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International Organisations and Indigenous Peoples' Issues: Rights over Land and Natural Resources

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Abstract:
The relationship between land and indigenous peoples give rise to various questions which have been largely connected to the idea of rights. These rights, whether individual or collective, have formed further issues of debates within various international organisations. Therefore, how these organisations, like International Labour Organisation and the United Nations, have deliberated on matters related to indigenous peoples' access to their lands and the rights that are to be conferred upon them form an interesting field of enquiry which have been sought to be understood through this paper.

Introduction:

There is a close connection between land and indigenous peoples' survival. We can understand this crucial connection from the profound relationship that exists between land and society, culture, politics, spirituality and economy of an indigenous community. Colonial powers and modern states around the world were created politically and economically over the exploitation of indigenous land and extraction of natural resources. Thus, land becomes the central issue for indigenous politics (Bellier& Martin 2012: 480). Therefore, instruments of international organisations affirm the protection of indigenous lands and territories and through its mechanisms, international organisations attempt to ensure the indigenous peoples' control over their land and territories. Approximately 476 million indigenous peoples, or 6.2 percent of the world's population, are distributed among 90 countries.

There are almost 5,000 different groupings among them. Most of the indigenous peoples across the world from Maori of New Zealand to Sami of Europe were displaced from their ancestral land and natural resources. Nation-states around the world failed to protect the traditional collective rights of indigenous peoples. As a result of this, international organisations came into the scenario in the 1950s. International Labour Organization (hereafter ILO) was the first international organisation that worked for the land rights and other rights of indigenous peoples. There are two international conventions on the rights of indigenous peoples adopted by the ILO, one is- Indigenous and Tribal Populations Convention of 1957, also known as C107. The second convention was adopted in 1989, known as Indigenous and Tribal Peoples Convention (C169). This is the only binding convention concerning indigenous rights. On the other side, United Nations (UN) started to engage with the issues of indigenous peoples since 1970s and it created several forums to deal with the issues of indigenous peoples, such as- Working Group on Indigenous Populations (WGIP) established in 1982 and in 2002 UN set up the Permanent Forum on Indigenous Issues. There are other mechanisms emanated from the UN such as- Special Rapporteur on the Rights of Indigenous peoples, Expert Mechanism on the Rights of Indigenous peoples and UN Voluntary Fund for Indigenous Peoples. Significant shift observed in the history of UN is the adoption of United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007. These documents focus on both individual and collective rights of indigenous peoples. This paper looks at how these conventions and declaration involve with the issues of land rights and natural resources of the indigenous peoples in indigenous lands.

ILO and Indigenous Peoples:

Regardless of the assimilationist and integrationist nature of the ILO Convention 107, it's Article 11 stands for the land rights of indigenous populations. According to the Article "the right of ownership, collective or individual, of the member of the populations concerned over the lands which these populations traditionally occupied shall be recognised." (ILO 1957) On the other hand, ILO 169 defines the term 'land' as territories that include "total environment of the areas which the peoples concerned occupy or otherwise use" (ILO 1989). Article 14 (1) of the Convention 169 admits that "the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognised. In addition,

measures shall be taken in appropriate cases to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect" (ILO 1989). In addition to this Article 14(3) urges states to establish procedures within a states' legal system with the purpose to solve the issue of land claimed by indigenous peoples. If we meticulously observe the language that is used both in Convention 107 and Convention 169 concerning indigenous peoples' right to land and resources, we will find that Convention 107 uses the term 'ownership' alone while on the contrary Convention 169 refers to both 'ownership' and 'possession' (Rombouts 2017).

There is a strong relationship that exists between land rights of indigenous peoples and Convention 169. The provisions of the convention 169 stated that nation state should respect and recognise indigenous territories and they should have the right to control over the natural resources. The convention also calls for a process of consultation with indigenous peoples prior to any development activity on the land of indigenous communities (Stavenhagen 2005: 19). It is experienced from the past explanations that external actors, especially in most cases the states, historically acquired or desired to acquire or extract natural resources from indigenous lands without any consultation or consent of indigenous peoples. Therefore, in the convention 169 attention was given to safeguard mechanisms of the land and natural resources of indigenous peoples. The Convention also vociferously emphasised on right of indigenous peoples in the use and conservation of natural resources. Thus, Article 15 (2) of the Convention 169 read "…in cases in which the state retains the ownership of mineral or sub-surface resources or rights to other resources pertaining to lands, governments shall establish or maintain procedures through which they shall consult these peoples, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible participate in the benefits of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities" (ILO 1989).

In regard to the right to natural resources of indigenous peoples, Convention 169 proposed that indigenous peoples should have the right to participate in the use, management and conservation of natural resources (Article 15(1)). Besides, Article 16 of the convention addresses the issue of displacement which is one of the most crucial ones for the indigenous peoples. Article 16(1) states that indigenous peoples cannot be removed from their traditional lands. Although exception in this case is addressed by the Article 16(2) where it is pointed out that relocation of indigenous peoples from the land they occupy, is feasible only with the free, prior and informed consent of indigenous peoples. The Article also added that in cases where it is nearly impossible to achieve free, prior and informed consent, relocation could be done through adequate procedures constituted by national laws and regulations. Moreover, indigenous peoples have the right to come back to lands they occupied traditionally, "as soon as the grounds for relocation cease to exist" (ILO 1989: Article 16(3)). If such kind of return seems to be impossible for indigenous peoples, then according to the convention indigenous peoples must be given quality lands as well as legal status equal to the lands previously occupied by the indigenous peoples to meet their both present requirements and future development (ILO 1989: Article 16(4)). The article is open for the provision of compensations in terms of money or in kind in a situation where indigenous peoples prefer so. Finally, Article 16(5) considers that relocated persons must be compensated fully for any kind of loss. The inclusion of the notions like participation and consultation that echoed through its various provisions, particularly in relation to the protection of lands and resources of indigenous peoples, makes the Convention 169 exclusive (Rombouts 2017: 190)

United Nations and Indigenous Peoples:

One of the instances of international organisations in this regard was the report of Martinez Cobo. In this, Cobo attempted to depict a relationship between land and indigenous peoples by arguing that land, for indigenous peoples, does not merely depict possession or means of production. It stands for much more than that, as it also defines the whole circle of relationship between their spiritual life on one hand and Mother Earth on the other. This has a deep-rooted connotation as they do not view land as a mere commodity to be acquired but as a material element that must be enjoyed freely (Rombouts 2017:174). Again, the UNDRIP recognised the importance of land rights for indigenous peoples and especially during the time of debates at the WGDD special emphasis was given to the inclusion of collective land rights (Gilbert 2007: 223).

UNRIP strongly upheld the land right of indigenous peoples and as an outcome, several provisions of the declaration have been dedicated to this issue. Keeping in mind the historical injustices and consequences of colonialism which deprived indigenous peoples from their traditional occupation and traditional lands, the preamble of the UNDRIP recognised "the urgent need to respect and promote

the inherent rights of indigenous peoples" (General Assembly 2007). It is not just the political, economic or social structures of the indigenous peoples that mentions about their rights to their land. Apart from the right to their lands, their culture, spiritual tradition, history and even philosophy emphasise on their rights to their territories and resources as well. The Preamble to the UNDRIP therefore, strongly upholds that "control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs" (General Assembly 2007). Similarly, the Article 8 (2) of the UNDRIP affirms that "states shall provide effective mechanisms for prevention of, and redress for: (b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources" (General Assembly 2007: 4).

Its Article 10 declares that "indigenous peoples shall not be forcibly removed from their lands or territories" (General Assembly 2007: 5). The Article states that 'free, prior and informed consent' of the concerned indigenous peoples was important in case of any relocation that would have been carried out. Furthermore, it reads, consent was not the only necessary criteria and it is also important to lay emphasis on the question of just and fair compensation and also on the option of return, wherever possible. Several provisions of the UNDRIP are concerned with safeguard of the indigenous peoples' land and territories. For instance, Article 25 upholds the 'profound spiritual relationship' between indigenous peoples and owned lands or used lands. In addition, the most important provision of the declaration that is related to the lands, territories and resources of indigenous peoples is 26(1) which says "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" and 26(2) that establish the indigenous peoples' right to own, use, develop and control of lands, territories and natural resources (General Assembly 2007: 7&8).

On the other hand, Article 27& 28 argued that some portion of land, territories and natural resources are not feasible to return to indigenous peoples. As Article 27 emphasised on the establishment of a kind of process for the adjudication of indigenous peoples' lands and territories that is not in their possession (Morgan 2016), while Article 28(1) and 28(2) indicates "Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent" and "Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of monetary compensation or other appropriate redress" respectively (General Assembly 2007: 8). Moreover, Article 29 of the UNDRIP believed that indigenous peoples have the right to both conservation and protection of environment and it is the duty of the state to set up assistance programmes for conservation as well as protection. Thus, it assigns the state with the duty of taking effective measures so as to ensure that "…no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples" (General Assembly 2007: 8). Lastly, Article 32 asserts that states must acquire 'free, prior and informed consent' of indigenous peoples before the approval of a project that affects the territories under their possession, especially projects related to the exploitation of mineral, water or any other resources (General assembly 2007: 9).

Conclusion:

The paper shows that international organisation in specific and international law in general undergo several changes in its structure as international organisations shift from adopting a state to people centric approach. Rights of indigenous peoples is one of the outcomes that emerged as a result of this development. However, in focusing on indigenous peoples' right to land and natural resources ILO and UN heavily focused on individual rights. This individualistic nature of indigenous rights undermine that indigenous rights are primarily collective rights. One of main challenges faced by ILO in 1960s and 1970s was that C107 believed that indigenous communities should integrate into the larger dominant section of society. However, C169 did manage to rectify this issue and tried to accommodate collective rights and advocated internal right to self-determination and recognised distinctiveness of indigenous peoples. UNDRIP, on the other hand, can be seen as a mixture of both individual and collective rights and therefore, rather than considering this document as an end it should be looked as a starting point to claim indigenous rights.

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