pereira & Gough 2013).

⁴²⁶ Chávez deleted Articles 8 and 11 and amended others. Article 8, in particular, was a significant omission as deleted Indigenous peoples right to self-identify. Changes to Article 20 (Article 19 in the declaration) moved the chairman's text closer to state positions from the strong free, prior and informed consent principle to one of consultation (Lüdert 2007). Article 46 on territorial integrity caused some concern (E/CN.4/2006/79).

his agency. The process also entailed state allies' brokerage to build winning coalitions. The adoption of new methods of work and temporary venue shifting also need emphasis; informal working groups, under the lead of state allies, helped formulate a chairman's text that enjoyed broad support. These deliberative mechanisms allowed for frank, off the record encounters that sidelined the most obstructionist states and encouraged a final Draft Declaration.

4.4.6 From the Commission on Human Rights to the Human Rights Council

In March 2006, and against the backdrop of the imminent establishment of the Human Rights Council (HRC), the chairman's text entered the CHR at a moment of considerable uncertainty.⁴²⁷

The transition from the CHR to the HRC meant that the Draft Declaration was caught in an institutional limbo, as one venue was supplanted by a new institutional arrangement.⁴²⁸

Indigenous peoples were not directly involved during this period of formal voting by IGO member states. Unlike in the previous case study where voting leverage was achieved by liberation movements emerging as state delegations non-state actors in this instance remained excluded. Under these access and participatory constraints state allies secured a clear majority vote in the HRC. Especially, the first President of the HRC Alfonso de Alba, an outspoken ally, kept the adoption process moving while keeping the IC abreast.⁴²⁹ In addition, the IC further strengthened their coalition by establishing the *Indigenous Caucus Steering Committee* (ICSC).

⁴²⁷ In principle, the WGDD text had to be adopted by the CHR, as subsidiary of ECOSOC. The WGDD could have been halted or undergone a process of amendments or the CHR could have authorized a final session. The ILRC and the Indian Movement Tupaj Amaru lobbied for an extension of the WGDD to reach full consensus (A/HRC/1/NGO/1).

⁴²⁸ The CHR ended in solemn protocol and without action on the Draft Declaration on 27 March 2006. It was replaced by the HRC which was established by near consensus (170 votes for, 3 abstentions (Belarus, Venezuela, Iran) and 4 against (USA, Israel, Marshall Islands, Palau). It consists of 47 States, elected by majority vote in the GA for three-year terms. UN Secretary General Annan deplored the CHR's credibility deficit and called for Reform (SG/SM9808HR/CN/1108). The HRC had a full year to review and improve all mandates, mechanisms and functions (A/RES/60/251). The President of the General Assembly oversaw these processes (A/RES/60/1, para 157) (See more generally Rosenthal 2008).

⁴²⁹ He informally met with the IC and states on 24 June 2006, after Canada signalled to defer adoption. Canada was "buying time to find a way to permanently block an adoption" (Åhren 2007: 107). Canada drew on procedural motions which opposing States themselves considered contrary to the development of human rights.

Important to consider here was that by placing the HRC under the General Assembly the UN's focus on human rights was heightened. The CHR effectively halted the adoption by deferring a decision presumably because it did not intend to interfere with yet to be determined HRC's venue characteristics (E/RES/2006/2). Fortuitously Alfonso de Alba, a UN diplomat since 1983, was elected as the *Group of Latin American and Caribbean States* (GRULAC) candidate for the HRC post - a type of unanimous resolve other regional groups lacked.⁴³⁰ With his election, a long-standing state ally, now led the HRC presidency with an experienced diplomat.

De Alba kept the adoption process moving and consulted with the IC throughout this period. Indigenous peoples intensified their activities and called on state allies, including Mexico, Guatemala and Scandinavian states, to do all within their power to ensure that the Declaration was adopted without further delay.⁴³¹ In addition, de Alba brokered a clear majority vote through building a strategic alliance with states interested to adopt the *Draft Convention for the Protection of All Persons from Enforced Disappearance* (de Alba 2009: 124). By way of advocating for both instruments state allies combined voting preferences strategically, while indicating their commitment for a new and improved HRC. This alliance factored into the HRC adoption of both instruments and increased reputational costs for all states. The HRC, on 29 June 2006, by its second-ever resolution, adopted the *Draft Declaration on the Rights of Indigenous peoples* by 30 votes for, 2 against (Canada and Russia) and 12 abstentions (HRC/RES/1/2).⁴³²

⁴³⁰ GRULAC reached unanimity, enhancing its voting position for first HRC President (see A/61/53, para 8). The presidency since rotates amongst the regions.

⁴³¹ Mexico together with Argentina, Belgium, Chile, France and Spain held a press conference on March 29, 2006 lobbying for the adoption. Mexico and Guatemala cemented wining coalitions with Peru and Spain. The decided that additional weight could be brought if Peru, given its chairmanship in the WGDD, tabled the resolution for adoption. It was sponsored by 45 States (A/61/53, para 68; A/HRC/1/L.3).

⁴³² Australia, New Zealand and the USA, as HRC non-members, participated as observers. Canada, unsuccessfully, attempted to amend Peru's proposal for adoption. A strategy to win time and to identify individual votes taken. The

States in the HRC accepted Article 3 on Indigenous peoples' self-determination which maintained its consistency with international law. It also accepted the "non-statist" conception of self-determination in Article 4. The last hurdle was adoption by all UN members States in the GA.

Indigenous peoples, excluded at this stage, focused their efforts by forming the *Indigenous Caucus Steering Committee* (ICSC). The ICSC further formalized Indigenous peoples international presence and consisted of two representatives from each Indigenous Regional Caucus.⁴³³ They moved to New York City to be present during the adoption process before and during the GA session.⁴³⁴ The ICSC was a coalition adjustment that acted as focal point for strategies and eliciting feedback from the regional caucuses. The establishment of the ICSC proved to be important when the GA proper, and the GA Third Committee, discussed the Draft Declaration from late 2006 until its vote in September 2007. Les Malezer chaired the ICSC.⁴³⁵ He levelled a continuous campaign to secure the broadest possible State support. This campaign focused special attention on the African States whose positions were unknown because these States had been largely inactive during the WGIP standard-setting and WGDD elaboration phase.

International Convention for the Protection of All Persons from Enforced Disappearance was also adopted (A/RES/1/1).

⁴³³ These included a panel of human rights experts and it brought global public attention to the obstructions and delays that were mustered against the declaration (Malezer 2010: 33).

⁴³⁴ Les Maelzer (chair, from Australia), Saodata Aboubacrine and Hassan Idbalkassm (Africa); Dalee Sambo and Mattias Åhren (Arctic), Raja Devashish Roy and Victoria Tauli-Corpuz (Asia); Hector Huertas, Azelene Kaingan and Jose Carlos Morales (Latin America and the Caribbean), Andrea Carmen and Chief Ed John (North America); Miliani Trask (Pacific) and Mikhail Todyshev (Russia and Eastern Europe)

⁴³⁵ He was the co-Chair of the National Congress of Australia's First People. Maelzer was lauded for his role as ICSC chair and for communicating with the IC regional caucuses (Interviews Dahl & Åhren 2014).

4.4.7 Addressing African State Sovereignty Concerns

African states used the GA's Third Committee to defer adoption of the Draft Declaration for a full year.⁴³⁶ The deferral stands in contrast to the previous chapter, where both the standard-setting with respect grafting self-determination with human rights for all peoples was driven, by former liberation movements turned newly independent states, through their voting leverage in Third Committee. In the present instance the venue, instead of enabling non-state actors, constituted a veto point. States, that had not participated in the standard-setting and elaboration phase, drew on the venue to voice concerns over challenges the Draft Declaration posed to their sovereignty. Namibia and Botswana in particular spearheaded the deferral, while known obstructionist states (Australia, Canada and New Zealand) asserted diplomatic pressure on members of the African Group of States (AGS). Three fronts were opened up to overcome the procedural hurdle African states erected. First, HRC President de Alba guided the adoption process forward. Second, the ICSC and state allies enlisted the President of the General Assembly to help mitigate African state's sovereignty concerns, while averting major amendments of the HRC text. Third, state allies broke an apparently cohesive AGS voting bloc.

4.4.7.1 Veto Point: The Third Committee Defers Adoption

In October 2006 the adoption process became enmeshed in a struggle of positioning. The newly formed HRC, under the leadership of de Alba as President, asserted its autonomy but clashed with those states that turned to the Third Committee as a veto point. My contribution here is to demonstrate the crucial role of state' allies to provide a counterpoint to opposing states who used the venue to affirm their role as IGO principals. This is to say that non-state actors working through sheltered IGO venues may be able to set standards more easily they, however, are also

⁴³⁶ The basic venue characteristics of the GA and Third Committee have been outlined in the previous chapter.

likely to face several veto points when moving into higher UN venues where their access and ability to vote is lacking.

As analyzed earlier a central impetus for UN reform can be attributed to the growing importance of human rights in the UN since the end of the Cold War. UN Secretary-General Kofi Annan initiated a reform process in 2005. He suggested to states that the HRC should be either a new principal organ or a subsidiary body of the GA (A/59/2005, para 181-183). Annan declared that the UN should

mark a clean break with the past [and never be] caught up in political point-scoring or petty manoeuvres; it should always think about those whose rights were denied (A/59/565, para 284).⁴³⁷

Such a strong stance by the UN Secretariat clashed with states opposing radical reform (Lauren 2007: 332). As a result, the powers and functions of the new venue were still indeterminate at the end of 2006.⁴³⁸

In light of these indeterminacies HRC President de Alba aimed to secure a degree of autonomy from the Third Committee in November 2006. He presented the first HRC report, which included a recommendation for the adoption of the Draft Declaration, to both the GA plenary *and* the Third Committee. He did so according to a transitional procedure that had been formulated a month earlier.⁴³⁹ This procedure went beyond UN practice whereby CHR reports were submitted to the Third Committee only. De Alba drew on it to affirm the HRC status and to

⁴³⁷ See also Annan 2005.

⁴³⁸ States disagreed on the HRC status in the UN hierarchy, the size and composition, geographic representation, competence, the role of special procedures and NSAs participation. The HRC approved its functions and powers in 2007 in (RES/5/1.9 *Institution-building of the United Nations Human Rights Council*). The reform entailed a number of improvements. Critically, the HRC became a subsidiary of the GA proper. The Universal Periodic Review (UPR) puts all states under human rights scrutiny and provides NSAs, such as Indigenous peoples, a direct channel to submit information to the OHCHR.

⁴³⁹ The HRC report was to be presented to both venues on the understanding that the latter act on “all recommendations” of the HRC to the GA (A/RES/61/250/Add.2).

influence the Third Committee to simply pass the Declaration for adoption to the GA.⁴⁴⁰ His motion was unsuccessful.

Namibia, in a letter, and Botswana, in an aide-memoire, asked the President of the General Assembly (PGA), Al Khalifa of Bahrain, to defer voting on the Declaration.⁴⁴¹ These States voiced concerns over their sovereignty. Noteworthy, with regards to the co-constitutive process underway, was that key contestations re-emerged by those States which had been inactive during the standard-setting and elaboration phase. Botswana's aide-memoire contested that the Draft failed to define Indigenous peoples and that the grafted version of self-determination interfered with the norm of non-interference. Botswana further objected because Indigenous peoples' rights threatened the norm of territorial integrity (Draft Aide Memoire 2006). These documents seriously dampened the prospect for a swift adoption. The significance here is that the AGS, with its 53 members and a 27% vote share, heavily influences voting outcomes (Voeten 2013).⁴⁴² African States may be materially weak, but when acting in concert in the Third Committee and the GA, they are the strongest constituency.

What was less clear, however, was whether Namibia's and Botswana's interventions presented the views of the AGS as a whole, or whether they were minority positions with other African states siding merely in the name of African unity. Indeed, that their concerns represented an unanimous position was questionable. This was because Benin, Cameroun, the Congo and South Africa had previously voted for adoption in the HRC. It also appeared that political influence was asserted behind the scenes because the aide-memoire cited seven key concerns of considerable similarity to known positions by the CANZUS group (Åhren 2007: 109).

⁴⁴⁰ Peru, given the same understanding as de Alba, tabled a proposal for adoption in the Third Committee on 31 October 2006 (A/C.3/61/L.18).

⁴⁴¹ In response to a joint letter from states supporting the adoption.

⁴⁴² Today there are 54 members (28% of all votes) with the accession of South Sudan in 2011.

The ICSC, excluded during this phase of IGO decision-making, engaged state allies. They argued that the standard-setting and elaboration phases created expectations to adopt. The ICSC used external pressure by publicly denouncing African states interventions as “a remarkable and bizarre development” that set back careful standard-setting activities (Ed John 2006). Peru, Mexico and Fiji called Namibia’s letter a motion that “made no sense” and that it sent a signal “of inability to act.” Mexico, emphasized that “it seemed strange to seek more time for consultations on a Declaration that had already been the subject of 24 years of negotiations” (GA/SHC/3878).⁴⁴³

On 20 November 2006, the adoption process was effectively halted following Peru’s and 34 co-sponsors proposal to adopt the HRC Declaration (A/C.3/61/L.18/Rev.1). Botswana, Kenya, Namibia and Nigeria blocked passage by a so-called “no action” motion (A/C.3/61/L.57/Rev.1).⁴⁴⁴ A “no-action” motion offers a veto point to States. It requires a majority vote and is outlined in Article 75 of the GA’s Rules of Procedure.⁴⁴⁵ African States used this veto mechanism “to allow time for further consultation” and “to conclude considerations of the Declaration” before the next GA session. The vote to defer received 82 votes in favour, 67 against with 25 abstentions (A/C.3/61/L.57/Rev.1). Subsequently, Peru and the initial 34 co-sponsors withdrew support for the amended resolution, and the final vote to defer stood at 83 votes for deferral with 91 abstentions. Notably, among the many abstentions were African States which indicated that the AGS was divided (A/C.3/61/L.18/Rev.1).

⁴⁴³ Peru appealed that the HRC “draft had been revised to address the concerns of many delegations, particularly regarding the principle of self-determination and respect for national sovereignty” (GA/SHC/3878).

⁴⁴⁴ Namibia first motioned to defer “to allow time for further consultations” on 10 November 2006 (A/C.3/61/L.57).

⁴⁴⁵ A representative may at any time move the closure of the debate on the item under discussion, whether or not any other representative has signified his wish to speak. Permission to speak on the closure of the debate shall be accorded only to two speakers opposing the closure, after which the motion shall be immediately put to the vote. If the UNGA is in favour of the closure, the President shall declare the closure of the debate. The President may limit the time to be allowed to speakers under this rule (XII. Plenary Meetings; Rule 75). <http://www.un.org/en/UNGA/about/roPGA/plenary.shtml>

Above all this episode affirms expectations from the IGO literature which finds that participation by non-state actors remains restricted during formal voting and decision-making. This line of scholarship shows that IGO member states favor “informal means of consultations” with non-state actors instead (Ruhlman 2015: 7). It foremost upholds the strong influence of states as IGO principals and their final authority to endorse or reject non-state actors normative demands.⁴⁴⁶ It also demonstrates that some states, and especially those from Africa, lack the diplomatic capacities to be more deeply involved in consultative processes throughout a norm life cycle. These states rely on intervening later on and at higher up veto points. Despite these general lessons this section allows to draw more fine grained conclusion because a large number of votes against the deferral (and subsequent abstentions) pointed toward states polarization: states were divided to adopt and accept the evolution on human rights or to defer at the cost of indigenous peoples’ empowerment and by undermining HRC credibility. The institution of sovereignty was at a cross-road of being mutable with a large number of states accepting restrictions with respect to their relationship with indigenous peoples.

4.4.7.2 The Critical Role of State Allies: Enlisting the President of the General Assembly

The African Group of States, following the deferral, presented the President of the GA (PGA) with amendments to key provisions on the Draft Declaration on 16 May 2007. These amendments would have seriously undermined the “non-statist” conception of indigenous peoples’ self-determination. They intended to avert a challenge to state sovereignty by seeking to put an onus on the norm of non-interference through the inclusion of “national law” as a qualifier on key articles twelve times. They further sought to undermine indigenous peoples’ status by

⁴⁴⁶ This underscores IGO politics based on state interests because pushback from especially powerful member states was levelled by the CANZUS group and others. China, Egypt and Iran joined opposition with the aim to minimize the HRC autonomy and fasten the position of the Third Committee as the “only universal body” on human rights issues (A/C.3/61/L.18/Rev.1).

requesting that the rights of “peoples” be replaced with rights of “indigenous individuals” to participate in the political affairs of the state. In this connection, they also sought to undermine the principle of self-identification when stating that states maintain “the prerogative to define who constitutes indigenous people” (Barume 2009: 172).

Notwithstanding, state allies, consulting with the ICSC, drove the adoption process forward through two mechanisms. They influenced the President of the GA to engage all stakeholders informally while concurrently brokering African states bilaterally. They thereby achieved that no formal mechanism would be established to allow opening the text up. This diplomatic campaign resulted in a remarkable turnaround by African states; as the proposed amendments were cut from more than 45 paragraphs to a total of nine amendments before the GA vote, in September 2007. This development, effectively, affirms the critical role of state allies to influence outcomes when non-state actors are formerly excluded from IGO venues. Especially Mexico stood out. Mattias Åhren, a member of the ICSC, evaluated its role as follows:

Mexico did a fantastic job in discussing with the African group, taking care of their concerns and fears, offering some compromised language that did not really harm the Declaration much, but [that] was sufficient for the African States to accept it (Interview Åhren 2014).

With respect to non-state actors informal access and participation state allies also kept the ICSC abreast on their diplomatic efforts. Andrea Carmen, another ICSC member, recalls:

Mexico, Peru and Guatemala [...] were coming back and forth to us saying this is the status [...] even though we were not then considered part of the negotiation process [they] told us that they probably had enough votes to adopt the Declaration on a squeaker (Interview Carmen 2014).⁴⁴⁷

⁴⁴⁷ Several initiatives to persuade the AGS were made by the Indigenous peoples African Coordinating Committee (IPACC), Amnesty International, a group of African international lawyers and by IWGIA (IPACC A Brief Comment 2007; Response Note 2007; Barume 2009: 180).

Most important, to my reading, was that Mexico impacted the President of the GA through a letter co-signed by 67 co-sponsoring states.⁴⁴⁸ The letter, was an instance of social pressure, because it emphasized to the PGA that a large portion of states accepted the HRC Declaration. State allies legitimated the standard-setting and elaboration process by explaining to the PGA that the “no action” motion did not necessitate reopening “the text which may lead to yet another lengthy process with an uncertain outcome.” They, instead, offered an alternative way forward by proposing an introductory preamble rather than amending the Declaration itself (Malezer , Letter to Khalifa 2007). Malezer, as chairperson of the Indigenous Caucus Steering Committee, in a separate letter to the PGA, added strong objections to the African Group’s attempt to “fundamentally alter the text.” He argued that the proposed amendments were “extreme and offensive to Indigenous peoples” and that they would never be acceptable to them. Malezer, in fact, endorsed Mexico’s “alternative road forward” and to continue with “other means than amendments to the actual Declaration text” (Malezer, Letter to Khalifa 2007).

These social pressure tactics influenced the PGA to conduct consultations on the “views of all concerned parties in the process.” He appointed Hilario G. Davide from the Philippines to facilitate “open and inclusive” consultations (Malezer, Letter to Khalifa 2007). This is interesting because Al Khalifa thereby acknowledged to keep indigenous peoples’ participation, if not formally, but informally intact.⁴⁴⁹ The success of these tactics was evident when Davide presented his report which brought the proposed amendments down to 25 (Report Davide

⁴⁴⁸ De Alba also met with the PGA, the Namibian and Philippine’s Ambassadors. He emphasized that the adoption was an important signal to indigenous peoples and that a failure to adopt undermined the status of the HRC (de Alba 2009: 130).

⁴⁴⁹ The ICSC signalled to “be prepared to consider some proposals,” but only to the extent these do not compromise the results of the “long negotiations process” (Report Davide 2007: 3).

2007).⁴⁵⁰ The ICSC and state allies, further, realized that the cohesion amongst African states was not only weak but breaking down.⁴⁵¹ One reason was that

in private, several African states' representatives expressed that they were being dragged into positions that were unjustified [and expressed their] reluctance to be responsible for the failure of a text that had taken such a long time [to negotiate] (Barume 2009: 179).

Mexico, Peru and Guatemala then engaged the AGS on a "package deal" of amendments. "We were aware," de Alba explained, that Benin, Mali, Mauritius and South Africa would be willing to cast a positive vote if a reference to the "territorial integrity of States" was made (de Alba 2009: 131). The AGS equally assured that no further amendments would be sought and that other amendments coming from the GA plenary floor would be jointly voted down. States opposed to the Declaration, especially the CANZUS group, were unable to influence the African states and Mexico. Canada, for instance, leveled "desperate efforts to lobby Mexico at the highest level to back down, but Mexico did not do so" (Åhren 2007: 116).⁴⁵²

Mexico and Peru brought the proposed amendments down to a total of nine and presented a Draft on 7 August 2007. These amendments, and important with respect to the mutability of composite norms of state sovereignty, affirmed the norm of territorial integrity, which was important to African states but kept key demands for indigenous peoples' self-determination intact. First, Article 46(1) in the HRC Draft stated:

Nothing in this Declaration may be interpreted as implying for any State, people or group or person any right to engage in any activity or perform any act contrary to the Charter of the United Nations.

⁴⁵⁰ Davide proposed a "middle-ground" approach by offering three options: (1) "to add a chapeau or a new preambular paragraph crafted to address the major substantive concerns;" (2) to amend Article 46 on territorial integrity of the declaration; or (3) a "hybrid model" which could combine worthwhile elements of the other two options (Report Davide 2007: 5).

⁴⁵¹ Several actors make this point (see for instance de Alba 2009, Barume 2009 and Åhren 2007).

⁴⁵² On 13 August 2007 Australia, Canada, Colombia, New Zealand and Russia introduced a set of 34 amendments to the PGA, which altered the rights related to territories and resources; free prior and informed consent; self-determination; and intellectual property (ibid.). GRULAC and the AGS showed no interest in considering these proposals.

And was amended by adding:

Or construed as authorizing or encouraging any action which would dismember or impair totally or in part, the territorial integrity or political unity of sovereign and independent states.

Second, indigenous peoples status as “peoples” was affirmed as the right of states to define indigenous peoples was now omitted.⁴⁵³ This underscored indigenous peoples long-standing demand for self-identification as well as their status as “peoples” with a right to self-determination under international law. The challenge to the composite institution of state sovereignty, as such, needs be read in conjunction with preambular paragraph 16 and 18, which link all provisions to the *Vienna Declaration Programme of Action*, the two *International Human Rights Covenants* and the 1970 *Declaration on Principles of International Law Concerning Friendly Cooperation and Relations Among States*. These links mean that the norm of territorial integrity remains conditioned on states

conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind (A/RES/8028; A/CONF.157/22).

To be clear these final amendments moved closer to states’ interests; yet do not undermine that states equally accepted, or at minimum displayed pro-norm support, for indigenous peoples’ right to self-determination within territorial bounds of a state; on the basis of consent, respect and reciprocity.

⁴⁵³ These final amendments did not include any alteration of the right of self-determination, provisions on treaties and land, or provisions on territorial and resource rights. A new preambular paragraph recognized “that the situation of Indigenous peoples varies from region to region, country to country, and from community to community and that each State should observe this Declaration in the light of its national circumstances.”

The ICSC, following consultations with all regional indigenous caucuses, approved the nine amendments on 6 of September 2007.⁴⁵⁴ The Indigenous Caucus North American Group, which was most reticent to accept amendments, expressed that even though they “did not like two of the nine proposed amendments” they were not deal breakers and that the rights we sought “were still intact” (Carmen 2009: 92). A lesson here is that non-state actors rely heavily on state allies during periods leading up to formal voting. These allies help protect key normative demands. State allies used social pressure tactics to influence a venue chair, the President of the GA to conduct informal consultations, which in turn avoided opening the text up for formal amendments. Consultations conducted under the purview of the PGA and bilaterally by state allies from the non-Western world offered informal means to address substantive concerns while further sidelining the most obstructionist states. This more generally confirms arguments that building norms without the support of “great powers” is, although difficult, possible (Bower forthcoming).

4.4.8 Adoption of the Declaration on the Rights of Indigenous Peoples

The General Assembly voted on the UN *Declaration on the Rights of Indigenous Peoples* (UNDRIP) on 13 September 2007 (A/61/L.67).⁴⁵⁵ UNDRIP was adopted by an overwhelming majority of 143 states in favour and only 4 (Canada, New Zealand, Australia, and the United States) voting against.⁴⁵⁶ The strategy pursued by the Indigenous Caucus Steering Committee and state allies to break the African Group of States was more than a success with the AGS shifting their vote en masse. Thirty-one African states voted for the Declaration, including

⁴⁵⁴ The AGS had to grapple with their own history of colonization and African States concerns were understandable in the context of trying to “nation build, while dealing with the issues of Indigenous peoples at the same time.” They lauded African States for their refusal to be influenced by obstructionist States and to take an “independent position” instead (UN Press Conference on Indigenous Rights Declaration, 2007).

⁴⁵⁵ It was tabled by former WGDD chair Chavez on behalf of Peru.

⁴⁵⁶ Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, the Russian Federation, Samoa and Ukraine abstained. Montenegro recorded as “absent” voted in favour, official vote’s cannot be changed once recorded however (A/61/295 (2007)).

countries like Botswana who led the opposition in 2006. No African country present voted against UNDRIP, although Burundi, Kenya and Nigeria abstained. Fifteen African States were absent including a number who had co-sponsored its deferral a year earlier, however.⁴⁵⁷ It is difficult to ascertain what influenced their decision, whether it was pressure by the CANZUS group or a general sense of wanting to remain as uncommitted as possible.⁴⁵⁸

An over two-decade long process with the direct participation of its main beneficiaries had come to an end. ICSC chair Malezer summarized the final adoption aptly as a success of grafting a “non-statist” conception of Indigenous peoples’ self-determination:

We emphasize once again that the Declaration on the Rights of Indigenous peoples contains no new provisions of human rights. It affirms many rights already contained in international human rights treaties, but rights which have been denied to the Indigenous peoples. As Indigenous peoples we now see a guarantee that our rights to self-determination, to our lands and territories, to our cultural identities, to our own representation and to our values and beliefs will be respected at the international level (Statement Malezer 2007).

The various tensions that the evolution of indigenous peoples’ rights produced were indicative of the deep challenge to the composite institution of state sovereignty. The recognition of indigenous peoples as “peoples” with a right to self-determination enunciates a duty upon states to support and devolve sovereignty to indigenous peoples. This must be understood as an ongoing de-legitimization of colonialism and its multi-faceted ramifications the world over.

UNDRIP breaks new ground because it acknowledges indigenous peoples as actors which are not states but who hold inherent and inalienable rights to self-determination. These attributes of the Declaration equip indigenous peoples, regardless of their relatively weak status vis-a-vis

⁴⁵⁷ Chad, Côte d’Ivoire, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea-Bissau, Mauritania, Morocco, Rwanda, Sao Tome and Principe, Seychelles, Somalia, Togo and Uganda.

⁴⁵⁸ 38 interpretative statements on the vote were provided by state delegations: Argentina, Egypt, Iran, Japan, Jordan, Myanmar, Paraguay, the Philippines, Suriname and Turkey voted in favour because a territorial integrity reference was made; other states argued either that their entire population was indigenous or that they did not have indigenous populations in their territories; Australia, Canada, the US and New Zealand expressed their dissatisfaction as they had done throughout the years.

states, with a necessary normative tool they were long denied. This outcome, while undoubtedly unique, speaks to more recent scholarship on the “mediated inclusion” of “intended beneficiaries” in global governance processes and through IGOs (Tenove 2015).⁴⁵⁹ More specifically, states and indigenous peoples can use UNDRIP to satisfactorily resolve claims to self-determination, if states fail to employ this tool, there could be repercussion for the international system of states as a whole (Keal 2007: 304). This is because such failure can potentially sap legitimacy from the institution of state sovereignty; that together with the composite norms of territorial integrity, non-interference and self-determination constitute three fundamental pillars of international politics.

At this juncture, it is important to reflect on the previous chapter and the impact of the *Declaration of Independence to Colonial Countries and Peoples*. Both declarations under investigation are non-binding on states and differ from treaties or customary international law. Declarations give formal validity to the dynamic development of international norms and reflect the commitment of states to move in certain directions, abiding by certain normative principles. At first the norm of self-determination, as Jackson put it, became an “international categorical imperative” for underwriting the independence and territorial integrity of the peoples in “most Third World states” (Jackson 1990: 42). Its implementation under the active role of liberation movements freed some 750 million peoples from colonial rule and globalized a reformulated institution of state sovereignty. Its application, although momentous, remained limited to peoples living in overseas colonies. It also served as a bulwark against demands for self-determination by domestic groups. Post 1945 decolonization was, consequently, not without contradictions and, as this chapter argued, especially because it excluded sub-state groups, including indigenous

⁴⁵⁹ The author examines mediated inclusion of victims in decision-making by and about the International Criminal Court (ICC).

peoples, from bearing rights to self-determination. What is more, and as noted, it established a challenge to the institution of state sovereignty for a relatively small number of predominately European states with colonial territories.

Indigenous peoples' advocacy for a UN *Declaration on the Rights of Indigenous Peoples* therefore constituted a logical step to address some of the former Declaration's contradictions and inconsistencies. The implementation of UNDRIP differs more fundamentally because it necessitates application in some seventy states and according to the various aspirations of 370 million indigenous peoples. This is clearly not an easy task but cannot be used as an excuse for states to protract implementation. It foremost serves as a reminder that the variance of indigenous peoples/state relations remain high and continuous to be mired by an implementation gap.⁴⁶⁰ Despite this, I disagree with scholars who claim that the implementation of indigenous peoples' self-determination is therefore unlikely.⁴⁶¹ Instead, I find support with those who posit that the "winds of change appear to be blowing" as indigenous peoples assert their rights and challenge governments in new ways (Ornelas 2014: 14; Coates 2013). Of course, it is not enough for states, such as the CANZUS group (Canada, Australia, New Zealand, and the United States) to have changed their negative votes on UNDRIP to one of endorsement in recent years.⁴⁶² To "talk the talk" of human rights, as Hafner-Burton and Ron put it, does not mean that states necessarily "walk the walk" (Hafner-Burton & Ron 2009).

⁴⁶⁰ Positive developments include Bolivia which was the first state to implement UNDRIP in a new constitution and law in 2009. National Law No. 3760 is an exact copy of UNDRIP. The 2009 Greenland Self-Government Act's recognizes the Greenlandic people as having a right to self-determination as consistent with article 3 of UNDRIP. Premier Kuupik Kleist of Greenland stated at the EMRIP session "this new development in Greenland and in the relationship between Denmark and Greenland should be seen as a de facto implementation of the Declaration and, in this regard, hopefully an inspiration to others." (Kleist 2009)

⁴⁶¹ A promising avenue for future research would be to apply and further develop recent constructivist scholarship on norm localization (see Acharya 2004; Hafner-Burton & Tsutsui 2005, Neumayer 2005).

⁴⁶² Australia 'endorsed' UNDRIP in 2009, Canada, New Zealand and the United States in 2010.

Kenneth Deer posits instead: “you do not ask for rights; you assert them. When rights are asserted, they grow [...] indigenous peoples must assert and exercise our inherent rights” (Deer 2010: 28). One avenue through which indigenous peoples pursue UNDRIP’s implementation is through courts. In Canada, for example, indigenous peoples have won some 170 legal victories in recent years – the biggest winning streak in the country’s legal history – that have provided First Nations a voice in how resources are accessed and developed. What is more, and with respect to territoriality norms being divisible, the *Tsilhqot’in Nation vs. British Columbia* unanimous Supreme Court ruling has begun to unravel the doctrine of *terra nullius* (that no one owned the land prior to European assertion of sovereignty) by ruling that it has never applied to Canada and by granting the Tsilhqot’in nation ownership over 1,750-square-km area in the province of British Columbia.⁴⁶³ A decision that the Assembly of First Nations Regional Chief of British Columbia Wilson-Raybould hailed as a “game changer” throughout Canada “where there is unextinguished aboriginal title.”⁴⁶⁴ Lastly, and towards the end of writing this dissertation, it appears promising that Canada removed its permanent objector status by declaring before the *United Nations Permanent Forum on Indigenous Issues* in May 2016:

[We] are now a full supporter of the Declaration, without qualification. We intend nothing less than to adopt and implement the declaration in accordance with the Canadian Constitution [...] What does all of this mean for Canada now? It means nothing less than a full engagement on how to move forward with adoption and implementation, done in full partnership with First Nations, the Métis Nation and Inuit Peoples.⁴⁶⁵

⁴⁶³ See Borrows 2015 for a critical analysis of the supreme court ruling and its implication for territorial rights in Canada.

⁴⁶⁴ There exists clear synergy between UNDRIP Article 10 (on free prior and informed consent) as well as those Article 37 (on treaty rights) Accessed online at: http://cdn.newslook.com/c7/c7fb38af302742b24087a83fa2dcfb3e/mp4_high/c7fb38af302742b24087a83fa2dcfb3e-mp4_high.mp4

⁴⁶⁵ In a speech delivered by Carolyn Bennett, Minister of Indigenous and Northern Affairs, accessed online at <http://www.metisnation.ca/wp-content/uploads/2016/05/Speech-Minister-Bennett-UNPFII-NEW-YORK-MAY-10-FINAL.pdf> This decision reverses Canada’s earlier position of UNDRIP not reflecting “customary international law nor change Canadian laws” (Canada 2010). In addition, the *Truth and Reconciliation Commission of Canada: Calls to Action* report called in 2015 on the “federal, provincial, territorial, and municipal governments...to fully adopt and implement” UNDRIP and for Canada to develop “a national action plan, strategies, and other concrete measures to achieve the goals” of the declaration. Accessed online at www.trc.ca.

The question remains of how to implement UNDRIP, not only at the domestic level, but also at the international level.

4.5 Implementation Phase: Indigenous Peoples Take a Permanent UN Seat

Indigenous peoples and states agreed on a compromise Declaration that is since measured by its implementation record. Without losing sight of the domestic implementation gap, this section focuses on the implementation phase of indigenous peoples' rights at the international level.⁴⁶⁶ This is because the challenge is how to use UNDRIP to advance rights domestically and internationally. This depends on the actions of indigenous peoples, the commitment of states and UN support. UNDRIP, and similar to the *Declaration of Independence to Colonial Countries and Peoples* as previously analyzed, defines in Article 41 and 42 a specific role for the IGO to promote and protect the rights of indigenous peoples and calls on the organization to contribute to the full application of UNDRIP.

I attend to the central concern of this dissertation asking under what condition non-state actors can use Intergovernmental Organizations to challenge the composite institution of state sovereignty. In an ideal world state sovereignty and human rights, of which UNDRIP is part, should reinforce one another. State sovereignty is challenged where self-determination is denied and state presumptions of maintaining the norms of non-interference and territorial integrity are offset until the norm of indigenous peoples' self-determination is satisfactorily achieved. As James Anaya, the former Special-Rapporteur, put it

⁴⁶⁶ See on the former Lightfoot 2009; Stevens 2010; Champagne 2013; Ornelas 2014.

UNDRIP conditions [...] or calls upon states to exercise their sovereignty in a certain way and in this case in a way that accommodates the rights of indigenous peoples which include their own rights of self-government. [It] is an international standard from outside the domestic political domain that calls upon states to organize that domestic political domain in a way, to accommodate internal self-government of indigenous peoples. [UNDRIP] requires recognition of sovereignties of indigenous peoples in particular (Interview Anaya 2014).

It is precisely for these types of normative commitments that states are challenged to adjust their constitutional arrangements and implement UNDRIP.⁴⁶⁷

This concluding section demonstrates that the institutionalization of venues indicates a break with the past. Indigenous peoples have taken a permanent seat at the UN. They use this access to participate in specialized venues to challenge states not only from a domestic level, but also from above, at the international level. They draw on these venues by providing information, shaming states through moral leverage and symbolic politics (Keck & Sikkink 1998: 24). Above all, a focus on these venues, augment insights concerned with how non-state actors get involved in international governance tasks to hold states and IGOs accountable (Kahler 2009). A number of venues, with complimentary functions in the operationalization of UNDRIP have been set up. These venues, to borrow from Lake and Wong, are an “emergent property” of indigenous peoples’ international agency (Lake & Wong 2009: 132). With regard to the dimensions of access and participation of indigenous peoples the day to day work of these venues is increasingly carried out by indigenous peoples. They have taken a permanent UN seat to promote the implementation of UNDRIP. The role of allies has consequently become less pressing even though allies continue to be important to strengthen indigenous peoples’ coalitions and networks in the IGO and beyond.

⁴⁶⁷ I am aware of the debates on UNDRIP’s legal status. States opposed to the Declaration describe it as an important policy tool but not legally binding. The US recognize it as “an aspirational declaration with political moral, rather than legal, force” (United States 2007). Barolomé Clavero, a member of the UNPFII, maintained that UNDRIP is “certainly not a Convention among states, but it constitutes a Treaty, Convention or Covenant between States and Peoples” (E/C.19/2008/CRP.6, para 16). Legal status aside the challenge to state sovereignty remains because initial status does not determine (non)-compliance with human rights norms (Shelton 2004: 458).

The venues themselves lack enforcement authority and are marginalized by their position in the UN hierarchy. They are, still, indicative of a change of indigenous peoples' international status. These venues cement their agency to shape outcomes with greater direct input. Given this the horizontal diffusion within the UN system and promotion of vertical implementation of indigenous peoples' rights domestically needs to be assessed with regard to the venues' functions and how these coordinate their activities with indigenous peoples, states and other IGOs. In terms of horizontal diffusion, I demonstrate how Indigenous peoples push to expand their access and participation. This includes seeking to secure more robust venue mandates at the UN (suggesting, for instance, to equip the UNPFII with monitoring and evaluation capacities) (Alta Outcome Document 2013). I further consider how the division of work between venues constitutes venue nodes that increases indigenous peoples overall influence across the UN system. In fact, as will be shown, some of the functions allies used to fulfill have been taken on taken on by indigenous peoples.

My objective below is to provide an analysis on three specific UN venues and other human rights bodies. They all act independently and contribute to the implementation of UNDRIP in their own way. I demonstrate how the following venues manifest the horizontal diffusion of UNDRIP at the UN: the UN Permanent Forum on Indigenous Issues (UNPFII), the Expert Mechanisms on the Rights of Indigenous peoples (EMRIP) and the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous peoples.⁴⁶⁸ I highlight their role in the vertical implementation in states. The mandates of these venues are established under Articles 41 and 42 of UNDRIP. The UNPFII specifically, as a subsidiary body of ECOSOC, contributes to the full realization of UNDRIP. In the Human Rights Council;

⁴⁶⁸ Other relevant venues include the human rights treaty monitoring bodies (The UN Committee on the Elimination of Racial Discrimination (CERD), the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR)).

indigenous peoples' rights are considered by EMRIP, an advisory body, as well as by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous peoples (hereafter the Special-Rapporteur).

4.5.1 Information and Symbolic Politics: The United Nations Permanent Forum on Indigenous Issues

The UNPFII is a key venue for indigenous peoples at the UN since 2002.⁴⁶⁹ The decision to create a permanent forum was part of the standard-setting process discussed before.⁴⁷⁰ In 2008 the venue expanded its mandate to promote UNDRIP's full and effective application and that it considers UNDRIP as its legal framework (E/C.19/2008/13, para 132). The venue contributes to the horizontal diffusion of indigenous peoples' rights by advising ECOSOC and other UN agencies, programs and funds; raising awareness about indigenous peoples' issues; and by promoting the integration of activities affecting them in the UN system more broadly.

With regards to access and participation by indigenous peoples, and unlike to the WGDD and WGIP before it, the UNPFII is comprised of eight government-nominated experts and eight indigenous-nominated experts. Such "on parity" representation in the venue constitutes a clear break from the past where allies were more important and affords indigenous peoples greater agency in observing UNDRIP's operationalization. It is also different from the Decolonization Committee which was composed of state delegates. In addition, the venue's two-week long annual sessions are open to indigenous peoples from around the world to participate in its deliberations. A key limitation is that the venue is limited to gathering information and making

⁴⁶⁹ Its name - the UN "Permanent Forum on Indigenous Issues" - is a product over definitional contestations. Indigenous peoples maintained, "we are peoples and not issues" a position the UNPFII aimed to remedy and continues to seek a name change from "issues" to "on the Rights of Indigenous peoples" (E/C.19/2014/L.1).

⁴⁷⁰ Discussion for its creation began in the late 1980's. The CHR declared the need for "a permanent forum for indigenous peoples" in the UN by 1995 (RES/1995/30). The SG concluded that the "striking absence of a mechanism to ensure regular exchange of information among the concerned and interested parties - Governments, the United Nations system and indigenous people - on an ongoing basis" necessitates the establishment of a permanent forum to ensure the participation of Indigenous peoples in the work of the UN (A/51/493, para 166). ECOSOC formally decided to establish the venue in 2000 (E/CN.4/2000/L.68).

recommendations but cannot itself take decisions on human rights related matters. Nonetheless, the venue offers indigenous peoples a sustained platform for their advocacy work and provides opportunities for ongoing coalition-building with other indigenous peoples and allies. The venue as such garners their international agency into a hub that is used to influence states, the UN and other IGOs. The role of allies, consequently, is no longer as critical as before.

For some the marginal position of the venue is seen as problematic because “indigenous political subjectivities take shape in the power relations of the forum that not only make indigenous peoples subjects but also subjugates them” (Lindroth 2011: 544). Indigenous peoples working through the UN, accordingly, are risking to be coopted under an “illusion of inclusion” (Corntassel 2007: 142).⁴⁷¹ Even though these insights are important they miss that indigenous peoples are more likely to affect change by following a dual strategy of challenging state sovereignty through a

struggle within the structure of domination vis-à-vis the techniques of government, by exercising their freedom of thought and action with the aim of modifying the system in the short term and transforming it from within in the long term (Tully 2008: 276).

Indigenous peoples active at the UN, if not being representative for all voices, have in fact stated that they “take heart in the UN’s continuing commitment” to support the implementation of UNDRIP (Malezer 2010: 44).

Moreover, with regards to the access and participation of indigenous peoples in the IGO. Indigenous peoples continue to pursue strategies of making their own access and participation at the UN more effective. That is why I agree that a co-optation mechanism does not “sit well with the very complex and dialectical relationship” that indigenous peoples have come to establish

⁴⁷¹ Corntassel refers to “blunting” as a form of moderation of indigenous peoples claims to fit with dominant norms of existing international structures while “channelling” indigenous peoples’ focus into UN activities rather than to mobilize domestically (Corntassel 2007: 140).

internationally (Morgan 2011: 143). As I argued throughout this chapter, indigenous peoples are engaged in a co-constitutive process. A process that is sustained through a cohesive set of core demands and characterized by resisting the moderation of their claims by states, including the right over definitions over who they are and their international subject position. United Nations venues, such as the UNPFII, are consequently used to assert their position as agents in the governance of indigenous peoples' rights. They use the venue to provide alternative sources of information, and like other advocacy networks, "provide not only facts but testimony – stories told by people whose lives have been affected" (Keck & Sikkink 1998: 19). In its function as a public forum, the UNPFII gives visibility to these testimonies without states direct mediation. In endorsing indigenous peoples' views, and by linking these to specific UNDRIP articles, the venue offers indigenous peoples a critical tool to motivate political action calling upon states to adjust constitutional configurations.

These processes are currently playing out, yet, and more specifically, the UNPFII offers indigenous peoples a site to challenge state sovereignty. These include delegitimizing the Doctrine of Discovery.⁴⁷² Its application legitimized the dispossession of indigenous peoples during European colonization (Interview Ed John 2014). In 2012 the UNPFII challenged states sovereignty by repudiating the "legal and political justification for the dispossession of indigenous peoples from their lands, their disenfranchisement and the abrogation of their rights" through doctrines of "conquest", "discovery", terra nullius or the Regalian doctrine. They contested these through the IGO as "nefarious" and which construed indigenous peoples as

⁴⁷² The Doctrine of Discovery refers to an international legal principle, constructed by European states in the fifteenth century, to justify dispossessing Indigenous peoples. The UNPFII organized "Special Themes" and included, in 2007, "Territories, Lands and Natural Resources" (E/C.19/2007/12); in 2010 "Indigenous peoples: development with culture and identity, articles 3 and 32 (E/C.19/2010/15); in 2012 "The Doctrine of Discovery: its enduring impact on indigenous peoples and the right to redress from past conquests, articles 28 and 37 (E/C.19/2012/13; E/C.19/2014/3); and in 2014 "Principles of good governance" consistent with article 3 to 6 and 46 (E/C.19/2014/11).

“savages,” “barbarians,” “backward” and “inferior and uncivilized” (E/C.19/2012/13, para 4). In addition, the UNPFII shames states for underachieving in applying good governance principles of

transparency; responsiveness; accountability; participation; consultation and consent; human rights; and the rule of law [with regards to indigenous peoples’ domestic rights] (E/C.19/2014/11, para 3).

Indigenous peoples also use the venue to challenge state sovereignty by strengthening the link of UNDRIP to existing human rights treaty law. This is because there exists significant synergy between general state human rights obligations and UNDRIP. Indigenous peoples’ rights are fully enforceable by UN treaty bodies, for which the declaration

constitutes an inescapable framework of reference for the application and development of new interpretations of state obligations under those treaties (Rodríguez-Piñero Royo 2009: 319).⁴⁷³

Indigenous peoples active in the venue strengthen these linkages through information sharing and awareness building. For example, the International Indian Treaty Council (IITC) held a UNPFII side event in May 2014 with a focus on the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), a legally binding instrument that is ratified by 174 States. The IITC provided documentation on ICERD recommendations relating to indigenous peoples and offered guidelines to indigenous peoples on how to submit petitions to

⁴⁷³ The *International Law Association Committee on the Rights of Indigenous Peoples* describes states and UN practice moving forward towards implementation: there “is a massive amount of highly significant international practice recognizing the rights of indigenous peoples, which is accompanied and confirmed by the practice developed at domestic level by most countries in the territory of which a significant population of indigenous people live. This practice has developed both at the legislative (including constitutional) and jurisdictional level, affirming the right of indigenous peoples to the recognition and safeguarding of their cultural identity, their cultural rights, land rights, and their right to autonomy and participation in decisions affecting them” (International Law Association 2010: 49). Victoria Tauli-Corpuz, former UNPFII chair, argues that UNDRIP relates to already existing obligations under treaty law and that certain provisions reflect “international customary norms” (Tauli-Corpuz 2007: 2; Anaya & Wiessner 2007).

ICERD in order to induce state compliance (IITC 2014).⁴⁷⁴ In fact, ICERD, as a treaty body, declared that they will use UNDRIP “as a guide to interpret State party’s obligations under the Convention relating to indigenous peoples” (A/RES/61/295). In short the UNPFII, although not equipped with monitoring functions *per se*, acts as a central venue for indigenous peoples interested in driving accountability politics. The venue thereby contributes to processes of international norm socialization and especially via strengthening the link of UNDRIP to existing human rights treaty law.

My discussion underscores some key activities of the venue. It demonstrates the horizontal diffusion of access and participation mechanism by indigenous peoples at the UN. Venue characteristics of permanence and “on parity” membership are shared between government-nominated and indigenous-nominated experts. This translates into greater indigenous peoples influence to use the IGO. Indigenous peoples more permanent UN participation is evolving and not as some authors claim at the risk of collapse and retrenchment (see on the later Kymlicka 2007: 287). Tauli-Corpuz aptly describes the mechanism of working towards greater horizontal diffusion:

[UNPFII is] shaped as we move and it is up to the members of the forum to be more bold, to push the limits in terms of what the forum can do. Also during my time [as chair] we had the expert study on implementation of Article 42, which is really looking at how the declaration is being implemented, and also sort of creating a proper forum that will allow for more investigation into situations of indigenous people. [These] are the ways in which we try to move the envelope further because [...] you should really use all these mechanisms to push for more equal participation (Interview Tauli-Corpuz 2014).

These statements are supported by the 2013 *Global Indigenous Preparatory Conference for the UN World Conference on Indigenous Peoples* that called for the creation of a new venue

⁴⁷⁴ The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and ILO Conventions 169 provide additional avenues to hold states accountable.

with a mandate to promote, protect, monitor, review and report on the implementation of the rights of Indigenous peoples, including but not limited to those affirmed in the Declaration, and that such a body be established with the full, equal and effective participation of Indigenous peoples (Alta Outcome Document 2013: 4).

In March 2016, and towards the end of writing this chapter, the United Nations followed up and announced an ambitious consultation process ending in June 2016. This process has two key objectives: extending more meaningful access and participation to indigenous peoples and working towards the representation of indigenous governments in the IGO.⁴⁷⁵ Most proposals recommend a

new body that would consist of both Indigenous peoples' representatives and Member States, or, at a minimum, a procedure that includes consultations with Indigenous peoples.⁴⁷⁶

The converging views so far also include that indigenous peoples are not NGOs and that a new category for their access should be considered; that the principle of self-identification is an important criterion for such access; as well as that state recognition for their access should be a factor, but “not the deciding factor.” Such a status would further recognize the political and legal nature of indigenous peoples, extending beyond their consultative function as NGO's.⁴⁷⁷ Other proposals suggest the independent participation by indigenous peoples as observers in “all relevant UN bodies on issues affecting them, including the General Assembly.” While these consultations are currently ongoing they have ostensible prospects for being successful. At

⁴⁷⁵ States had agreed to these during the General Assembly's World Conference on Indigenous Peoples. Outcome document available online at: <http://www.un.org/en/ga/president/68/pdf/letters/9152014WCIP%20-%20CFs%20on%20Draft%20Outcome%20Document.pdf>

⁴⁷⁶ See *Draft one of the compilation of views on enabling Indigenous peoples' participation in the UN*. Others forwarded that indigenous delegates should be able to introduce legal instruments (such as treaties and other protocols). Another recommended that indigenous nation delegations may speak or intervene at any level concerning any topic deemed relevant to the interests or rights of each nation consistent with the right of free, prior and informed consent. Accessed online <http://www.un.org/esa/socdev/unpfii/documents/2016/Docs-updates/Compilation-27-April-Final-Version.pdf>

⁴⁷⁷ Some indigenous peoples “put forward a proposal for the creation of a new category of observer status that would allow indigenous peoples' representative institutions to participate more effectively” (A/70/84-E/2015/76, para 42).

minimum, these developments underscore indigenous peoples' intention to expand their access and participation and to establish stronger enforcement mechanisms than those currently available. These developments, to recall findings from the previous chapter, also parallel with late developments of increasing access and participation by liberation movements.

4.5.2 Accountability Politics: The Expert Mechanisms on the Rights of Indigenous Peoples (EMRIP), the Universal Periodic Review and the Special Rapporteur on the Rights of Indigenous Peoples

There are three additional venues with direct access and participation by and for indigenous peoples. These venues act as accountability venues and established "clear, quite distinctive and complementary roles" for enhancing UNDRIP's implementation (Burger 2009: 306).

First, the *Expert Mechanisms on the Rights of Indigenous Peoples* (EMRIP) was formed in 2007 as part of the second venue, the Human Rights Council (HRC).⁴⁷⁸ EMRIP is mandated to assist in the implementation of UNDRIP by providing thematic expertise on indigenous peoples' rights and by making relevant proposals directly to the Council. The venue, similar to the WGIP, consists of five independent experts that are appointed for staggered terms from one to three years by the HRC.⁴⁷⁹ Crucially, with respect to the participation by indigenous peoples, its members are now only drawn from indigenous experts (Burger 2016).⁴⁸⁰ In this connection, its members have declared that UNDRIP constitutes a normative framework for their work and that they consider the Declaration a permanent agenda item (A/HRC/10/56, para 11). The venue meets annually for up to five days and is open to indigenous peoples, states, NGOs, UN bodies and agencies. The venue has established itself as a unique place for deliberating the scope and content of indigenous peoples' rights. It primarily prepares and disseminates legal expertise to

⁴⁷⁸ The HRC, as noted, has been elevated and reports to the GA directly.

⁴⁷⁹ They may be re-elected for one additional period.

⁴⁸⁰ See for a member list: <http://www.ohchr.org/EN/Issues/IPeoples/EMRIP/Pages/Membership.aspx>. Experts are selected according to Resolution A/HRC/5/1 (2007).

guide the implementation of UNDRIP. With regards to the access and participation of indigenous peoples, EMRIP noted that the open arrangement for access “greatly facilitated the work” and that “strong and broad indigenous participation” is of utmost importance (A/HRC/10/56, para 13). Actually, EMRIP attracts a large number of indigenous peoples, with about fifty delegations attending in 2012 alone (A/HRC/21/52, Annex II).

Second, and related, the venue’s relevance with regard to the challenge to state sovereignty is that it contributes to the work of the HRC in the context of the Universal Periodic Review (UPR).⁴⁸¹ The UPR is a state driven venue and works on the basis of an interactive dialogue that enables the Council to regularly examine the human rights records of all member states. The UPR has no precedent because it can make concrete recommendations on how to address serious human rights violations and/or how to address challenges of implementation in individual states. Another salient feature, with respect to indigenous peoples’ rights is, that the review process incorporates both legally binding and non-legally binding human rights standards (Redondo 2008).

In the first UPR cycle, from 2008 to 2011, UN member states presented their human rights record.⁴⁸² In the second cycle, 2012 to 2016, each state presented developments regarding recommendations and steps taken towards and with respect to implementing these recommendations. Other stakeholders, including indigenous peoples and NGOs can attend the interactive dialogue but are not equipped to take the floor during the adoption of reports. However, they can submit written information which will be used during the review process itself. They can also participate and make intervention in HRC session and prior to the adoption

⁴⁸¹ The ultimate motivation of the UPR is the improvement of the human rights record in every state and that has significant consequences for indigenous peoples’ rights. EMRIP identifies “global and cross-cutting issues” and considers themes of interest, including “the right to land and territories; the right to self-determination; the right to free, prior and informed consent; indigenous refugees and internally displaced persons; customary law; challenges to the implementation of indigenous peoples’ rights and treaties.” (A/HRC/10/56, para 27).

⁴⁸² 48 states are reviewed annually during three sessions lasting two weeks each. (A/HRC/5/1, paras 5-14).

of UPR Working Group reports. As part of these mechanisms indigenous peoples' rights have been mentioned over 425 times since the creation of the UPR, while 86 states raised the issue of indigenous peoples and 61 states received specific UPR recommendations on implementing indigenous peoples' rights.⁴⁸³ Given the ability of indigenous peoples to participate in each review phase, they can actively comment upon and measure the results of individual state's implementation record.

Although it is difficult to predict the prospects of the UPR in driving the implementation of UNDRIP it has indicated its potential to provide a regular measure of how states are complying with international human rights (Svensson 2014).⁴⁸⁴ For instance, during the second cycle of the UPR review, Canada was encouraged to fully implement UNDRIP and was asked to consider eight recommendations by the HRC (A/HRC/24/11, para 27). As noted Canada has subsequently removed its permanent objector status and declared to fully implement UNDRIP in May 2016.⁴⁸⁵ New Zealand came under pressure to improve its relations to indigenous peoples and received 64 recommendations from the UPR.⁴⁸⁶ New Zealand, speaking before the HRC, noted that many recommendations were

challenging areas that government itself had recognized as requiring further attention [...] including social disparities between non Maori and Maori, the status of the Treaty of Waitangi in domestic legislation (Ramcharan 2011: 58).

In short, the UPR keeps up the challenge of state sovereignty, as outlined in UNDRIP, and offers additional avenues for indigenous peoples to participate. Besides that, it is still too early to assess

⁴⁸³ The majority of recommendations, according to the reports reviewed by the author, were received by Australia (39), Chile (30), Canada (29), Mexico (22) and Paraguay (20).

⁴⁸⁴ Studies on the UPR's effectiveness, and with respect to indigenous peoples' rights are scant and/or non existent. Svensson demonstrated that 48% of all UPR recommendations were either partially or fully implemented since its first cycle. The author, although considering this an achievement, still warns against overvaluing the results and calls for additional research (Svensson 2014: 70).

⁴⁸⁵ I do not aim to infer causality because a shift in government has influenced this decision.

⁴⁸⁶ New Zealand accepted 33 without reservation, 12 for further discussion, 11 with qualifications and 8 rejected.

the long-term impact of the UPR, it remains important to note its limitation as a state driven venue. Although the UPR monitors states' compliance with their human rights commitments the process itself, while a clear improvement from the Commission on Human Rights, lacks strong enforcement mechanisms. Despite this drawback, the proceedings of the UPR throw light on human rights violations, even best practices, and in so doing, contributes to the horizontal and vertical diffusion of indigenous peoples' rights.

According to my reading especially the ongoing push by indigenous peoples to fully entrench UNDRIP through the Expert Mechanism into the UPR process contributes to indigenous peoples' rights operationalization.⁴⁸⁷ This is apparent with respect to the submission to the UPR by the Expert Mechanisms through so-called "Expert Mechanism Advice" (A/HRC/EMRIP/2013/CRP.1). Since its establishment venue members reported to the UPR on

treaties, agreements and other constructive arrangements between States and indigenous peoples. [In these reports EMRIP] asserts indigenous peoples' own understanding of the treaties negotiated by treaty nations [while recommending] full compliance with and implementation of articles [relating to] the principle of free, prior and informed consent and the right to self-determination (A/HRC/EMRIP/2010/5, para 20-32).

Venue members have used Expert Mechanism Advice to unequivocally affirm indigenous peoples' self-determination as:

[...] an ongoing process which ensures the continuance of indigenous peoples' participation in decision-making and control over their own destinies. It means that the institutions of decision-making should be devised to enable indigenous peoples to make decisions related to their internal and local affairs, and to participate collectively in external decision-making processes in accordance with relevant human rights standards (A/HRC/EMRIP/2010/2, para 31).⁴⁸⁸

⁴⁸⁷ Venue members stressed that they would not take up specific human rights cases or address country specific human rights situations. They instead intend to focus on specifying the scope of UNDRIP, which include identifying good practices as well as offering practical guidelines for their implementation.

⁴⁸⁸ Venue members further engage states in information politics. For instance, they have compiled responses from questionnaires seeking the views of states on best practices regarding the implementation of UNDRIP. They reported that although many states had a "national strategy to implement" UNDRIP that these lacked "details on the scope and nature of States' national implementation plans" (A/HRC/EMRIP/2012/4, para 7-11; A/HRC/EMRIP/2013/3).

Repeatedly the Expert Mechanism also asserts the centrality of self-determination “as a central right from which all other rights flow” and asks that instances of non-recognition of indigenous peoples in some States of their “collective legal personality of indigenous peoples and their communities” be remedied (A/HRC/EMRIP/2013/2, para 19). EMRIP, by grounding its work on UNDRIP, as its “normative framework,” channels expertise and legal information with the goal of vertical norm diffusion in states. It combines expert knowledge with normative claims by indigenous peoples to induce compliance.⁴⁸⁹ The venue’s main strength is that it is linked directly to the Human Rights Council to which it forwards proposals. The HRC then makes decisions based on the thematic advice it receives from EMRIP. In 2013 the HRC agreed with EMRIP to

need to find ways and means of promoting the participation of recognized indigenous peoples’ representatives within the United Nations systems, on issues affecting them, as they are not always organized as non-governmental organizations (A/HRC/24/L.22).

The Human Rights Council, in line with processes currently playing out, thereby indicates a deepening of indigenous peoples’ international status as subjects in international law. And as such sits uneasy with claims of a likely retrenchment of the indigenous track at the United Nations (Kymlicka 2007). These examples, more generally, show the important role of EMRIP as an accountability venue. EMRIP’s members use their expert knowledge, that is authoritative and comprehensive, and given that indigenous peoples are staffing the venue, constitutes a

⁴⁸⁹ Venue members develop and propose factors to determine whether state practice is in compliance with UNDRIP. They assert that states have a “duty” to obtain the consent of indigenous peoples in light of these factors. (A/HRC/EMRIP/2011/2, para 13). EMRIP “noted with approval” - in a technical workshop relating to the study of indigenous peoples’ right to participate in decision-making - that states had made positive constitutional and legal changes in Costa Rica, Colombia, Venezuela, Ecuador, Peru and the Philippines (A/HRC/EMRIP/2010/3, para 5) while pointing out non-compliance in Colombia and Peru as well as the slow process of constitutional reform in Chile (A/HRC/EMRIP/2010/3, para 7).

nested locale for indigenous peoples to drive the implementation process from above the domestic and from within the IGO.

Third, in 2001 the *Special Rapporteur on the Rights of Indigenous Peoples* was seconded by the then Commission on Human Rights as part of the system of thematic Special Procedures. The Special-Rapporteur affirmed UNDRIP to be the normative framework to carry out her mandate.⁴⁹⁰ The Special-Rapporteur noted that his principal function is to examine the specific situations of indigenous peoples' human rights, identify causes for violations and engage states on these matters.⁴⁹¹ The first term was served by Rodolfo Stavenhagen, followed by James Anaya, then by Victoria Tauli-Corpuz since 2014. With respect to the horizontal diffusion of indigenous peoples' agency at the UN both Anaya and Tauli-Corpuz have distinguished themselves as active indigenous delegates in the standard-setting activities. Beginning with Anaya the Special Rapporteur's primary function has been to increase "the likelihood that indigenous peoples' rights will pull states into conformity" with UNDRIP (Charters 2015: 172). A defining role of the Special Rapporteur is to complement the other existing venues in promoting, monitoring, and upholding indigenous peoples' rights. The Special Rapporteurs is asked to:

work in close cooperation and coordination with other special procedures and subsidiary organs of the Council, in particular the Expert Mechanism on the Rights of Indigenous Peoples, [...and to] work in close cooperation with the Permanent Forum and to participate in its annual session (ibid.).

⁴⁹⁰ In 2008, James Anaya began to focus on operationalizing UNDRIP by noting that HRC Resolution 6/12 requires him to do so.

⁴⁹¹ Since 2007, the Special Rapporteur has been mandated by the HRC to promote good practices in relation to the implementation of UNDRIP; to compile reports on the overall human rights situation of indigenous peoples in selected countries; to address specific cases of alleged violations of indigenous peoples' rights and to conduct thematic studies (A/HRC/RES/15/14).

Special Rapporteur Anaya, in an effort to avoid duplication with the work of EMRIP, primarily focused on

providing observations on the core issues that have arisen [and] evaluating specific countries and examining specific situations of allegations of human rights violations [in addition to stating that] his role, for the most part, be complementary and supportive of the work of the Expert Mechanism (A/HRC/12/34, para 13 and 27).⁴⁹²

Furthermore, the Special Rapporteur, and similar to petition mechanisms analyzed in the previous chapter, receives interventions about specific human rights allegations from indigenous peoples. Anaya, and noteworthy, has established an innovative way of receiving such petitions during UNPFII sessions after realizing that indigenous peoples tend to bring human rights allegations forward during forum sessions (A/HRC/12/34, para 11). The Special Rapporteur also conducts visiting “fact-finding missions” during which she assesses human rights situations as well as the country specific institutional and legal situation with respect to UNDRIP.⁴⁹³ Since 2002 the three Special Rapporteur’s visited a total of thirty states.⁴⁹⁴ The country reports submitted by the Special Rapporteur to HRC act as tool for keeping states accountable to implement UNDRIP. For instance, the report following Anaya’s visit to New Zealand in 2009, requested the government to enter into “discussions with Maori as soon as possible regarding the constitutional review process” (A/HRC/19/35/Add.4). Subsequently, in 2011, the Maori peoples and New Zealand engaged in such a review process and one which is ongoing. Indigenous peoples, here and elsewhere, can rely on the Special Rapporteur to bring their local voices to the IGO and that her assessments will always take into account the “perspectives and priorities of the

⁴⁹² Moreover, in an effort to coordinate the work of these mechanisms, the Special-Rapporteur clarified that his focus would be on supporting the thematic work of EMRIP rather than engaging in thematic studies (A/HRC/10/56, para 21).

⁴⁹³ For terms and references see E/CN.4/1998/45. 115 states offer United Nation Special Rapporteurs a standing invitation to visit (see spinternet.ohchr.org for a full list).

⁴⁹⁴ See for country reports: <http://www.iwgia.org/human-rights/international-human-rights-instruments/undeclaration-on-the-rights-of-indigenous-peoples/a-brief-history/86-eng-international-processes/un-special-rapporteur/373-country-visits-of-the-un-special-rapporteur>

indigenous peoples concerned” (A/HRC/18/42). Clearly both Anaya and Tauli-Corpuz have built a strong reputation in their capacity as indigenous delegates within the IGO. As was noted in the only available study on the specific role of the *Special Rapporteur on the Rights of Indigenous Peoples* to date:

All of [the Special Rapporteur’s] pursuits ultimately contribute to enhancing the quality of indigenous peoples’ rights under international law in such a way to accelerate states’ internalization of the pull to obey, even when it might not be in their interest to do so, despite the lack of an international sovereign and/or sanctions (Charters 2015: 176).
Special Rapporteur Tauli-Corpuz will, and deserving ongoing analysis, likely continue Stavenhagen and Anaya’s work and contribute to the implementation and application of indigenous peoples’ rights.

In sum, the division of labour amongst these three mechanisms underscores a process of horizontal diffusion of operationalizing the *Universal Declaration on the Rights of Indigenous Peoples* through the UN. This division is also necessary in order to enhance each venues individual focus and to avoid duplication of work across venues. Such coordinating strategy seems particularly important for indigenous peoples given the time and resource constraints they experience. Lastly, critical weight for implementing UNDRIP, and as noted, falls on the rights holders themselves who can “breathe life into” UNDRIP at the local level in a way that does not necessarily involve the direct involvement of states (Sambo Dorough 2009). Ken Coates for example demonstrates how the declaration finds “deep traction” in Canada where hundreds of indigenous communities “see themselves, their history and their futures in UNDRIP” (Coates 2013). As Rhiannon Morgan has aptly argued

the exercise of inherent authority, is incumbent on indigenous peoples, together with their allies in civil society, to continue to be energetic in the defence of their human rights through various forms of social, legal, and political mobilization (Morgan 2011: 162).

This task continues to be challenging but what is clear is that indigenous peoples have used the UN for their own empowerment and, given the expansion of their activities at the IGO, will continue to do so. One long-standing indigenous delegate at the UN put it this way:

It's like boxing [...] if you want to make change you can't stay outside of the boxing ring and make wild swings and yell and protest and all of that. If your opponent accidentally comes close to the ropes you can go in and hit him, maybe you are going to take him down but if you really want to get into it you have to be inside that ring, you got to be in there battling it out the best way you can (Anonymous Interview 2014).

4.6 Conclusion

This chapter analyzed indigenous peoples' engagement with United Nations venues to challenge state sovereignty. I demonstrated the value of focusing on access and participatory mechanisms, the essential role of allies as well as the relevance of venues through analyzing a) the norm emergence phase which followed on directly from the previous chapter concerned with national liberation movements, b) the standard-setting phase which highlighted the active role of indigenous peoples as standard-setters in a sheltered venue c) the implementation phase offered insights on how indigenous peoples have taken a permanent seat at the UN in several venues to drive the implementation of the UN *Declaration on the Rights of Indigenous Peoples*.

With respect to challenges to state sovereignty I demonstrated a second grafting moment. Indigenous peoples used the IGO to assert their status as peoples and formulated a non-statist conception of self-determination and grafted it onto human rights law. I demonstrated how independent human rights experts working in a sheltered venue came to support this view and how these actors in turn helped engage states into accepting indigenous peoples' self-determination. This reformulation of self-determination broke new ground in international relations because it involves the right of indigenous peoples to participate as peoples in the structure of indigenous governments and with states on an ongoing basis. States accordingly are

challenged to devolve authority to indigenous communities, tribes and nations, including territorial control.

More specifically, I highlighted the process of coalition building and venue shopping by indigenous peoples and demonstrated the role of secretariat members as norm entrepreneurs during the norm emergence phase. This coalescing development between non-state actors demanding access and allies from within the IGO encouraging their participation in a new venue set into motion the indigenous peoples' boomerang pattern. Second, during the standard-setting phase, I demonstrated how indigenous peoples' status as *peoples* and a outlined a *non-statist* version of self-determination that was consistent with human rights and treaty law was formulated in a sheltered venue; the Working Group on Indigenous Populations. This section analyzed how indigenous peoples organized through the Indigenous Caucus to influence norm development, how independent human rights experts set precedents for indigenous peoples' access and participation in the sheltered venue and analyzed the impact of novel modes of deliberation which were instituted to bridge contestations between indigenous peoples and states. In this connection, I demonstrated how existing human rights standard-setting principles drew states into the deliberations with indigenous peoples.

Moreover, I turned my attention to how indigenous peoples addressed a veto point during the elaboration phase. This section underscored that indigenous peoples with access to the Human Rights Council pressured states to open access to those indigenous peoples that were formerly excluded. It also demonstrated how social pressure tactics influenced the WGDD chair to accept indigenous peoples as consensus participants and how indigenous peoples used the "no change" strategy as a means to teach states, anchor WGDD' elaborations based on the Draft Declaration; while blocking the most reticent states from cluttering the WGDD by introducing

contending positions. This section also highlighted the essential role of state allies to built winning coalitions and to sideline the most obstructionist states. The adoption of new methods of work akin to those implemented in the sheltered venue and temporary venue shifting also need emphasis; informal working groups, under the lead of state allies, helped formulate a Draft Declaration that enjoyed broad support.

Finally, I offered an argument on how indigenous peoples have taken a permanent UN seat in the implementation phase. This concluding section discussed the relevance of institutionalizing and further extending venues mandates in which indigenous peoples partake. Indigenous peoples have taken a permanent seat at the UN. They use this access to participate in specialized venues to challenge states not only from a domestic level, but also from above, through the United Nations. With these point in mind I offer a conclusion to this dissertation below.

5. Conclusions

This dissertation has sought to specify under what conditions non-state actors can use the United Nations, an Intergovernmental Organization, to challenge state sovereignty. This concluding chapter summarizes and contrasts the empirical findings of the two cases analyzed, highlighting differences but above all stressing the similarities between them. Through building an original database of relevant UN documents spanning over seventy years and by further triangulating these with other evidence, including interview data with key actors, the empirical findings in this dissertation support that national liberation movements and indigenous peoples have used, and in the latter case continue to use the United Nations to challenge one of the most central institutions in world politics: state sovereignty. I demonstrated that state sovereignty is, despite being resilient and hard to change, a mutable and variable institution.

In this concluding chapter, I also situate the empirical findings into a broader discussion of the interactions by non-state actors with Intergovernmental Organizations. Finally, the chapter provides a discussion on the implications of this dissertation's theoretical framework for studying three important areas of research: state sovereignty, the relevance of Intergovernmental Organizations and role of non-state actors in driving and implementing norm based change, and to norms undergirding state sovereignty in particular.

5.1 Summary of the Dissertation and Findings

This dissertation provided a detailed analysis of two sets of non-state actors working through the United Nations: national liberation movements and indigenous peoples. These actors drew on the IGO to challenge the composite institution of state sovereignty. I argued that grafting the norm of self-determination onto human rights has been the main normative tool to challenge prevailing conceptions of state sovereignty by both non-state actors under investigation. By drawing on an Intergovernmental Organizations both groups of non-state actors were able to alter conceptions

of sovereignty. They affected especially the norms of self-determination, which carried implications for the norms of non-interference and territoriality. Although state sovereignty remained in place as a resilient ordering principle of global affairs, the prevailing conceptions of sovereignty underwent a significant change that affected the range of behavior regarded as appropriate and consistent with the institution of state sovereignty. State sovereignty proved to be mutable.

National liberation movements and indigenous peoples achieved these outcomes by engaging various venues in the nested structure of the United Nations in order to assert that denying them self-determination created a double-standard in global human rights law. Both sets of actors contended that to declare a universal recognition of self-determination, and to deny such a right to the peoples living in overseas colonies and to indigenous peoples surely offends the prohibition of racial discrimination. The findings thereby dovetail with scholarship that demonstrates that transnational mobilization is likely when actors are able to contest issues involving legal equality of opportunity (Keck & Sikkink 1998: 27). The dissertation affirms that norms which are in principle universal in scope (self-determination and human rights) are more likely to garner international traction when non-state actors are able to lay their specific claims against their exclusion from enjoying these rights as individuals and groups of peoples. It thus also speaks to those insights which have proposed that such norms are also always “institutionally referential” in so far as rights require an “institution that is charged with satisfying and protecting them” (Reus-Smit 2009). National liberation movements and indigenous peoples made this charge against existing sovereign states and by drawing on the UN to raise issues of inequality and unavailability of internationally protected rights. They asserted their status as peoples to whom the norm of self-determination unequivocally applies. Both non-

state actors used an Intergovernmental Organization to challenge resilient conceptualizations and practices of state sovereignty.

Chapter 3 demonstrated that neither self-determination nor human rights were available to peoples living outside of Europe by the end of the Second World War. Colonial states, as founding members of the UN, sought to maintain the status quo over the future of their colonial possessions and its peoples indefinitely. This changed from the moment the United Nations was created in 1945. National liberation movements build coalitions with the goal to access and participate in the UN, all the while state allies (and to a limited extent consultants) pushed for a universal recognition of self-determination at the UN. Over time a vague principle was transformed to become a universal norm that was linked with the emergent human rights regime. Gradually, the norm of self-determination so constituted supported national liberation movements in their quest to end overseas colonialism. As more states gained independence, calls for self-determination by other national liberation movements grew more common and were more successful given the greater number of available state allies in the UN. The overall outcome was momentous, as the majority of overseas colonial territories had gained sovereign statehood by the mid 1970s.

National liberation movements could use this normative imperative to challenge state sovereignty because they accepted the emergent territorial integrity frame, which ended the era of territorial expansion. They, on the other hand, limited the composite norm of non-interference that states upheld with respect to the treatment of the colonized peoples. The norm of self-determination essentially drove a wedge into existing sovereignty arrangements. Non-interference was limited because practices that were based on racial discrimination and the unavailability of self-determination to peoples in overseas colonies became objectionable.

Denying such rights became a categorical wrong that states with colonial possessions had to accept as outdated. By 1960 the UN established that the subjugation of peoples constitutes a denial of fundamental human rights and that all peoples have the right to self-determination, not only without distinction, but that this necessarily includes the right to freely determine their political status. The members of the UN, the majority of whom had recently emerged from their own liberation struggle, declared that immediate steps shall be taken, in Trust and Non-Self-Governing Territories to transfer all power to the peoples – that is transfer sovereignty to them. This dissertation stressed that the normative demands engendered by national liberation movements on the ground were further stimulated at the UN by liberation actors turned state actors. This process had a paradoxical effect; it was both a challenge to sovereignty, and especially when it meant overseas imperialism, and yet an affirmation of sovereignty as it for the time determined the status of states on a global scale.

The IGO, as such, contributed in its own unique way to ending European colonialism in Africa and Asia in a relatively peaceful fashion and within three decades. Moreover, and as a consequence of this co-constitutive process the United Nations did not remain static but changed substantially with more and more national liberation actors entering the organization as state delegates. The inclusion of new states into the organization, in fact, permanently altered the UN from an organization with a Western-European heavy membership to one where post-colonial states from Africa and Asia today present the largest regional constituencies in most of its principal organs.

Chapter 4 established that indigenous peoples also used the IGO to assert their status as peoples with a right to self-determination. They formulated a non-statist conception of self-determination and grafted it onto human rights law. This conception distinguished between

“external” and “internal” self-determination, with the later involving the right of indigenous peoples to participate as peoples in the structure of indigenous governments *and* with states on an ongoing basis. States are since challenged to not only treat indigenous peoples within their borders on the basis of equality and non-discrimination, but also to devolve authority to indigenous communities, including territorial control. This is to say that indigenous peoples had to assert repeatedly that their territorial claims did not dispute the territorial integrity of states. Noteworthy is also that these demands are similar to those outcomes achieved by national liberation movements in the latter part of decolonization whereby peoples in numerous small islands opted for various self-government arrangements over full independence.

Still indigenous peoples’ self-determination is also different from my first case study where self-determination was foremost applied as a constitutive right of the peoples in Trust and NSGTs that was consumed in the act of gaining independence. The role of colonial states, as institutional referents, was thus to satisfy demands for independence. By contrast, states in which indigenous peoples reside continue to be called upon to implement the rights of indigenous peoples through mutually agreed terms. In other words, the first grafting moment had repercussions for the second grafting process I studied. States, including those that emerged during the era of decolonization, had to accept that not only all peoples have a right to self-determination but that its limited application during decolonization unduly restricted indigenous peoples from being recognized rights holders also.

Above all, indigenous peoples used the IGO in a larger process to re-constitute the relationship between them and the state in which they live. Indigenous peoples addressed their exclusion from being able to claim self-determination as peoples and also by having secured a more permanent UN seat. If national liberation movements challenge to state sovereignty was a

sweeping revolution than indigenous peoples challenge to state sovereignty is a continuing evolution. Given the gap in the domestic implementation, indigenous peoples continue to contest the lack of compliance of state through the UN. Today, and as noted towards the end of Chapter 4, indigenous peoples still reshape the contours of the UN by deepening their international presence and by fastening their agency to keep states accountable form within the IGO.

It is important at this point to reflect on the respective challenges of state sovereignty as expressed in the UN *Declaration on the Granting of Independence to Colonial Countries and Peoples* as well as the *Declaration on the Rights of Indigenous Peoples*. While both these documents lack the formal force of a treaty or a convention they are expressions of two related normative challenges to the composite institution of state sovereignty. First, these declarations highlight that the right of peoples to self-determination has transformed from a mere principle to an actual right of peoples. At first self-determination was universalized and took on an anti-colonial shape by affirming peoples' right to free themselves from colonial rule. The former declaration thereby established that all peoples have the right to self-determination without distinction while effectively restricting its application to peoples living in Trust and NSGTs. It meant independence from colonial or foreign domination yet left the question of self-determination outside of this limited scope unanswered. The latter declaration was thus a logical corrective to the former declaration by establishing that indigenous peoples hold a right to self-determination just as all other peoples do. Second, and with respect to their implementation record, it seems significant to note that the *Declaration on the Granting of Independence to Colonial Countries and Peoples* challenged a relatively small number of European states to transfer sovereignty to the peoples in colonial territories. Once major colonial powers like the British, who held onto the majority of NSGTs, became norm followers the application of self-

determination was from 1960 onward quite rapid. Despite this, there were also those colonial states, such as Portugal, that continued to contest the application of a reformulated conception of self-determination even if it meant conflict on the ground. What is more, newly independent states that had altered the composition of the UN in their favor continued to keep the pressure on norm-violating states constant and incessant. In other words, the compliance record by states varied substantially until the reputational costs for the most recalcitrant states became simply too high to ignore.

The *Declaration on the Rights of Indigenous Peoples* requires some seventy states to implement its stipulations and often according to the various aspirations of different indigenous groups within a given state. The implementation of the declaration in these states is slow while violations of indigenous peoples' rights continue unabated. Many states, with noted exceptions, disregard the commitments they made almost a decade ago when voting in favor of UNDRIP. Against this backdrop, and as noted toward the end of Chapter 4, it is reassuring to observe that indigenous peoples pursue their rights implementation through domestic courts and by forging and developing community plans and alliances in order to strengthen their advocacy efforts domestically. While speculating about the future is difficult, of course, these types of domestic alliances are to my reading critical in order to demand accountability from states. There is after all strength in numbers. This is also why it, and the explicit focus of this dissertation, remains necessary that indigenous peoples pursue their UN engagement and to keep pressuring for the implementation of UNDRIP not only at the domestic but at the international level. Only through these sustained activities will it be possible to start bridging the implementation gap that currently exists. Political will on the parts of states has to be induced through the IGO accountability mechanisms I discussed. Finally, if recent pledges for the full implementation of

UNDRIP by states like Canada move forward their example as a former objector to UNDRIP may guide other states. With these points in mind the findings of this dissertation also allow me to draw more specific lessons.

5.2 Theoretical Implications

The first noteworthy point is that neither non-state actors nor the IGO analyzed are epiphenomenal to the study of world politics. On the contrary, this dissertation affirms constructivist insights that state sovereignty is a socially constructed composite institution that is co-constituted by multiple actors. As this dissertation furthered theoretically these actors include not only states, but as my argument stressed, non-state actors who engage states through the nested venues of Intergovernmental Organizations. In this way this dissertation provides a rival explanation to state-centric theories that tend to treat state sovereignty as an immutable and indivisible institution.

It equally challenges those that argue that state sovereignty is waning. This dissertation contends that state sovereignty is better conceived as a resilient yet mutable composite institution. Instead of affirming states as sole actors in settling the normative and practical status of one of the most fundamental institutions of world politics the argument offered will be especially of interest to constructivist scholars by drawing more fine-grained conclusions: *State sovereignty is not only what states make of it but it is mutable when non-state actors are able to engage IGO's to alter normative standards and prevailing practices of state sovereignty.*⁴⁹⁵ State sovereignty is therefore usefully comprehended as the legal and political practices linking intersubjective ideas of legitimate authority to three fundamental norms: territoriality, non-interference and self-determination.

⁴⁹⁵ I adapt this phrase from Wendt, a leading constructivist in the field of World Politics, who famously postulated that anarchy is what states make of it (Wendt 1992).

Alterations to the norms undergirding the composite institution of state sovereignty are neither easy to achieve nor are they automatic. Non-state actors using IGO's in these ways face constant pushback from states whose primary goal is to maintain the status quo. In order to be successful, non-state actors must sustain their engagement with Intergovernmental Organizations over relatively long periods and wrest concessions from states and persuade them to accept changes to the composite norms constituting the institution of sovereignty. In this connection, I argued that non-state actors often rely on the essential role of allies, as is the identification, adaptation and expansion of propitious venues. I identified different types of venues but emphasized one particular type of venue that supports these activities: sheltered venues. Sheltered venues are critical to set normative standards and create access and participatory opportunities for non-state actors in the IGO. As prompted in Chapter 1 the decision by non-state actors to use an IGO to challenge fundamental institutions is consequently, although difficult, far from a futile enterprise.

This is not to argue that IGOs are outright hospitable to the demands from non-state actors. On the contrary, the demand by non-state actors to access the United Nations was in both cases severely constrained both in terms of the form of access and status. National liberation movements' access was formally limited by colonial states to actors from Trust Territories. Indigenous peoples could initially access the UN only by being accredited as NGOs under ECOSOC. In both cases states misrecognized national liberation movements and indigenous peoples by denying them international status. Despite these constraints, non-state actors' mobilization for access to the IGO was picked up by allies working in the IGO. These allies acted as norm entrepreneurs and created opportunities for the entry of non-state actors to IGO venues. To recall national liberation movements benefited foremost from state allies active in institutional design venues. Indigenous peoples on the other hand found support from both state

and Secretariat allies. The initial conditions with respect to the access of non-state actors surveyed therefore parallel with the available literature that suggest that non-state actors who build transnational coalitions and who are able to create linkages with key allies' active in Intergovernmental Organizations are more likely to succeed in participating in the IGO.

This dissertation has also established that states resist to allow for the upstream participation by non-state actors in the IGO. Yet again, despite the constraints states leveled against improved non-state actors' participation higher up in the IGO, these were worn down through the sustained interactions of coalitions between non-state actors and their allies. Their combined activities through sheltered venues are particularly noteworthy. National liberation actors, who entered the UN as newly independent state delegates, used the Third Committee to unify UN Charter obligations in an effort to open the IGO up to the peoples from Non-Self-Governing Territories. These actors continuously pushed from within the IGO to create venues and to extend participatory rights to other liberation movements based on a blueprint of mechanisms available to the much smaller list of Trust Territories first, and with limited success, in the Committee on Information. By 1960 national liberation movements from the remaining NSGTs found a highly receptive venue in the Decolonization Committee. An accountability venue that provided them with full participation and standing observer status.

Indigenous peoples at first were also restricted because the UN only allowed for their participation as NGOs which misrecognized their status as peoples. Independent human rights experts who chaired another sheltered venue, the Working Group on Indigenous Populations, set a precedent to offer indigenous peoples without NGO consultative status entry and by extending participatory capacity as active standard-setters to them. The venues open door policy in turn created expectations for uptake of comparable modalities in the nested structure of the IGO.

Indigenous peoples drew on these precedents and attendant expectations by demanding adaptations to higher up IGO venues. To date, indigenous peoples have found a more permanent seat at the UN. In fact, and towards the end of my research, the President of the General Assembly engaged indigenous peoples and UN member states in a consultation process concerning the ways to enable more effective participation of indigenous peoples in relevant UN venues affecting them. A decision on these matters is expected toward end of 2016. What is clear, judging from the proposals, is that both indigenous peoples and states indicated a need for enhanced forms of participation for indigenous peoples. There is, in fact, considerable convergence for a separate category of participation as those currently available under ECOSOC-accreditation for NGOs because they do not sufficiently accommodate the participation of indigenous peoples at the UN.

Above all the function of sheltered venues clarifies non-state actors' institutional entry point and thereby specifies existing models such as Keck & Sikkink's boomerang pattern. The empirical identification of sheltered venues in both my cases adds to existing accounts in so far as non-state actors challenge norms from below the bureaucratic structure of the IGO while confirming models which explain that non-state actors reach out to IGOs to challenge state from above, and especially when domestic channels are blocked. A key generalizable lesson therefore is that sheltered venues are critical spaces for non-state actors to achieve norm based change and by substantiating that they do so from above the domestic; yet from below within the nested structure of the IGO. It may be useful then to conceive of sheltered venues as launching pads from which norm-based boomerangs are thrown not only back into target states but into the IGO itself. This entails that it is important to appreciate IGOs not as monolithic and singular entities but that they are better conceived of as evolving multiple and nested venues.

A focus on sheltered venues also clarifies aspects in the evolution of access and participation of non-state actors. Sheltered venues are, before anything else, relevant to non-state actors because they provide stepping stones for engaging states in larger processes of norm contestation and development. Given that states more often than not constrain access of non-state actors means that a necessary first step is to identify and/or create propitious venues. As part of this I demonstrated how allies active in the IGO facilitated the creation of venues to support non-state actors demand for such platforms of deliberation. Once non-state actors establish a foot in the door they can begin to broaden and deepen their own interactions with states when moving up in the IGO.

What is especially important for non-state actors to use sheltered and other types of venues is to be able to participate in order to engage states discursively. In order to account for these interactions, it is important to investigate the modes of deliberation in the nested structure of IGO venues and how non-state actors apply their tactical repertoire with lesser or greater effect in these venues. I identified several mechanism of deliberation which impacted outcomes: informal working groups chaired by human rights experts or state allies, interactive workshops, oral and written petitions as well as visiting missions. These participatory mechanisms allowed non-state actors to table their demands in such a way that states had to contend with their positions. It also offered state allies a way to bolster their linkages with non-state actors while receiving information and testimonies to keep states accountable in other venues to which non-state actors lack access. These mechanisms have often been the result of a confluence of non-state actors' demands and norm entrepreneurs' informal decisions and practices. These limited inroads subsequently provided cues for adaptation in other venues and for deepening non-state actors' engagement with states.

In instances where the participation of non-state actors was limited during moments of venue shift I further demonstrated how non-state actors draw on social pressure tactics such as walk outs and hunger strikes to overcome and even alter such veto points. In this connection, I also found that non-state actors engage with state allies outside of the IGO to contest its lack of responsiveness. These findings challenge those scholars who contend that IGOs are static. Changing participatory mechanisms of IGO venues, although difficult to achieve and often imperfect, do occur. Non-state actor participation, of course, presents states with a loss of control. To a large extent, these changes have accordingly been the result of non-state actors questioning the appropriateness of existing rules and procedures. This finding therefore challenges claims about non-state actors' advocacy as a principal source of supply by the IGO. My findings are somewhat mixed: national liberation movements and indigenous peoples campaigned and fostered coalitions for participating in the IGO while allies in the IGO laid the groundwork for establishing and deepening such participation. This more generally points toward a set of mechanisms through which non-state actors strengthen their participatory capacity: by engaging key actors such as secretariat members or chairpersons of venues, by lobbying both inside and outside the IGO, by building winning coalitions with states, and by generally arguing for participatory principles based on including those that are affected. The relevance of venues is indeed evident when non-state actors can participate with states on the basis of parity but also when they can staff venues as independent experts offering authoritative advice.

In addition, this dissertation's focus on the participation of non-state actors during the stages of the norm life cycle produced interesting findings. National liberation movements that underwent a status change to state actor primarily shaped the standard-setting phase as norm

entrepreneurs with liberation movements concurrently mobilizing domestically. These findings diverge from the transnational movement literature which argues that non-state actors' advocacy to be most prevalent in the standard-setting phase (Risse 2002; Finnemore & Sikkink 1998). The findings in Chapter 3 therefore run counter to more recent developments whereby non-state actors' involvement in IGO standard-setting activities has become more expansive and direct. Indeed, indigenous peoples as I demonstrated in Chapter 4, were able to shape new standards and elaborate norms by directly engaging states. Indigenous peoples in other words have been present during the entire norm life cycle while national liberation movements, with the exception of those from Trust Territories, were able to challenge state sovereignty primarily in the implementation phase and/or by having to emerge as states.

Leading on from the above, the dissertation's findings demonstrate that allies play a critical, even essential, role during the creation of venues, yet can be equally consequential during moments of venue shift. This is because allies can facilitate the translation of access and participation by non-state actors from one venue to the next. Especially when states use their prerogative to veto upward access in an IGO allies may be able to use their agency to broker for the continued access by non-state actors. State allies of national liberation movements, for instance, did so by drawing on limited access mechanisms to the Trusteeship Council and by transferring these to the Fourth Committee of the General Assembly. In the case of indigenous peoples, independent human rights experts engaged states in an effort to secure special accreditation procedures for indigenous peoples during the elaboration phase. A focus on how coalitions are built with key allies is therefore another important condition which may well travel across other cases. The expectation is that without allies the access and participation by non-state actors moving through the IGO hierarchy may be less successful or is more easily hindered by

states. This finding is not to minimize the importance of non-state actors in seeking access to an IGO's venue itself. To the contrary those non-state actors who form larger coalitions amongst each other and who collectively pursue their goals are more likely to induce states to open up the IGO up when available access channels are blocked. This was evident in both cases with respect to the formation of the Non-Aligned Movement and the Indigenous Peoples Caucus, respectively. The shared strategies, knowledge and expertise non-state actors can draw on in regards to access and participatory opportunities are thus important for their success, and especially when moving upward in the hierarchy of an IGO. Non-state actors' expertise on the rules of procedure or decision making process, as analyzed, is consequently a definite asset.

Lastly, the empirical findings also affirm the usefulness of considering the status by non-state actors in an IGO. A focus on status specifies the overall recognition non-state actors are granted by the IGO. It helps to account for gains and losses in non-state actors' agency and recognition in the venues of an IGO as more or less recognized and competent actors alongside states. Status foremost explains whether states accept a non-state actor or whether they maintain a restricted view of their agency as actors in the IGO. Again both cases underline how the status of non-state actors changed.

At first national liberation movements were not recognized at the UN but in time their status was elevated as fully recognized state delegates. During the transformations from colonial rule to independent statehood liberation leaders from NSGTs could increasingly rely on the UN to be recognized not only as petitioners but towards the end as standing UN observers and the 'only legitimate representatives' of the peoples in NSGTs. Their status fully shifted once they came to the IGO as state delegates. Indigenous peoples' status was initially limited to one of Non-Governmental Organizations and in time shifted to affirm their status not as NGOs but as

peoples under international law. Today indigenous peoples' status recognition can be observed in several capacities at the UN; whether it be as indigenous parliamentarians, human rights experts, chairpersons, forum members, Special Rapporteurs, and most importantly as groups, peoples and nations participating in the venues of the UN. Although marginal, these changes in status continue to deepen and despite the fact that some states continue to argue against recognizing indigenous peoples other than as NGOs. Notwithstanding these states' intransigence, ongoing practices and recent proposals at the IGO indicate a shift in their status and one that, to my mind, will continue to evolve.

5.3 Future Research

With the above in mind I would like to consider the potential for future research. As I have argued in the theory chapter the two non-state-actors I studied are part of a relatively small population of cases in terms of their challenge as actors with demands to self-determination as peoples. In fact, there are only two additional sets of non-state actors which would fall into the specific category conceived here, namely, secessionist movements and ethnic minority groups. A great deal of additional research is needed if we are to conceptualize these additional non-state actors with respect to their abilities and strategies to challenge the composite institution of state sovereignty through the United Nations. It would thus be interesting to explore how these types of non-state actors fare in engaging the UN in a larger demand for self-determination and especially whether they are a) also seeking to access and participate in the IGO through sheltered venues, b) whether and how allies played a role in supporting their access and participation and c) whether unsuccessful attempts to enter an IGO higher up in the organizational structure are followed by attempts from below, through sheltered venues, as outlined here.

What seems particularly salient with respect to these potential case studies is not only

how these actors share demands for self-determination but how their claims implicate the norm of territorial integrity. Given that national liberation movements accepted the norm of territorial integrity and indigenous peoples had to repeatedly assert that their claims did not extend to secession leads to the expectations that secessionist movements are likely to encounter major pushback from states when attempting to draw on the UN. States, old and new alike, have simply shown themselves allergic to engage in contestations surrounding the sanctity of existing borders. With respect to ethnic minority groups, the UN has been actively involved in mitigating between states and minority groups and promoted either some form of autonomy (e.g. Burma, Cyprus, Sudan, Iraq, Indonesia, Sri Lanka) or some form of federalism with existing states (e.g. Azerbaijan, Bosnia, Kosovo, Macedonia, Ukraine). Yet, as has been noted elsewhere, these “endorsements have only occurred in the context of resolving violent conflicts, rather than as part of a more general principled commitment to minority autonomy” (Kymlicka 2007: 292; Hannum 1996). To my mind critical weight therefore continues to fall on existing states who are challenged to ensure that ethnic minority groups instead of having to resort to violence find domestic and international avenues, such as United Nations, to address their claims through negotiating their rights instead. In short, studying the relevance of the United Nations in convening multiple actors engaged in normative contestation surrounding the composite institution of state sovereignty remains pressing.

With respect to the study of Intergovernmental Organizations this dissertation points toward the utility of treating IGOs as central conveners in world politics. They are not simply passive extensions through which states act. Rather, they are institutions through multiple actors’ act to help bring about change. My findings specifically suggest future research related to three types of actors active in these organizations: secretariat members, independent experts and

chairpersons of venues. Both cases under investigation highlight that secretariat members play crucial roles to establish institutional momentum and interests. It would therefore be interesting to investigate other instances in which an IGO's secretariat gets involved with respect to challenging prevailing conceptions of state sovereignty. In fact, United Nations debates on the Responsibility to Protect spring to mind. Independent experts active in an IGO also merit sustained analytical focus. A study on the role of independent human rights experts may be an interesting starting point. Another aspect which this dissertation has brought to the fore is a consideration of how the chairperson of venue's impact multilateral negotiations. The role of chairpersons in effect is a fruitful yet understudied avenue of exploration. Capturing a chairperson can have important repercussions not only for non-state actors who maintain their engagement with IGO's over long periods but also to those who seek to participate in IGO venues on a more *ad hoc* and intermittent basis to set new standards, elaborate norms and to keep state accountable.

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