

---

## UNIT 1      **CONCEPT, MEANING AND DEFINITION\***

---

### **Contents**

- 1.0 Introduction
- 1.1 Meaning and Definition of Indigenous Peoples
  - 1.1.1 Meaning of the Term “Indigenous”
  - 1.1.2 Defining Indigenous Peoples
- 1.2 International Organisations and the Concept of Indigenous Peoples
- 1.3 History of Indigenous Peoples’ Rights and International Law
- 1.4 Summary
- 1.5 References
- 1.6 Answers to Check Your Progress

### **LEARNING OBJECTIVES**

After going through this unit, you will be able to:

- identify who are indigenous peoples;
- understand the meaning and definition of “indigenous people”;
- comprehend the concept of indigenous peoples in the context of rights;
- be familiar with the emerging international policies and laws for the protection of indigenous peoples; and
- learn about the rights of indigenous peoples under international law.

---

## **1.0 INTRODUCTION**

---

Since anthropology emerged as a scientific discipline in the nineteenth century, indigenous and tribal people have been its major focus. Many anthropologists have spent their professional lives working with indigenous and tribal people whose traditions, language or ways of life differ from those of people from politically dominant ethnic groups.

According to the United Nations Permanent Forum on Indigenous Issues there are more than 370 million indigenous people spread across 90 different countries worldwide. Most of the indigenous people live in remote areas of the world. Out of 370 million indigenous people, about 70% live in Asia. They occupy only 20% of the world’s land but consist of and nurture about 80% of the world’s cultural and biological diversity. In the world, there are over 5,000 ethnic cultures of indigenous peoples ranging from the forest people of the Amazon to the tribal people of India, from the Inuit of the Arctic to the Aborigines of Australia. Indigenous people are characterised by the distinctiveness of their unique traditions. They have their own social, cultural, economic and political

---

\*Contributor: Dr. K. Anil Kumar, Assistant Professor, Discipline of Anthropology, School of Social Sciences, Indira Gandhi National Open University, Maidan Garhi, New Delhi

## Introduction to Indigenous Peoples

institutions that are distinct from those of the dominant and larger societies in which they live.

Some examples of indigenous peoples are:

- the Lakota in the USA,
- the Mayas in Guatemala,
- the Aymaras in Bolivia,
- the Inuit and Aleutians of the circumpolar region,
- the Saami of northern Europe,
- the Aborigines and Torres Strait Islanders of Australia and
- the Maori of New Zealand.

Some of the indigenous peoples in Asia are:

- hill tribes of Thailand,
- scheduled Tribes of India,
- numerically small people of the North Siberia,
- national minorities of China,
- cultural minorities of Philippines,
- isolated and alien people of Indonesia,
- aboriginal tribes of Taiwan,
- aborigines of Malaysia, and
- natives of Borneo.

According to Colchester (1995), most of these groups now claim to be 'indigenous', for the term is less prejudicial than the aforementioned labels and it links them all in a common struggle.

These and most other indigenous peoples have retained their distinct characteristics which are different from those of other segments of the national populations. Spread across the world, they are the descendants – according to a common definition – of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived. The new arrivals later became dominant through conquest, occupation, settlement or other means.

Indigenous peoples often have much in common with other neglected segments of societies. Like them, they

- lack political representation and participation,
- are economically marginalised and poor,
- lack access to social services, and
- face discrimination.

Despite their cultural differences, diverse indigenous people share similar problems related to the protection of their rights. They strive for recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources. Contrary to other ethnic minorities, that struggle to protect their rights on individual level, indigenous people have always stressed the need to recognise their collective rights.

Despite some positive developments, the rights of indigenous peoples as a whole have traditionally been ignored. As a global reality, efforts of indigenous peoples to have their rights recognised or further developed are relevant in both developing and developed countries. Indigenous peoples suffered from historic injustices due to colonisation and dispossession of their lands, territories and resources, preventing them from exercising their right to development that meets their own needs and interests. In general, indigenous people are disproportionately represented, even among the poorest of the poor, in both industrialised and developing countries (Victoria Tauli-Corpuz, 2001).

The rights of indigenous peoples are recognised through various international declarations or conventions such as:

- The 1989 International Labour Organisation Convention No. 169 concerning the indigenous and tribal people in independent countries,
- The 1992 United Nations Convention on Biological Diversity, and
- The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted in September 2007 by the General Assembly, is the most comprehensive and advanced of international instruments dealing with indigenous peoples' individual and collective rights. It is the latest addition to a growing body of international human rights law. UNDRIP is comprehensive in the sense that it covers the full range of civil, political, economic, social, cultural and environmental rights under international law. The Declaration not only elaborates on these rights but also imposes obligations on states and international organisations and inter-governmental bodies as well (International Work Group for Indigenous Affairs, <http://www.iwgia.org/culture-and-identity/identification-of-indigenous-people>).

In the context of this framework, the present unit deals with the most disadvantaged and vulnerable group of people in the world today, the Indigenous peoples. The unit is divided into three parts: The first part will describe the background, meaning, definitions and concept of indigenous peoples, while the second and third parts focus on the legal context of the rights of indigenous peoples, including an analysis of the content of the Declaration.

---

## **1.1 THE MEANING AND DEFINITION OF INDIGENOUS PEOPLES**

---

In this section, the meaning and different definitions of indigenous people put forth by scholars and international organisations will be introduced.

### 1.1.1 Meaning of the Term “Indigenous”

Etymologically, the term “*indigenous*” derives from the Latin word “*indigena*” made up of two words, namely *indi*, meaning “within” and *gen* or *genere* meaning “root”. In other words, the term “indigenous” refers to “born in”, “something that comes from the country in which it is found”, “native of”, or “aborigine”, in contrast to “foreign” or “brought in” (see Albert Kwokwo Barume: 2010, 2014).

The word ‘indigenous’, used in a purely adjectival sense, has the common meaning of “from” or “of the original origin” or group or culture regarded as coming from a given place. Anthropology defines the term ‘indigenous’ as referring to someone or something that is native or originating from a given place or the original inhabitants of a specific geographical area.

The word *Indigenous* was adopted by aboriginal leaders in the 1970s after the emergence of indigenous rights movements around the world as a way to identify and unite their communities and represent them in political arenas, such as the United Nations. *Indigenous* was chosen over other terms that leaders felt reflected particular histories and power dynamics, or had been imposed by the colonisers. The word “peoples” is used instead of the word “population” because this term recognises the existence of organised societies with an identity of their own rather than mere groupings sharing some racial or cultural characteristics (ILO: 1998).

Since the 1980s the term indigenous and indigenous people has evolved beyond its specific empirical reference. Combined with the term knowledge and people, it has come to signify a social science perspective as well as a philosophical and ideological position, which rests on recognition of the role of knowledge in the power relations that have come into being by the expansion of Europe.

#### Activity

Define the term ‘indigenous’.

Indigenous peoples are peoples, communities and nations who claim a historical continuity and cultural affinity with societies endemic to their original territories that developed prior to exposure to the larger connected civilisation associated with the Western culture.

While the term “indigenous peoples” is used in international instruments, these people are often known as

- tribes,
- natives,
- original,
- first people/nations,
- aborigines,
- ethnic groups,
- adivasi, janajati,

- indios,
- pueblos originarios,
- original population,
- hunter-gatherers,
- nomads,
- hill people.

Having been politicised, the term indigenous is a highly contentious term and it is still far from clear.

During the late twentieth century, the term indigenous people evolved into a legal category, which refers to culturally distinct groups that had been affected by the processes of colonisation. To reach its current understanding in international law, the meaning of the term “indigenous” seems to have evolved through several distinct phases (see Albert Kwokwo Barume; 2010, 2014).

#### Activity

Identify various generic terms used for indigenous people.

### 1.1.2 Defining Indigenous People

The term indigenous or its equivalent has been used in anthropology to describe groups called tribes for quite some time. However, there is no universal agreement on the definition of the word “indigenous peoples”. Many prominent scholars have developed their definitions with different elements to characterise indigenous people. However, there is no consensus on the definition of the term “indigenous people” in international law. This is because it is almost impossible to create one simple definition to describe a large number of very different communities, each existing within unique social, political and geographical situations.

In her acclaimed work, *The Indigenous Voice in World Politics*, Ranke Wilmer examined the global historical process of moral exclusion undertaken by Western powers against indigenous peoples. She defines indigenous as peoples:

- with tradition-based cultures;
- who were politically autonomous before colonisation;
- who, in the aftermath of colonisation and/or decolonisation, continue to struggle for the preservation of their cultural integrity, economic self-reliance, and political independence by resisting the assimilation policies of nation-states.

Anthropologist John Bodley developed an even more inclusive definition of indigenous people by simply describing them as a group of people who identify themselves with a specific, small-scale cultural heritage.

In 1972 the United Nations Working Group on Indigenous Populations (WGIP) accepted as a preliminary definition a formulation put forward by Mr. José Martínez Cobo, Special Rapporteur on Discrimination against Indigenous Populations.

**Box:1**

“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 in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural, social institutions and legal systems.”

The limitations of the definition were subsequently noted by the organisation. The definition applied mainly to pre-colonial populations, excluded other isolated or marginal societies. In 1983 the WGIP enlarged this definition (E/CN.41Sub.2/1983/21Add paragraph 3. 79) to include the following criteria:

**Box:2**

- (a) they are the descendants of groups, which were in the territory at the time when other groups of different cultures or ethnic origin arrived there;
- (b) precisely because of their isolation from other segments of the country’s population they have almost preserved intact the customs and traditions of their ancestors which are similar to those characterised as indigenous;
- (c) they are, even if only formally, placed under a state structure that incorporates national, social and cultural characteristics alien to their own.

In 1986 it was further added that any individual who identified himself or herself as indigenous and was accepted by the group or the community as one of its members was to be regarded as an indigenous person (E/CN.4/Sub.2/1986/7/Add.4.para.381). The draft Universal Declaration on the Rights of the Indigenous peoples prepared by the DWIG does not provide a specific definition of indigenous peoples or populations. According to the Chairperson, Ms. Erica Irene Daes, Rapporteur of the Working Group, this was because “historically, indigenous peoples have suffered, from definitions imposed by others” (E/CN.4/Stib.2/AC.4/1995/3, page 3) (Sylvie Motard, 2007).

There is no universal definition of indigenous and tribal peoples, but ILO Convention No. 169 takes a practical approach to the issue and provides objective and subjective criteria for identifying the peoples concerned (see Article 1 of the Convention). These criteria can be summarised as:

**Table 1.1: Objective and subjective criteria for identifying the peoples concerned**

Box: 3	Subjective criteria	Objective criteria
Indigenous peoples	Self-identification as belonging to an indigenous people	<p>Descent from populations, who inhabited the country or geographical region at the time of conquest, colonisation or establishment of present state boundaries.</p> <p>They retain some or all of their own social, economic, cultural and political institutions, irrespective of their legal status.</p>

Tribal peoples	Self-identification as belonging to a tribal people	<p>Their social, cultural and economic conditions distinguish them from other sections of the national community.</p> <p>Their status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.</p>
----------------	---	--

**Source:** [https://www.ilo.org/global/topics/indigenous-tribal/WCMS\\_503321/lang--en/index.htm](https://www.ilo.org/global/topics/indigenous-tribal/WCMS_503321/lang--en/index.htm)

A description of indigenous people given by the World Bank (operational directive 4.20, 1991) points out that,

**Box:4**

Indigenous Peoples can be identified in particular geographical areas by the presence in varying degrees of the following characteristics:

- a) close attachment to ancestral territories and the natural resources in these areas;
- b) self-identification and identification by others as members of a distinct cultural group;
- c) an indigenous language, often different from the national language;
- d) presence of customary social and political institutions; and
- e) primarily subsistence-oriented production.

As can be seen, no universal definition of indigenous peoples exists and because of the history of political repression, discrimination, and assimilation policies by states, indigenous peoples usually reject to be defined by external agencies. In order to identify rather than “define” indigenous identities, most of the researchers use the working definitions provided by the International Labour Organisation (ILO) Convention 169 (Tomei and Sweptson, 1996) and the Draft UN Resolution on Indigenous Rights. Both approaches emphasise that self-identification by indigenous peoples should be used as the main criterion, while at the same time underlying the following commonalities shared by indigenous identities, including

- i) historical continuity with pre-colonial societies;
- ii) strong link to territories;
- iii) distinct social, economic, and political systems;
- iv) distinct language, culture, and beliefs; and
- v) self-identification as different from national society.

From an indigenous perspective, the right to self-identification is essential to ensuring that they are respected as peoples with their own identities, cultures, languages, worldviews, and religions (Stavenhagen, 2002).

International organisations more closely follow IWGIA’s (International Work Group for Indigenous Affairs) definition in their work programmes. The International Labour Organization (ILO), the United Nations (UN), and the World

Bank also use the above definition in their work programmes with indigenous peoples. The World Bank further recognises that because indigenous people live in various contexts, there may not be a universally accepted definition for indigenous peoples. Therefore, the World Bank also recognises minority groups that governments have labelled as “indigenous ethnic minorities,” “aboriginals,” “hill tribes,” “minority nationalities,” “scheduled tribes,” or “tribal groups,” to be indigenous communities or peoples.

**Check Your Progress**

- 1) Discuss the meaning of Indigenous Peoples.

.....

.....

.....

.....

---

## **1.2 INTERNATIONAL ORGANISATIONS AND THE CONCEPT OF INDIGENOUS PEOPLES**

---

As noted earlier, since there is no universally accepted definition of indigenous peoples, it leads to varying interpretations by states. As a result, UNDRIP (2007), though regarded as an authoritative declaration on the rights of indigenous peoples, does not provide any form of formal definition of the term ‘indigenous peoples’. It identifies “indigenous peoples” as being the beneficiaries of the rights contained in the Declaration, without defining the term. Considering the diversity of indigenous peoples, an official definition of “indigenous” has not been adopted by any UN system/body. Instead, the system has developed a modern understanding of this term based on the following criteria:

**Box: 5**

- self-identification as indigenous peoples at the individual level and accepted by the community as their member;
- historical continuity with pre-colonial and/or pre-settler societies;
- strong link to territories and surrounding natural resources;
- distinct social, economic or political systems;
- distinct language, culture and beliefs;
- form non-dominant groups of society; and
- resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

*Source:* United Nations Permanent Forum on Indigenous Issues, Indigenous peoples

According to the United Nations the most fruitful approach is to identify rather than define indigenous peoples. This is based on the fundamental criterion of self-identification as underlined in a number of human rights documents.



The International Labour Organization (ILO) has adopted a definition of the concept of indigenous peoples on two occasions: the statements of coverage of Convention 107 (1957) and Convention No. 169 (1989). When treaty law is examined for a formal legal definition of indigenous peoples, we see that Article 1 of the 1989 ILO Convention 169 provides some clarity (see Box: 3).

Indigenous and tribal peoples are often known by national terms such as native peoples, aboriginal peoples, first nations, adivasi, janajati, hunter-gatherers, or hill tribes. Given the diversity of peoples it aims at protecting, the Convention uses the inclusive terminology of “indigenous and tribal peoples” and ascribes the same set of rights to both groups. In Latin America, for example, the term “tribal” has been applied to certain afro-descendent communities.

The ILO definition includes both historical disruptions caused by colonisation and situations outside that context during the formation of the present state boundaries. This definition could apply to both European settler states as well as Asian or African states. Nevertheless, according to treaty law, this definition applies only to those states who are party to the convention. As of June 2012, ILO Convention 169 was ratified by only 22 countries and the only Asian state that remains a party to this Convention is Nepal, which joined this treaty regime in the year 2007 (ratification ILO C169). Therefore, this definition cannot be termed as established within international law. At the most, it applies only to those states which are party to the convention.

Further, in the earlier ILO Convention 107 (1957), Article 1(b) provided that: “members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong”. Here the definition of indigenous refers to populations who are descendants of those who inhabited the region at the time of colonisation. The convention remains in force for only 17 countries including a few Asian countries such as India, Bangladesh and Pakistan. Therefore, this definition also cannot be taken as standard within international law. At the most, it applies only to those who are party to the convention.

The description of “indigenous peoples” in Convention No. 169 contains several elements which are not found in its description of “tribal peoples”:

- *historical continuity* (pre-conquest/colonization societies);
- *territorial connection* (their ancestors inhabited the country or region at the time of conquest/colonisation/creation of the state); and
- *distinct social, economic, cultural and political institutions* (they retain some or all of their own institutions).

However, these conceptual dissimilarities have no legal implications under Convention No. 169 as far as the actual rights of these two groups are concerned; both groups are entitled to the same rights under the Convention. This however may not be the case in the application of other international instruments; in particular the UN Declaration on the Rights of Indigenous peoples.

The statement of coverage of Convention No. 169 is largely based on criteria developed by José Martínez Cobo, whereas Convention No. 107 identifies indigenous peoples as a sub-category of “tribal”; the two groups are separate in Convention No. 169. Moreover, article 1 (2) of Convention No. 169 – similar to the Cobo definition - establishes self-identification as indigenous as a fundamental criterion for determining the groups that are to be identified as indigenous peoples.

Convention No. 169 also describes indigenous peoples as ‘people’ – whereas Convention No. 107 identifies them as ‘populations’.

Article 1 (3) of Convention No. 169 specifies that the use of the term peoples in the Convention shall not be construed as having any implications as regards the rights which may be attached to the term under international law. The objective of this reservation is to avoid challenging international legal questions related to the concept of ‘people’ – in particular the right to self-determination, which under international law is acknowledged as a right of ‘all peoples’. This reservation, or the application of the other provisions of Convention No. 169, shall not – according to article 35 of the Convention – affect the rights of the peoples concerned pursuant to other international instruments or national legislation (UN Document A/61/L.67 12 September 2007). The reservation in article 1 (3) demonstrates the close link between the problem of finding an international agreement on how indigenous peoples should be identified and legal issues.

Although there is no general agreement on the need for a definition, there are several definitions that are widely accepted as guiding principles for the identification of indigenous peoples, including the Cobo definition, and the statement of coverage of the ILO Convention No. 169 (article 1).

While conducting a special study on the problem of discrimination against indigenous peoples, the Special-Rapporteur of the UN Sub-Commission on the Promotion and Protection of Human Rights, José Martínez Cobo, 1986, formulated a working definition of indigenous peoples (see Box 1).

Though this definition was the result of a comprehensive study conducted by the Special Rapporteur on the problem of discrimination against indigenous populations under the recommendation of the Sub-Commission, it was merely a recommendation report (For Cobo’s report, see supra note 52) submitted to the UN Working Group on Indigenous Populations and therefore could not be called a legal document. As shown in chapter 6, there is no apparent and uniform state practice and *opinio juris* concerning this definition; accordingly, the definition of Martínez Cobo cannot be said to have attained the status of customary law (José Martínez Cobo 1986).

The Special-Rapporteur outlined a number of factors that may be relevant for identifying indigenous peoples. This emphasises their historical continuity, for an extended period reaching into the present, and includes:

- occupation of ancestral lands;
- common ancestry with the original occupants of these lands;
- culture;

- language; and
- residence in certain parts of the country, or certain regions of the world.

The Special-Rapporteur included self-identification as ‘indigenous’, as a fundamental criterion:

*An indigenous person is one who belongs to an indigenous peoples through self-identification as indigenous (group consciousness) and is recognised and accepted by the group as one of its members (acceptance by the group).*

According to Benedict Kingsbury, Cobo’s approach to the definition was controversial due to its requirement of “historical continuity with the pre-invasion and pre-colonial societies that developed on their territories.” This approach reflected the classical European case of colonial settlement in the western settler states such as the United States, Canada, Australia and New Zealand. This requirement did not reflect the reality in many Asian and African countries where there was no clear cause of historical disruption by colonial settlement. The views of Asian states and groups (claiming to be indigenous) greatly differ from Cobo’s definition of indigenous peoples.

Many Asian states opposed the application of the concept of indigenous peoples within their territories and endorsed the definition laid down by Cobo. China, for example, agrees with Cobo’s definition while claiming that “the question of indigenous peoples is the product of European countries’ recent pursuit of colonial policies in other parts of the world” (UN Doc. E/CN.4/WG.15/2 (1995). Here China affirmed the test of ‘Salt-Water’ colonialism, which was a standard test of determining ‘Colonialism’ during the time of decolonisation and self-determination in the 1960s.

India and Bangladesh also denied the status of indigenous peoples within their territories by claiming that “indigenous peoples are descendants of the original inhabitants who have suffered from conquest or invasion from outside.” Asian groups continue to claim recognition and status of indigenous peoples within their countries despite strong oppositions from governments. Thus they tend to go beyond Cobo’s narrow definitional requirement of colonial disruption or conquest. As a result, there is no consensus on the definition laid down by Cobo.

However, this draft definition was not adopted as Martinez Cobo’s definition later became the working definition of the UN Working Group (Copenhagen: IWGIA Document No. 80, 1996). Even though this earlier definition is not legally binding, it can be said to have reflected the intent of the working group members at the time to make the concept of indigenous peoples more universal and applicable beyond classical western colonisation. Alternately, one could also conclude that since this definition was replaced by the latter, it does not reflect the consensus of the group members.

With regard to general principles of law as a source of international law on the definition, there is no literature available presently that argues the possibility of any particular principle of law lending its force, in order to determine a definition of indigenous peoples. Likewise, judicial decisions and scholarly writings, as subsidiary means of determining law, do not point to the existence or emergence of a particular definition as established in international law.

An additional source that provides a definition of indigenous peoples is the World Bank’s *Operational Policy 4.10* on indigenous peoples (see Box: 4). This definition can also not be termed as binding in international law because the policies of the Bank are considered more of an internal policy guideline than a binding norm of international nature. Also, the application of the Bank policies are to be observed (in good faith) only by states funded by the Bank. Therefore, the World Bank definition of indigenous peoples cannot be termed as binding in international law.

It is clear that there is no universally accepted and binding definition of the term “indigenous peoples” in international law. With regard to the Asian context too, there is no agreement among states and groups within these states claiming to be indigenous, on the definition.

As discussed earlier, declarations of the UN General Assembly, per se, do not have the binding effect of law. Nevertheless, the significance of the UNDRIP cannot be understated, as it was adopted after decades of consultation and participation from both state parties and indigenous peoples in a legitimate process of norm-building in the field of indigenous rights. Therefore, such a declaration, having been solemnly adopted by the majority of member states of the United Nations, may arguably have a formal status nearing that of the 1948 Universal Declaration of Human Rights. According to James Anaya:

**Box: 7**

It is possible, at least arguably, to understand the Declaration as related to legal obligation within standard categories of international law. First, the Declaration is a statement of rights proclaimed by the vast majority of U.N. member states, through the General Assembly, within the framework of the general human rights obligations established for states by the U.N. Charter, a multilateral treaty. With this status, the Declaration can be seen as embodying or providing an authoritative interpretation of norms that are already legally binding and found elsewhere in international human rights law, including in various human rights treaties.

According to Siegfried Wiessner and James Anaya, indigenous peoples’ “right to demarcation, ownership, development, control and use of the lands they have traditionally owned or otherwise occupied and used” has attained the status of customary international law. Thus, it is crucial to examine the customary status of these rights in order to understand the implications of their eventual application to a wider world of indigenous peoples.

**Check Your Progress**

2) Define the concept of indigenous peoples.

.....  
.....  
.....  
.....

3) Describe a few definitions of indigenous peoples.

**Concept, Meaning and  
Definition**

.....  
.....  
.....  
.....

---

### **1.3 HISTORY OF INDIGENOUS PEOPLES’ RIGHTS AND INTERNATIONAL LAW**

---

The Universal Declaration of Human Rights (UDHR) was adopted on 10 December 1948 is still working on to ensure freedom, equality and dignity for all. The universal ideals contained in the Declaration’s 30 Articles range from the most fundamental – the right to life – to those that make life worth living, such as the rights to food, education, work, health and liberty. Emphasising the inherent dignity of every human being, its Preamble underlines that human rights are “the foundation of freedom, justice and peace in the world” (see <https://www.standup4humanrights.org/en/article.html>).

Though the issue of indigenous peoples seems to have received greater attention after World War II in literature, a number of writers describe a long tradition of recognition of the status and rights of indigenous peoples within international law. According to early writings, the contemporary emergence of indigenous rights is not so much the progressive development of new law, but rather the restoration of rights previously existing and recognised.

The international community has shown increasing concern for the protection of the rights of indigenous peoples. Conventions and declarations of the international community provide a broad framework, as well as specific statements regarding the protection of indigenous peoples and their interests, cultures, ways of life, cultural survival and development. It may be noted that some international instruments relating to indigenous peoples have not been ratified by large numbers of the international community.

The emergence of the concept of “indigenous peoples” was a long process. From the year 1920 indigenous peoples have tried to raise the issue of their marginalisation and discrimination. The first international organisation to deal seriously with indigenous peoples’ rights issues was the International Labour Organization (ILO). Within its framework, the ILO Convention Concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (ILO Convention No. 107) was adopted in the year 1957. It was the first binding document in the field of indigenous peoples’ rights protection.

Convention 107 contained important provisions on land use and inheritance, social security, health and the right to education. After 30 years, ILO Convention No. 107 was revised by the Convention Concerning Indigenous and Tribal peoples in Independent Countries (ILO Convention No. 169). Convention 169 makes the first attempt to define indigenous peoples based on their descent from the population which inhabited the country or geographical region at the time of conquest or colonisation.

Ever since then, the prominence of indigenous peoples and their rights in international law has progressively increased. At the beginning of the 1970s, the United Nations began examining the issues concerning indigenous peoples in a more detailed way. More and more indigenous peoples' organisations started to receive consultative status with the United Nations Economic and Social Council (ECOSOC). This allowed them to participate within the United Nations' system alongside other non-governmental organisations.

Beginning in the 1970s, non-governmental organisations in Geneva launched ad hoc initiatives on specific human rights issues concerning indigenous peoples. But gradually, the human rights bodies of the United Nations started to look more seriously at the problem as well.

In the Year 1971, the Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed a Special Rapporteur (Mr. José R. Martínez Cobo of Ecuador) to undertake a study of the problem of discrimination against indigenous populations. Martínez Cobo concluded that existing human rights standards are "not fully applied" in the case of indigenous communities. It is stated in the report that self-determination must be one of the basic pre-conditions for indigenous peoples' rights as well as the right to keep the territories they possess.

In 1982, ECOSOC created an ad hoc subsidiary organ of the Sub-Commission devoted to indigenous peoples: the Working Group on Indigenous Populations. The aim of the working group was to review the existing standards on indigenous rights protection and contribute to their development. The working group, composed of representatives of governments as well as indigenous peoples and organisations, is one of the largest human rights forums in the U.N. system, bringing in its fold more than seven hundred participants regularly. Its tasks include the building of dialogue between governments and indigenous peoples, reviewing national situations, and developing international standards concerning the promotion and protection of indigenous peoples' rights.

The next landmark in the history of indigenous rights recognition is the Draft Declaration on the rights of indigenous peoples, produced in 1993-1994 based on eight years of documentation of reports to the working group. Among its major achievements, the working group developed a Draft United Nations Declaration on the Rights of Indigenous peoples, which is being submitted to the United Nations Commission on Human Rights (through another ad hoc working group of the latter). The working group consists of more than 200 indigenous organisations which participate and meet once a year. The process should lead to the adoption of the Declaration by the United Nations General Assembly (UNGA).

Another declaration on the rights of indigenous peoples is also being developed at the regional level, within the Inter-American system.

In the year 1985, the UNGA established the Voluntary Fund for Indigenous Populations to enable representatives of indigenous organisations to attend the sessions of the relevant U.N. bodies dealing with indigenous issues. The 1992 Rio Conference on Environment and Development (UNCED), commonly referred to as the Earth Summit, was a turning point for indigenous peoples.

Not only were they recognised as a “major group” of civil society but, for the first time, they were able to participate and influence processes relating to the environment.

Agenda 21 adopted by the UNCED in 1992 recognises the actual and potential contribution of indigenous and tribal peoples to sustainable development. The 1992 Convention on Biodiversity calls on contracting parties to respect traditional indigenous knowledge with regard to biodiversity and its sustainable use. The Vienna Declaration and Programme of Action emerging from the 1993 World Conference on Human Rights recognise the dignity and unique cultural contributions of indigenous peoples, and strongly reaffirm the commitment of the international community to the economic, social, and cultural well-being of indigenous peoples and their enjoyment of the fruits of sustainable development.

As a sign of the increasing importance of indigenous issues, August 9 was proclaimed International Day of the World’s Indigenous peoples by the United Nations, first in 1994, to promote and protect the rights of the World’s Indigenous population. This day also commemorates the achievements and contributions that Indigenous peoples make in the world. August 9 also marks the first time the UN Working Group on Indigenous Populations met in Geneva in 1982. Its goal was to facilitate the General Assembly’s adoption of the Declaration by 2004. In 1995, it launched the International Decade of the World’s Indigenous peoples (1995-2004). The International Day of the World's Indigenous peoples is observed on August 9 every year during the International Decade of the World's Indigenous peoples (resolution 49/214).

The period of 1995-2004 was proclaimed as the International Decade of Indigenous peoples with the theme “Indigenous peoples: partnership in action”. In 2001, a “Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples” was appointed to receive information and communications on violations of indigenous peoples’ rights.

A U.N. Permanent Forum on Indigenous Issues has also been established (as an advisory body to ECOSOC) in order to focus on global issues related to indigenous peoples, especially in the fields of human rights, economic and social development, culture, education, health, and the environment. After taking more than 20 years to draft and to accept the draft, The Declaration was adopted by UN General Assembly in September 2007. It establishes the rights of Indigenous peoples to the protection of their cultural property as well as the rights to education, employment, health, religion, language, and more. The adoption of the Declaration caused controversies, especially regarding its regulations relating to land rights for indigenous communities. However, it represents a global instrument of indigenous peoples’ rights protection.

Moreover, apart from ad hoc initiatives and instruments, the diversity of indigenous peoples has been taken into account by other general instruments on human rights, as well as within the realm of international environmental law and cultural diversity. The process of drafting engaged the representatives of indigenous communities who got the possibility to promote their own views on the rights that should be granted to them (Alessandro Fodella 2006).

**The Draft Declaration on the Rights of Indigenous peoples:** This is the most comprehensive statement of the rights of indigenous peoples to date, establishing collective rights to a greater extent than any other document in international human rights law. It establishes the rights of indigenous peoples to the protection of their cultural property as well as the rights to education, employment, health, religion, language, and more. It also protects the rights of the indigenous peoples to own land collectively.

The Declaration testifies to the commitment of the international community to the protection of both the individual and collective rights of indigenous peoples. It emphasises their right to maintain and strengthen their institutions, cultures and traditions and to pursue their development in accordance with their aspirations and needs. It has become a major tool for Indigenous peoples to defend themselves against discrimination, racism, oppression, marginalisation and exploitation.

Among the human rights the Declaration defines and protects, the following are of particular importance to indigenous peoples:

- The right to self-determination.
- The right to collective rights.
- The right to development.

The full text of the draft Declaration, consisting of 46 Articles, was divided into 9 parts as given below.

- Part 1. Fundamental Rights: Non-discrimination, equality, self-determination (Articles 1-3)
- Part 2. Life and Security (Articles 4-7)
- Part 3. Culture, Religion, and Language Laws (Articles 8-13)
- Part 4. Education, Media, and Employment (Articles 14-16)
- Part 5. Participation and Development (Articles 17-24)
- Part 6. Land and Resources (Articles 25-29)
- Part 7. Self-Government and Indigenous peoples (Articles 30-36)
- Part 8. Implementation (Articles 37-42)
- Part 9. Minimum Standards (Articles 43-46)

Many human rights advocates regard Article 3, the right of self-determination, as the most significant feature of the Declaration, with all other rights supporting that essential freedom. The complete text of the Declaration on the Rights of Indigenous peoples can be downloaded at <http://www1.umn.edu/humanrts/instate/declaration.html>.

The issue of the rights of indigenous peoples has thus slowly but steadily gained importance for the international community. This has led to an international legal framework that is comprised of individual and collective rights stemming



from general and ad hoc instruments, deriving from different sources, and belonging to different areas of international law.

**Check Your Progress**

4) Name the organisations that contributed to the rights of indigenous peoples.

.....  
.....  
.....  
.....

5) Explain briefly about the definition related problems in international law.

.....  
.....  
.....  
.....

---

**1.4 SUMMARY**

---

There are approximately 370 million indigenous peoples in the world, belonging to 5,000 different groups, in 90 countries. Indigenous peoples live in every region of the world, but about 70 per cent live in Asia. Indigenous peoples have historically been among the poorest and most excluded demographic group in the world. They have not only faced serious discrimination in terms of their basic rights to their ancestral property, languages, cultures, and forms of governance, but also in terms of access to basic social services (education, health and nutrition, water and sanitation, housing, etc.) and the essential material conditions for a satisfying life.

Presently, there is no universally accepted definition of the word “indigenous peoples.” However, many development agencies and institutions have developed their own definitions with different elements to characterise indigenous peoples. Considering the diversity of indigenous peoples, any specific definition may have the effect of excluding some indigenous groups from the category. A strict definition may also serve as an excuse for governments not to recognise indigenous peoples in their jurisdiction. Hence, no legal definition of indigenous peoples is either necessary or desirable, remains a prevailing view.

As a global reality, efforts of indigenous peoples to have their rights recognised or further developed are relevant in both developing and developed countries. Indigenous peoples suffered from historic injustices due to colonisation and dispossession of their lands, territories and resources, preventing them from exercising their right to development that meets their own needs and interests.

In general, indigenous peoples are disproportionately represented among the poorest of the poor in both industrialised and developing countries. The rights

of indigenous peoples are significantly recognised through various international declarations or conventions, such as

- The 1989 International Labour Organization Convention No. 169 concerning the indigenous and tribal peoples in independent countries,
- The 1992 United Nations Convention on Biological Diversity,
- The Draft UN Declaration on the Rights of Indigenous peoples, and
- The 2007 United Nations (UN) Declaration on the Rights of Indigenous peoples.

The above international laws are particularly relevant to the recognition and protection of the rights of indigenous peoples.

The landmark document 'The 2007 United Nations (UN) Declaration on the Rights of Indigenous Peoples is the culmination of decades of drafting and negotiations by the Working Group on Indigenous Populations in which more than one hundred indigenous organisations and thousands of indigenous individuals participated. The Declaration testifies to the commitment of the international community to protect both individual and collective rights of indigenous peoples. It emphasises the right of indigenous peoples to maintain and strengthen their institutions, cultures, and traditions and to pursue their development in accordance with their aspirations and needs. It has become a major tool for indigenous peoples to defend themselves against discrimination, racism, oppression, marginalisation and exploitation. Among the human rights the Declaration defines and protects indigenous peoples, these are of particular importance to indigenous peoples.

---

## **1.5 REFERENCES**

---

Anaya, J. (2009). International human rights and indigenous peoples. New York: Aspen Publishers.

Anaya, J., & Wiessner, S. (2000). The UN Declaration on the rights of indigenous peoples: Towards re-empowerment. *Jurist*, para 13. Retrieved from <<http://jurist.law.pitt.edu/forumy/2007/10/undeclaration-on-rights-of-indigenous.php>>

Cobo, J. M., (1986). Study of the problem of discrimination against indigenous populations, UN Document E/CN.4/Sub.2/1986/7Add.4, Paragraph 379.

Colchester, M. (1995). Indigenous peoples' rights and sustainable resource use in South and Southeast Asia. R.H., Barnes, A., Gray, & B., Kingsbury (Eds.). *Indigenous peoples of Asia*. Ann Arbor: Association for Asian Studies.

Convention concerning indigenous and tribal peoples in independent countries. (1989 June27). 28 ILM 1382, (entered into force 5 September 1991) [ILO Convention No 169] Retrieved from < <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C169>>

Convention concerning the protection and integration of indigenous and other tribal and semi-tribal populations in independent countries. (1957 June 26). (entered into force 02 June 1959). [ILO Convention No 107] Retrieved

from [http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312252](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312252)

E/CN.4/Sub.2/1983/21 Add. Para. 379. As cited in Tapan K. Bose, Definition and delimitation of the indigenous peoples of Asia. C., Erni, (Ed.). Vines that wont bind: Indigenous peoples of Asia (Copenhagen: IWGIA Document No. 80, 1996) 46, para 1.

E/CN.4/Sub.2/1984/2/Add.2; For Bangladesh, Report of the Working Group on indigenous populations on its fourteenth session, UN Doc. E/CN.4/Sub.2/1996/21, para. 34. As cited in Kingsbury, f 77.

Fodella, A. (2006) International law and the diversity of indigenous peoples. Vermont Law Review, Vol. 30

Ian, M. (2000 September). Are there indigenous peoples in Asia? Cultural Survival Quarterly Magazine.

Indigenous Voices fact sheet, Retrieved from [http://www.un.org/esa/socdev/unpfi/documents/5session\\_factsheet1.pdf](http://www.un.org/esa/socdev/unpfi/documents/5session_factsheet1.pdf)

International Labour Organisation. For ratifications of the C169. Retrieved from [http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312314](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312314)

International Work Group for Indigenous Affairs. Retrieved from <http://www.iwgia.org/culture-and-identity/identification-of-indigenous-people>.

Kingsbury, B. (2000). Operational policies of international institutions as part of the law-making process: The World Bank and indigenous peoples. G.S., Goodwin-Gill & S., Talmon (Eds.). The reality of international law: Essays in honor of Ian Brownlie (329, para 2). Oxford University Press.

Kingsbury, *ibid*, at 434, para 2. Salt-Water colonialism means classical European colonial rule, or a situation in which a colonial power (European) is geographically separated from its colonies by ocean water.

Kingsbury, *supra* note 52, at 434, para 2. Government of India, observations, UN Doc.

Operational Policy 4.10. (para 3). The World Bank. Retrieved from [http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPM ANUAL/0,contentMDK:20553653~menuPK:4564187~pagePK:64709096~piPK:64709108~theSitePK:502184~isCURL: Y,00.html](http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTOPM ANUAL/0,contentMDK:20553653~menuPK:4564187~pagePK:64709096~piPK:64709108~theSitePK:502184~isCURL:Y,00.html)

Secretariat of the Convention on Biological Diversity (2005 September 21-23) The convention on biological diversity and traditional knowledge. Conference Room Paper for the Workshop on Traditional Knowledge, Panama.

Sylvie Motard. (2007) Indigenous People and Sustainable Development: How Has UNEP Contributed?, in (edit book) Indigenous Knowledge Systems and Tribes and Tribals, Special Volume No. 1: 241-251 (2007) Sustainable Development: Relevance for Africa Emmanuel K. Boon and Luc Hens, Editors, Kamla-Raj Enterprises.

Tauli-Corpuz, V. (2001). Indigenous peoples and the millennium development goals. *Indigenous Perspectives*.

UN Doc. E/CN.4/WG.15/2. (1995). Consideration of a draft United Nations Declaration on the Rights of Indigenous Peoples, as cited in Kingsbury, *ibid*, at 417-418.

UN Document A/61/L.67. (2007 September 12) The United Nations Declaration on the Rights of Indigenous peoples, adopted by the UN General Assembly.

<https://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=2219&context=etd>

---

## **1.6 ANSWERS TO CHECK YOUR PROGRESS**

---

- 1) Refer to sub-section 1.1.1
- 2) Refer to section 1.2
- 3) Refer to section 1.2
- 4) Refer to section 1.3
- 5) Refer to section 1.3

