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Los Angeles

The Protection
of the Traditional Knowledge of Indigenous Peoples

A dissertation submitted in partial satisfaction of the
requirements for the degree Doctor of Philosophy
in Information Studies

by

Julia Gosart

2013

ABSTRACT OF THE DISSERTATION

The Protection of the Traditional Knowledge of Indigenous Peoples

by

Julia Gosart

Doctor of Philosophy in Information Studies

University of California, Los Angeles, 2013

Professor Anne Gilliland, Chair

I examined the social content of the United Nations (UN) policies that aim at the protection of “traditional knowledge” (TK) of populations classified by international law as indigenous peoples. The UN category “traditional knowledge” embraces a wide range of products of the indigenous cultural and intellectual activities. I conjectured that while the TK policies were ostensibly aimed at protecting indigenous peoples from the misappropriation of these products, the major factor leading to creation of TK protection measures were the interests pursued by the third parties to benefit from indigenous intellectual resources. I examined the policies produced since 1992 by the UN agencies working on the issues of (1) economic development and conservation (CBD, UNEP, FAO, World Bank, UNCED, UNDP), and (2) protection of intangible heritage (WIPO, UNESCO, WGIP) to test my conjecture. I complemented this examination by a study of 100 conservation projects conducted on the

territories of indigenous peoples (2002-2012). Informed by the archival theory perspective I learned that the TK protection measures focused significantly on a necessity to develop indigenous expertise as tools of sustainability/conservation. Despite the use of indigenous practices in conservation projects only certain indigenous groups benefitted from these projects, where most groups experienced negative consequences. The TK policy approach remained foreign to indigenous positioning on the TK protection issues: indigenous collective rights claims received little political recognition; currently proposed mechanisms of protection -“the prior informed consent” and “fair benefit sharing”- responded to the indigenous needs only partly.

Next I examined indigenous participation at the UN drawing on the sociology of knowledge perspective, and used the history of indigenous engagement with WIPO IGC (2001-2012) as a case study. Although the degree of indigenous political influence at IGC was low, the positive changes indigenous work produced in the positioning of the indigenous caucus at IGC could be considered unprecedented in the history of the UN agencies. I concluded that despite that the work on the TK protection can be considered to some extent as the step toward easing the access to indigenous forms of knowledge by interested parties, such as scholars and researchers working in the area of development and conservation (vs. address needs and interests of indigenous peoples), it had the unintended consequence of the growth of indigenous engagement in making these policies.

Substantively the study advances scholarly understanding (1) of the social context of the UN policy making and the significance of records as tools of institutional and political practices; and (2) of the forms of indigenous advocacy. Methodologically it complements research across sociological and archival studies of records and political settings. As a praxis-oriented endeavor it may contribute to more effective indigenous advocacy.

The dissertation of Julia Gosart is approved.

Ellen Pearlstein

Jonathan Furner

Maurice Zeitlin

Anne Gilliland, Committee Chair

University of California, Los Angeles

2013

DEDICATION:

To all of my UCLA teachers.

Specifically, to Anne Gilliland who had brought me to UCLA and supported me throughout my years of study; to Maurice Zeitlin, to whom I am indebted for the most that I learned as a doctoral student; to Ellen Pearlstein who had been an inspiring and supportive colleague; and to Jonathan Furner for his intellectual guidance.

TABLE OF CONTENTS

Chapter 1. Introduction	1
A. Problem statement	1
B. Argument and the research questions	3
C. Policies as a form of knowledge	3
D. Significance of the study	5
E. Chapter breakdown	9
Chapter 2. Methodology	10
A. Knowledge as social phenomenon	10
B. Methodological tools	11
Chapter 3. Indigenous peoples: Attempts to define	15
A. Introduction	15
B. Perspectives	18
C. Conclusion	34
Chapter 4. Development and protection of TK	36
A. Development	37
B. Traditional knowledge: Dossier	42
C. TK and indigenous knowledge studies	55
D. Conservation studies	60
Chapter 5. Traditional knowledge as cultural heritage	76
A. Cultural heritage: Theoretical frameworks	76
B. UNESCO and protection of folklore	81

C. Indigenous heritage and Daes' study	84
D. WIPO and the conception of "Traditional Knowledge"	90
E. Conclusion	97
Chapter 6. United Nations and indigenous rights	98
A. Introduction	98
B. The protection policies: Social context	100
Chapter 7. WIPO IGC study	111
A. Introduction	111
B. Participation of indigenous politicians in the work of the IGC	112
C. Conclusion	125
Chapter 8. Conclusion	127
Appendix	132
A. Appendix	132
B. Appendix	152
C. Appendix	154
D. Appendix	161
F. Appendix	164
G. Appendix	166
References	167

LIST OF FIGURES

Figure 1. SD Principle	47
Figure 2. WIPO Fact-Finding Missions: Traditional Knowledge	99
Figure 2. Indigenous Organizations: Pattern of participation at WIPO IGC	124

LIST OF TABLES

Table 1. Composition of conservation studies	68
Table 2. Indigenous organizations participation at the WIPO IGC by location	125
Table 3. Indigenous participation at WIPO IGC: individuals and organizations	126
Table 4. Interventions at the WIPO IGC by indigenous politicians	128

Definitions and abbreviations

The discussion of the protection of the intellectual creations of indigenous peoples is conducted using terms employed in the relevant legal and political discourses, where the meaning of these terms depends on the context of particular legal instruments or policy recommendations. In this sense, the definitions employed in the discourse on protection of traditional knowledge (TK) and related discourses can be regarded as mere technical terms as opposed to being conceptual constructions responding to particular traits of social reality that they aspire to capture. Below I will provide brief definitions for the key terms to guide the reader through what follows. Later in the text I will discuss the key terms and their construction in detail.

Definitions

Copyright – The body of laws that grants authors, artists and other creators protection of their literary and artistic works.

Cultural diversity - In the broadest sense, a variety of distinct ways of collective living. Within the sphere of international law, this term signifies “*the common heritage of humanity... embodied in the uniqueness and plurality of identities of the groups and societies making up humankind... a source of exchange, innovation and creativity*” (UN Educational, Scientific and Cultural Organization 2001).

Cultural heritage - Tangible and intangible aspects of a particular culture, including sites of historic, scientific or cultural significance, or those that have an “*outstanding universal value*” (UN Educational, Scientific and Cultural Organization 1972). Includes tangible and intangible objects, classified as elements of cultural property (owned by nations or belonging to humanity).

Customary law - A form of law derived from customs; the legal capacity of customary law is recognized by statute of the International Court of Justice, Article 38(b).

Human rights – The rights of all humans to be “free and equal in dignity and rights” as stated in Article 1 of the Universal Declaration of Human Rights (United Nations 1948). These rights include political and civil rights, freedom of expression, right of equality before the law, rights to education, to food, to equal work opportunity, and the right to participate in one’s own culture.

Indigenous and local communities – A term developed and used in the United Nations Convention on Biological Diversity to refer to groups having the legal status of indigenous peoples and/or self-identifying as such, as well as to other small land-based communities that are considered as having a lifestyle essentially similar to indigenous peoples.

Indigenous peoples – A category of international law to refer to the culturally and/or ethnically diverse groups who are regarded as descendants of pre-invasion inhabitants of lands presently occupied/dominated by others and as such are eligible to enjoy a set of special rights.

Intellectual creations (of indigenous peoples, and/or groups classified as “indigenous peoples”) – The fruits of the collective process of knowing, perceiving and expressing their understanding of reality among indigenous peoples and/or groups thus classified; or the forms in which the cultural and intellectual activities and achievements of indigenous peoples have found representation.

Intellectual property – In its broadest sense, “creations of the mind”, including inventions, works of a literary or artistic character, names and symbols, images, designs, and confidential information, used in commerce and conceptualized as property.

Intellectual property rights – A principle in law referring to the right of a creator to possess his/her idea as a form of property.

International community - Most specifically United Nations member states, but also others who are actors in international diplomacy, such as corporations and nongovernmental organizations.

Laws – For the purposes of this work, I employ the conception of laws as a specific set of ideas about the way in which reality works that together comprise an instrument of social cohesion.

Laws are social constructions whose content might or might not accurately represent the nature of the social problems that these laws are created to correct. What determined the construction of these laws (i.e. what made possible the codification of specific ideas about the nature of social problems as instruments aimed at social control) might differ from the actual causes of the problems that these laws aim to correct.

Policy – In the context of this work and in relation to the conception of laws, I define policy as a set of specific directives aimed at producing social change that rest upon existing legal standards. These directives rest upon, and in their form express, specific ideas about the way in which society works and is codified in existing legal norms.

Political influence – A partial or complete acknowledgement of one’s interests as legitimate as evidenced by the inclusions of one’s specific demands/claims/aspirations in the outcome of a process aimed at the development of a particular policy and/or law; must be distinguished from the notion of “political power,” which implies possession of concrete means to influence political processes.

Public domain – In the context of intellectual property rights, the state of belonging and/or being available to the public without copyright restrictions.

Records - documents created in the course of pursuing the objectives and mission of an organization and in accord with specific standards.

Safeguarding – In the context of the protection of tangible and intangible cultural heritage, measures directed at ensuring the viability of that heritage; these measures include identification, enhancement, transmission, and revitalization of forms and aspects of the heritage.

Self-determination – A principle in international law. Self-determination refers to the capacity of people to freely determine the way in which they want to govern themselves.

Sui generis – A neo-Latin expression meaning *of its own kind/genus*. In law, the term refers to legal classifications that exist independently of other categories due to their unique character and/or specific purposes of creation.

Abbreviations

CBD – Convention on Biological Diversity

ECOSOC – United Nations Economic and Social Council

FAO – United Nations Food and Agriculture Organization

ILO – United Nations International Labor Organization

UN – United Nations

UNCED – United Nations Conference on Environment and Development

UNCTAD – United Nations Conference on Trade and Development

UN CSTD – United Nations Commission of Science and Technology for Development

UNDP - United Nations Development Programme

UNEP - United Nations Environment Programme

UNESCO - United Nations Educational, Scientific and Cultural Organization

UNFPA - United Nations Population Fund

UNPFII - United Nations Permanent Forum on Indigenous Issues

UNWGIP – United Nations Working Group on Indigenous Populations

WIPO – United Nations World Intellectual Property Organization

WIPO IGC - World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

WHO – United Nations World Health Organization

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VITA

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Colonial Social and Legal Theory & Historical Origins of the Indigeneity Concept. Panelist. UCLA Critical Race Studies Symposium, Los Angeles, March 31-April 2, 2011

Protection of Indigenous Peoples and Traditional Knowledge. Panelist. Law and Society Association annual meeting, Chicago, 27-30 May, 2010

Traditional Indigenous Knowledge as a Social Construct. Panelist. The Society for Social Studies of Science annual meeting, Montreal, Canada, 10-13 October, 2007

Enhancing the Understanding of Traditional Indigenous Knowledge. Presenter. Science and Technology in Society: An Interdisciplinary Graduate Student Conference, Washington D.C., 31 March – April 1, 2007

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September 2008- May 2009

Project manager, editor, translator. *“Traditional knowledge & indigenous peoples”*
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Administered financial issues, developed content, edited, translated the publication from
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Project leader. UN Mission in Kosovo. Kosovo Ministry of Culture, Youth and Sports.
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Human rights work

2004-2009

United Nations representative of an umbrella indigenous peoples organization based in
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Chapter 1. Introduction

In this chapter, I introduce the problem statement of the study, the argument and the research questions, discuss the significance of this study and provide chapter breakdown.

Problem statement

Since 2004 I conducted advocacy service as a UN representative of an indigenous rights organization (LIENIP, Russia) and worked with the officials at the United Nations (UN) headquarters in New York. Around this time the UN agencies involved in the activities in the area of indigenous issues¹ conducted multiple events focused on what was termed “protection of traditional knowledge.” These events ranged from educational and policy activities and professional projects, to preparation of legal instruments, consultations and at times employment of indigenous individuals as experts and project participants. My original conjecture about the reasons for this work was that there must be difficulties experienced across indigenous groups related to the safety of the products of the indigenous peoples’ cultural and intellectual activities. These difficulties, I maintained, were severe enough that deemed international attention and intrusion by means of legal and practical actions. What puzzled me was that I could not understand to what degree these happenings at the UN could have a concrete impact on the indigenous communities, such as those which whom I worked (LIENIP was located in Altai, South-Central Siberia)? I began interviewing people to further understand what these activities meant. I learned that for many indigenous individuals – even those who I met at the UN human rights forums (especially for the non-English speakers from the outside of the US) - the

¹ “Indigenous issues” comprise a set of questions and corresponding practices that the international community raises as being important to the welfare of groups classified as indigenous peoples.

questions related to TK protection were vague and at times made no sense: it was unclear what the term “TK” referred to and what dangers surrounded its wellbeing.

My inquiry led me to further understand that what was termed “traditional knowledge” was not exactly an empirical entity to be found across indigenous communities (and in danger of destruction). Rather it was a category, legal and to a degree scholarly one, that embraced a wide range of elements denoting products of cultural and intellectual labor of the groups described by the UN authors as leading “traditional” lifestyle.² These groups and their knowledge(s) were described as disappearing due to destructive effects of the post-industrial economies and as such must be saved. Indigenous peoples were the main and the largest population falling into the descriptions of *traditionality* and thus the key target of the UN policy and legal actions in that direction. At the moment of this investigation a long record of forms of misappropriation and misuse of cultural items, products of intellectual labor and of research data collected within indigenous settings, existed. At the same time the instances of prospecting for intellectual resources in indigenous settings pointed to the lack of means for indigenous communities to protect their territories and lands from the outside intrusion. The TK work at the UN aimed, what I saw as a contrary goal: to ease an access to indigenous settings as a way to assist and support indigenous individuals with safeguarding of their knowledge(s). To what degree, I thought, this work (focused on protection of knowledge vs. people) could be of benefit to individuals with whom my organization worked back in Russia? And why these activities, purportedly a part of the UN work aimed at protecting indigenous rights, went on with apparently little or no concern whether indigenous individuals outside of the UN were aware of these developments or not?

² “Traditional knowledge” was also a subject of search of the UN Official Document System used to thematically classify the records.

Aimed to clarify the implications these development could possibly have for indigenous communities I commenced a study which led to writing this dissertation.

Argument and the Research Questions

I argue that the factors which significantly determined the UN agencies work on TK protection had to do more with the interests of the interested parties (the states and private corporations) in controlling the domain of rights for intellectual resources possible to gain from indigenous settings than the interests of and needs experienced by individuals inhabiting indigenous communities. I support my argument I conduct an exploratory study, using the following questions as my guides:

- 1) What are the elements composing the category of TK, and where did they come from? What are the ideas, theories and terms upon which this body of knowledge emerged? To what degree does this representation of indigenous realities correspond to the actual life conditions of indigenous groups?
- 2) What are the measures proposed to protect elements of TK, and to what degree do they correspond to the indigenous needs and realities?
- 3) What could be possible implications of the TK protection work and what does it signify?

Policies as a form of knowledge

I analyze policies as a product of institutional knowledge making practices, or what I term “institutional records.” By “institutional records” I mean documents composed in response to particular objectives of an institution and in accord with specific standards for creating these

documents. By “institutions” I mean the UN entities involved in the work on TK protection as this work relates to the questions concerning indigenous peoples, or “indigenous issues,” to use the term commonly employed in the UN documents.³ Institutional records of the UN entities involved in the work on protection are the empirical form of representation of the policies I will examine. The content of these records emerges from political processes/happenings conducted within the UN and/or under the auspices of the UN as an umbrella organization. The form of representation of the political knowledge created through these processes/happenings corresponds to the internal standards of documentation within the UN where records are created, classified, maintained and disseminated and destroyed with an aim of supporting functioning of the UN and its legitimacy. The empirical contexts of policies creation also allows approaching their examination from the position what I call *political knowledge* using conceptualization developed by Karl Mannheim (Mannheim 1934, 186-189).

Political knowledge is a product of events that have inherently political character, or are characterized by constant struggle for power. These events comprise the work of the UN in the areas of diplomatic negotiations, policy and lawmaking activities, and the creation of programs implementing legal norms and policy objectives. These events are conducted by political actors, who I refer to in this study as members of the international community. These actors include representatives of the UN member states’ governments, the UN officers (including but not

³ The peculiarities of specialization of the UN institutions involved in indigenous issues leads to diverse approaches to the indigenous questions. For example, the International Labor Organization (ILO) is an agency with a focus on the questions related to improving living and working conditions of workers. Historically the ILO has been a leading UN agency in the area of protecting indigenous rights. At the same time, the way in which the questions of indigenous rights have been addressed by and in the work of the ILO corresponded to 1) the expertise of the ILO as an agency concerned with the issues of labor, and 2) the broader problems the members states had faced at specific moments in relation to the maintenance of peaceful relationships between states and indigenous peoples located within those states’ borders. Such has been the situation since the moment of the creation of the first legal standards aimed at protection of rights of indigenous peoples, the ILO Convention 107 (1957). Unlike the ILO, the United Nations Educational, Scientific and Cultural Organization (UNESCO) had conducted its work in the area of indigenous issues through activities centered on issues of culture, science and education, yet with an aim to assist the international community in questions of peaceful cooperation.

limiting to administrative officers whose records I analyze for this study), the representatives of nongovernmental organizations including indigenous peoples' organizations,⁴ academia, and the profit-oriented corporate entities. These actors work in groups to advance recognition of the interests of the specific groups they comprise and/or represent and to which they belong by virtue of their professional and/or political association. As such they have specific interests regarding the subject matter as well as a different potential to influence the UN political processes with regard to exercising a degree of control over the realities of indigenous peoples' life. I do not look at the specificities of the way in which international diplomacy, policy and lawmaking at the UN are conducted which, however, merits a separate study: indeed, the degree of political power that each of these actors is able to exercise as a participant of the UN diplomatic proceedings influences in various ways the content of the discourse I analyze. For this work I only consider the nature of the settings in which the TK protection policies originated as institutional records and forms of political knowledge: I abstract the products of the political happenings at the UN forums into an example of this form of knowledge tangibly presented in the UN records. I pay no consideration to the degree of political influence that these different actors are able to exercise/had exercised on the formation of the content of the TK policies apart from one group of actors, indigenous politicians whose political actions I examine in the concluding chapters. The political nature of contexts where the policies are formed gives them an inherently *contingent character* in response to the settings from which they emerge: the policies serve and as such remain a means of expressing and/or communicating competing interests of different political actors and remains in constant formation.

Significance of the study

⁴ I analyze this group of actors in detail in the chapter seven as a part of a study of indigenous political participation.

Work in the field of the protection of intellectual creations of indigenous peoples on the international level is relatively recent. One of the key reasons why it appears to be necessary to investigate this matter arises from instances of appropriation of socially and culturally important intellectual entities created within indigenous settings, and the use of these entities without any consent from the people who created them and/or for purposes potentially harmful to individuals who inhabit indigenous communities. The main aim of this study is thus to contribute to the activities aimed to ensure wellbeing of intellectual creations of indigenous peoples by way of devising a theoretical approach that has the potential to be used as a tool to advance the political interests of indigenous peoples.

A major theoretical aim of this research is to contribute to the current state of knowledge and practice in the field surrounding the protection of indigenous peoples' intellectual creations by means of political and scholarly activities. A considerable knowledge gap in this field of knowledge exists in part due to the following reasons:

- The field is relatively new. Despite that issues related to legal protection of intangible forms of heritage and property of indigenous communities go back to the 1960s, only in the 1980s did the question of the wellbeing of the intellectual creations of indigenous peoples begin to receive the concerted attention of international policy makers. At the same time, the contributions of indigenous individuals to the work on the protection of intellectual creations of indigenous peoples are still few in number (although lately they have become more visible).
- The field is dominated by non-indigenous researchers. Only a small number of contributions come from the indigenous scholars, and even fewer are contributed by

the individuals who in various ways represent the interests of indigenous peoples/nations/organizations at the political forums of the UN.

- The field is interdisciplinary. While the potential for research is rich, its interdisciplinary character is insufficiently reflected in the current literature and on-going research endeavors. The sources existing in the field tend to focus heavily on legal aspects of protection, or/and provide understanding of the current situation from the standpoint of different branches of anthropology.

I aim to address these theoretical gaps through the following exploratory endeavor. As an indigenous rights advocate I see this endeavor partly as a striving to advance indigenous positioning on the matter of protection and in support of the claims and aspirations of indigenous politicians. To a degree this investigation constitutes a political statement. The questions I raise in this study emerged from my work to which theorizing came as a tool vs. a way to conceive an inquiry. Thus I lead my examination by following the nature of the question vs. boundaries of a particular discipline. This approach limits my investigation by turning it into a study that touches upon important questions yet does not allow attending to these questions in the depth that they demand. Rather, I attempt to ignite the future research and in that capacity ask questions rather than provide detailed answers concerning all the aspects of this study. In addition, as a form of a political statement, this study by definition is limited to a perspective of an indigenous advocate.

An empirical rationale for this study is in its attempt to contribute to facilitating relationships between indigenous politicians working at the international level, and representatives of the intergovernmental organizations and state governments that are involved in the issues that surround the question of the wellbeing of the intellectual creations of indigenous peoples. Untangling meanings contained in the claims of each of these interest groups can

potentially help clarifying issues regarding benefit-sharing coming from the research in indigenous communities such as Native American Nations in the United States, and strengthen the indigenous positioning on these issues on the state and federal level as well as within academia.

Significance of the study for the Information Studies field

The theme of protection of intellectual creations of indigenous peoples is somewhat new to the field of library and information studies. Among the most prominent international initiatives in this direction was the one taken by the International Federation of Library Associations and Institutions (IFLA) when, during the 2002 annual IFLA meeting, it issued a *Statement on Indigenous Traditional Knowledge*. The organization highlighted the special character of traditional knowledge – where “traditional knowledge” is a concept referring to different forms of intellectual creations of indigenous peoples in need of protection - and the need to safeguard and develop this knowledge from the perspective of indigenous people’s right to access information. The 2008 IFLA meeting was specifically dedicated to the problems associated with the protection of traditional knowledge. In the United States some of the major related developments include the work of the Society of American Archivists related to endorsement and implementation of the Protocols for Native American Archival Materials commenced formally in 2006,⁵ and the work of the American Library Association, which addressed the theme of protection of traditional knowledge during the annual 2008 Conference. I hope to critically revise the existing ideas and notions surrounding the issues of TK protection. As an indigenous scholar I will contribute a perspective regarding these issues that rests upon my

⁵ See, for example, Protocols for Native American Archival Material. (n.d), and Society of American Archivists (2012).

position as an activist while also advancing the state of knowledge in this area within Information Studies.

Chapter breakdown

The study is composed of eight chapters. Following the first chapter I introduce the methodology in the second chapter and the conceptions surrounding the notion of “indigenous peoples” in the third chapter. I discuss the formation and development of the TK protection policies within the larger UN work on development and conservation in the fourth chapter, and in relation to the work in the area of cultural heritage in the fifth chapter. The fourth chapter contains a study of 100 projects on conservation of natural environment toward assessing a degree to which CBD related policies on TK protection corresponded to the indigenous realities when implemented. In the following sixth chapter I discuss possibilities and means for indigenous political participation in the UN. In the next seventh chapter I conduct a study of indigenous participation using the case of WIPO IGC. I conclude in the last, eighth chapter.

Chapter 2. Methodology

In this chapter I discuss the kind of methodological tools I employ for my investigation and limitations of this study.

Knowledge as Social Phenomenon

My study falls into what Mannheim calls the “sociology of knowledge,” both as theory and method. Theoretically, the following propositions guide my investigation. First, social theory itself is an expression of the concrete circumstances of a knowing subject.⁶ Second, and subsequent, concepts are products of social relationships “*standpoints*” rather than unchanging frameworks of looking at the world.⁷ Third, methods are part of the analysis itself. I take concepts as the product of particular social relationships, where the theory itself is an expression of the process of becoming. Methodologically these premises promote an investigative approach that regards the problem 1) as a product of the human experience that preceded its appearance; 2) arising from a willful (rather than random) human act; 3) in its treatment significantly rests upon the experience out of which the problem emerged in the first place. The elements of qualitative nature that connect the epistemological side of an investigation with the methods of investigation include among others: the choice and meaning of concepts; the mechanism for categorizing; the level of abstraction; and the ontology that underlies the analysis. I also employ work of Maurice Zeitlin, which I find rests significantly upon the key premises of Mannheim’s theory, especially

⁶ As Mannheim puts it, “1) Theory is a function of reality; 2) Theory leads to a certain kind of action. 3) Action changes the reality, or in case of failure, forces us to a revision of the previous theory. The change in the actual situation brought about by the act gives rise to a new theory” (Mannheim 1936, 126-127).

⁷ As Mannheim writes: “The world is known through many different orientations because there are many simultaneous and mutually contradictory trends of thought... struggling against one another with their different interpretations of “common” experience. The clue to this conflict ... is ... in the very different expectations, purposes, and impulses arising out of experience ... [and] rooted in the whole matrix of collective interests” (Mannheim 1936, 269).

the idea that each historical setting involves its own logic for understanding the problem; thus, it is a task of an investigator to understand this logic in order to recreate the event in a way faithful to its time frame. In order to do so, Zeitlin emphasizes that it is crucial both to rest the explanation on the detailed empirical analysis, and to contextualize it within its historical framework.⁸ Such are the key premises upon which genealogical method used in this analysis rests.

I investigate the meaning of the social phenomenon understood within an institutional system of the United Nations agencies as “traditional knowledge” (TK), the causes for its alleged protection, and those legal mechanisms proposed to support protective measures. I take the set of concepts that exist for the existing phenomenon of TK to be a product of social relationships. Specifically, I see them as an expression of an administrative perspective on indigenous issues, one of competencies of the officers of the UN agencies, in correspondence with the larger social context within which the UN system is embedded and where the conceptualization of TK takes place. The TK concept might also be in conflict with other explanations of the same social phenomenon that derive from different social relations taking place in different historical milieu.

Methodological Tools

The methodological tools I employed in my study are content analysis of the documents within an archival theory perspective, political sociology, and some descriptive statistics. I used the UN Bibliographic Information System database as my prime source of data. Traditional

⁸ As Zeitlin writes: “*The theory of this work is contained within the detailed analysis itself, in the effort I make to provide explanations of specific historical sequences, not only during the civil wars themselves but also within their relevant historical time*” (Zeitlin 1984, 18). Employment of concrete historical details, Zeitlin writes, as opposed to mere generalizations in any socio-historical analysis helps to avoid construction of empirically based social theory. If conceptual categories, that are to explain reality, are supported only by theoretical abstractions, the explanation becomes incomprehensible, and creates a reality of “categories,” leaving concrete historical causes of development and social relations (that are historical products) mystified: “*objects produce their subjects,*” “*slaves are slaves because they produce what makes them so ...*” (Zeitlin 1984, 231, 235).

knowledge I learned is a subject of search in this system used to thematically classify the stored records. Not all the records end in this system, the fact that somewhat limited this investigation to the records I was able to obtain. I investigated the UN records produced by the officials working in the field development and conservation: UNEP, FAO, World Bank, UNCED and UNDP. I examined 100 conservation projects created in response to CBD adoption and conducted on the territories of indigenous peoples (2002-present) to assess a degree to which TK protection measures relevant to conservation benefitted indigenous peoples. I used content analysis for this examination with some descriptive statistics. I examined the records produced by the UN authors in the areas of protection of intangible heritage, intellectual property and indigenous rights: WIPO, UNESCO and the Working Group on Indigenous Populations. I used the legal scholarship to navigate through the content of these legal materials and interpret them and case studies. In addition to these sources, I conducted a study of political environments of a session of the World Intellectual Property Organization Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO IGC) in which I participated in July 2009 as a part of an indigenous caucus. While I did not incorporate the results of this study into this investigation neither the experience which led me to commence this research, my participation in this session as well as my advocacy work including the service to an indigenous people's organization (LIENIP, 2004-2009) provide me with additional expertise in the subject matter. In this study I examined the policies as forms of political knowledge from a perspective of political sociology, and used some descriptive statistics.

In this study I employ the genealogical method as developed within the tradition of Michel Foucault and in correspondence with the ideas of Zeitlin and Mannheim. I strive to investigate the making of policies by placing the elements which compose the policies texts

within the historical moment of their production (i.e., employing the truth criteria developed within this framework and valid to this moment).⁹ I employ the genealogical method to investigate the UN records and also to examine the results of my investigation as a way to further develop my research questions keeping the study open to change as the new findings emerge. I also utilize some of the methodological approaches developed within the tradition of studies of science and technology and the sociology of jurisprudence. I approach documents as technologies employed to “bracket” categories in bureaucratic knowledge production and classified accordingly. On the one hand this is a practice of the justification of the validity of a piece of knowledge through a reflective analysis; on the other hand it is also a way to build more knowledge upon an existing body of ideas (Riles 2006, 71). A number of theorists working in this tradition have emphasized the relationship between the social nature of knowledge and the particular social and political settings of the knowledge making.¹⁰ By means of this study I aim to contribute to the growing body of research which study the *tactical* uses of knowledge artifacts as emphasized by Foucault, while facilitating the understanding of knowledge artifacts

⁹ As Foucault puts it: “*Let us give the term genealogy to the union of erudite knowledge and local memories that allows us to establish a historical knowledge of struggles and to make use of this knowledge tactically today*” (Foucault 1980, 83, emphasis added).

¹⁰ Social historians in the field of science and technology, in particular actor-network theorists Bruno Latour and Steve Woolgar, analyze relationships between the construction of knowledge and power structures using the example of scientific communities. Practices of producing, disseminating, evaluating and reproducing what they call “inscriptions,” or artifacts produced by a community of scientists, not only enable scientists to disseminate ideas and technologies but also make their professional activities legitimate and authoritative (Latour and Woolgar, 1986). Scholars of technology, Geoffrey Bowker and Susan Leigh Star, in their study of relationships between the process of classification and technologies (which enable representation of social phenomenon with the use of seamlessly neutral categories) emphasize how instrumental use of knowledge supports political practices: “*classification systems and standards... [are] artifacts embodying moral and aesthetic choices... that craft people’s identities...*” (Bowker and Star, 1999, 4). Finally, ethnographers of anthropology, Akhil Gupta and James Ferguson indicate how anthropological conventions are recreated each time a new piece of knowledge emerges, thus helping to “block” other knowledge from emerging. Looking at anthropology as what they call “regional science” Gupta and Ferguson also demonstrate how anthropologists create their subjects through what they call “naturalization of cultural difference.” They see anthropological ideas about other cultures to be directly related to the institutional requirements of studying particular geographic region and/or area of which availability of funds and larger political interests might have a key role. Hence, they argue, criteria of validity for anthropological knowledge is dependent on institutional competence which often has a political element making all anthropological knowledge “situated” in particular structures of power: “*what pass for universal...norms end up supporting a particular structural and ideological location*” (Gupta and Ferguson 1997, 8, 18).

in general and legal knowledge in particular, as tools of resistance. Informed by the work of Geoffrey Bowker and Susan Leigh Star, I trace the categories used to classify TK back to the fields of their origins in social science and investigate the history of why a particular category is or has been employed to classify a particular reality as “traditional knowledge.” I also analyze how stripping the category of its original context uncovers how that original context works to support purposes that might be very different from those presented as the protection of traditional knowledge. I also study the contents of documents as records encoding the history of an idea within an organization, where the creation of documents is a continuous process of incorporation of earlier files into new ones.

This study is exploratory, which limits the scope and the results of the study. As an investigation of issues that have not been clearly defined due to the mostly novel subject matter of the historical making of the TK protection policies, the study clarifies the major trends toward providing grounds for further research. The methodology that I chose for this study further limits my efforts to the examination of records mostly, leaving aside the interconnected and equally important examination of processes of record creation and the realities of the social life within which the documents had been constructed. The final limitation reflects my position as an indigenous researcher. My service to indigenous cause, while being the primary motivation for this study nevertheless limits my work toward making certain choices rather than toward conducting it as a quest for understanding with no prior engagements.

Chapter 3. Indigenous Peoples: Attempts to Define

In this chapter I work toward conception of indigenous peoples. I provide an overview of thematic literature and major theories of what I term “indigeneity” as developed in social and legal studies as well as those that emerge from political contexts.

Introduction

The literature focused on the subject matter termed “indigenous peoples” is vast and continues to grow.¹¹ The term commonly refers to specific cultural groups that exist in a variety of geo-political and social settings, usually as a minority.¹² Most of these groups are subjects of domestic jurisdiction;¹³ they are also protected under international law. Conceptions of indigenous peoples developed by social and legal scholars are very diverse.¹⁴ For example, in international legal contexts this expression is rooted in the way in which colonies and dependencies of particular states were thought of and referred to, especially beginning with the last quarter of the nineteenth century, the time that marks the beginning of the development of a

¹¹ Godoy et al., for example, report that from 1985 to 2003 the annual growth of literature on this subject was 9.46% (Godoy, et al. 2005).

¹² I do not refer to a legal category of ‘minority’ here, but rather to social conditions (and political claims arising from those conditions) of groups enjoying a status of indigenous peoples and/or self-identifying as such. Indigenous identity implies alliance with groups whose identity as a distinct peoples entails a particular lifestyle, threatened (and, as history testifies, in many cases destroyed) by states foreign to indigenous economic and political structures. For example, such is the most recent definition of these groups useful perhaps only as an attempt toward constructing an all-encompassing way of describing these groups with no regard to the legal concept of these groups: “... *a people with generations of experiences with the local climate, terrain, and subsistence systems*” (Lee 2011, 9). Indigenous peoples are often encapsulated within dominant regimes of their states; yet, sometimes they constitute a majority of the population like, for example, in Bolivia.

¹³ This is despite the fact that in some cases these groups might have their own political, social and legal institutions functioning within the boundaries of the group’s territory. Such is, for example, the case of Native Americans who are currently, as Duane Champagne describes it, under an unrecognized “dual citizenship” status, i.e., simultaneously belonging to two distinct and historically controversial social contexts: that of the tribe and that of the U.S. society of which tribes are a geographical, political, social and cultural part (Champagne 2010).

¹⁴ Literature dealing with ‘indigenous peoples’ also emerges from the arts and humanities. For this dissertation, however, I do not examine this literature since my prime interest is the development of legal notions of indigeneity and supporting these notions with social science theories.

legal idea of indigenous peoples within international law.¹⁵ The colonial notion of indigeneity led to the way in which the concept would be defined in the first international document in which rights of indigenous groups and duties of the states regarding them were created – the International Labour Organization Convention 107 (1957).¹⁶ Relatively recent literature in which legal notions of indigeneity are employed describes indigenous peoples broadly as nations/peoples that strive in different ways for political autonomy, such as the Chamorro peoples struggling for political self-determination in U.S. controlled Guam, or the Mexican Zapatistas (indigenous rebels of the Mexican state of Chiapas). These notions often rest upon particular legal standards of treating groups recognized as indigenous peoples by the international community and by the states in which these groups are located. The ways in which states' jurisdictions define indigenous groups (essentially communities that deserve special treatment as a way to recognize and protect rights of these groups) tend to differ from one state to another. At times a specific state way of dealing with indigenous question might contradict international principles aimed at protecting indigenous rights (such is the situation within the Russian Federation, for example). This diversity of legal notions of indigeneity makes it very difficult (indeed impossible) to construct a legal notion of indigeneity that could serve as a sound analytical instrument to be employed across boundaries of states' legal and political systems. Social science authors, whose work reinforced legal scholarship, repeatedly employ concepts of indigeneity that signify a so-called traditional lifestyle distinguished from modernity and led in

¹⁵ Some of the most prominent examples of such groups are, for instance, those inhabiting the current territories of North and South America and classified as 'Indians', an expression that has been used as a generic term for all the New World inhabitants since Columbus landed in the New World.

¹⁶ In the context of this Convention, indigeneity was defined as a property of groups other than colonies; it referred to populations that inhabited particular territories of the Latin American states toward which the first international development program ("*Andean Indian Programme*") was directed. At the same time, the Convention itself was a product of administrative knowledge of International Labour Organization; the way in which indigeneity was codified in the text of this Convention rested upon earlier documents of the ILO, specifically of the Colonial Code of the 1930s, a set of documents produced specifically as a measure to discipline the colonial workforce.

continuity with the traditions of concrete peoples that go back centuries (for example, nomadic peoples indigenous to the Kalahari desert in Africa or the Penan hunter-gatherers of Malaysia in Borneo). This expression also targets individuals whose indigenous identity emerges from participating in human and indigenous rights forums and political events, especially in the studies of social movements.¹⁷ Groups understood as indigenous peoples are estimated to comprise from 300 to 370 millions of people or five to seven percent of the world's population. According to a number of theorists, they speak over five thousands of the world's languages, live in areas rich in biodiversity, comprise ninety to ninety-five percent of the world's cultural diversity, and are often considered among the poorest segments of the population whose survival as distinct peoples and cultures has been endangered by the effects of what had been called modernity and globalization.¹⁸

The multiplicity of definitions of indigeneity apparently leaves open the question of which criteria are necessary for classification of a group as an indigenous peoples across areas of studies. A generally agreed-upon observation is that no definition can be devised that is capable of capturing the diversity of these groups and of their lifestyles.¹⁹ The lack of guiding principles for defining indigenous peoples leads some authors to question the utility of the concept, and others to abandon its use altogether.²⁰ Nevertheless, the need to have a way to comprehensively define indigenous peoples and in a somewhat coherent fashion has been persistently acknowledged by a number of authors and organizations.

¹⁷ See, for example, Ivison, Patton and Sanders (2000), Sieder (2002), Stamatopoulou (1994), Niezen (2003).

¹⁸ For the diverse statistical estimations see for example the World Bank approach in its *Operational Directive 4.20: Indigenous Peoples* (Fliert 1991, 83-88) and also United Nations (2009), Thornberry (2002), International Work Group for Indigenous Affairs (2001), and Maybury-Lewis (2006). On cultural diversity see Gray (1991).

¹⁹ See, for example, Barnard (2007), Anaya (2003), Li (2000), Quane (2005), UN Development Programme (2001), UN Permanent Forum on Indigenous Issues Secretariat (2004).

²⁰ See, for example, Thornberry (2002, 48); Kingsbury (1998), Eudaily (2004); Kuper (2003), UN Economic and Social Council. Commission on Human Rights (1997).

While the diverse cultural and social realities of groups and individuals understood by scholars as indigenous peoples cannot be captured in a single definition, it is possible to distinguish in the thematic literature three major perspectives²¹ for examining what might be called indigenous realities (by which I mean processes existing within the boundaries of cultures/societies termed ‘indigenous peoples’):

- The social science perspective, being a mode of thought emerging from experience of analyzing indigenous realities by means of scientific theories and from a social position of scientific enterprise;
- The legal perspective, resulting from conceiving indigenous realities from a position of law, and focused on solving problems emerging from social and political relations between groups with the status of indigenous peoples and the states in which they exist, by means of law;
- The political perspective, emerging from experiences of resistance by individuals claiming indigenous identity against those legal and social conceptions about indigeneity that have been imposed upon their peoples.

The realities of these knowledge-making experiences are highly interconnected, and, therefore, the proposed categorization must be seen only as a demonstrative device intended to achieve methodological clarity regarding the existing knowledge whose subject matter is indigenous peoples.

Perspectives

²¹ I rest my understanding of perspective on the following definition by Karl Mannheim: “*the subject’s whole mode of conceiving things as determined by his historical and social setting*” (Mannheim 1936, 266).

The social science perspective focuses on socio-historical realities of what has been termed as indigeneity.²² This perspective can be found in a variety of disciplines, most significantly in anthropology but also in postcolonial studies, history, conservation, biology, ecology, political science (especially in studies of political resistance), sociology, and to some extent in geology, archeology, and area studies. Among a number of proposed ways of characterizing indigenous peoples two tendencies have been overwhelmingly popular in these disciplines: an inclination to define these groups as descendants of the “original inhabitants of the region” (Godoy, et al. 2005), that is the first settlers of a particular land), and a propensity to place the meaning of indigeneity within a larger context of a dichotomy between modernity and tradition (Thornberry 2002, 33-39).²³

The *original inhabitants* description projects the meaning of indigeneity as native and/or autochthonous to a particular location,²⁴ often with an emphasis on the historical priority of inhabitation of a particular place. Apart from the power that this concept has gained within political contexts, its theoretical basis rests on a set of contradictory statements. The implied possibility of a genealogical (and at times a suggested social) lineage between the first settlers of the land and the current occupants of the same territory implies that a group can inhabit the same geographical place for a number of years without moving and/or merging with other social

²² Scholars use the words *indigeneity*, *indigenism*, *indigenouslyness* interchangeably when referring to a specific characteristic/set of properties pertinent to groups termed indigenous. In this article I use the term ‘indigeneity’ consistently.

²³ I do not question that groups represented as “indigenous peoples” in legal and social science literature enjoy unique lifestyles threatened by the post-industrial economic development and globalization; neither do I suggest that these groups’ identities do not rest upon histories which genealogically and epistemologically go back to the time when their ancestors settled in new territories which these groups might or might not inhabit now. My critique is rather focused on *representations* of these groups that rest upon theories and methodologies of non-indigenous origins. Such representations, which are based on worldviews that are foreign to indigenous peoples, have historically served as a support for their subordination.

²⁴ See generally Dove (2006), Pelican (2009), Wickstrom (2003). ‘Rural’ and ‘local’ are used interchangeably with ‘indigenous’ in works focused on rural development such as for example in Kothari (2002). James Clifford provides an interesting overview of literature focused on the experiences of displaced groups who claim indigenous identity and introduces the concept of engaging diasporas theories as a way to articulate the realities of indigenous groups. Clifford (2007). Also see Zimmerman, et al. (2001).

collectives. However, it is highly unlikely that ecological and social events would not have affected a group over any considerable length of time. Even if taken as a general theoretical guiding thread, the proposition has its weaknesses. Consider a brief chronology of events in the history of the Inuit peoples living in the Nunavut Territory of Canada's Eastern Arctic.²⁵ The Inuit peoples' immediate ancestors, the Thule peoples, came to Arctic Canada and Greenland six to nine centuries before Europeans. Their occupation of these localities led to the disappearance of the Dorset culture that existed there for about two millennia and whose peoples had themselves been the colonizers of pre-Dorset paleoeskimos known as the first occupants of the High Arctic (Smith and Wishnie 2000). Thus, it can be argued that the history of the Nunavut territory begins with peoples other than Inuits, making current Nunavut occupants, technically speaking, not 'indigenous' to these lands. At the same time to what degree does thus constructed history (which is broadly the history of the geographical location) help to understand what determined the current social and political conditions of the population of Nunavut, namely the emergence of Nunavut as a separate territory, as an autonomous political district and a homeland for people who identify themselves as the Inuit peoples? Furthermore, how does the 'original descendant-cy' projection (even if it is structured in a somewhat flexible fashion, relative to the period of European ascendancy) capture the diversity of current life conditions of the individuals self-identifying as Inuits living within or outside the Nunavut borders? Finally, how does thus constructed representation of indigeneity help to build theoretical parallels between the conditions of Inuits and other groups termed "indigenous peoples" (whose land claims, for

²⁵ Nunavut (meaning "our land" in the Inuktitut language) is a relatively new territory established in 1999 under the provisions of the Nunavut Land Claims Agreement (1993), which was carved out of the Northwest Territories of Canada. Under the provisions of the Agreement, the Inuit of Nunavut received title to the 350,000 km of lands and a significant level of political autonomy from Canada. Currently about 82% of the Nunavut population identify themselves as Inuits. For the text of the Nunavut Land Claims Agreement refer to *Agreement between the Inuit of the Nunavut settlement area and Her Majesty the Queen in right of Canada* (1993). For more information see Dahl, Hicks and Jull (2000).

example emerged on similar grounds yet were caused by circumstances very different from those of the Inuits)?

Interrelated with the “original inhabitant” viewpoint is a tendency to define indigenous peoples as being *ontologically different* from those who have discovered and/or studied them.²⁶ This is the type of thought notorious for its history of service to political and cultural projects of domination over less powerful groups.²⁷ Epistemologically this type of representation can be traced back to positivist philosophy; it is most prominently expressed in the theories of social evolution and modernization.²⁸ Despite the epistemological relatedness between these two theories, each develops a somewhat different viewpoint. What relates the two (and is of interest to this study) is a particular vision of social transformations that explains differences among

²⁶ This is not to suggest that the way in which indigenous individuals live, their social settings, cultural practices, political systems have no distinct character and/or similar to those settings of which the researchers themselves might have been a part. On the contrary, and in accord with Erica Daes description of indigenous, distinct ways of living are pertinent to these groups in response to the histories and social transformations of these communities. My critique aims at the tendency to apply indigeneity description to the social collections that might not be compared with each other despite their shared lack of similarities with the so-called modern, industrialized social groups. (Daes 1993).

²⁷ This mode of thinking about ‘the other’ received various descriptions depending on the contexts of application. Edward Said, for example, characterized it as *orientalism*, while Ter Ellingson working on problems essentially similar to the ones developed by Said, yet emerging from a very different social context, described this mode of thought as *mythology of the noble savage*. (Said 1978; Ellingson 2001).

²⁸ Among significant social evolutionists of the nineteenth century was Herbert Spencer, an English sociologist and a follower of Auguste Comte whose works were prominent not only among sociologists, but also legal theorists concerned with the construction of norms of political control over colonial (defined as ‘uncivilized’) populations (Lorimer 1890; Spencer 1873). Among modernization theorists there was a school of thinkers who focused on transformations of territorial states; they classified social entities using dichotomous ‘ideal types’ of traditional and modern societies, and postulated that transformation toward the latter, a more developed (and more desired) state, could be achieved by the introduction of technological and scientific assistance to the less rational and less industrialized groups. Among the most prominent theorists in this area was, perhaps, Talcott Parsons. It would take another work to see the ways in which social evolution and modernization theories ideas found implementation in policy and economic initiatives focused on indigenous groups. For a thorough discussion see, for example, Rodríguez-Piñero (2005, 90, 103--112, 198--199). Of special interest is his reference to the 1953 ILO publication “*Indigenous Peoples: Living and working conditions of indigenous populations in independent countries*,” wherein indigenous peoples are described by ILO authors as existing in undesirable living conditions and as “backward” populations in need to be integrated “*into the economic life of [their respective] country ...*” (ILO, as cited by Rodríguez-Piñero 2005, 97, note 70). Rodríguez-Piñero presents the following quote of Jef Rens, the ILO Deputy Director--General that displays an attitude toward the indigenous populations upon which development projects were directed: “*Our Andean programme is based on ... [a] fundamental conception that ... every man is worth every man. I am deeply convinced that if we give the Altiplano Indians their change, they would be able to rise to whatever level and to produce among them individuals of a high culture, comparable to the best elements in the most civilized nations ...] We are like elder brothers whom age has allowed the way of modern and civilized life better than the younger ones. It is our duty to offer our young Indian brothers a hand*” (Rodríguez-Piñero 2005, 106, note 115).

societies using a model of progressive stages of development. According to this vision, industrially and militarily stronger groups exemplify more advanced states of social development and are composed of morally and intellectually superior individuals as compared to conquered and/or dependent peoples. Another notion that both theories implicitly support is that the progress toward higher levels of civilization/development can be cultivated by means of proper education and technological assistance to the groups seen as less advanced, as societies (analogous to biological life forms) grow toward a perceived perfection. This interpretation of social transformations served to justify various interventions in indigenous settings as forms of humanitarian assistance aimed at instituting and supporting progressive change. Despite the wide criticism these theories have received, their legacy still can be felt, as in studies that continue to assess indigenous experiences as marked by what is termed “traditionality.”²⁹ The authors who employ this approach tend to structure indigeneity as an abstract property to be found across traditional cultures leading to a somewhat stereotyped representation of indigenous groups and thus leaving diversity of indigenous realities obscured. While these authors as a rule celebrate indigenous experiences instead of using them to exemplify “backward” ways of life their work continues to represent indigenous communities and individuals as silent and distant objects of research (and by extension of legal and political action) essentially different from those who construct representations (Tennant 1994; Agrawal 1995).

The legal perspective, while interconnected with that of social science, is based on a separate history. It broadly emerges from a history of relations between various states and the specific ethnic/cultural groups living within their borders; this history has been codified in

²⁹ A major body of literature in which such characterizations of indigenous peoples have been developed is that concerning the protection of traditional indigenous knowledge, described as a product of a particular lifestyle found across indigenous communities, which requires and rests upon a specific mode of thinking different from and endangered by modernity (described in detail in chapter four).

specific legal documents that compose international law (if looked upon as a field of professional knowledge) as well as in separate states' jurisdictions. These groups have been defined by the prominent legal scholar of indigenous rights, James Anaya, as “the living descendants of pre-invasion inhabitants of lands now dominated by others”³⁰ leading to a specific conceptualization of indigeneity in international law (Anaya 2003). In contrast with the social science perspective, the term ‘indigenous’ as used in international legal context came from a French colonial category intended to avoid connotations associated with discrimination (Rodríguez-Piñero 2005, 46, 339). The term generally served, Patrick Thornberry notes, as a “euphemism” to describe non-Europeans subjected to colonial regimes (Thornberry 2002, 38). In their attempts to define indigeneity, legal writers employed social science theories that were currently prevalent, where the content of a specific legal problem determined the kind of social theory to be used.

The current approach to the indigenous question within international law is based on two treaties – the ILO Convention 107 (1957) and the ILO Convention 169 (1989) – and one declaration, the UN Declaration on the Rights of Indigenous Peoples (2007). The history leading to this approach can be seen as developing through three distinct periods:

1) The introduction of the question of the rights of colonial populations during the last quarter of the nineteenth century leading to the first concept of indigeneity as referring to the colonial workforce and signifying the meaning of indigenous as uncivilized;

³⁰ Currently, two approaches could be located in defining the concept within international law, as Benedict Kingsbury suggests: a positivist one, which treats IP as a legal category that requires a precise definition for the purposes of using it as a way to determine scope of application of relevant legal instruments, and a constructivist one, identified by a process of continuous evaluation of particular relevant claims, cases and practices as a way to negotiate the kind of norms that would accommodate these claims, where a fundamental question behind defining attempts is justification of particular programs emerging from the recognition of ‘indigenous peoples’ as a legal category (Kingsbury 1998).

2) The development of the question of the rights of dependent populations after World War II, and the introduction of an international dimension to the indigenous problem as a problem of underdeveloped societies;

3) The construction of a modern concept of indigenous peoples as culturally distinct nations/peoples with particular rights.

Each period, as defined here, can be seen as a response to certain historical events, which generated specific ways of dealing with the relations between indigenous groups and their states.³¹ However, the fundamental legal criteria of each period for defining populations as indigenous peoples emerged from the historical context of these populations in a state of dependency, and reflect the inclination of states and of the international community to offer different types of humanitarian assistance to these populations, including assistance in addressing the protection of their rights.

In addition to international legal standards, the content of which, as Anthony Anghie suggests, should be looked upon as a response to a question of order among different social (cultural) entities, norms focused on treatment of indigenous groups were established within the jurisdictions of individual nation-states (Anghie 1999). These norms differ from state to state and at times could contradict international-level principles for the treatment of groups understood as indigenous peoples. This can be illustrated using the example of the Russian Federation. Under current law, Russia recognizes as indigenous peoples only those ethnic groups living on territories of their ancestors, enjoying a “traditional lifestyle,” and whose populations remain

³¹ Similarly to the development of social theories of indigeneity, the laws focused on ‘indigenous peoples’ originated in the contexts of nineteenth century colonial expansion, Cold War confrontation and the simultaneously emerging political power of the so-called Third World.

under fifty thousand individuals (Russian Federation 1999, 2000a, 2001).³² Hence references to ‘indigenous peoples’ in Russia are as “small,” “numerically small peoples,” or “small-numbered peoples”³³ [korennye malochislennye narody]. The treatment of Russian ethnic minorities as indigenous peoples, as Russian legal scholars suggest, is an issue of the so-called “positive discrimination,” which is a recognition that the federal government must exercise specific protective measures toward ethnic groups whose existence as distinct peoples is threatened, as evidenced by the low demographic numbers (Kriaskov 1996; Ponkin 2008). What is peculiar is that the history of the positive discrimination approach in Russian context is rooted in the initial policies of the 1920s by the Soviet state aimed at assisting the “backward” nations of the North.³⁴ This approach does not correspond to the way in which indigenous politicians -- who claim that states have historically denied basic rights to indigenous groups by various means including imposition of an identity upon them -- envision the guiding principles for relations between states and their indigenous peoples.³⁵

³² For further discussion of legal standards pertinent to Russian indigenous peoples see Osherenko (2000), Xanthaki (2004).

³³ These groups consist of 45 distinct peoples (Russian Federation 2000b). Using data from the 2002 Russian Census, the number of indigenous (i.e. “small-numbered”) peoples can be estimated to be about 280 thousands that is less than half a percent of the whole population of over 145 million people (Rosstat 2002). At the same time, however, as Donahoe et al. suggest, of 200 nationalities living in Russia close to 130 could claim indigenous status, which would amount to about 14% of the Russian population, or about 20 million people (Donahoe, et al. 2008). See also Stoyanova (2009), and Shapovalov (2005). For information on statistics see Sokolovski (2005), and Stepanov (2004).

³⁴ Other important questions include the degree to which current protective measures actually help small peoples since, as suggested by Nikolai Vakhtin, they are very modest in their effects (Vakhtin 1992). Another related aspect would be the reasons why individuals identify themselves as members of indigenous groups, and to what degree their self-identification (reflected in numbers) can be taken as an indication of “traditional” lifestyle as suggested by legal descriptions (where “traditional” itself is a very questionable concept).

³⁵ In general, indigenous politicians working at the level of the United Nations as well as within separate state systems reject any attempt by the government to create definitions for indigenous peoples, as expressed, for example, by the following clause: “*We, the Indigenous Peoples present at the Indigenous Peoples Preparatory Meeting on Saturday, 27 July 1996, at the World Council of Churches, have reached a consensus on the issue of defining Indigenous Peoples and have unanimously endorsed Sub-Commission resolution 1995/32. We categorically reject any attempts that Governments define Indigenous Peoples*” (UN Permanent Forum on Indigenous Issues Secretariat 2004, emphasis by the author).

The genealogical roots of the legal concept of indigenous peoples go back to the events of the last quarter of nineteenth century colonialism and as such, as a number of theorists suggested, are primarily a product of it. The first reference to the rights of “natives” or “aborigines” (the legal terms used at the time in reference to indigenous populations) appeared within the framework of the doctrine of trusteeship (sometimes referred to as tutelage doctrine).³⁶ This doctrine authorized European nations to guard over “uncivilized” peoples, as their responsibility as senior members of the “family of nations.” Specifically, this doctrine provided a “dual mandate” for European states to exercise political and economic control in the form of a guardianship over the less developed peoples subjected to the control of Europeans in a form of colonies (Rodríguez-Piñero 2005, 20).

The key events of this period were the international conferences of the last quarter of the nineteenth century in which policies regarding the rights of colonized populations were developed (Berlin Conference, Brussels and Saint Germain Conferences). The doctrine of trusteeship received authoritative status with Articles 22 and 23 of the Covenant of the League of Nations (1919). Article 22, which specifically categorized *dependent* territories according to the “stage of [their] development,” assigned administration over them to be exercised by mandated “advanced nations” in accordance with their “civilized duties,” and provided that governance of colonial territories was a “sacred trust of civilization.”³⁷ The emergence of the term “indigenous” in international legal parlance occurred in the 1930s in the drafting of standards for disciplining

³⁶ As conceptualized by James Lorimer: “*the right of underdeveloped races, like the right of undeveloped individuals, is a right not to recognition as what they are not, but to guardianship – that is to guidance – in becoming that of which they are capable, in realizing their special ideals*” (Lorimer, as quoted in Rodríguez-Piñero 2005, 19, note 14).

³⁷ Article 22 of the Covenant of the League of Nations (1919) reads: “*To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization and that securities for the formance of this trust should be embodied in this Covenant*” (The League of Nations 1919).

colonial workforce under the auspices of the International Labour Organization. These standards included the definition of “indigenous workers” in Article 2 of the Recruitment of Indigenous Workers Convention (1936). The definition referred to populations broadly understood within the ILO context as native labor, which included colonial subjects as well as populations of self-governing states existing in a position of dependency (such as the Native Americans of the U.S.). As suggested by Luis Rodríguez--Piñero and Ian Brownlie, the preference for the expression “indigenous” (from the French *indigène*) as opposed to “native” was due to the negative connotations associated with the latter term (Rodríguez-Piñero 2005, 46, note 148). The definition was evidently based on general propositions of social evolution theory and served to regulate relations between colonized populations and their colonizers, and to legitimize colonization as being a humanitarian and philanthropic mission.

The second period that influenced the formation of the legal concept of “indigenous peoples” was the post-World War II period, specifically events leading to the composition of the first Convention focused on the rights of indigenous peoples in 1957 under the auspices of the International Labour Organization. Rodríguez--Piñero characterizes this period as the time during which the indigenous problem gained an international dimension as a problem of development. He sees a specific connection between the Convention’s purpose in bringing the development programs to Ecuador, Peru and Bolivia (the Andean Indian Programme of 1952-1962), and the interests of these states in assimilating their indigenous populations.³⁸ He points out that the Convention was intended as a guide to help other states in assimilating their

³⁸ One of the intriguing areas of possible study is the relationship between the emergence of the first instrument focused on the rights of indigenous peoples (ILO Convention 107, (1957) and the aims of the United States government in supporting development projects (such as the “*Andean Indian Programme*”) in the climate of the Cold War.

indigenous populations.³⁹ In his analysis of the ILO Convention 107, Rodríguez-Piñero notes that during the post-war period indigenous groups were considered to be territories to be politically and socially integrated with their respective states. Perceived as locations owned by their states, indigenous peoples became a “technical category” toward which international development projects were directed.⁴⁰ A version of indigenous peoples’ rights, promoted by the Convention,⁴¹ considered only their rights as citizens of the new nations. Their cultural practices and unique social and political organizations mattered only in relation to how they facilitated (or impeded) the aims and process of assimilation. In the post-colonial context, indigeneity remained a characteristic that essentially denoted an inferior and temporary social state of peoples, now approached as territories possessed by their respective states.

The modern concept of indigeneity emphasizes the cultural differences of indigenous groups from the dominant social and political structures of the nation states within which they are located. The diverse forms of indigenous social settings are no longer perceived as a

³⁹ The writing of the Convention should also be analyzed as falling within the context of the U.N. decolonization regime, officially beginning with the UN General Assembly Resolution 1514, *Declaration on the Granting of Independence to Colonial Countries and Peoples* (Dec. 14, 1960). At that time, emerging new nations faced with the problem of constructing their national identities and political systems came under the influence of Western political models and scientific theories. This influence is most evident in the way they started seeing their culturally different indigenous groups as problematic (i.e., backward). Rogers Brubaker describes this period in the following manner: “[This was] a moment of high political confidence in Western models of political development and their transferability to the developing world, sustained by robust epistemological confidence in a generalizing style of social science capable of discovering universal patterns of social and political development and of validating policies aimed at promoting such development.” The “nation-building” literature of the 1960s, according to Rogers Brubaker, had as a central idea, that “the ‘nation’ is simply the citizenry, to the extent that it becomes a unit of identity and loyalty ... [where] ... nationhood ... was seen as strengthened ... by ... modernizing forces ... [while] ... ethnicity could be understood as a potentially serious impediment to nation-building and national integration” (Brubaker 1996, 80-82).

⁴⁰ As Rodríguez-Piñero explains: “The ILO standards were conceived as a set of technical guidelines that should guide state developmental policies toward these peoples, where indigenous cultures mattered only as factors in the success or failure of these policies, and where the international legal form was only meant to represent the international community’s moral commitment to the solution of the ‘indigenous problem’.” (Rodríguez-Piñero 2005, 144).

⁴¹ The preamble to the *ILO Convention 107* states that “adoption of general international standards on the subject will facilitate action to assure the protection of the populations concerned, their progressive integration into their respective national communities, and the improvement of their living and working conditions.” (International Labour Organization 1957).

disappearing abnormality, but rather as a crucial part of the world's cultural diversity. Groups understood as indigenous peoples remain parts of their states, and by their location are subject to the political and economic influences of those states. Nonetheless, the internationally recognized standards of treatment for indigenous peoples – the most important one being the UN Declaration on the Rights of Indigenous Peoples – stress the right of indigenous individuals to control and maintain social and cultural differences of their groups by living according to their own historically developed ways of life.⁴²

The adoption of the Declaration by the UN General Assembly in 2007 was to a large extent a result of the political upheaval of indigenous groups and efforts by organizations working on their behalf. The political struggles of indigenous peoples in different countries⁴³ influenced changes in the relations between these peoples and their states (e.g., the questioning of states' sovereign powers) leading to the emergence of new norms and principles upon which peaceful relations among and within nation-states should rest. Among the milestones of this development was the 1971 Resolution of the UN Human Rights Commission to conduct a study focused on the problems of indigenous populations. This study, known as the Martinez-Cobo Study of the Problem of Discrimination Against Indigenous Populations, took over a decade to

⁴² A prominent Native American scholar Duane Champagne notes that the way in which the Declaration codifies these special rights of indigenous peoples responds to the vision of indigenous individuals as being citizens of their nation-states as opposed of being members of political systems different from those exercised by nation-states, yet enjoying the same level of political authority (government-to-government relationship). Hence, he maintains, the key claims of indigenous politicians, which for Champagne essentially form *the indigenous perspective* – those claims being of political autonomy and self-government – are not recognized by the international community (and are not codified in the text of the Declaration). This is not to say that emergence of the Declaration does not signify progress in the development of relations between indigenous groups and their states; rather, the content of the Declaration is significantly a result of what was possible to achieve at this moment of history (Champagne, personal communication). Champagne's critique helps to map out future developments of indigenous politics on the international and state levels.

⁴³ Some of the most well-known episodes of these struggles include the formation of the American Indian Movement, an organization established during the 1960s in the United States; the 1966 cattle workers' strike by the Gurindji peoples at Wave Hill, Australia; and the 1975 international conference of indigenous representatives from North, Central, and South America, Australia, New Zealand and Scandinavia in British Columbia, resulting in the formation of the World Council of Indigenous Peoples, one of the first UN associated NGOs of intentional scope and influence (Coates 2004; Sanders 2010). For Australian history refer to, for example, Summers (2010).

complete. A further step was taken at the 1977 NGO Conference on Discrimination against Indigenous Populations in Geneva, which led to the creation in 1982 of a UN Working Group on Indigenous Populations that functioned, until recently, as an open international forum for indigenous leaders to bring their grievances and aspirations into the international arena. The most significant achievement of the Working Group is the composition in 1994 of a Draft Declaration on the Rights of Indigenous Peoples upon which the text of the Declaration on the Rights of Indigenous Peoples rests. The Declaration was adopted by the UN General Assembly in September 13 of 2007. Envisioned and written with the active participation of indigenous politicians, the Declaration is the primary internationally-recognized instrument for the protection of indigenous rights. The significance of the Declaration is limited to the ethical exercise of power, as it has no status as a legally binding treaty, even though the signatory nations have reporting responsibilities. The Declaration is not so much a set of standards by which indigenous peoples are to be treated by their respective states (such as preceding the ILO Convention 169 (1989)), but rather, as Patrick Thornberry notes, a “generalized indigenous ‘position’ on many issues,” articulated from the point of indigenous peoples (Thornberry 2002, 35).

The development of international legal standards on indigenous peoples was evidently based on specific social science ideas. At the same time, laws (as well as specific legal concepts that defined indigeneity) were established to address specific social problems arising from relations between states and populations with the status of “indigenous peoples.” Thus, these laws are a product of theorizing emanating from contexts very different from those of the social sciences. However, the two contexts are closely related and must be considered as such in an

analysis of the realities of groups having the status of indigenous peoples or self-identifying as such, and in the development of a comprehensive way of conceptualizing these realities.

Finally, the perspective I call *political* refers to the way in which indigeneity is characterized by individuals self-identifying as indigenous, most specifically those who represent the interests of indigenous groups at United Nations political forums. This mode of thought⁴⁴ emerged somewhat recently from a group previously isolated from political activities on the level of the UN.⁴⁵ This group is composed of indigenous politicians, by which I mean individuals who claim indigenous identity and who work on behalf of indigenous peoples' organizations or who are elected by members of a particular group to represent the group's interests at higher levels.⁴⁶ This is a heterogeneous group composed of individuals from different geo-political settings and socio-economic backgrounds, and whose states might or might not recognize their

⁴⁴ This mode of thinking should not be seen as limited to the group identified in this section and can be further studied by looking at the way in which indigeneity is defined by those who claim indigenous identity outside of the UN human rights forums on the state and local levels.

⁴⁵ Despite their isolation, these activities have been the subject of a number of studies. Ronald Niezen provides an account of what he terms indigenous identity formation within the contexts of late 'modernity' where identity emerges out of three interrelated factors: historiography that provides a group with a unique vision of its self, moral imperatives that allow perception of exclusiveness of a collective sense of identity, and use of identity for the political goals of a group. In reference to indigenous experiences Niezen refers to the commonality of a colonial past that the indigenous peoples have experienced, and to the commonality of a vision of a different future. These commonalities have allowed representatives of diverse groups and cultures to come together under a shared vision of themselves as 'indigenous peoples'. For Niezen, identity becomes a source of membership that allows perception of personal grievances to be elevated as a part of global history (Niezen 2003). This can be compared with Margaret Moore's conception of identity emerging from studies of nationalism, where it is broadly a vision of *self "concerned with the political community with which one identifies ... [and aspired to by] ... political or institutional recognition of this community"* (Moore, cited in Harty and Murphy 2005, 14). Similar to this are conceptualizations of indigenous peoples by the scholars of indigenous political movements. For example, Seán Eudaily, while refusing to use the concept 'indigenous peoples' resorts to the names that indigenous groups use for self-identification (such as First Nations, Aboriginal Australians, Torres Strait Islanders). Nevertheless, he adds that in his use of 'indigenous' he "alludes" to "peoples who are engaging in practices of resistance" which makes them indigenous to "power relations" rather than to territories/lands they occupy (Eudaily 2004, 2). Ken Coates, likewise, notes that membership in indigenous organization "defines" the meaning of indigenous for that organization (Coates 2004, 2-8).

⁴⁶ This study does not address the question of the nature and level of influence that indigenous organizations have exercised at the level of the UN. This question can be addressed using the framework suggested by Peter Willetts's analysis of the history of NGOs in the UN system. Willetts argues that an NGO can only influence UN programs when it is both an organization and part of a wider social movement (Willetts 2000). Thus, a key question in the analysis of the political power of an indigenous organization within the UN could be: *To what degree is this organization a part of a larger social upheaval?*

indigeneity claims (Coombe 2001). Some of these individuals are supported by the governments of their states; others might employ international settings to voice particular injustices done to their peoples by the political authorities of states of which they are a part.⁴⁷ What is of interest to this study, however, is the type of thought that emerges when these individuals form coalitions at UN political forums with the intention of influencing the policy-making process affecting indigenous groups. By nature, these coalitions are separate from indigenous communities and groups, yet are organized to represent the political interests of indigenous groups at the international level. The indigenous participation at the international level is coordinated by UN agencies and is often financially supported by the funds donated by the states' governments. Settings, within which the political perspective is formed, are necessarily political. Hence, the driving force behind the definitions of indigeneity is the motivation to achieve practical consequences deemed to follow from them. These consequences are generally the creation of opportunities for indigenous politicians to influence (1) the political settings in which they claim membership to oversee policy and law, and (2) the theory upon which the current legitimacy of policy makers rests. The social positioning of indigenous politicians as knowledge makers is peculiar, and very different from that of scientists and lawmakers. Their mode of thinking is connected to their existence as thinking subjects. Not only are indigenous politicians in a position to make knowledge about their own reality, but also simultaneously they are the focus of investigation and of policy/law-making activities conducted by others. This social positioning defines a form of consciousness expressed in various types of statements to international agencies/organizations and governments composed by indigenous individuals as collective statements. The content of these statements emanates from relevant scientific investigations and legal provisions, used *strategically*. Some theories and legal provisions are used to support

⁴⁷ I discuss the kind of individuals who compose this political formation in the chapter seven of this study.

specific claims, while others serve as a basis for critique, where the aim pursued by indigenous politicians is the development of a new way of looking at indigenous reality that can potentially serve their interests.⁴⁸ Using Foucauldian language, this perspective is distinguished by the *strategic* use of the existing knowledge *about* indigeneity. The knowledge thus constructed is an instrument employed to further specific interests on behalf of indigenous groups.

The key knowledge components that compose the content of indigeneity within this perspective are those that support the vision of the historical continuity of indigenous groups with cultures/societies of their predecessors⁴⁹ and which results from one or more factors, such as a) occupation of ancestral land; b) common ancestry with those who originally settled/occupied the land; c) cultural (social) characteristics that distinguish these groups from the social and political systems of which they are geographically a part, such as tribal/traditional/customary system of governance; d) language; and e) residence. These factors emerge from a set of formal documents focused on the protection of the rights of indigenous

⁴⁸ The way in which identity itself is defined within this perspective can be well seen in the discussion of identity by Duane Champagne. Specifically, he writes of the U.S. Native American context that: “*Indian identity is a matter of social and cultural action as well as self-identification*” (Champagne 2010, 19). Champagne discusses the relation between imposed legal and formal identities and the way in which these outside forms of defining groups as indigenous facilitated possibilities for political actions and acceptance (or rejection of) these forms of identity by individuals living in American Indian communities. On the international level, however, indigeneity becomes an analytical instrument to explain and further develop forms of political governance of groups that might or might not enjoy legal status of “indigenous peoples,” yet have forms of political governance, the development of which followed roots other than those that determined the development of the current legal and political systems practiced by nation-states. This is not to imply that indigeneity defines the so-called non-Western political structures, which as implied, should be essentially similar; rather what makes indigenous forms of political governance a category is their inferior state as forms of political power when compared with the level of political leverage of nation-states (within which these groups are as a rule encapsulated). The indigenous forms of political governance are multiple, responding to the way in which indigenous communities have historically developed. Yet, as a rule, they do not enjoy the same level of political influence within their community and on the state level as does the political authority of the state in which these groups are located; neither do they have an independent voice in the international arena. At the same time nation-states do not have analytical and legal tools to conceptualize and legally codify the way in which the political and social power of indigenous communities functions internally as well as a part of state and international systems. Until we do have such instruments, however, as scholars of indigeneity and social scientists more broadly, Champagne insists, our social theory cannot be seen as responding to the current social realities that this theory is to explain and predict (Champagne (2010) , personal communication).

⁴⁹ This is captured in this widely known definition by the World Council of Indigenous Peoples: “*The term indigenous people refers to people living in countries which have a population composed of differing ethnic or racial groups who are descendants of the earliest populations living in the area and who do not as a group control the national government of the countries within which they live*” (Sanders 2010).

peoples, most significantly Martínez-Cobo's Study of the Problem of Discrimination Against Indigenous Populations. His definition of indigenous peoples was adopted as a "working one" by the UN Working Group on Indigenous Populations (Martínez-Cobo 1986, para. 380—382). These factors also received formal recognition in the ILO Convention 169, Article 1. In order to reach cohesiveness in their statements, indigenous politicians abstract from the concrete realities their groups face and compose their collective claims as resting upon common experiences, most often represented as a history of cohesiveness denial of basic human rights resulting from colonial conquest and/or other events leading to a current dependency of an indigenous group on a metropolitan power that exploits indigenous land and peoples (Thornberry 2002, 48; Kingsbury 1998). Within this context what essentially emerges under the concept of indigeneity and related terms is less *a property* that describes a particular trait of social reality and/or which might require a particular legal action, than a theoretical tool to be used for specific actions.

Conclusion

The concept of indigenous peoples, as this examination suggests, is a form of understanding and conceptualizing reality. To define indigenous peoples by looking at empirical qualities of those who constitute these groups and/or are considered (or consider themselves) as members of indigenous groups, would result in an ambiguous notion of the concept. Furthermore within one people, various degrees of intensity of the sentiment of belonging to the group exists depending on the personal histories and destinies of individuals and their families.⁵⁰ Social

⁵⁰ Max Weber in his writing on nation notes that there must be a "sentiment" of "solidarity" that transforms a group of people into a coherent social collective. In certain conditions, a group of people whose histories might be different and who might or might not speak a common language could be "melded" by their common destiny. At the same time, a language could serve as a bond being, as Weber notes, at the time the only broadly accessible cultural "value" (a mechanism of participating in social life of a community). However, this is not a sufficient explanatory characteristic, as history presents us with many examples when people striving for separate political organization speak the same language (Gerth and Mills 1946).

scientists, in their attempts to construct a general concept, tend to produce generalized notions of indigeneity (such as “native” to a particular place or essentially different from what is understood as “modernity”). These generalizations arrange particular experiences of very different groups under a vague idea, the use of which, as an instrument for scientific communication across disciplines, is questionable. Legal theorists resort to ideas from social sciences, yet focus on problems of relations between indigenous peoples (as specific subjects of law) and the states within which they are located. This approach makes legal notions of indigeneity subject to social science theory, yet uses these theories in contexts very different from those out of which they originally emerged and for aims different from those originally intended. Finally, indigenous politicians focus on specific political objectives, which define the scientific and legal sources and conceptions they employ.

For this study I will use the notion of indigenous peoples as developed within existing instruments of protection indigenous rights, most specifically the Declaration on the Rights of Indigenous Peoples.

Chapter 4. Development and Protection of TK

The preliminary research in the subject matter allowed me to hypothesize that the UN institutions involved in the area of TK protection are those focused on conservation and economic development (UNEP, FAO, UNDP, UNCED, CBD, World Bank), on safeguarding of cultural heritage (UNESCO, WIPO, UNCTAD) and indigenous rights (UNFPII, UNWGIP). In this chapter I examine the relationship between the content of TK protection policies and the UN activities related to development and conservation. This chapter consists of the three thematic sections, hence its comparatively to the other chapters long content. First, I introduce the theoretical grounds for the UN projects of economic assistance since the early 1950s till present, and discuss the relationship between specific ideas of development and the use of local knowledge for economic projects (subsections titled “Development” and “Traditional knowledge: Dossier”). Next I examine connections between the way in which the category of “traditional knowledge” had been constructed by the UN authors and the social theorists whose research focused on what had been termed “indigenous knowledge.” I specifically focus on the parallels between the ideas about indigenous peoples, indigenous intellectual activities and their value to the aims of development and conservation as described by social theorists and the way in which the UN authors conceptualized “traditional knowledge” and needs and means for its protection (subsection titled “TK and indigenous knowledge studies”). I conclude with an examination of conservation projects that took place on the territories of indigenous peoples since the early 2000s as a way to examine a degree of correspondence of the key assumptions upon which the knowledge protection policies rest and the realities of conservation (subsection titled “Conservation studies”).

Development

Post-World War II until the 1960s

Development practices in the territories of indigenous peoples began in the post-World War II period as part of a broader program of international aid under the framework of the UN development regime. This regime was launched with the establishment of the Expanded Programme of Technical Assistance for Economic Development of Underdeveloped Countries.⁵¹ It was closely connected (and perhaps reiterated in principle) with the aims of U.S. foreign policies at the moment: the 1949 was the year when then U.S. President Harry S. Truman issued the Four-Point Programme aimed to provide economic aid to so-called “underdeveloped” countries. For the U.S., the domestic development initiative to a significant degree was a policy response to the threat of the spread of influence from the Soviet block toward former colonies and other countries torn by the war; thus, possibly, supporting the UN development projects could have been a means for the U.S. to support its interests in the Cold War confrontation. It would take, however, a separate study to examine the connection between the politics of those states, on the territories of which the UN development projects took place, aims and interests of the rebellious populations living within the borders of those states and the U.S. strategic investments in the UN work at that moment. What, however, supports this notion is the simultaneous growth of intellectual support for the development projects in the U.S.: it was the U.S. school of modernization theorists, some of whom dedicated their careers to the study of then called “Third World” countries, who provided a scientific justification for these interventions abroad. Modernization theorists developed a set of approaches toward the study of

⁵¹ See the UN Charter, chap. IX, Arts. 55-56, and the UN ECOSOC Resolution 222(IX) of August 15, 1949 titled *Expanded Programme of Technical Assistance for Economic Development of the Under-Developed Countries*. For a detailed discussion see Rodríguez-Piñero (2005, 84-85, 146-172).

society and means of its social and economic transformations; what relates these approaches is a belief that 1) societies as systems could be categorized by the level of their industrial development falling into the two general groups: the traditional and the modern social systems, where the boundaries of each system coincided with those of the geo-political borders of states; and an idea that 2) societies also followed the same general laws in their transformation, from the lower toward the more developed condition (“modern”), where the change could be instituted by means of economic growth and technical progress.⁵²

The concept of “underdevelopment,” including investigations into its aspects, its causes, labeling it as a “problem,” and proposed approaches to solving it was formulated in the context of the existing state of economy of the advanced Western societies held apparently as a universal model toward which the societies considered underdeveloped must aspire. Tellingly, the traditional-modern comparison repeated the nineteenth century “civilized-barbarian” dichotomy constructed in some relation to the needs of colonial invasions just a half a century prior to the UN development initiative.⁵³

The first and the major development project on the territories of indigenous peoples was the Andean Indian Programme in Latin America that targeted rural populations in Bolivia, Peru, and Ecuador (1952-1962). While other grand projects of economic assistance took place in the later years, the Programme deems a special attention. It was conducted as a part of the ILO Indigenous Labour Programme that emerged shortly after the Montevideo Conference (1949), and within the context of making the first Convention on indigenous rights, the ILO 107. The Andean Programme aimed to address the concerns with the “aboriginal populations” of “the

⁵² For the history and the origins of the idea, and an overview of the theories of modernization see Tipps (1973).

⁵³ For more see Agrawal (1995), Young (1995), Tennant (1994), Escobar (1991), and Banuri (1990).

American continent” seen at the moment as prominent examples of underdeveloped groups whose alleged “backwardness” was assessed as a barrier toward a construction of an economically and socially strong nation.⁵⁴ In practice the program served to assist Latin American states in assimilating their rural (and often rebellious) Indians. It would be very helpful to develop connections between the Andean Indian Programme and the composition of the ILO Convention 107 happening in direct relation to this initiative as an examination of a degree to which the Convention was in fact an instrument to respond to indigenous needs and aspirations. In a brilliant and detailed analysis of social and legal making of the Convention Luis Rodríguez-Piñero points out that ILO 107 was composed as a measure to assist member states with the issue of integrating their indigenous populations (Rodríguez-Piñero 2005, 172). What is significant for this study is that the issues associated with populations referred to in the Convention as “indigenous, tribal and semi-tribal populations” gained its international prominence in relation to the development projects commenced in the territories of Latin America, thus introducing indigenous issues to the international community as a “problem of development” to quote Rodríguez-Piñero (Rodríguez-Piñero 2005, 126). Such an approach led to the spread and establishment of the perception of indigenous populations as generally “undeveloped,” i.e. backward, primitive, and doomed to disappear as social collectives on a transitory socio-economic stage in the theory and professional projects. Consequentially practices, histories,

⁵⁴ See the General Assembly Resolution 275(III) of May 11, 1949 titled *Study of the social problems of the aboriginal populations and other underdeveloped social groups of the American continent*. For the comprehensive discussion see Rodríguez-Piñero (2005, 86, note 16).

What is also of interest, as Rodríguez-Piñero explains, is that the notion of indigeneity used in the ILO literature at that moment referred to two distinct concepts of the phenomena, emerging from very different contexts: the first one was the colonial concept of indigeneity as defined and used in the ILO Colonial Code of the 1930s and in reference to the colonial work force, while the other one emerged from the work of the organization in Latin America. That second notion was influenced by Latin American administrative conceptions of indigeneity (*indigena*), in the content very similar to the notions of “Indian” and “aborigine” used at that time, describing an underdeveloped/low “cultural state” of groups toward which economic assistance program was aimed (Rodríguez-Piñero 2005, 146-150).

beliefs and modes of thought of indigenous groups were not of a prime importance to the development focused professionals and scholars. Instead, the knowledge *of* indigenous realities composed through fieldwork done in indigenous settings was a way to explain specificities of social state of particular groups and justify intervention in indigenous settings often referred to as acculturation/assimilation/integration of indigenous individuals with the more developed societies.

From the 1960s until today

The initial UN development initiatives (that took place not only in Latin America but certain states in sub-Saharan Africa and Asia) in many respects failed to deliver rapid economic transformations and mean for successful integration of socially and culturally different groups into newly built independent states. The failure led to questioning the validity of the modernization and development theories, also prompted by the increasing concern over ecological degradation resulting from economic practices, especially prompted by the international networking and the activities of global NGOs, some of whom worked in partnership with the UN. The Stockholm Conference, or as it is officially termed the UN Conference on the Human Environment (Stockholm, Sweden, June 1972) marks the official beginning of the UN policy related work on the environmental policies. During the same year the UN Environmental Programme was launched by the UNEP, a UN body which would become the leading agency in the work on composing the Convention on Biological Diversity a decade later. The development models constructed since then highlighted a need for economic planning to incorporate ways and instruments of safeguarding natural environments. Some of these models employed an idea of participatory development, a strategy to insure participation of local populations in all the aspects

of development projects.⁵⁵ A number of studies were produced in parallel focusing on connections between development, local people needs, and assistance of science, technology and trained experts working in partnership with local populations. An element of these studies composed an area of research that increasingly since the 1980s formed a field of “indigenous knowledge” studies. These studies provided a theoretical foundation for the TK policy regime that would emerge in the 1990s.

Since the late 1980s development had been theorized increasingly within a framework of sustainability that remains the conceptual umbrella for the projects of economic and technical assistance today.⁵⁶ The concept “sustainable development” first appeared in 1987 in the report *Our Common Future* published by the World Commission on Environment and Development (now the Brundtland Commission). The idea gained prominence after the Earth Summit, or as this event officially had been termed, the UN Conference on Environment and Development (Rio de Janeiro, Brazil, June 1992),⁵⁷ becoming a foundation for a global program aimed at meeting, to quote the Brundtland report, “the needs of the present without compromising the ability of future generations to meet their own needs” (WCED 1987, 19). A strategy to insure the inter-generational equity, sustainable development embraces work in the field of international policy

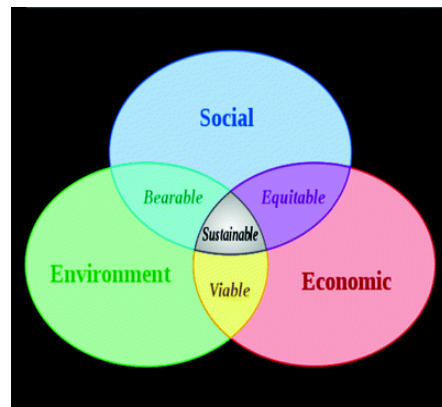
⁵⁵ The concept of participatory development was articulated in the 1971 UN report *Popular Participation in Development: Emerging Trends in Community Development* (UN Doc E.71.IV.2) and in the 1975 UN report *Popular Participation in Decision Making for Development* (UN Doc E.75.IV.10). It would take a separate study to examine the factors which led to the changes in the development from the top down approaches toward participatory way of conducting assistance project. Such a study would entail an examination of changes in the global economic structures interconnected with transformation of the specific states’ political systems and international relations as influenced by appearance of the newly independent nations increasingly since the 1960s.

⁵⁶ See, for example, the UN General Assembly of 2010 titled *Keeping the Promise: A Forward-Looking Review to Promote an Agreed Action Agenda to Achieve the Millennium Development Goals by 2015*.

⁵⁷ Since 1992 close to five hundred conventions had been adopted globally in response to the decisions for the Earth Summit. Echoing these conventions studies had been produced. At the same time legal and policy response, planning and scholarly work do not necessarily conclude in effective practical steps; in fact, there is a considerable gap between regulatory and implantation steps, as for example visible in the development surrounding climate change threat.

and law and corresponding professional activities as a way to construct and maintain a balance between social and economic needs and requirements for environmental safety (see fig. 1).

Fig. 1. SD Principle. (Reprinted from Merad, Dechy, and Marcel 2011).



The interpretations of sustainability vision are contested; most theorists agree, though, that sustainable economies – i.e. those that allow distributing wealth in socially just ways - require transitioning from theorizing economic processes as set of activities aimed at benefits toward pragmatic evaluation of the cost and the results of production in light of the limited and in some cases disappearing resources.⁵⁸ One of the key strategies proposed to achieve sustainability is conservation, most generally defined as a set of planned practices aimed at deliberate preservation of resources. The policy development surrounding protection of elements of traditional knowledge, relevant to sustainable economies, emerged in direct relation to conservation.

Traditional knowledge: Dossier

⁵⁸ For more on the theories of sustainability see the classic WCED text (WCED 1997), and a study by Miller, Caplow, and Leslie (2012). For the critique of relationship between poverty and sustainable economies and conservation see, for example, Adams et al. (2004), and a work by Giddings, Hopwood and O'Brien (2002).

I take the Earth Summit to be the starting point of the UN activities focused on the protection of entity that would be referred to in the policy documents as “traditional knowledge” (TK). The Summit was the first high level policy event that concluded with a set of resolutions that identified “traditional knowledge” as an object of protection by policy and legal measures. I will employ the abbreviation “TK” consistently throughout this work using it as a category that embraces all the related expressions that denote forms of intellectual creativities of the groups and individuals leading the so-called “traditional” lifestyle, indigenous peoples included, and seen and defined as subject of necessarily protection due to variety of factors including the relevance of these creativities to the aims of development and conservation. The two key Summit decisions that focused on protection of TK related the objectives and means of the TK with the aims of sustainable development. These are the Rio Declaration (Principle 22) and Agenda 21 (Chapter 26). The role of TK to the development objectives is further explicated in the Summit official agreements⁵⁹ - the Convention on Biological Diversity (CBD)⁶⁰ that has worldwide application, and the UN Convention to Combat Desertification (UNCCD),⁶¹ which focuses on

⁵⁹ Other relevant conventions in which value of TK to sustainable economic practices and conservation was recognized, and that were considered at that time include the Ramsar Convention on Wetlands (1971); TRIPS (1994), UPOV (adopted 1961, revised in 1971, 1978, 1991) which focused on the relationship between intellectual property rights and protection of TK; and the resolution of the 1989 FAO Conference annexed to the FAO 1983 resolution 8/83 titled *International Undertaking on Plant Genetic Resources* which recognized the rights of rural communities and farmers in conservation and in the use of plant genetic resources (UN Convention to Combat Desertification 1999a). The documents produced by these conventions were not consulted for this piece.

⁶⁰ CBD recognized the importance of TK to sustainable development and conservation through three key provisions: TK must be 1) respected, preserved and maintained; 2) promoted for application outside of the contexts of its origination yet with approval of TK holders; and 3) the holders must share the benefits derived from the use of this knowledge brings equitably with others. Relevant articles are Art. 8(j), Art. 17.2, Art. 18.4, and Art. 15.7 (UN Convention on Biological Diversity 1992).

⁶¹ UNCCD recognized the role of TK in combating desertification within a sustainable development framework somewhat differently from the CBD by focusing on the role of TK in transfer, acquisition and development of technologies. The four “obligations” which UNCCD parties must fulfill regarding TK in the implementation of the Convention include 1) the collection of information about TK through recording; 2) the development of TK protection measures with insurance of benefits to local people; 3) the dissemination of TK within the local communities as well as outside of them; 4) building partnership among local people, researchers and policy makers on various levels. Specific emphasis is placed on the documentation of TK by creating inventories with the participation of local people and/or through research conducted in their territories and by integrating local ideas and

the countries affected by droughts specifically of Africa. In addition, the *Forest Principles*,⁶² that emerged resulting from the Earth Summit, further explicated the role of TK in development related to conservation of forests.

Nature of traditional knowledge: “Knowledge, innovations and practices”

The CBD is the first and by far the major international instrument that insures protection of TK. The way the CBD addresses the subject matter of protection is conducted in relation with the aims of biodiversity conservation as a strategy of sustainable development.⁶³ The historical positioning of this treaty as well as its character as a legally binding agreement make the CBD the foundational instrument to which the texts of the policies and law to come would have to relate while in a different manner, including the other Summits agreements (the UNCCD and the *Forest Principles*) as well as the next generation of norms aimed at protection of TK (UN Convention to Combat Desertification 2000).

practices with modern science. Relevant articles are Art. 18 (2), Art. 16, and Art. 17 (UN Convention to Combat Desertification 1994).

⁶² *Forest Principles* shortened for *Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests* is a non-legally binding statement certain principles of which address protection of TK. Namely, the principle 12d of the *Instrument* provides for the recognition, recording, development and incorporation into program implementation of “appropriate [to sustainable development of forests] indigenous capacity and local knowledge, through institutional and financial support and in collaboration with the people in local communities.” The principle 2d stresses the importance of local community participation and urges governments to promote it. The principle 5a urges states to recognize and support the “...identity, culture and the rights of indigenous people, their communities and other communities and forest dwellers.” The Principle 5a further states, that “[a]ppropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, inter alia, those land tenure arrangements which serve as incentives for the sustainable management of forests” (UN Conference on Environment and Development 1992b, vol. III). Since 1992 the statement was developed into *Non-Legally Binding Instrument on All types of Forests* adopted by the UN General Assembly on 17 December 2007 (Resolution 62/98).

⁶³ At least two interrelated theoretical developments could be traced in relation to the way in which the topic of biodiversity conservation emerged in the related policy and legal texts, CBD being the major one. One theme focuses on biodiversity as variety of life forms; conservation in this framework is means to prevent possible extinction of species and environmental supplies vital for the survival of humans. The interrelated, yet separate theme presents biodiversity as mere resources, where resource conservation is a subject matter of resource acquisition and distribution.

The CBD refers to TK as “knowledge, innovations and practices” in its Article 8(j):

Each contracting Party shall, as far as possible and as appropriate, subject to its national legislation, respect, preserve and maintain *knowledge, innovations and practices* of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biodiversity and promote the wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of benefits arising from the utilization of such *knowledge, innovations and practices*” (UN Convention on Biological Diversity, 1992 (emphasis is added)).

The term “traditional knowledge” emerged during negotiations over the text of the Convention, and was apparently proposed by a representative of Canada as to be included in a draft text of the Convention Article 14 focused on “traditional indigenous and local knowledge.”⁶⁴ The Convention does not provide a definition of indigenous peoples (see Article 2, *Use of Terms*); neither does it attempt to address the question of defining these populations. Instead, CBD refers to the holders of TK as “indigenous and local communities embodying traditional lifestyles” in response to the fact that some countries, especially in Asia, and some Latin American states do not recognize the international treatment of these groups resulting in non-recognition of existence of indigenous peoples on their territories; representatives of these countries prefer the “local communities” term instead (Arts 1998, 179). Neither is there a uniformly agreed upon definition for the term “knowledge, innovations and practices.” Rather the term is explicated in response to the specific normative requirements of the Convention. Namely, it includes “skills and techniques” that constitute valuable elements of “culturally diverse knowledge systems” in

⁶⁴ The text of the draft article reads: “Each Contracting Party, recognizing that *traditional indigenous and local knowledge, innovations and practices* are contributing to the wise and sustainable use of biological resources and the conservation of biological diversity and have intrinsic and economic value, shall endeavor, within its national legislation, policies and capabilities, to ensure that measures be established to protect such traditional knowledge, innovations and practices and that access and transactions related to them, when appropriate, be duly rewarded.” (UN Environment Programme 1991a; emphasis added). For a history of making the Convention see, for example, Kate and Laird (2002).

accord with Article 10(c), which requires the protection of “traditional cultural practices” (UN Environmental Programme. Intergovernmental Committee on the Convention on Biological Diversity 1994a). It also includes information, know-how and indigenous [local] technology knowledge that as asserted constitute a vital resource to cost-effective, participatory and sustainable development practices in accord with Article 18(4) aimed at promotion of technical and scientific cooperation in development and use of “indigenous and traditional technologies” (UN Convention on Biological Diversity 1997b).⁶⁵

These conceptual constructions would form the foundation for the way in which TK conceptions would appear in the records of the UN agencies. I examined the records composed by the authors of the UN agencies involved in the development practices that in various capacities worked in the area of protection of TK. The records I examined date from the early 1990s till the early 2000s, including the records produced within the framework of CBD implementation. Within the framework on the UN Convention to Combat Desertification, TK was identified as an entity that embraced ideas and practices related to the protection of agricultural biodiversity (UN Convention to Combat Desertification 1999a). Within the context of the *Forest Principles*, TK is a “traditional forest-related knowledge,” the term compatible with the CBD terminology, yet related to the work of the Intergovernmental Panel on Forests established in 1995 by the Economic and Social Council by decision 1995/226 (UN Convention on

⁶⁵ A comprehensive list of elements that are relevant to CBD implementation of ways and means of protection of what is termed “traditional knowledge and technologies” is included in the report of the Open-ended Intergovernmental Meeting of Scientific Experts on Biological Diversity. It specifies that the elements to be protected must fall into a category of the “technologies and know-how” as relevant to the management of ecosystems and characteristic species and genetic resources. Management components include TK related to the lands, habitats, ecosystems and their functions, taxonomies, and the means of communication and information transfer. Communication methods might include songs, dance, plays and puppetry. Another two factor which makes TK element eligible for protection include TK relevance to conservation and sustainable use of biodiversity (which is a variety and variability of life forms (microorganisms, plants and animals) necessary to sustain functions of the eco-systems). Components of sustainable use include knowledge employed for cultural and spiritual purposes, traditional medicines, and methodologies employed for evaluating the relevance of this knowledge (UN Environmental Programme. Intergovernmental Committee on the Convention on Biological Diversity 1994b).

Biological Diversity 1996b).⁶⁶ “Traditional forest-related knowledge” had been described as an element of a larger sub-set of TK termed “traditional ecological knowledge” (UN Convention on Biological Diversity 1998). Forest-related TK had been described in the records of the UN agencies involved in the subject matter of protection as physical, social, and biological aspects of indigenous or local communities, “rules” to use these components in an ecologically friendly manner and to govern relationships among the users, tacit knowledge, “technologies” through which this knowledge had been and could be employed for communal needs, including ritual practices, and a specific worldview upon which this knowledge was based and that provided it with a socially and culturally unique character (UN Convention on Biological Diversity 1996b; World Bank 1998, 1999). In one document forest-related TK was described as being an intangible component “inherent in the genetic resources,” genetic resources being the *material* (a somewhat generic term commonly used within the UN parlance in defining this entity) of biological (microorganisms, plants, animals) origins and valued as elements that contain hereditary information (UN Convention on Biological Diversity 1997b). Within the work directly related to activities of the CBD the terms “traditional science” and “ethno-science” had also been used interchangeably with TK (UN Convention on Biological Diversity 1996c, 1997b). Apart from the elements described as directly useful for purposes of economic development and conservation TK was also described as containing “sacred” components. The sacredness of TK, as the UN authors explicated, emerged from indigenous/traditional groups’ perception of natural environment as a part of the “spiritual world” (especially in the contexts of connection between nature and religious/spiritual practices (UN Convention on Biological Diversity 1997a; UN

⁶⁶ The use of term “traditional ecological knowledge” could be traced back to the to the 1980s and the work of the Commission on Ecology's Working Group on Traditional Ecological Knowledge which was established by the 17 Commission on Ecology of an international environmental network - the International Conservation Union. The term is closely interconnected with the body of research focused on “TEK” (see, for example, UN Convention to Combat Desertification 1999a).

Convention to Combat Desertification 1999a). In different contexts TK was also described as a foundation for indigenous identity, especially in relation to the indigenous rights to culture (UN Convention on Biological Diversity 1996b, 1997a).

TK holders

Within the CBD context TK had been understood as collectively held and as reflecting the rich experience, wisdom of its “holders.” Holders had been further described as “stewards,” as in reports related to the work of UN FAO (Kuhnlein and Turner 1991; UN Food and Agricultural Organization 2005), “custodians,” and/or “owners” of this knowledge (UN Convention on Biological Diversity 1996b) who lead the “semi-isolated” life style that allowed them to develop culturally distinct relationships with nature.⁶⁷ Often their occupation was described as “farmers” and/or “foresters.” As a rule they transmitted their knowledge orally leaving it undocumented (UN Environment Programme 1991a; UN Convention on Biological Diversity 1996c; UN Economic and Social Council. Commission on Sustainable Development 1996; UN Convention to Combat Desertification 1999a; UN Food and Agricultural Organization 1998). Members of traditional, indigenous and local communities as described had a stake in conserving natural environments upon which their lives depended, turning them into the both, the “natural resource managers” as well the “stakeholders” entitled to share in the benefits from employment of their knowledge (UN Environmental Programme. Intergovernmental Committee on the Convention on Biological Diversity 1994a; UN Convention on Biological Diversity 1996a; UN Convention to Combat Desertification 1999a).

⁶⁷ The Secretary-General of the Intergovernmental Panel on Forests states in the 1996 report that farmers and foresters “can be seen as forming part of the same continuum” because “indigenous and local communities frequently integrate forest and agricultural management systems (UN Economic and Social Council. Commission on Sustainable Development 1996a).

Descriptions of TK had often been constructed through comparisons with science. Some authors recognized TK as similar to scientific knowledge in that TK evolved through observation and experiments (UN Convention to Combat Desertification 1999a; World Bank 1998). At times TK's "holistic and qualitative" elements are described as constituting the key differences with Western scientific knowledge, recognized as more valid: TK lacked an analytical element and included skills of persons who had no formal training and learned from members of their communities and through "hands-on" experience (UN Convention to Combat Desertification 1999a, 1999b). Yet, these and other authors emphasized that TK should not be discarded on its supposed backwardness, superstition, and primitivism when compared to modern science. Nor should it be considered "free goods" as had happened in the past leading to considerable "erosion" of this knowledge connected with the current disappearance "at alarming rates" of languages and indigenous cultures (UN Convention to Combat Desertification 1999b; UN Environmental Programme. Intergovernmental Committee on the Convention on Biological Diversity 1994a; UN Economic and Social Council. Commission on Sustainable Development 1996a; UN Convention on Biological Diversity 1998; and Article 18(2) of UNCCD). TK was also described as having potential to support development networks, assist in the identification of new products with commercial value, and provide insights into interactions within natural systems (UN Convention to Combat Desertification 1999a; UN Convention on Biological Diversity 1996d).

The *traditionality* of TK had been described directly in relation to the ecologically friendly life style of its holders as well as its old age. According to some authors, TK while found today in forms compatible with modern knowledge types (technologies, techniques, know-how, and/or knowledge systems) had been developed over thousands (or even millions) of years

and had been passed along by generations of people (UN Food and Agricultural Organization 1998; UN Economic and Social Council. Commission on Sustainable Development 1996a; UN Convention on Biological Diversity 1996a, 1997b; UN Convention to Combat Desertification 1999a; UN Environment Programme 1991a; UN Environmental Programme. Intergovernmental Committee on the Convention on Biological Diversity 1994b). Despite its somewhat non-scientific nature, TK was described as dynamic; it included mechanisms for innovation and change, specifically through the adaptation of outside methods of using natural resources and technologies. In one document tradition was described as a “filter through which innovation occurs,” (UN Convention on Biological Diversity 1997b), or as explicated in other sources research methods and application of practices that however stayed unchanged allow generation of new knowledge (UN Convention on Biological Diversity 1996d; Bunning and Hill 1996). In a different context the phrase “traditional innovation” was used to refer to adapting to different conditions from which new ideas could emerge within an overall social context and based on customary practices and rules. Thus, despite the fact that TK could be relevant only to the contexts in which it had originated, through innovative use, this local knowledge could, according to the UN authors create “substantial” opportunities for conservation and the sustainable use of natural resources (UN Convention to Combat Desertification 1999a; UN Convention on Biological Diversity 1997b).

To sum up, TK as the UN authors had identified it, considered to be “the combination of accumulated knowledge and the potential for innovation and adaptation of traditional systems, and the equivalent knowledge base and innovative capacity of 'modern' or 'scientific' systems which, if encouraged, offers unquantifiable, but probably substantial, opportunities for

identifying improved techniques for conservation and sustainable use of biological diversity (UN Convention on Biological Diversity 1996d).

TK for development and conservation

A majority of the UN authors emphasized the crucial usefulness of TK for the aims of development and conservation. TK according to these authors must be employed during every stage of economic processes, being paramount not only to the aims of development, but to insuring local peoples' meaningful participation in the process. This knowledge was seen as a key to empowering local populations for managing their resources, for alleviating themselves from poverty on their own terms and is a tool for sharing benefits to which local people are entitled (World Bank 1998; UN Convention on Biological Diversity 1996a, 1997a; UN Environment Programme 1991a; UN General Assembly 1992; UN Convention to Combat Desertification 1999a). TK was also described as valuable to the global society especially due to its commercial potential; many authors emphasized its value as a resource for development of new natural products, specifically in the areas of ecology, medicine, agriculture, natural resource and ecosystem management, by researchers and industries (UN Environment Programme 1991a; UN Environmental Programme. Intergovernmental Committee on the Convention on Biological Diversity 1994b; UN Convention on Biological Diversity 1996a, 1996b). In relation to the commercial value of TK the authors emphasized the CBD clause on the "equitable sharing of benefits" in the Article 8(j) in connection with a concern over the exploitation of local knowledge by industries (primarily agricultural and pharmaceutical) whose interest in TK by the early 1990s was already considerable. It would difficult if not impossible to actually estimate the value of TK for specific industries due to its intangibility as a resource as well as due to lack of concrete means to actually measure in concrete terms the potential impute of

knowledge/information on production.⁶⁸ At the same time Darrell Posey estimated that the commercial worth of TK-developed crop varieties to the international seed industry would be about fifteen billion of U.S. dollars per year, while that of medicines developed from work in indigenous communities would be almost three times more, about forty three billion of U.S. dollars per year (Posey 1990). Andrew Gray estimated that the amount of traditional medicine plants from which prescriptions drugs had been developed at that moment to be close to three quarters of all plants used in the industry (Gray 1991). In FAO report of 1995 it was estimated that the global trade in TK-derived product reached US \$11 billion (FAO 1995).

Protection of TK had been discussed from a position of employment of the prior informed consent as in accord with the CBD Articles 15.4 and 15.5; methods of obtaining consent, the need to create research ethics codes to regulate access to TK as ways of implementing the consent measure in practice had been discussed within a larger context of human rights normative framework and recognition of customary laws (UN Convention on Biological Diversity 1997b, 1998).⁶⁹

Means for protection: documents creation

One of the major ways to protect TK and promote respect toward it proposed by the UN authors had been to accord it “*status in national life comparable to that shown to scientific knowledge,*” to quote a UNEP author (UN Convention on Biological Diversity 1997b). FAO authors proposed identifying and building traditional conservation measures “*to promote more equitable access by all members of the community*” (Bunning and Hill, 1996). The technical

⁶⁸ For an overview of the commercial value of traditional medicine and plants worldwide and relevant statistics see, for example, Hamilton (2004).

⁶⁹ For discussion of legal means for protecting TK and the rights of its holders see for example, UN Convention to Combat Desertification (1999a) and World Bank (1999).

means to achieve this aim would rest, as other authors pointed out, on the cooperation between scientific and local communities in documenting and recording TK for specific scientific, development and conservation related purposes (UN Convention on Biological Diversity 1997b; UN Environment Programme 1991a). Some of the measures upon which such cooperation should focus included an integration of technologies into what had been called indigenous “systems,” an exchange of “modern” technologies with TK, the creation of traditional-modern technologies synergies, the introduction of TK into development programs and the dissemination of the resulting new information (World Bank, 1999; UN Environmental Programme. Intergovernmental Committee on the Convention on Biological Diversity 1994b; UN Convention on Biological Diversity 1996b, 1997b, 1998; UN Convention to Combat Desertification 1999b; UN Economic and Social Council. Commission on Sustainable Development 1996b). Within this paradigm a new participatory approach is required to bring about a collaborative identification of “modern tools” needed to strengthen the development and conservation capacities of local peoples (UN Convention on Biological Diversity 1996d). The authors who focused on the integration of scientific and local ideas and practices with scientific knowledge tended to promote the creation of information products in the form of TK catalogues, inventories, registers, and databases local and indigenous technologies, innovative know-how and taxonomies that can facilitate technology transfer and help to identify elements of biodiversity.⁷⁰ These products could be stored in computer systems and managed using modern technologies on levels ranging from national to worldwide (UN Economic and Social Council. United Nations Forum on Forests 2004; World Bank 1998; UN Convention on Biological Diversity 1996b, 1998; UN

⁷⁰ Among the best-known examples of TK databases is the one created by the UNESCO MOST Programme (phase I, 1994-2003) toward promoting international social science research and to strengthen links between policy makers and the research community (MOST and CIRAN n/d) and the *Indigenous Knowledge and Development Monitor*, published from 1992 to 2004 by the Nuffic Centre for International Research and Advisory Network (see <http://app.iss.nl/ikdm/ikdm/ikdm/index.html>).

Economic and Social Council. Commission on Sustainable Development 1996b; UN Environmental Programme. Intergovernmental Committee on the Convention on Biological Diversity 1994b). These traditional knowledge centers could function as “links” between those who created TK and the community of developers (UN Convention to Combat Desertification 1999b).

Participation

Participation has been repeatedly discussed within the context of implementation of CBD and UNCCD for the purposes of TK protection. Cooperative management agreements, consultation with local people and non-governmental organizations and their involvement in decision-making had been particularly emphasized (UN Convention on Biological Diversity 1996b, 1997b, 1998; Bunning and Hill 1996; UN Convention to Combat Desertification 1999b; World Bank 1998). Collaboration between scientists and rural people had been proposed as a way of insuring local/indigenous participation in the protection of local intellectual activities and products, including the discovery and use of knowledge through cooperative work (UN Convention on Biological Diversity 1996d). The World Bank author envisioned that development objectives could be successfully achieved through the realization of a “global knowledge partnership” created with the use of available information and communication technologies (World Bank 1998).⁷¹ To reach such cooperation a set of educational activities was also proposed, including workshops and meetings between local populations and the scientific community, building capacity programs focused on a synergy between TK and modern science and the training of local populations (UN Convention on Biological Diversity 1996b, 1996c, 1997b; UN Economic and Social Council. Commission on Sustainable Development. 1996b; UN

⁷¹ For critique of World Bank “knowledge” policies see, for example, Mehta (2001).

Environment Programme 1991a; UN Environmental Programme. Intergovernmental Committee on the Convention on Biological Diversity 1994b). On the institutional level the need for more case studies and relevant research had been emphasized. The need for a body to carry out intersession follow up work (in form of expert/working group, technical panel of experts) had also been repeatedly stressed. In addition, research institutions working with indigenous peoples were considered as providers of local/indigenous groups with monetary help (UN Convention to Combat Desertification. 1999b; UN Convention on Biological Diversity 1996c, 1997a, 1997b, 1998; UN Economic and Social Council Commission on Sustainable Development 1996b).

TK and Indigenous Knowledge Studies

An overview of the relevant social science studies published prior to the Earth Summit shows that TK protection theme within the UN context did not emerge in a theoretical vacuum or result from a groundbreaking discovery. On the contrary, recognition of the role of elements of the TK and of indigenous participation for projects of economic assistance and protection of natural environment on a policy level was a somewhat natural consequence of the way in which the relation between the two (local ideas and practices and economic change) had been theorized since the late 1970s. An overview of the relevant literature suggest that the basis of the publications in which the role of what had been called for the most part “indigenous knowledge”⁷² to the aims of economic projects had been explained in those studies rested only

⁷² While “indigenous knowledge” is the term most frequently used since the appearance of the first works focused on the subject matter, other related terms used include “local knowledge,” “traditional ecological knowledge” (TEK), “rural people’s knowledge,” “folk knowledge,” even “culturally-shared” knowledge emerging from a particular area. The way in which theorists tended to define it depended on the context and/or the subject matter of the study as well as was influenced by the perception of indigeneity among these theorists. For an overview of the terminology see for example, Agrawal (1995) and Kothari (2000).

on the novelty of their research focus, namely on the employment of local expertise to the specific to this time objectives of development practices. This research could be traced back to the early works of ethno-scientists who collected data from the “traditional” communities, mostly in relation to the studies of plants.⁷³ The research that emerged from the late 1970s formed a new field termed “indigenous knowledge” (IK) studies focused specifically on the nature, forms and role of local (indigenous) knowledge to development and conservation. The area of IK studies grew significantly in the 1980s and 1990s in connection with the growing attention of policy makers to the subject matter. The literature produced during this period provided theoretical grounds for the UN affiliated theorists: the UN authors referenced their work to the existing studies, grounded their reasoning and formulated forms and content of TK using theoretical frameworks most specifically conducted in the fields of ecology and anthropology (Brush 1993; Hames 2007).⁷⁴

An examination of connection between the works of the UN authors and of the researchers from the IK field shows a number of similarities. The two overwhelmingly popular tendencies are a propensity to define the object of study (TK or IK) by comparing and contrasting it with science and by using a system approach to conceptualizing knowledge forms and expressions in general (Kothari 2002).⁷⁵ The both tendencies are already visible in the

⁷³ For a brief overview of the early studies see for example, Nazarea (2006) and Brookfield (1996).

⁷⁴ In addition, a number of authors reinforced perception of IK as a panacea for sustainable development by emphasizing the role of indigenous peoples as natural conservators. Chris Tennant identifies two interrelated arguments in support of protection as propelled by these authors: first they tend to agree that IK must be protected as a unique resource developed by indigenous peoples being stewards of nature living as physical and spiritual one with land and natural environments; this argument is reinforced by the anxiety over the disappearance of this valuable knowledge due to disappearance of indigenous peoples themselves (“victims of development” as Tennant puts it) as well as due to the fact that its wealth had been ignored for many years and must be saved (Tennant 1994, 16). To what degree however, representations of IP as conservators and specifically those whose wealth of knowledge is an answer to modernity problems remains very unclear from these assertions.

⁷⁵ Michael Warren, one of the founding theorists of the IK field, whose work was commissioned by the World Bank, systematically employed a system metaphor to characterize indigenous knowledge (Warren, 1990(b), 1991; Warren,

foundational works of the IK researchers. For example, Michael Howes and Robert Chambers of the Institute of Developmental Studies, University of Essex in their commonly considered classic work on IK described what they called “indigenous technical knowledge” as a resource derived from “intuitive” perception of reality, inferior to scientific knowledge as means of predicting and explaining processes of reality due to IK propensity to exist as a “closed system,”⁷⁶ with, however, great potential realizable through cooperation with science (Howes and Chambers 1979).⁷⁷ The system approach is also visible as the key methodological device in creation of information products (knowledge inventories, catalogues, and databases) from the data obtained through the research in indigenous settings. Some prominent examples of such initiatives are the UN World Bank project on Indigenous Knowledge, UNESCO’s MOST programme, as well as work of development organizations NUFFIC and CIRAN that managed thirty-five research centers on production of indigenous knowledge and a publication of *The Indigenous Knowledge*

Slikkerveer, and Brokensha 1995). Compare with the UN authors, for example, with Bunning and Hill (1996), UN Convention on Biological Diversity (1996b, 1997b).

⁷⁶ The idea of dichotomous relationship between indigenous and scientific perceptions of reality and the tendency to describe the both entities as “systems” could be traced back to the premises of modernization theory now applied to analysis of modes of thought, purportedly existing among indigenous individuals. A key premise of system theory is that separate elements can be understood as parts of an interrelated whole functioning according to the principles applicable to the system as well as to each of the system elements. The theory finds parallels with the nineteenth century ideas on biological nature of organisms that allow theorizing comparisons and understanding of social entities as those functioning a systematic manner alike biological creatures due specific laws of universal kind that govern the existence of the both. In the second part of the twentieth century the idea developed into what Ludwig Von Bertalanffy termed system doctrine applicable to all scientific endeavor, namely a perception that separate elements can be understood as parts of an interrelated whole functioning according to the principles applicable to the system as a whole as well as to each of the system elements, thus composing a systematically functioning entity. Clarification of the premises helps seeing ways of application of system approach in very different contexts, such as for example works of Apffel-Marglin that have a clear indigenous advocacy agenda (Apffel-Marglin and Marglin (1990) and Apffel-Marglin (1996) and the one by Grenier (1998) focused on developing guidelines for researchers who work in indigenous settings. For somewhat recent ways of employing system toward analysis of indigenous knowledge see, for example, the study by Niels Röling and Paul Engel. In their descriptions of “interface” between indigenous knowledge systems and institutionally developed knowledge they defined IK systems as “coherent and consistent set of cognitions and technologies including their underlying cosmologies which have slowly involved by trial and error of generations of farmers.” (Röling and Paul Engel as quoted in Kothari, 2000).

⁷⁷ Other pioneering works in the IK field 1980 manuscript by Brokensha, Warren and Werner (1980), other works edited by Chambers (1983) and Chambers, Pacey, and Thrupp (1986), publications by Michael Warren (1991) and Warren, Slikkerveer, and Brokensha (1998), Richards (1985), Scoones and Thompson (1994). The theme of traditional ecological knowledge developed in the 1990s (see, for example, Williams and Baines (1993), Inglis (1993), Johannes (1989) and Berkes, Colding, and Folke (2000). For an anthropological perspective and role of applied anthropology in the field see Sillitoe (1998).

and Development Monitor, a periodical aimed to support indigenous knowledge resource management around the world. To what degrees these databases were constructed in response to the needs and aspirations of indigenous individuals whose knowledge they represented as compatible with science, or to what degree they in fact these were *indigenous* databases (in a sense that their content corresponded to the way in which particular indigenous groups perceived and expressed reality) remains a subject for a separate study. At the same time a number of theorists criticized IK studies as well as the employment of these studies toward creating information products.⁷⁸ Some of the major criticism focused on the fact that the research activities conducted in indigenous settings at the time when no significant ethical or legal norms existed to insure benefits to the those indigenous groups on whose territories and/or with the help of whom research had been done at times resulted in misappropriation and misuse of indigenous knowledge by the others, often for commercial purposes. Other authors emphasized that thus constructed knowledge products proved to be useless and/or not available for the use of those local groups in whose settings the construction of these products originally took place. In addition the information products housed as public domain led to degrading of some of the indigenous beliefs and practices described, interpreted and publically displayed over the Internet

⁷⁸ Arun Agrawal is among those theorists who provided a comprehensive critique of IK studies. Agrawal argues that the process of the indigenous databases construction are an instance of a wider practice of writing about the research, and of transforming the actual (in terms of observed/studied) indigenous reality into a category within which indigenous is reconstructed in a manner consistent with its utility to particular (institutional) aims. In his analysis of indigenous databases, catalogues of “best practices,” and folk taxonomies and/or studies of practices, Agrawal demonstrates how documentation and preservation of IK helps indigenous ideas emerge as a “fact” at the expense of its integrity, nuance and context. Jude Fernando goes further, and calls thus created “indigenous knowledge” to be “means, through which diversity of knowledge systems and the embedded cultures.. are disciplined and managed according to capital’s need to expand” (Fernando 2003). Agrawal maintains that preservation and documentation of indigenous peoples knowledge by means of its “scientizing” is a way of channeling resources away from the more urgent aim of transforming power relations, and, thus, empowering those who have an interest in appropriating knowledge of indigenous peoples. Classifying institutional knowledge under a category of “indigenous” and/or “traditional” stresses the importance of knowledge, rather than people; or more precisely, of information derived from the studies of indigenous communities and/or individuals. As a result, indigenous/traditional knowledge emerges as a conglomeration of pieces of scientific information valued for reproduction of institutional practices with larger institutional goals in mind (Agrawal 1995, 2002). For related works see, for example, Briggs (2005), and Briggs and Sharp (2004).

with no consent from the people whose knowledge was used for these purposes. At the same time proponents of preserving local knowledge via creation of information objects noted that thus created resources might strengthen and/or lead to further collaboration between scientific and indigenous communities. Such collaboration could lead to the use of local ideas in conservation and development by engaging local people in processes potentially beneficial to them.⁷⁹ And in fact, as I demonstrate in the next section, some initiatives did result in positive consequences for the local communities, yet only in specific kind of conditions and also when by the local/regional/state governing entities.

To conclude, this examination makes possible to observe that the way in which the concept “traditional knowledge” was constructed within the UN protection policies to a significant degree rested upon the relevant writings of social scientists, some of whom directly participated in development projects.⁸⁰ The reported characteristics of TK appear to be similar to those found in the social science literature. Both the “indigenous knowledge” researchers and the “traditional knowledge” professionals tend to agree on the crucial role of this type of knowledge for development. They tend to perceive this knowledge to exist in a form comparable to the standardized knowledge sources used in scientific culture (particularly in representations of this

⁷⁹ At the same time a number of studies emerged that did consider the way in which local people construct meaning and placed the ideas into local contexts, such as, for example, works by Scoones and Thompos (1994) and Fairhead and Leach (1996).

⁸⁰ Not only the reference to the sources as well as the way in which this literature is created (using similar formats to a journal social science article) but actual statement of the reports indicate that their authors use research in the social science (and in times are employed by the UN agencies for purposes of making these reports). For example, as one report states : “Today, a growing body of literature attests not only to the presence of a vast reservoir of information regarding plant and animal behavior, nutrition and medicinal potentials of natural products, but also to the existence of effective indigenous strategies for ensuring the sustainable use of natural resources” (UN Convention to Combat Desertification 1999c). Further, as a few authors observed, changes in development strategies led to the growing number of social scientists employed in the field as professionals which led to the growing number of publications (Hoben 1982; Escobar, 1991).

knowledge as a “system” and/or “technology”).⁸¹ Consequentially, scientists and professionals engaged in development argue for preservation and conservation of this type of knowledge in a manner that they believe would support development objectives that in turn would prove beneficial to local people. The key proposed methods of preservation include documenting this knowledge and engaging local groups in the projects of economic development and conservation.

Conservation Studies

The research on “indigenous knowledge” can be located as an element of a wider group of studies that examine and, at times, promote support of indigenous subsistence practices marked by their asserted inherently nature friendly character and threatened by the post-industrial economies. Apart from the political potential of thus presented value of indigenous life style⁸² to conservation the notion of their inherent nature friendly character (implicitly radically different from the world faced with environmental degradation) is disputed.

One group of theorists critique the idea of indigenous stewardship of nature as a colonial legacy and an expression of an assertion of duality between indigenous life styles marked by the *traditionality* and the so-called modernity in a new guise (Tennant 1994). Indigenous peoples are collectives that exist as social and geo-political parts of their states, at times, practicing life styles significantly different from the larger socio-cultural settings (as well as among each other) yet remaining integral parts of the state and at times, international economies. Other groups of

⁸¹ James Fairhead’s description of “indigenous technical knowledge” existing “*like a lost and untranslated technical manual authored by a particular ‘culture’...* [which is to be published by an expert and/or a researcher] *who has acquired the script..*” (James Fairhead quoted in Sillitoe, Bicker and Pottier 2002, 6).

⁸² For the use of ecological native metaphor for political purposes and by indigenous advocates see, for example, Ulloa (2003), and Conklin (1997).

scholars critique the larger idea that humans by nature live in harmonious relations with environment (Mitman 1992). They argue that the view that humans are integral parts of the natural environment striving toward maintenance of the balance among diverse elements (organic wholes) is a legacy of social evolutionism and theorizing the nature of social life as that of an organism. Finally scholars working in the area of conservation point out that what has been presented as conservation practices of indigenous groups is a mere prevention by certain collectives of an overuse of the resources rather than a planned set of actions aimed at long term preservation of resources (Alvard 1993). Eric Smith and Mark Wishnie, for example, explicate that it is the small size of communities, relative remoteness some of them from the post-industrialized world and the subsistence practices based on hunting, fishing, plant gathering that might have resulted in the balanced use of resources. While sustainable as means to continuously support community needs these practices can hardly be considered planned actions focused on preventing depletion of species and environmental degradation (Smith and Wishnie 2000). In addition replication of these practices on the large scale can hardly be economically feasible (Fennell 2008).

As a way to test relevance of the CBD knowledge protection policies and informed by this scholarship I ran a study of conservation projects that occurred in consequence to sustainable development policies and that took place on the territories of indigenous groups. I defined conservation as a set of planned activities aimed at conservation of natural resources.⁸³ I interpreted the CBD clause “knowledge, innovations and practices” as ideas and modes of

⁸³ Conservation has been defined by a number of theorists, where the key and somewhat polar conceptions include a so-called “ephenomenal” conservation, using Michael Alvard description, emerging from lack of ability and/or interest of the groups examined to drive local resource to the extinction (hence, an assumption that indigenous peoples live in harmonious relationship with environment) toward a set of consciously planned practices which aim at deliberate protection of environment. For discussion of the concept “conservation” see Alvard (1993, 1998), and Ruttan and Mulder (1999).

thought that embraced all aspects of social relations within a community and between a community and the outside actors. I theorized that what composed “traditional knowledge” was the indigenous expertise and practices that rested on and by means of doing articulated social and ethnical norms and codes of managing natural and social settings. The condition upon which the elements of TK were to become the core of the conservation initiatives was means and ways of indigenous engagement in these projects toward creating the opportunities for the local understandings, needs and aspiration to indeed emerge as the foundation of the conservation projects. Thus, to assess the degree of correspondence of TK CBD policies to indigenous needs I decided to examine a degree and forms of indigenous involvement in conservation with a focus on the role of indigenous individuals in these projects. To what degree, I asked, indigenous individuals were able to direct or lead the projects in correspondence with the specificities of local social and economic settings (and consequentially benefit from them)? And, to what degree did local practices and expertise help conservation?

Methods

I located 100 scholarly descriptions of conservation projects that took place on the territories of indigenous peoples from 2002 till present.⁸⁴ I used the ScienceDirect⁸⁵ database for most of my search and employed different combinations of “conservation,” “sustainable development,” “case study,” and “indigenous.” Among an overwhelming amount of results, a significant part of which were theoretical works, I selected one hundred and one cases, classifying the studies by

⁸⁴ My previous research indicated that the projects of somewhat longer duration and larger scope tended to emerge since the early 2000s, where the 1990s initiatives tended to be pilot and/or short term projects. The sample of 100 works I found comparable with methodologically related studies, such as for example, a study by Brian Miller, Susan Caplow and Paul Leslie who reviewed 120 works, a study by Nicole Heller and Erika Zavaleta who worked with 281 articles, and a study by Fikret Berkes and Tikaram Adhikari who reviewed 42 cases (Miller, Caplow and Leslie (2012), Heller and Zavaleta (2009), Berkes and Adhikari (2006)).

⁸⁵ ScienceDirect is an Elsevier database that features book chapters and journal articles from over than 2,500 peer-reviewed journals and 11 thousands books.

the following logic. First, to construct a possibly balanced geographical representation – for the reasons of clarity - I located a somewhat comparable amount of works for certain geographical regions, despite, of course, that geography did not necessarily correspond to the number of indigenous groups and individuals living in a specific territory. Having examined works in theory, I attempted to have a somewhat comparable amount of studies for each of the conservation strategies identified in the studies as widely practiced. While useful for the purposes of this study, this approach also had serious limitations. As a rule, conservation projects rested upon a number of interconnected strategies; for example, a creation of a protected area might have included development of eco-tourism on the protected territory, which in some cases was managed by a local indigenous community and/or conducted with the use of traditional ways of nature managing (an example of three to four different ways of conserving within the framework of one project). I differentiated the cases by the accent placed on a specific strategy by the authors while consciously ignoring, for the reasons of this inquiry, the limits and consequences of this theoretical (vs. empirical) classification.

My approach led to the following composition of the studies I examined (see Table 1):

Table 1: Composition of conservation studies

	TK use in conservation	Community Management	Tourism	Protected Areas	Alternative strategies	TOTAL
South America and Caribbean	4	2	1	3	6	16
Pacific	5	4	4	2	3	18
Asia	5	2	3	1	1	12
Africa	5	3	0	10	5	23
North American and the Arctic	12	6	7	3	4	32
TOTAL	31	17	15	19	19	101

In addition I documented types of ecosystem conserved using following categories: forestry (18); marine ecosystems (6); wild life by protection of particular plant, animal, fish species (74); river ecosystem and fisheries (3).

I examined the studies next. I documented positive and negative consequences of the projects despite that in some cases only one kind of results was reported. This approach was useful as a heuristic device to navigate through the studies in response to my research inquiry, yet it also had significant drawbacks. First, rarely was a study a detailed examination of long term effects of a particular conservation strategy on local livelihoods. For the most part the authors gave an overview of the effects of the certain conservation projects on nature and social systems at times across geographical regions. Second, the studies presented outcomes of differently shaped research methodologies molded by specificities of the discipline, research focus areas, duration of the projects and also specificities of the settings where the projects occurred. Some authors documented more than one project comparing results of a particular conservation strategy across different geo-political and social settings at times outside of one country or one geographical region. Others focused on specificities of indigenous settings and discussed a degree of correspondence of a particular conservation strategy to the local settings. In a few cases the authors had an underlining advocacy objective, which while admiring, also to a degree misrepresented the empirical settings under examination. In addition the studies tended to focus on the regions where previous projects took place, and/or in the areas with an outstanding degree of environmental degradation such as the Amazonia, South America.⁸⁶ Some

⁸⁶ The interest to the conditions of conservation in the Arctic, including the Russian Arctic communities, is directly related to the political power and actions of the Arctic Council, an intergovernmental forum focused on the issues of environmental degradation in this region (<http://www.arctic-council.org/index.php/en/>). The studies on the South America for the most part focused on the conservation policies and projects related to the Amazonian deforestation with a particular emphasis on Brazil due to perhaps the fact that more than 50% of the tropical forests are located on the territory of Brazil (related studies on deforestation in the area of Amazon River focus on Peru, Ecuador, Bolivia

areas were left uncovered (for the number of reasons that preclude working in these areas) despite that a number of indigenous groups do inhabit them, such as, for example, parts of Russia outside of the Arctic regions, or of Africa outside of the Southern and Eastern African states. Thus, while serving the purposes of my inquiry this study did not allow, neither aimed at estimating the state of conservation research and/or practices. A concise compilation of the cases assessed for this study is presented in Appendix A. Below I discuss the results of the examination classified by the conservation strategy practiced.

Results

Conservation practices and the use of local knowledge

The largest group of studies, accounting for thirty one, focused on relationship between the local groups' ideas and expertise and conservation projects. The projects in this group occurred in all the geographical regions and employed diverse conservation strategies yielding positive and negative results. Positive outcomes were reported when conservation was practiced using local tenure and resource management practices; such was, for example, a case described by Shankar Aswani and Richard Hamilton. A collaborative research between the Rovina Lagoon indigenous groups of the Solomon Islands and marine scientists rested upon local sea-tenure system and concluded in the set of techniques helpful to protect endangered species of fish important for local cultural and subsistence practices (Aswani and Hamilton 2004). Ian Baird and Philip Dearden likewise reported successful planning of managing tropical protected areas in Cambodia using the local Brao peoples' resource tenure arrangements (Baird and Dearden 2003). Inspiring were the studies from the Pacific. An investigation of the causes of fish poisoning by

and Columbia). The studies of the Pacific – particularly the New Zealand and Australia – for the most part focus on the issues of management of resources in relation to the indigenous peoples territorial rights and customary norms and principles. The studies documenting conservation in Africa tend to focus on ethno botany (South Africa) and

scientists and the indigenous elders of the Malanbarra Yidinji clan, Australia, for example, led to development of ways to protect culturally important fish species (Gratani, et al. 2011). Similarly, collaborative work on sustainable harvesting of a culturally important pigeon helped to conserve the endangered bird using New Zealand Māori management strategies (Lyver, Jones, and Doherty 2009). One of the key projects from the Pacific was a fourteen-year long research partnership between the Rakiura Māori and ecologists and statisticians of the University of Otago, New Zealand. This project concluded with the development of strategies of collaboration and research methods that incorporated and/or rested upon indigenous worldviews and ways of investigating reality (Crawford 2009; Moller, et al. 2009). Somewhat comparable to the developments in Pacific were the projects from Scandinavia. The reports, included in this study, focused on the dynamics of adopting the Sámi traditional techniques of human-animal relations to the ecological, technological, social and legal changes that influenced behavior of animal and of the Sámi ways of life (Vuojala-Magga 2011; Tyler, et al. 2007). A few among the authors of these reports documented collaborative work between the Sámi and the policy and science institutions, such as the Jane Heikkinen et al. who assessed the results of the RENMAN initiative, a three-year project between reindeer herders and researchers from nine institutes located in five countries (Heikkinen, et al. 2004). This initiative aimed at developing participatory research strategies of sustaining reindeer management in the Barents Euro-Arctic, and concluded with some success (Arctic Centre n/d). Another interesting report from the Arctic was a study of international partnership between indigenous communities living on the both sides of the Bering Strait, the Arctic Russia and the United States. Facing similar conditions of managing walrus and polar bear populations, people from these communities collaborated on conserving the animals

and supporting their own survival of the threats related to climate change, poverty, political pressures and economic instabilities (Meek, et al. 2008).

A few authors documented consequences of the embeddedness of knowledge in the local social, political and cultural settings. Martha Dowsley and George Wenzel, for example, discussed how Inuit' ways of describing and explaining reduction of number of polar bears in Nunavut, Canada, were at times limited to locally observed occurrences or presented with a compliance to a group opinion rendering more of a cultural point of view rather than a factual account in support of conservation of these animals (Dowsley and Wenzel 2008). Melissa Leach and James Fairhead, on the contrary, reported on the practices used by environmentalists in presenting Mande hunters' knowledge (Mande are indigenous groups in Guinea, West Africa) in alignment with the European donors' aims and perceptions, the strategy the authors termed as a subtle drawing in the local individuals into the projects which might have brought no direct benefits to them (Leach and Fairhead 2002).⁸⁷

Conservation by means of community management

Seventeen reports collected for this study were evaluations of conservation conducted by the means of community management. This strategy was reported as practiced across all geographical regions and in correspondence with specificities of the local settings. Among the

⁸⁷ In a related study Serena Heckler, who worked with the Piaroa peoples (Venezuela) demonstrates how value placed on specific species of knowledge leads to creation of "privileged" knowledge forms and practices in indigenous settings. She critiques deficiencies of the research methods used to represent Piaroa knowledge as homogenous, systemic entities in alliance with the aims of research. She also demonstrates how policies aimed at conserving TK and traditional elements of Piaroa culture led the local people search for means to benefit from the outside interest to their lives by means of creating "councils of elders," introducing shamans as authorities, and producing "traditional worldviews." She also discusses how the contact with the powerful outside actors leads to local questioning of traditional authorities in search for more prominent and powerful leadership. The study is a great example of how conserving "traditional knowledge" – i.e. ways of freezing a particular practice into an artifact – lead to stripping these practices of their core, the social functions they play and emerging from these functions benefits to the community (Hecker 2007).

best practices were, considerably initiatives that took place in Australia under the state sponsored Indigenous Protected Areas program to facilitate protective management of lands and/or sea territories owned by indigenous communities (Australian Government n/d). Despite potential dependency of indigenous groups on the state support, and the complexities of administrative nature related to the construction of the land managing agreements, the program in principle could be considered the means to recognize indigenous right to self-governance to facilitate intercultural and intergenerational dialog and conservation (Langton, Rhea, and Palmer 2005; Szabo and Smyth 2003; Hill 2011). Similarly, the authors reporting the cases from Canada, revealed potential of co-management to strengthen indigenous ties with the land and maintain cultural practices despite significant challenges related to the nascent state of this management practice⁸⁸ (White 2006; Bastien-Daigle, Vanderlinden, and Chouinard 2008; F. Berkes, M. Berkes, and Fast 2007). Similar insights provided scholars examining situation in Scandinavia, where collaborative research on reindeer management rendered inferior position of the Sámi herders in the planning, administration and data gathering and interpretation (Tyler, et al. 2007; Heikkinen, et al. 2004).

The authors reporting on the cases from Africa discussed very different kinds of community management practices best exemplified, perhaps, by implementation of the Communal Areas Management Programme for Indigenous Resources (CAMPFIRE). Initiated in the 1980s in Zimbabwe the Programme became a popular means across African continent to

⁸⁸ These challenges were associated with the lack of mechanisms that can help reinterpreting indigenous views and practices into the language compliant with science, and social and professional inequities between indigenous communities and government and academic entities, who remained the key voices in policy and planning. A study by Paul Nadasdy, for example, was especially thought provoking. Using the case of co-management between the Yukon government biologists and the Kluane people (Canada), Nadasdy questioned the potential of co-management to support indigenous interests by pointing out ways in which government biologists retained by means of co-management de facto control over the Kluane peoples natural resources and practically took possession of intellectual products created through collaborative work (Nadasdy 2003).

practice conservation. The Programme granted rural communities rights to sell the state-owned but communally held land to private companies that, in turn, could develop conservation friendly enterprises on these lands, such as tourism and hunting (USAID 2006). The authors whose works I examined for this study, revealed that complexities of social and legal nature prevented many indigenous communities across Africa to generate some form of income from the community management projects comparable to CAMPFIRE. Despite some degree of conservation success, these projects benefited only a selected number of indigenous individuals, while creating social inequity and ways to expropriate community resources by private actors (Logana and Moseley 2002; Holmes-Watts and Watts 2008).

Conservation by means of tourism industry

Fifteen studies collected for this analysis discussed eco-tourism and cultural tourism, the forms of conservation practices reported to take place across most of the geographical regions and on the territories of national parks, reserves and protected lands. In the settings where indigenous groups retained some or, in rare cases, full degree of control of the industry, mostly in Canada, Scandinavia and Australia, benefits to indigenous communities tended to be more significant when compared with those in the settings where industry was operated by the external actors (reports from South America, Asia and Africa). Among most often reported benefits to indigenous individuals were forms of economic opportunities, promotion of indigenous cultural practices, and creation of means of cultural education. Negative consequences ranged from economic and cultural control over indigenous lands and practices to stereotyping of indigenous groups, and commercialization of traditional items and activities.⁸⁹ Julia Ohlschacherer et al., for

⁸⁹ For an overview of the positive and negative consequences of creating tourism industries for the purposes of conservation see, for example, a study by Bennetta et al. (2012).

example, documented how introduction of tourism in Manu National Park, Peru led to violation of traditional land rights. Local indigenous communities lost the traditional rights to conservation authorities, suffered disturbance of the sacred sites and received minimum benefits from the initiative (Ohlschacherer et al. 2008). Scholars, working in Asia and Africa, reported similar findings (Hunter 2011; Lai and Nepal 2006; Hitchner, et al. 2009; Kaltenborn, et al. 2008). The projects that took place in North America, the Arctic and Australia also had drawbacks, while however, yielding some benefits to indigenous groups. For example, in the case reported by Martha Dowsley, the creation of the tourism industry led to the conflicts between indigenous and conservation communities related to different ethical and normative approaches to managing polar bears. While for local Inuit communities bear hunting was an important traditional activity (bringing also some financial gain) conservationists considered hunting as a violation of conservation ethics (Dowsley 2009). Among other negative consequence were uncertainties related to the nature of the industry dependent in its operation on the interest of the outside actors in indigenous (“exotic”) ways of life (Lynch, et al. 2010; Lemelin, et al. 2012; Müller and Huuva 2009). A thought-provocative study by Kjell Olsen focused on the intentional uses of Sámi stereotyped images by the Sámi in Norway as a strategy to attract tourists and strengthen political claims using indigenous difference as a tool of ethno-identity politics. Such representations while pragmatically useful, Olsen noted, recreated cultural and social marginalization of indigenous peoples (Olsen 2006).

Conservation by means of creating protected areas

Creation of protected areas was a continuously growing conservation strategy that since 1996 expanded more than 50 percent worldwide despite a history of disturbed livelihood and forced resettlement associated with it (West, Igoe, and Brockington 2006). The nineteen studies

examined for this work focused on the creation of protected areas across most of the world geography in the form of national parks, reserves and protected territories; the authors of these studies reported different degrees of success of these projects. Most disturbing among them were those that took place in the African states where a proportion of the land given to protected areas remained one of the largest in the world.⁹⁰ Michael Cernea and Kai Schmidt-Soltau estimated that current and planned creation of 12 parks across African continent would conclude with close to 300 thousand of displaced individuals and additional 150 to 300 thousands forced into being the “hosts” of the parks, i.e. the individuals suffering income lost, food insecurity, marginalization and loss of access to a common property resulting from creation of parks in close proximity to their households (Cernea and Schmidt-Soltau 2006). Some theorists questioned validity of protected areas in light of the negative consequences it potentially might cause not only to people, but the protected species. Dispossessed individuals living in the close proximities to the parks might kill protected animals and plants for subsistence and/or security of livestock, and/or threaten them by overuse of the park’s water reserves for agriculture (T. Struhsaker, P. Struhsaker, and Siex 2005; Okello 2009). Other theorists proposed forms of engagement of local groups in managing protected areas by creating small wild life sanctuaries to help the local people to grow cattle, allowing them picking plants from the protected lands for food and/or commercial purposes, and leasing community-owned lands to private actors which, as theorized, might be beneficial to the local people and protected species (Wishitemi and Okello 2003). The cases from North America brought additional evidences in support of protected areas managed and/or co-managed by indigenous groups, despite that the practices discussed also had their drawbacks (the case of creative Marine Protected Areas in Canada between the government

⁹⁰ In 2006, for example, 15.46 % of the land in Eastern and Southern Africa was designated for certain form of a protected territory, while in North America, another continent with a significant proportion of land given to protected areas the share was 14.23 % of the total territory (West, Igoe, and Brockington 2006).

and the members of the First Nations (Guenette and Alder 2007), and co-management of a national park in Alaska by the Tlingit indigenous peoples and local authorities (Thornton 2010).

Alternative means

This final category of the nineteen studies was comprised of the projects I termed “alternative” strategies for methodological reasons. These strategies embraced combinations of methods which found lesser degree of coverage in the literature and could not be grouped into a separate category. Most popular among these strategies were forms of compensation to local groups for the conservation friendly practices/services, and advocacy. Kerstin Zander et al., for example, documented how conservationists compensated the Borana peoples, a group inhabiting the southern Ethiopia and some parts of Kenya, for conserving culturally and commercially important and endangered breed of sheep (Zander, et al. 2009). Donna Kwan and colleagues informed on the means of preserving a culturally important species of fish used by Torres Strait islanders by combining financial assistance from the state, support of a local protection agency and the research of the hunting patterns (Kwan, Marsh, and Delean 2006). Susanna Heicht reported on the decrease in deforestation in Brazil, that resulted from interrelated political, social and economic changes (the policies promoting resilient land use, the state payments for environmental services and advocacy (Heicht 2012). In fact advocacy, a strategy truly alternative if compared with traditional conservation techniques, emerged in reports of a few scholars. Sharon Milholland for example, documented the famous Snowbowl case, where construction of a sky resort on San Francisco Peaks was prevented by the Navajo and Hopi struggle to protect their traditional lands thus making conservation a by-product of self-determination struggle (Milholland 2010). Other exciting examples were studies by Stuart Kirsch in Papua, New Guinea, and by Alabi Saheed (Kirsch 2007; Saheed 2012). Saheed reported on the consequences of the

notorious case of the environmental damage of Ogoniland by the oil developments, where the Ogoni peoples suffered numerous human rights violations since the late 1950s from destruction of their land and lives to military repression in the 1990s in response to the Ogoni protests. Current international attention to the situation in Ogoniland brought some hope for the change.

Discussion

The results of this examination indicated that the role of indigenous individuals in conservation projects conducted on their territories since the 1990s remained, for the most part, participatory. The majority of the projects were imposed upon indigenous groups with a varied degree of success as tools of conservation and of creation of social equality. The factors which influenced most the degree of benefits to indigenous groups related to the social, economic, and political settings in which indigenous communities lived. Those rendering most benefits were the settings of the states where indigenous individuals enjoyed a greater degree of legal and social protection as members of cultural minorities and as citizens. Likewise, those indigenous individuals living in the places affected by poverty remained most vulnerable to conservation initiatives (sharing, perhaps, the fate of other social segments of their societies). Most commonly reported positive consequences, majority of which occurred in the North America, the Arctic, and the Pacific, included creation of economic opportunities, support of communities' cultural needs and enhancement of traditional practices, and development of constructive relations between indigenous and state, conservation and academic communities. Most disturbing reports, that tended to focus on the African states, documented displacements, poverty and cultural destruction. Unequal distribution of benefits, partial (and in some cases non-existent) attention to the indigenous needs and perspectives, creation of social tensions within and between groups involved in the projects, dependence on the outside funding, and commercialization of

indigenous cultural practices and items complimented the list of negative consequences. Most widely practiced forms of TK protection were the technical means of collecting, preserving and disseminating research findings co-produced or created with some (or at times with no) involvement of indigenous individuals in the conservation research. At times these activities had only partial relevance to the needs of local people; in a few cases these projects brought disadvantage and harm, as reported by Paul Nadasdy.

These findings suggest that the forms of implementing policy and legal approaches toward protecting TK examined here only partially corresponded to the ethical framework of sustainable futures, and in certain cases protected interests of actors other than indigenous communities. The examination indicated that the ways in which local and indigenous communities conceptualize processes of social reality and of the natural world tend to differ from the way policy theorists approach these processes and at times may not be included in the work of conservation planners and related policy developments.⁹¹ Assessment of local ideas and practices from a position of aims of conservation and development may also lead to 1) misrepresentation of local knowledge by identification of those knowledge *species* that are to be protected as “the privileged knowledge” with no regard to the context in which it was made, and 2) creation of information products out of TK elements that may not be useful and/or even

⁹¹. This notion, however, does not imply that local ideas are less sophisticated and/or informative if compared with the scientific ones. As Eugene Hunn and Brien Meilleur put it: “*cognitive anthropologists have consistently argued that traditional environmental knowledge is no less sophisticated in its empirical foundations than “Western” science and that it is dynamic, open to innovations borrowed from neighbors or co-opted from colonial practice. However, this knowledge is owned by local peoples, expressed in their native languages, and applied in the practice of their daily lives, which makes such traditional knowledge “indigenous”* (Hunn and Meilleur 2010). Rather indigenous ideas are as a rule expressed by metaphors and using languages different from those employed as tools of scholarly communication, which at times may confuse the scientists working in indigenous settings, as visible in Martha Dowsley study (Dowsley 2009). When, however, abstracted into *an object of policy and/or legal protection* these very different forms of intellectual activities of groups categorized as local and indigenous communities take on a character of elements of one category termed in different contexts as indigenous and/or traditional knowledge. Such a categorization prescribes a similarity of properties to these entities that in reality does not exist to a degree asserted in the mechanisms of protection.

accessible to indigenous groups. The fact that indigenous groups often were targets rather than beneficiaries of conservation projects further supports the notion that creation of the TK policies related to the interests and need of indigenous groups only partially. These findings are somewhat disturbing in light of the ongoing debates surrounding creation of the set of legal and policy instruments aimed at protecting forms of indigenous intellectual and cultural creativities with the means of intellectual property at UN WIPO, where the struggle over principles, means and form of TK protection is a battle over entitlement of rights for intellectual resources possible to generate from the indigenous settings and potentially profitable for development of new products. In light of the current lack of sound international mechanisms to protect indigenous communities by means of prior informed consent as well as to insure indigenous rights to equitable benefit sharing the focus on *knowledge vs. people* is disturbing one leading to potentially further impoverishment for many indigenous communities already affected by the history of colonization and dominate regimes over their lands and lives. This is not to say that the research findings that informed the UN and interrelated policy actions had no positive consequences for some of the indigenous groups.⁹² These projects often remained the only means for indigenous individuals to advance their perspectives on managing traditional lands and natural environments and thus to some degree advance underlining these perspectives groups' interests. The kind of knowledge that emerges from collaborative work and/or from involvement of indigenous individuals may be the means of change toward improving the indigenous economies and social state, relations with the external actors while also serving as means to care for environment.

⁹² This subject matter relates to the discussion of political activism and is not the topic of this work despite its direct relevance.

Chapter 5. Traditional Knowledge as Cultural Heritage

In interrelation with work aimed at protection of traditional knowledge due to its value to development and conservation and the consequential means and requirements of protecting it, the theme of TK protection developed within a related yet thematically different discourse on the protection and the safeguarding of cultural heritage and/or cultural property.⁹³ In this chapter I briefly outline the key developments relevant to this discourse. The chapter is structured as following. First, I discuss the theoretical framework within which the protection of cultural heritage theme was developed. Next I apply this framework to analyze the relevant work of UNESCO. I then turn to the discussion of protection of heritage from a position of human rights as the theme had developed within the context of work of the Working Group on Indigenous Populations focusing specifically on the contribution of the Group Chairperson and Rapporteur Erica-Irene Daes. I conclude with discussion of conception of TK as element of intellectual property focusing on activities of WIPO.

Cultural Heritage: Theoretical Frameworks

Historically the field of cultural heritage first emerged for the protection of cultural objects conceived as physical property. Only commencing with the second part of the twentieth

⁹³ According to a number of legal scholars, no agreed upon definition of “cultural property” or “cultural heritage” exists. Janet Blake suggests, that because the heritage is a concept that allows better flexibility and broader range of elements to be embraced under, it is becoming the “term of art in international law” (Blake 2000, 67). Nevertheless, one of the key questions the field remains the concrete definition for the concept. Apparently, each UNESCO document contains a definition composed for the purposes of this particular document alone and in relation to specific aims of this document. At the same time, the documents are created in relation to each other, where the newly created instrument must embody in its content yet represent in the form relevant to specific aims of the document previous developments expressed in the relevant instruments issued before it. What further complicates the situation is that the definitions are borrowed from social science (Blake suggests, mostly from anthropology and archeology) yet without accounting for concrete contexts within which these definitions were initially composed. Blake concludes that the apparent uncertainty regarding the content of the heritage concept might be a sign of limited capacities of this concept as a tool to provide solutions to specific problems toward which its use is directed (i.e. the problems upon which the creation of UNESCO instruments is focused might be too complex to be solved using instruments of protecting culturally important items).

century has the field gradually expanded to include the discussions of heritage protection from a position of human rights. Since the time of its origination within the UN system, the subject matter referred to as “cultural property” and/or “cultural heritage” falls within the competency of UNESCO. To explain the nature and forms of cultural heritage and legal means for its protection I turn to the work of a legal theorist John Henry Merryman and employ his conceptual paradigm to structure my analysis of the work of UNESCO. According to Merryman, items to be preserved as cultural property are comprised of “objects of artistic, archeological, ethnological or historical interest” which have significance to a particular culture (Merryman 1986). As historically conceptualized within the Western legal discourse, cultural heritage objects are of two general kinds: land-related objects and moveable objects (both tangible and intangible). Protection of these objects, according to Merryman, can be understood through the two conceptual lenses within a common but differently interpreted aim of protection:

- Cultural property *internationalism*, where objects of cultural significance are understood as “components of a common human culture” as expressed in the UNESCO Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), and
- Cultural property *nationalism*, where such objects comprise “national cultural heritage” and are treated within national jurisdiction, as embodied in Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) (Merryman 1986, 831-832).

Within the framework of cultural property *internationalism*, the rationale for protection is threefold: 1) conservation/preservation/safeguarding of this property against destruction; 2) creation of legal instruments for protection in form of recommendations of conventions; and

3) encouragement of international exchange, which includes exchange of objects through markets as well as inter-governmental exchanges of such objects.⁹⁴

The body of law regarding protection of cultural items emerged historically out of a perceived necessity to protect culturally significant objects from damage during the armed conflict in the nineteenth century. This aim, according to Merryman, is expressed most clearly in the UNESCO Hague Convention where the preservation of objects from damage is justified as a means of fostering international cooperation⁹⁵ through the exchange of cultural objects. Merryman detects two principles of “general applicability” in this and in later UNESCO documents advocating an *internationalist* perspective of protecting objects of cultural significance: first, protection must be insured without any regard for national interest in these objects; and second, special *legal* measures of protection must be established due to what is seen as the special universal importance of this property, i.e. the “party of interest” in this case is seen as all of “humanity”⁹⁶ (Merryman 1986, 842, note 37).

Within the *nationalist* framework, the interest of protecting culturally significant objects is that of a state; the states have an interest in controlling these objects in order to prevent development of a market for these objects. The *nationalist* emphasis signifies an aim different from that of preserving items of culture for a common or universal good, as illustrated specifically by cases of what Merryman calls “destructive retention.” In such cases, the decision to neglect objects up to the point of their destruction is preferable to their ostensible “loss”

⁹⁴As Merryman explains, the justification for exchange is provision of access to these objects with an aim of education and enjoyment, as envisioned in the Preamble of UNESCO Constitution (Merryman 2005, 21, 24; UN Educational, Scientific and Cultural Organization, 1945).

⁹⁵ These aims are comprehensively stated in the UNESCO Constitution, the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) and the UNESCO Recommendation Concerning the International Exchange of Cultural property (1976).

⁹⁶ By “humanity” is generally understood “everyone,” or every person and/or people has a legitimate interest in preservation and enjoyment of the culturally significant objects (Merryman 2005, 11).

through export (Merryman 1986, 846). The “party of interest” in this case becomes the states themselves.

Consequently, the justifications for protection and the consequential protective measures advocated or taken will differ according to the way in which the interests of the international community (in the form of intergovernmental organizations, particularly, UNESCO) and the state authorities manifest control over the objects of cultural significance and articulate justifications for their actions.

What in particular makes these cultural objects significant?

Value of heritage objects

Merryman notes that regardless of whether the items understood as the objects of cultural significance are classified by one measure or another, neither paradigm accords these items any “intrinsic value” (Merryman 1986, 837, note 21). This is particularly evident from a requirement stated in the Preamble of the 1970 UNESCO Convention to contextualize the cultural objects with the aim of understanding their “true value” (or providing information that would establish their significance to the local and/or world history). As emphasized by the *nationalist* perspective, the cultural significance of objects emerges from a recognition of their market value.⁹⁷ Protection in the form of retention insures control over export of these objects, and recognizes the interests of member states as “owners” of this property. The *internationalist* position (as the Hague Convention clearly shows), on the contrary, rejects any distinction among objects of importance on local, national and international levels interested to preserve heritage of humanity (technically comprised of them all). Importance here is not on favoring objects per se,

⁹⁷ The lack of what might be seen as essential value as a property of the items considered to compose cultural heritage objects places a danger of turning their selection into a matter of mere political choice manipulated by the state authorities responsible for selecting specific items that would compose national and international registers of culturally significant objects. The selection is also and often directly influenced by the value of these items as cultural commodities, especially for those items which character is considered nonrenewable.

but maintenance of the international community's mission of fostering peaceful international relations via cultural means and with the use of these objects.⁹⁸

The both paradigms, Merryman notes, are interrelated and at times reinforce each other; and, indeed, both ways are valid to the extent of meeting certain objectives. Consequentially, UNESCO activities in the area of cultural property “*display a ... kind of interplay between group and member interests whose results are ... embodied in ... conventions and recommendations.*” The fact that states' interests are predominant over international interests, as international law documents indicate, signifies “the centrality of the state” in “a world organized into nation-states,” concludes Merryman (Merryman 1986, 853). At the same time, the emergence of institutions and the international body of law regarding protection of human rights signifies an increasing concern for the importance of cultural heritage for humanity. This movement signifies, as Merryman suggests, that the political force of national sovereignty is declining; simultaneously, “new actors” are emerging claiming rights within the changing context of the global political relationships. Culture is, revealingly, a key rhetorical object in the rights discourses of indigenous politicians; they use the rhetoric of heritage to assert their claims for land rights and rights to development as “cultural rights.”

To conclude, within the *nationalists'* perspective, cultural heritage to a significant degree gains its meaning within property relationships, i.e. relationships that facilitate exchange of heritage objects as having equal value as cultural commodities. Hence it is their market value that signifies their importance as items composing cultural heritage. Within the *internationalist'* perspective, it is the relation of these objects to the community that has created them that signifies their character as constituents of cultural heritage. The same objects that in a context of

⁹⁸This mission, according to Blake, places heritage “at the center of a sense of collective international identity based on mutual self-respect,” where identity is a quality which provides a sense of belonging to a group (Blake 2000, 85).

market relations are regarded as “articles of utility” turn into evidences, testaments of exercise of a fundamental right of *all* humans in response to the standards upon which the right to culture stands.⁹⁹ The aims of *internationalist*’ perspective emerge from the key objective of international community to support political and social stability within and between societies; protection of cultural items within this contexts is a form and means of maintaining of the “way of living” of a particular group. The interconnection between the two perspectives is especially evident insofar as the right to own property in itself is an expression of what a most fundamental right of human beings to freely enjoy and use as one pleases whatever one possesses as one’s own.¹⁰⁰ Rather these polarities signify different contexts within which heritage (and TK, as its element) gains meaning as an object of protection.

UNESCO and Protection of Folklore

In the following sections I will employ Merryman’s way of looking at the subject matter of heritage protection to analyze relevant developments from which the theme of protection of TK as an element of heritage had emerged. In accord with Merryman’s framework I will identify two interrelated threads in this field: the propensity to conceptualize TK as an *property* element, (*nationalist*’ perspective; debates on who has the right to own this property), and the construction of TK as a *foundation* for a group identity (*internationalist*’s perspective; debates

⁹⁹ Rights referred to as cultural rights are expressed in a set of legal instruments beginning with the Universal Declaration of Human Rights (1945) and resting upon the principles of the Declaration the International Covenant on Social, Economic and Cultural Rights (specifically Art.15) and the International Covenant on Civil and Political Rights (Art. 27). Cultural rights pertinent to indigenous peoples include rights to participate in cultural life, rights of minorities to maintain and develop its heritage, rights to cultural cooperation, rights to benefits from arts and scientific achievements, and intellectual property rights (Coombe 2009; Robbins and Stamatopoulou 2004).

¹⁰⁰The Universal Declaration of Human Rights reads: “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” (United Nations 1948, Art. 2).

on whether or not a group could enjoy and practice own culture to guarantee the group survival as a distinct peoples).

The work on protection of TK as an element of cultural heritage emerged notably in the 1990s. At the same time the discussions over protection of intellectual and cultural creations relevant to the situation of indigenous peoples can be traced back to the 1960s and states' concerns over the protection of what had been termed at that moment "expressions of folklore." Initially, the components of the "expressions of folklore" were recognized as objects to be protected due to their value as elements of national heritage; the proposed means of protection were for the most part existing then intellectual property instruments. On the international level UNESCO and WIPO initially approached the task of heritage protection. The first comprehensive instrument that emerged from their joint efforts on the task was the UNESCO/WIPO Model Provisions For National Laws on the Protection of Expressions of Folklore (1982). This document defines the nature and elements of "expressions of folklore" along the lines of the existing measures to protect this element of intellectual property. "Expressions of folklore" are understood to extend to elements of traditional artistic heritage, including: verbal expressions (tales, folk poetry, riddles); musical expressions; corporal expressions (dance, plays, games and rituals); tangible expressions (paintings, carvings, sculptures, pottery, basket weaving, jewelry, woodwork, metalware, mosaic, needlework, textiles and costumes); musical instruments; architectural forms. In this document protection of folklore is justified on the basis of works composing folklore been "part of the cultural heritage of the nation," where responsibility for the safeguarding of these elements fell on a state.¹⁰¹ Using

¹⁰¹The text summarizes existing state instruments on protection of folklore in the following manner: "*All these texts [legal instruments] consider works of folklore as part of the cultural heritage of the nation ("traditional heritage," "cultural patrimony,".. "cultural public domain"*) (UNESCO/WIPO 1982, par. 5).

Merryman's classification, it is significantly a *nationalist* approach toward the protection of elements of cultural property; i.e. initiatives regarding protection and/or safeguarding elements of traditional cultures within this framework were premised upon an understanding of components of these cultures as parts of national property to which states were to attend.

Subsequent, the 1989 document on protection of folklore, constructed solely by UNESCO, considered protection of "folklore" in the form of safeguarding¹⁰² to be a subject matter of international scope, where "folklore" was seen as a "part of the universal heritage of humanity." The 1989 UNESCO Recommendation on the Safeguarding of Traditional Culture and Folklore defined "folklore" in the following manner:

Folklore (or traditional and popular culture) is the totality of tradition-based creations of a cultural community, expressed by a group or individuals and recognized as reflecting the expectations of a community in so far as they reflect its cultural and social identity; its standards and values are transmitted orally, by imitation or by other means. Its forms are, among others, language, literature, music, dance, games, mythology, rituals, customs, handicrafts, architecture and other arts" (UN Educational, Scientific and Cultural Organization 1989).

What is significant in this definition is a shift to the *internationalist*' approach toward protection of folklore. Unlike its predecessor, the UNESCO/WIPO Model Provisions, the 1989 Recommendation is constructed around the theme of identity thus structuring the aims and means of protection of heritage, and folklore as its element, around international law instruments aimed at protecting cultural rights.¹⁰³

¹⁰² Within the framework of the 2003 UNESCO Convention "safeguarding" is defined as "measures aimed at ensuring the viability of the intangible cultural heritage, including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage" (UN Educational, Scientific and Cultural Organization 2003, Art. 2 (3)).

¹⁰³ International law instruments aimed at protection of what is termed "cultural identity" include Arts. 1(3), 5(1) of the UNESCO Declaration of Race and Racial Prejudice (1978), Art.1 on the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1992), and the Arts. 4,8,12 of the UN Declaration on the Rights of Indigenous Peoples (2007). See for more, for example Horváth (2008, 58).

Finally, the term “folklore” is giving way to “intangible cultural heritage” as a term of art in the written output of UNESCO. The 2003 Convention on the Safeguarding of the Intangible Cultural Heritage considers the subject of protection as “intangible cultural heritage” defined as:

...the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity. For the purposes of this Convention, consideration will be given solely to such intangible cultural heritage as is compatible with existing international human rights instruments, as well as with the requirements of mutual respect among communities, groups and individuals, and of sustainable development (UN Educational, Scientific and Cultural Organization 2003).

The “intangible cultural heritage,” as defined above, is manifested inter alia in the following domains: (a) oral traditions and expressions, including language as a vehicle of the intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship” (UN Educational, Scientific and Cultural Organization 2003, Art. 2(11), 2(2)). Apparently, the aim of this Convention balances the dual UNESCO mission of supporting international cooperation with the states’ needs to protect their cultural property. The apparent balancing of aims results from the character of the Convention as being a materialization of the UNESCO work regarding protection of intangible cultural elements that goes back to the 1960s.

Indigenous heritage and Daes’ study

The fact that the term “folklore” lost its salience within the work of UNESCO relates and to a degree expresses specific developments within UNESCO and WIPO. The two organizations worked jointly on the problems of protection of what was understood as “folklore” till 1978. In 1984, however, they diverged in their approaches toward the subject matter of protection. WIPO continued to explore the use of existing intellectual property mechanisms, while UNESCO took a broader interdisciplinary approach that led significantly to the way in which the 1989 Recommendation and the 2003 Convention were composed. Both organizations, however, continued to cooperate; for example, they jointly hosted the World Forum on Protection of Folklore in Phuket (Thailand, April 1997), as well the next four Regional Consultations on the same subject matter. At the World Forum specifically the delegates identified the term “folklore” as overly narrow, signifying the inferiority of indigenous cultures, as well as inadequate to the aim of protecting products of the intellectual labor of indigenous peoples (Carpenter 2004). The delegates suggested using the term “indigenous cultural and intellectual property” in the context of protection of the TK of indigenous peoples, and the one that was developed by Ms. Erica-Irene Daes. In addition, at the following year UNESCO Washington Conference on assessment of the 1989 Recommendations, use of the term “folklore” was further criticized as being inappropriate to define the nature of cultural heritage with a particular emphasis on the indigenous cultures leading to the changes in the language of UNESCO when addressing the subject matter.

The term “folklore” also and in interrelation received criticism within the WIPO work on protection of intellectual creations understood as part of cultural heritage. WIPO’s eventual preference for the term “traditional knowledge” over “folklore” reflected the belief of those who worked over the terminology that “folklore” referred essentially to artistic copyright-related

expressions, while the matter of protecting intellectual creations of “indigenous and local communities” (definition of “communities” here is used in the sense employed used in the CBD context) relied to a significant degree on the value of TK as a scientifically and industrially important resource (Howell and Ripley 2009).

The discussion of development of TK as a subject of protection within the work on protection of heritage was influenced by the developments emerging from the indigenous peoples participation in the international fora, most specifically emerging from the work of the UN Working Group on Indigenous Populations and as expressed in the key study composed by the Group Chairperson and Rapporteur at the moment Ms. Erica-Irene Daes *Discrimination Against Indigenous Peoples* (1993). This study grew into the 1995 report *The Draft Principles and Guidelines on the Protection of the Heritage of Indigenous Peoples* adopted in 2000 by the UN Sub-Commission on the Promotion and Protection of Human Rights as a set of principles and guidelines to be consulted with and employed by those involved into the practices and policy making aimed at protection of indigenous heritage.¹⁰⁴ The Daes’ study originated from her

¹⁰⁴ See the following documents in which the working paper had been developed into a report revised in and adopted by the Sub-Commission on the Promotion and Protection of Human Rights at its 52nd Session in 2000: *Discrimination Against Indigenous Peoples’ Protection of the Heritage of Indigenous People, Final report of the Special Rapporteur*, UN ESCOR Sub-Commission on Prevention of Discrimination and Protection of Minorities, 47th Sess., Agenda Item 15 (1995), where the initial text of the Draft Principles is to be located. *Human Rights of Indigenous Peoples: Report of the Seminar on the Draft Principles and Guidelines for the Protection of the Heritage of Indigenous People*, UN ESCOR Sub-Comm’n on Prevention of Discrimination and Protection of Minorities, 52nd Sess., Agenda Item 7 (2000), document presented for adoption to the Sub-Commission. And, the *Principles and Guidelines for the Protection of the Heritage of Indigenous Peoples*, Decision 2000/107, UN Sub-Commission on the Promotion and Protection of Human Rights, (2000) where adoption of the report can be found. The further work on this document was conducted under the mandate of the UN Working Group on Indigenous Populations. In 2004 the Sub-Commission on the Promotion and Protection of Human Rights - the Working Group functioned under its auspices – asked Yozo Yokota (a UN Special Rapporteur on the situation of human rights in Myanmar, 1992 -1996) to prepare a set of guidelines for the review of the draft principles to be conducted further by the WGIP (*Guideline for the Review of the Draft Principles and Guidelines on the Heritage of Indigenous Peoples* (2004). Yokota worked with Matthias Ahren of an indigenous organization from Scandinavia Saami Council. Ahren introduced the expanded working paper at the twenty-third session of the WGIP inviting WGIP to consider working toward transforming the edited version of the guidelines into a legally binding instrument of the international scope (*Review of the Draft Principles and Guidelines on the Heritage of Indigenous Peoples - Expanded Working Paper Submitted by Yozo Yokota and the Saami Council on the Substantive Proposals on the Draft Principles and Guidelines on the*

working paper on the question of cultural property within a framework of indigenous peoples positioning on the international area, and as specifically expressed by the work of the Working Group on Indigenous Populations. The paper commissioned by the Sub-Commission on Prevention of Discrimination and Protection of Minorities grew into a study with an aim to compose a set of measures recommended to the international community as a way to enhance respect for what had been understood at the moment as the indigenous peoples' cultural property. Daes composed her work in response to the concrete issues and as expressed by representatives of indigenous peoples' organizations and groups, and nations, as well as with the assistance of agencies that worked on defense of indigenous rights. Hence, a specific positioning from which Daes regards the subject matter of protecting indigenous heritage is the indigenous self-determination and the right of indigenous peoples to their land.¹⁰⁵

Daes introduces the theme of heritage/property protection with a note that from "indigenous peoples' viewpoint," no distinctive line between forms of property termed "cultural" and "intellectual" (in a way in which these terms are used outside indigenous settings) could be drawn. The both are fruits of human activity emerging from and expressing in various ways a relationship between the people and their land.¹⁰⁶ Daes further challenges the property concept by stating that this form of representation of cultural realm rests upon an economic perception of what is considered to be a culture and in contrast with the indigenous perspective where culture

Heritage of Indigenous Peoples (2005). For further reading see, for example, Wiessner and Battiste (2000) and UN Economic and Social Council, Commission on Human Rights (2005).

¹⁰⁵ Daes: *Heritage* "is everything that belongs to the distinct identity of a people and which is theirs to share, if they wish, with other peoples. It includes all of those things which international law regards as the creative production of human thought and craftsmanship, such as songs, stories, scientific knowledge and artworks. It also includes inheritances from the past and from nature, such as human remains, the natural features of the landscape, and naturally-occurring species of plants and animals with which a people has long been connected" (Daes 1993, par. 24).

¹⁰⁶ Daes: "Heritage" also includes all expressions of the relationship between the people, their land and the other living beings and spirits which share the land, and is the basis for maintaining social, economic and diplomatic relationships - through sharing - with other peoples. All of the aspects of heritage are interrelated and cannot be separated from the traditional territory of the people concerned. What tangible and intangible items constitute the heritage of a particular indigenous people must be decided by the people themselves" (Daes 1993, par.164).

embraces all the elements of being. As a remedy Daes proposes using the term “heritage” when discussing the subject matter of protecting culturally significant elements of indigenous peoples. Not only heritage concept allows incorporating cultural, social, historical, religious and spiritual realms of being into one, but also and mainly it provides a way to understand what constitutes “culture” from a positioning of its meaning to a particular group of people and as constructed by these people. Rather than assessing specific modes of thought, practices and objects as sources of possible economic gain (i.e., a property framework), heritage paradigm explicates the meaning of these entities from a position of their social origin, hence Daes reference to the “community and individual responsibility” as the terms of evaluating heritage (Daes 1993, par. 26). Communal character of heritage emerges from this entity being a shared among community members and the one to which a community had a “right” (Daes 1993, par. 29, 28).

Daes places her argument within the social settings of the heritage theme development on the international level. She traces the theme origination in the form she explicates to the 1981 UNESCO international meeting in San Jose, Costa Rica dedicated to the problems of ethnocide with a particular focus on the indigenous peoples of the Americas. An official statement that came out of this meeting - The Declaration of San Jose - Daes recognizes as the first official recognition of the danger of ethnocide, i.e. denial of right to practice one’s own culture, to the wellbeing of indigenous cultural and intellectual heritage.¹⁰⁷

¹⁰⁷ She further discusses the connection between relevant international instruments with an emphasis on the human rights perspective along the following lines: *"The heritage of indigenous peoples has a collective character and is comprised of all objects, sites and knowledge including languages, the nature or use of which has been transmitted from generation to generation, and which is regarded as pertaining to a particular people or its territory of traditional natural use. The heritage of indigenous peoples also includes objects, sites, knowledge and literary or artistic creation of that people which may be created or rediscovered in the future based upon their heritage. The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic creation such as music, dance, song, ceremonies, symbols and designs, narratives and poetry and all forms of documentation of and by indigenous peoples; all kinds of scientific, agricultural, technical, medicinal, biodiversity-related and ecological knowledge, including innovations based upon that knowledge, cultigens, remedies, medicines and the use of flora and fauna; human remains; immovable cultural*

In her report, Daes emphasizes the aim of protection of indigenous peoples' knowledge as one of the major tasks of protecting indigenous heritage. What emerges from her discussion of TK is that this entity must be approached essentially as the specific way(s) of seeing reality expressed by particular patterns of conduct and forms of thought on the specific languages rather than mere products of knowledge making activities rights to which constitute the subject of debates and laws. Daes' argument is structured around indigenous peoples right to self-determined existence and the land rights; thus, the heritage - understood as the forms an ways in which a concrete peoples express and transmit what they know and how they see the world – is essentially an expression and a form of the peoples relationship with land and must be understood and accordingly represented as such in laws (Daes 1993, par.21). At the same time this (indigenous peoples') perception of heritage does not preclude employment of non-indigenous legal instruments within the indigenous settings, those, for example that had already been created to protect knowledge products. Rather their use should aim at protecting indigenous groups from those who might want to employ TK for own purposes (especially commercial) seeing it as a “free good” and developing understanding of and respect for TK among non-indigenous actors.

In contrast with Daes' arguments, the authors of the 2003 UNESCO Convention do not recognize the issue from the standpoint of indigenous peoples' collective right to culture. Rather, as the Article 2(1) implies the Convention allows including TK of indigenous peoples as an object of protection on the basis of universal human rights, i.e. the rights of all individuals.¹⁰⁸

property such as sacred sites of cultural, natural and historical significance and burials. Every element of an indigenous peoples' heritage has owners, which may be the whole people, a particular family or clan, an association or community, or individuals, who have been specially taught or initiated to be such custodians. The owners of heritage must be determined in accordance with indigenous peoples' own customs, laws and practices” (Daes 1993).

¹⁰⁸ No direct reference to “traditional knowledge” as an object of safeguarding is made; rather, it can be inferred, that TK is an element of “practices, representations, knowledge, skills – as well as the instruments objects, artifacts

Clearly, within such a framework of protection, the claims of indigenous peoples regarding acknowledgment of the central role of their communities in creating cultural objects are not explicitly recognized. As the Article 2(2) signifies, TK gains a particular attention as a key element for sustainable development, but without recognition of the specific claims of indigenous peoples as “stakeholders” who are entitled to benefit from this resource.¹⁰⁹

WIPO and the Conception of “Traditional Knowledge”

and cultural practices associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage..” listed as immediate objects to be safeguarded (UN Educational, Scientific and Cultural Organization 2003, Art. 2(1)).

¹⁰⁹ The fact that the Convention does not recognize the claims of indigenous peoples might be explained by the history of UNESCO in the area of protecting of non-material heritage - understood as the both property, and/or inheritance of the universal value – of which the 2003 Convention to a significant degree is materialization. The 2003 Convention has a direct relation to the 1972 UNESCO *World Heritage Convention*, which considered protection of intangible heritage along with material elements, yet dropped the subject matter in the final text, explains that. To a significant level this emerges from recognition of relationship between nature and cultural practices associated with it. UNESCO 1962 *Recommendation Concerning the Safeguarding of Beauty and Character of Landscapes and Sites*, for example, recognized the cultural and aesthetical value of landscapes and sites as parts of “vital heritage of whole regions in all parts of the world.” Their safeguarding is seen “necessary to the life of men for whom they represent a powerful physical, moral and spiritual regenerating influence, while at the same time contributing to the artistic and cultural life of peoples.” (UN Educational, Scientific and Cultural Organization 1962, Preamble). Within the 1972 UNESCO *Convention concerning the Protection of the World Cultural and Natural Heritage* recognition of relationship between nature and culture is further stressed in recognition of the both to be “combined works of man and nature”(UN Educational, Scientific and Cultural Organization 1972). What is particularly important is that the both are evaluated as heritage due to significance of the natural sites as sources of scientific, archeological, historical, and ethnological knowledge, or, as indicted by Thomas King (King 2004). Recognition of “knowledge element” emerges here from recognition of cultural aspect of natural resources that are valuable in their own right. Knowledge comes as resulting from identification, documentation or any other form of expression (a type of evidences) of the social significance of those natural elements that are to be protected for their cultural significance for a community (and humanity). Another framework within which value of non-tangible heritage is constructed is the framework of universal human rights (e.g. rights of individuals rather than of communities, as claimed y indigenous politicians). For example, the UNESCO *Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private works* of 1968 stresses significance of culture to cultural identity of peoples: “..cultural property is the product and witness of the different traditions and of the spiritual achievements of the past and thus is an essential element in the personality of the peoples of the world..” (UN Educational, Scientific and Cultural Organization 1968, Preamble). The 1976 *Recommendation on Participation by the People at Large in Cultural Life and their Contribution to It* calls on states to preserve cultural identities of national and foreign minorities by affirming the equality of cultures. (Macklem 2009). The 1977-1978 Report of the Director-General as well as the Medium-Term Plan for 1977-1982 both stress the importance of culture to economic development, cooperation and identity of groups. Since the 1980s and through the 1990s the UNESCO work to a significant degree falls into the objectives expressed in the 1986 the UN General Assembly’s Proclamation on the World Decade for Cultural Development, included: acknowledging the cultural dimension of development; affirming and enriching cultural identities; broadening participation in culture; promoting international cultural co-operation (UN General Assembly 1986). This work concluded with the adoption in 2003 *The Convention on the Safeguarding of the Intangible Cultural Heritage*.

The UN World Intellectual Property Organization remains the only UN entity that currently propounds a comprehensive conception of traditional knowledge. The development surrounding work of WIPO on TK protection began with a WIPO worldwide study conducted in 1998-1999 and aimed exclusively toward identification of nature and scope of this entity titled the WIPO Fact-Finding Missions. Officially WIPO commenced this work in 1997 with the establishment of the Global Intellectual Property Issues Division headed by Dr. Kamil Idris. Within the framework of the Division's first program of activities for the 1998-1999 the theme of TK protection emerged as among the key ones and addressed as an element of a search for the new ways in which intellectual property could support developmental processes of diverse cultural groups. The justification for focusing on the TK reflected the fact that the groups identified as "holders of traditional knowledge" previously received inadequate attention as those who could benefit from employment of intellectual property mechanisms. As stated in the WIPO Program and Budget for the 1998-1999, the major objective of the organization's activities in the area of traditional knowledge is *"to identify and explore the intellectual property needs and expectations of new beneficiaries, including the holders of traditional knowledge, in order to promote the contribution of the IP system to their social, cultural and economic development"* (UN World Intellectual Property Organization 2001, 16). The study was conducted in twenty-eight countries throughout the South Pacific, Southern, Eastern and West Africa, South, North and Central Americas, South Asia, the Arab countries and the Caribbean. It consisted of interviews, consultations, meetings with close to three thousand individuals living in urban and rural areas. Other sources of information included documents collected during the missions and observations recorded during the study. The interviewed individuals included representatives of government and academia (indigenous and non-indigenous), traditional leaders and politicians

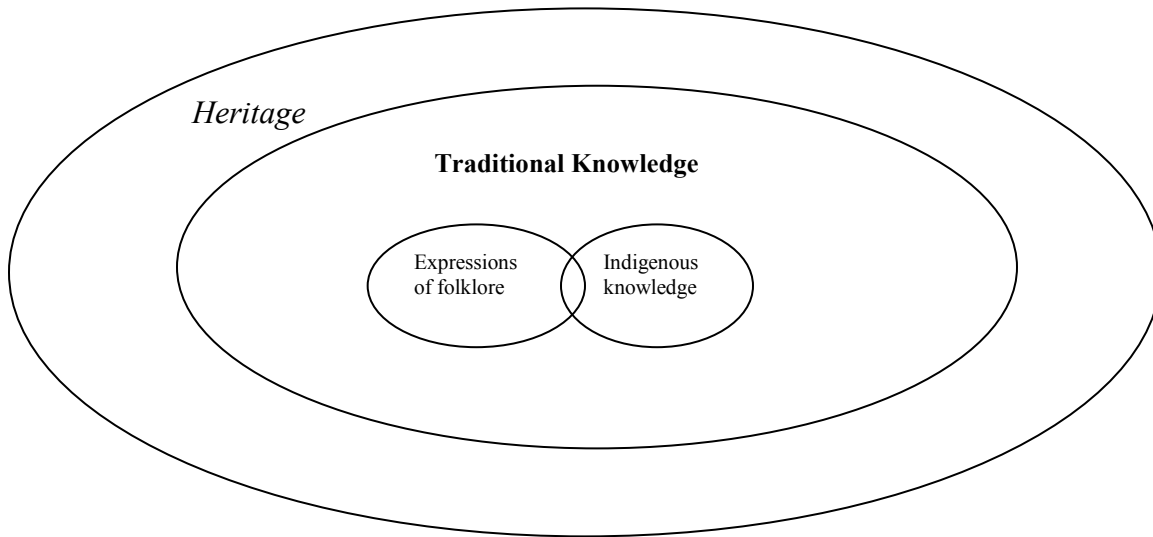
(including elders (Canada), representatives of NGOs, practitioners of traditional artistic and cultural art (artists, writers, dancers), traditional healers, museum curators, legal practitioners and indigenous rights activists, conservationists with an aim to identify intellectual property needs and aspiration of those individuals conceptualized as “TK holders.”¹¹⁰ The definition of TK constructed for the study reads:

Traditional knowledge refer[s] to tradition-based literary, artistic or scientific works; performances; inventions; scientific discoveries; designs; marks, names and symbols; undisclosed information; and all other tradition-based innovations and creations resulting from intellectual activity in the industrial, scientific, literary or artistic fields. “Tradition –based” refers to knowledge systems, creations, innovations and cultural expressions which have generally been transmitted from generation to generation; are generally regarded as pertaining to a particular people or its territory; and, are constantly evolving in response to a changing environment. Categories of traditional knowledge could include: agricultural knowledge; scientific knowledge; technical knowledge; ecological knowledge; medicinal knowledge, including related medicines and remedies; biodiversity-related knowledge; traditional cultural expressions (“expressions of folklore”) in the form of music, dance, song, handicrafts, designs, stories and artwork; elements of language, such as names, geographical indications and symbols; and, movable cultural properties. Excluded from this description would be items not resulting from intellectual activity in the industrial, scientific, literary or artistic fields, such as human remains, languages in general, and other similar elements of “heritage” in the broad sense (UN World Intellectual Property Organization 2001, 25).

¹¹⁰ The holder, as understood in this study is an individual “*who create, originate, develop and practice traditional knowledge in a traditional setting and context*” (UN World Intellectual Property Organization, 2001, 26). Among the major limitation of the study is its adherence to the WIPO’s circle of contacts in the selection of “holders” (the officers who conducted the mission worked either with government officials who facilitated their activities or with those people identified by the WIPO as relevant to this work). In addition, lack of a clear definition for the term “indigenous peoples” for the study makes it difficult to understand the scope of application of the WIPO proposed definition of TK. The authors of the Report refer to the very broad understanding of indigenous peoples as provided by J. Martinez Cobo in his *Study of the Problem of Discrimination Against Indigenous Populations*, namely as nations and/or peoples “... 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 countries.. They form ... non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories.. ethnic identities.. in accordance with their own cultural pattern, social institutions and legal systems” (Cobo 1986, as quoted in the UN World Intellectual Property Organization 2001, 23).

In this definition, which would serve the organization as a basis to develop a current perception of TK, WIPO authors place what is understood as traditional knowledge within the wider area of cultural heritage. As the diagram reconstructed after the one originally made for the Study signifies, indigenous peoples' TK is only a subset of what WIPO sees as TK (see fig. 2).

Fig. 2. WIPO Fact-Finding Missions: Traditional Knowledge (adopted from UN World Intellectual Property Organization 2001, Figure 2, 26).



The diagram's representation of folklore and heritage apparently responds to the way in which these elements are defined for the UNESCO/WIPO Model Provisions (traditional heritage of an artistic nature only) as well as they have been deliberated by Daes in her study *Discrimination Against Indigenous Peoples*. The conception of traditional knowledge as it emerges in this initial attempt of WIPO to construct a definition which would bridge all the related to protection developments embraces a set of related expressions that broadly refer to the same subject matter. It is, as it is described in a later WIPO record, a mere "... convenient umbrella term ... used to

refer to a wide range of subject matter”¹¹¹ as opposed to being a mechanism to analyze and/or reference the concrete elements of social reality.

The work of WIPO related to protection of TK had been conducted and continues to exist, as of March 2013, under the auspices of WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). I discuss the creation and the work of the WIPO ICG in the seventh chapter of this study. Discussions surrounding the conception of TK as well as means for its protection are conducted in relation with the two other elements: genetic resources and traditional cultural expressions. The term “genetic resources” refers to generally biological material to be found in plants through research. The work on protection of genetic resources can be traced back to the early 1980s and the activities of the UN Food and Agriculture Organization related to protection of rights of farmers. This work materialized in the International treaty on Plant Genetic Resources for Food

¹¹¹ The following WIPO analysis of the term might help to explain the significance and meaning of TK: “*In previous work, the Secretariat of WIPO has used the term “traditional knowledge” in an open-ended way ... This is not a formal definition, but a working concept of traditional knowledge, which may not be as precise as a scientific or restrictive legal definition, but it provides nonetheless the essential elements for the understanding of the nature and scope of traditional knowledge as legal subject-matter, and is consonant with the general approach to the definition of subject matter that is taken in the international IP framework...*

Traditional knowledge is “traditional” because it is created in a manner that reflects the traditions of the communities. “Traditional” ... does not necessarily relate to the nature of the knowledge but to the way in which the knowledge is created, preserved and disseminated. [It] ... is a means of cultural identification of its holders, so that its preservation and integrity are linked to concerns about the preservation of distinct cultures per se; and, even if it contains information of a practical or technological character, traditional knowledge has a cultural dimension and a social context that can distinguish it from other forms of scientific or technological information...

[TK] is essentially culturally-oriented or culturally-biased, and it is integral to the cultural identity of the social group in which it operates and is preserved...

[T]he cultural identity dimension of traditional knowledge may have a dramatic impact on any future legal framework for its protection, because, being a means of cultural identification, the protection of traditional knowledge, including traditional knowledge of a technical nature, ceases to be simply a matter of economics or of exclusive rights over technology as such. It acquires a human rights dimension indeed, for it intertwines with the issues concerning the cultural identification and dignity of traditional communities” (UN World Intellectual Property Organization Secretariat 2002a).

What is crucial, is that: “*A survey of existing international standards in the field of intellectual property would illustrate that a precise definition of traditional knowledge is not necessarily a crucial requisite for identifying the legal elements of a mechanism for its protection. ...The crucial element for the protection of any legal subject-matter is the identification of certain characteristics that it must meet as a condition for protection — such as novelty, inventive step and susceptibility of industrial application, for inventions, and distinctiveness, for trademarks...*” (UN World Intellectual Property Organization Secretariat 2002a).

and Agriculture adopted at the thirty first session of the Conference of the FAO (Rome, November 2001). The term “traditional cultural expressions” embraces a set of elements previously appearing under the framework of folklore despite that as a general category to describe intellectual creations emerging from the artistic and cultural areas “folklore” lost its salience. For the purposes of this study I will not engage into the discussion of history of development of the other two elements and mention them as the context of WIPO discussions surrounding protection of TK.

Presently, as of March 2013, on the margins of concluding development of the legal instrument(s) aimed at protection of TK the definition of this entity in the draft Article 1 reads:

For the purposes of this instrument, “traditional knowledge” [refers to] includes know-how, skills, innovations, practices, teachings and learnings [developed within a traditional context]/[developed with an indigenous people or local community]/[and that is intergenerational]/[and that is passed on from generation to generation] (UN World Intellectual Property Organization Secretariat 2013).

The envisioned policy objectives for the protection remain along the lines introduced in the 1990s focusing on recognition of value and promotion of respect to this entity, meeting the rights and the needs of the TK holders and providing solution to empower these holders, preservation and conservation of TK and its systems as well as safeguarding of it, repression of unfair use, and what is significant – insuring prior informed consent and benefit sharing (in accord with the CBD standards of protection). Principles of protection focus on protection against misappropriation (substantive provisions) and on ensuring that these provisions are flexible, balanced, effective and consistent (UN World Intellectual Property Organization Secretariat 2013).

Clearly the conception of traditional knowledge is referred to a specific type of culturally and economically significant resource toward which a protective measure is to be insured as a way to respond to specific interest of those actors who could potentially benefit from using and owning this resource. The reasons for TK to be understood as a separate responds to the way in which measures of protection had been constructed previously, the step that seemingly sheds more light to the processes of creation of legal knowledge rather than to the actual realities of TK (what and how what is understood and referred to by this term actually exists). The current approach toward conceptualizing TK within WIPO IGC that remains the framework for further discussion as opposed to being a settled way to refer to the subject matter is an evidence of this claim is evidently a trait of the TK protection policies as species of *political knowledge*; namely the way in which the conceptions of TK exist is always in the state of formation and evolution as long as the processes of negotiations take place.

Conclusion

The UN work aimed at conceptualization of TK, the objectives and means for its protection, the choice of terminology regarding which phenomena are to be protected within the framework of heritage is densely interconnected with the work of UN agencies employing TK for developmental purposes and conservation. At the same time conceptualization of TK as an element of differs from the notions surrounding TK in the policies related to development, with a difference emerging from introduction of a human rights perspective as it had been developed within the work of the UN Working Group and presented in the Daes' study *Discrimination Against Indigenous Peoples*.

Chapter 6. United Nations and Indigenous Rights

In this chapter I provide an overview of the UN system's possibilities and channels of participation of indigenous politicians in the indigenous rights forums. I also evaluate my findings related to the content and development of protection discourse in light of the argument I make in this study.

Introduction

The examination of the content of the records of the UN system conducted in the chapters four and five of this study suggests that the TK policies emerged as an intellectual product created in response to the needs of non-indigenous knowledge makers. As such it can be considered a mechanism that supports interests of actors other than individuals inhabiting specific indigenous groups, and most specifically the states. It could be argued further, that the UN system remains a mechanism that historically supported the interests of the states in the issues of international concern: the states remain the key entities in the process of creating international legal norms as the subjects of law with the rights to put forward new legal rules; as the sovereign entities they are legally bound only by norms to which they voluntarily consent.¹¹² The legal history of protection of indigenous rights, which compose a subset of the human rights law, suggests that indigenous views and perceptions of rights/freedom/justice did not serve as the foundation for the content of this body of law and resulting policies. The states have been and remain the key voices in deciding the *kind* of rights and freedoms the groups classified as

¹¹² See, for example, the recent history of the United Nations by Mark Mazower. One of the key arguments the author makes is that the United Nations has been founded as a transitory means to have the mission and the role of the League preserved in the conditions of decolonization. The argument however, works on the premise that the UN were to be an instrument to serve the interests of the British imperial system, the key player in the international relations at the moment, which as implied continued after the World War Two. The role of the United States in the foundation of the UN and in the world politics during the interwar and the period right after (the Soviet and the American influence on the work of the UN) is left out (Mazower 2009).

indigenous peoples could have, taken their position as entities that cannot enjoy self-government, i.e. those that remain under some form of control/domination of their federal governments.¹¹³ It would be correct to say that the United Nations system of policy and law making – the legal vocabulary, the tools and procedures of creating policies and law employed within the UN - embodies in its norms and expresses in its processes a *particular vision* of the way in which justice is to be created. This vision is codified in the international legal norms and principles; it is implemented through the ways of conducting international relations and by the use of existing legal instruments. It is promoted as universally valid, i.e. the one which, in principle, accounts for all experiences and aspirations, despite that as a product of a particular intellectual tradition (rooted in the colonial times) this vision gained its legitimacy as a universally (i.e. internationally) valid due to the dominated, silenced positioning of other groups turned into the subject of these laws (indigenous peoples including). As such the UN vision of rights, freedom and justice remains fundamentally foreign to the vision of freedom, rights and justice to which indigenous politicians appeal. As a consequence, the UN activities in the area of indigenous issues - as ways to implement existing standards of protection of indigenous rights - remain only indirectly if at all the kind of actions in which interests and aspirations of individuals inhabiting indigenous communities find representation and legitimacy. In that light the question of the degree to which the discourse as a product of the UN policy making serves the interests of

¹¹³ I tend to agree here with Vine Deloria: the right to self-determination is not the same as the right to self-government, as in the case of the United States. Deloria points out that the US tribal governing structures are not the ones that Indian people have historically enjoyed, would appreciate or necessarily choose/adopt, given a choice. Rather, these are the products of long and problematic relations between the tribal governing bodies and the U.S. government in which recognition of the tribes as political entities could only come at the cost of adapting forms of governance that would correspond to the interests and needs of the United States government in maintaining a degree of control over the tribal territories and social, economic, political and educational establishments (Deloria and Lytle 1984, 17-27). From this positioning forms of self-government practiced for example by Inuit in the Nunavut territory of Canada and in Greenland are essentially the forms of what Timo Koivurova and Leena Heinamäki call “public government model,” namely the systems of governance created in correspondence with the state political and economic structures (Koivurova and Heinamäki 2006, 101-109).

indigenous peoples loses its prominence. At the same time is it possible to claim that the discourse remains a tool created and used by the states to control political and social processes that take place within indigenous communities?

In this part of my study I work toward supporting the second part of my argument, the claim that despite that the discourse remains a product of non-indigenous epistemological origins it cannot be considered solely as the means of advancing non-indigenous interests in the area of protection of intellectual creations of indigenous peoples. The policies are a form of *political knowledge* by means of their existence as a spoken word, which content remains open to influences of those participating in the UN protection forums indigenous politicians included. Participation at the UN forums demands from indigenous individuals adoption of specific ways of articulating their views and positioning, and which is the language of so to speak those political actors that historically dominated over indigenous groups. At the same time and despite the limits the UN system places upon indigenous political activities, it is the means to institute change in the way in which the indigenous issues are currently handled on international and domestic levels.

The Protection Policies: Social context

As a form of *political knowledge* the policies can be considered as a body of words, ideas and propositions that can be articulated, assumed or contradicted, accepted or rejected. The social context of the existence of these policies is constituted of the political happenings surrounding the question of TK protection. These happenings in different ways have been supported by the UN organizational structure in a form of the events that bring together groups with diverse political interests, who struggle to have their interests to be recognized as legitimate.

The recognition of the interests as legitimate happens when certain ideas (for example, conceptions of elements of TK) proposed by a certain political group/actors enter legal and policy texts and as such gain validity as the proper way to represent a reality under question against all possible other ways of representation (as proposed by the other political actors who participate in negotiations). Later these ideas have a potential to function as elements of policies and/or legal tools potentially functioning as instruments of social control/coercion. Below I specify the kind of agencies which in various ways had been involved in the subject matter of protection (and records of which constituted the materials for analysis in the chapters four and five), their positioning within the hierarchy of the UN organization and the kind of possibilities open to indigenous individuals willing to participate in the UN political forums on indigenous rights with a particular focus on the work related to protection of TK within the framework of CBD.

UN specialized agencies and indigenous rights

The key political events and happenings which compose the social context for formation of the discourse are those conducted by and/or under auspices of the specialized agencies of the UN, namely: UNCTAD, UNESCO, WIPO, CBD/UNEP, UNPFII, FAO, UN Forum on Forests, UNDP, WHO. These agencies had been most involved among all the UN affiliated institutions in the subject matter of protection: currently existing legal instruments and policies in the area of protection rest upon the work of these agencies and/or feed upon concrete projects conducted under the auspices of these agencies. What is the nature of these agencies as institutions functioning as parts of the UN system, and what is the role of these agencies in promotion and protection of indigenous rights?

First, these are the specialized agencies of the United Nations coordinated on the intergovernmental level by one of the six main organs of the UN system¹¹⁴ - the Economic and Social Council (ECOSOC). The ECOSOC is a body responsible for the social and economic activities, specified in the Charter as promotion of higher living standards and of full employment, social and economic development, issues of health, international cultural and educational cooperation, and human rights (Articles 55, 60). The Council operates under the General Assembly that formally coordinates its work (United Nations 1945, Art. 60, 62-64). The Council has a membership of fifty-four governments elected by the General Assembly basing on geographical representation. The Article 68 of the UN Charter provides that the ECOSOC could establish subsidiary entities – such as regional economic commissions and the specialized agencies – that are to support in various ways the activities of the ECOSOC. Despite that under the Charter the Council remains the main coordinating body in the work of the agencies, in reality they have a distinct set of tasks that differ from one organ to the other as well as from the activities of their parent body. In addition the agencies are established through their own treaty mechanisms, function via own budget, staff, and have their own policymaking bodies. While the agencies remain parts of the UN family¹¹⁵ and linked with the ECOSOC through a set of formal agreements, they exist in many senses as autonomous entities. Internally the work of the agencies is coordinated by the UN System Chief Executives Board for Coordination.

The way in which the Council operates in the climate of the international diplomacy has been described as relatively technical: the Council supports the UN mission of maintaining peaceful cooperation among the nations by conducting studies, submitting recommendations,

¹¹⁴ The other five organs include Security Council, General Assembly, Secretariat, Trusteeship Council, and International Court of Justice (United Nations 1945, Art.7, par.1).

¹¹⁵ The UN entities function as a “family” in various ways, not only as parts of one organization, but also as the components of the six principle organs of the UN where each principle organ has its own objectives formulated in response to the general mission of the United Nations.

drafting of conventions and conducting conferences under the approval of the General Assembly (vs. for example the work of the Security Council directly involved in settlement of disputes including the use of military action if needed). At the same time, the Council is a UN body that has been more open to participation of the actors other than the states. Thus despite (and perhaps because of) the somewhat technical nature of its activities the Council remains a mechanism through which the role of the states in decision making processes on the level of the UN could be challenged.

Under the UN Charter the ECOSOC is the major channel through which the UN conducts the relationship with the members of the civil society – political actors who represent interests of others than the state governments. One of the major components of the civil society is the NGOs, participation of which at the work of the UN is insured by the Articles 71 of the UN Charter, which states:

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organization after consultation with the member concerned” (United Nations 1945, Art. 71).

Apart from the questions of composition, existence and relationship with the states’ governments that NGOs might or might not have, as well as not touching upon the issues of possibilities a concrete NGO to influence domestic political processes using the international political channels,¹¹⁶ the existence of the relationship between the UN and the non-governmental

¹¹⁶ While in this study I do not address the question of the level of influence specific indigenous organizations had exercised at the level of the UN, it is nevertheless a venue which would significantly add to the key questions of this work. One of the frameworks to conduct such a study is suggested by Willets’ analysis of history of NGOs in the UN system. Willets argues, that an NGO can only exercise some level of power on the way the UN political

organizations – formally through the normative provisions of the UN Charter, and practically as exhibited by the history of NGOs engagement with the UN– supports a notion that indigenous peoples could in fact influence policy and law making related directly to the wellbeing of their home communities.¹¹⁷ Presently about three and half thousands of NGOs exist in the consultative status with the ECOSOC. The status provides diverse formal and informal opportunities for indigenous individuals to participate in the work of the UN Representatives of an organization with the consultative status could enter the UN buildings and lobby the delegates of various UN forums informally. They also could work with the UN Secretariat. Finally, and that is of the key significance to this study, the status gives an opportunity for members of an NGO to engage in the work of the ECOSOC subsidiary organs that have their own systems of relationship with the civil society members.

Indigenous rights at the UN

processes are conducted is when an NGO is both, an organization and a part of a wider social movement. To explicate, an NGO in order to have an ability to influence international political climate should be more than a small number of individuals whose focus might be on influencing making of a specific policy document (instead of challenging established policy making system on international and national levels), but a body 1) able to impact domestic political system and have public support within specific sectors of society/economy, and 2) able to generate new ideas leading to appearance of new NGOs focused on the same subject matter yet approaching the work from new directions (Willets 1996). Thus, a key question of a study focused on assessing a degree to which an indigenous organization is capable to exercise a degree of political power within the UN would a question of a degree to which this organization is a part of a larger social upheaval aimed at changes in political system on various levels.

A related, yet very different by the aims of the study, work had been conducted by Bas Arts. Arts analyzed the extent to which global NGOs actually exercised political influence on formation and implementation of UN policies in the area of biodiversity and climate change as conducted under the auspices of the UNEP CBD and UN Framework Convention on Climate Change. Arts' focused on the processes of international relations, specifically on the social context, kind and quality of NGOs interventions to the negotiations. Arts concluded that in the area of environmental policy making and implementation NGOs had been able to influence political processes only in a limited fashion. The factors which enabled NGOs influence include 1) expertise, i.e. substantive knowledge of the particular issue and diplomatic skills, and 2) similarity between NGOs demands and the existing regime rules which plays a significant role in making NGOs interests legitimate. What constrained NGOs ability to influence policy making and implementation were 1) a confrontational, radical or idealistic types of an approach to negotiations, i.e. which did not correspond to the reality of political happenings and 2) the presence of the like-minded dominant states which did not depend on NGOs input during negotiations (Arts 1998).

¹¹⁷ In fact, the history of the NGOs role in formation of some of the policies, especially in the area of environmental protection, indicates that the NGOs could play a greater role in the processes of international relations that assigned by the Art. 71. Furthermore, the major international work on indigenous rights had been conducted and continues to exist within the walls of the United Nations, via relationship between the organization and indigenous peoples' organization as well as through work with prominent indigenous political leaders.

The ECOSOC subsidiary bodies have been the major mechanisms through which the work on indigenous rights had been conducted. Genealogically this work goes back to the activities of the oldest subsidiary entity of the United Nations – the International Labour Organization- created under the auspices of the League of Nations in 1919. The ILO, now a specialized agency of the UN, is responsible for the work on the two existing binding instruments that focus on the rights of indigenous peoples – the ILO Convention 107 (1957) and the ILO Convention 169 (1989). A more prominent and remarkable example of the ECOSOC engagement in the work on indigenous rights is the history of drafting the Declaration on the Rights of Indigenous Peoples.

The work on the Declaration was coordinated by the ECOSOC Commission on Human Rights.¹¹⁸ The main body of the Commission responsible for the human rights activities was the Sub-Commission on Prevention of Discrimination and Protection of Minorities (since 1999 to 2006 it functioned as the Sub-Commission on the Promotion and Protection of Human Rights). One of the six working groups of the Sub-Commission was the Working Group on Indigenous Populations (1982-2006),¹¹⁹ an entity under which the major work on drafting the Declaration was conducted. The Commission on Human Rights also established an inter-sessional ad hoc working group on the Draft Declaration on the Rights of Indigenous Peoples (1995 – 2006) to aid to the process. What makes the work on the Declaration a remarkable story is that for the

¹¹⁸ This Commission existed from 1946 to 2006 as an international forum and an instrument in the area of promotion and implementation of the human rights standards, and since 2006 was replaced by the currently functioning the UN Human Rights Council.

¹¹⁹ Creation of the Working Group on Indigenous Populations was proposed on September 1981 by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (resolution 2 (XXXIV) and authorized by the Economic and Social Council on May 1982 (resolution 1982/34). The Council authorized establishment of a working group meeting annually to review, analyze and submit to the Sub-Commission developments focused on protection of human rights of indigenous populations with a special attention paid the development of these standards in accordance with aspirations of indigenous populations throughout the world. The Working Group ceased to exist after the adaptation of the Draft Declaration evolving into the Expert Mechanism on the Rights of Indigenous Peoples currently functioning as a subsidiary expert mechanism of the Human Rights Council.

time in history representatives of indigenous political entities could participate in the processes of drafting the policy instrument: the doors to indigenous participation were open in 1982.

Furthermore since 1984 indigenous individuals and organizations with no consultative status with the ECOSOC could participate in the work on the Declaration, a step unprecedented in the UN history at the moment and thereafter (Stamatopoulou 1994).

In addition it must be added the 1990s in general could be characterized as the times of growing international attention toward indigenous issues beginning with adoption of the ILO Convention on Indigenous and Tribal Peoples 169. In 1993, the General Assembly proclaimed the Decade of the World's Indigenous People (1995-2004) in the resolution 48/163 leading the UN entities involved with indigenous issues to create specialized programmes and increase the number of projects focused on indigenous peoples.¹²⁰ In response to the General Assembly decision as well as following the adoption of the ILO Convention 169 specialized agencies conducted a number of thematic events, workshops, seminars, and roundtables. Another venue for political involvement of indigenous politicians during the 1990s had been international conferences conducted under the auspices of the United Nations. One of the major was the Technical Conference on Practical Experience in the Realization of Sustainable Development and Environmentally Sound Self-Development of Indigenous Peoples (Chile, May 1992), requested by the ECOSOC Commission on Human Rights in the resolution 1990/62. The Conference had a substantial number of attendees representing indigenous organizations and/or governing structures of indigenous peoples, where some participated as observers, while others were invited to nominate participants working along with members of different governments. Another major conference was the 1993 Vienna Conference on Human Rights where a

¹²⁰ Presently we are in the Second International Decade of the World Indigenous People (2005-2015) proclaimed by the General Assembly in 2004 in the GA resolution 59/174.

substantial number of indigenous individuals participated. One of the major decisions emerging from the Conference was the Vienna Declaration and Programme of Action that among other issues recommended the General Assembly to establish a permanent forum for indigenous people. The recommendation led to the creation of the UN Permanent Forum on Indigenous Issues in 2000, with the first session taking place in 2001 in New York. The 1994 International Conference on Population and Development in Cairo adopted the Action of the International Conference on Population and Development, acknowledging discrimination and oppression of the world's indigenous peoples and listing specific needs and concerns of indigenous populations that governments must address, primarily issues that are health care related. The 1995 World Summit for Social Development adopted the Copenhagen Declaration and Programme of Action, which focused on recognition and support of indigenous peoples' pursuit of their economic and social development in way that was respectful to their indigenous identity, cultural values and traditions. The 1995 Fourth World Conference on Women in Beijing adopted the Declaration and Platform for Action recognizing the need to ensure respect for the rights of indigenous women. An additional means to influence policy making during this time had also been production of indigenous declarations and policy proposals composed during indigenous peoples' conferences. Among most influential statements that influenced formation of the protection discourse were the Charter of the Indigenous-Tribal Peoples of the Tropical Forests adopted by the International Alliance of the Indigenous-Tribal Peoples of the Tropical Forests in February 1992; the Kari-Oca Declaration adopted during the World Conference of Indigenous Peoples on Territory, Environment, and Development in May 1992; and The Maatua Declaration on Cultural and Intellectual Property Rights of Indigenous Peoples adopted during the First International Conference on Cultural and Intellectual Property Rights on Indigenous

Peoples in June 1993. The statements from these declarations as well as references to them could be found in a number of records produced by the UN specialized agencies involved in the work on the protection.

CBD

Most influential UN entities in the formation of the protection discourse had been the CBD, the body that worked on creation and currently involved in the implementation of the Convention and that functions under auspices of the UNEP. What kind of mechanisms CBD had created in response to the normative developments within the UN related to insuring protection of indigenous rights, specifically by means of insuring participation of indigenous politicians in the work of these organizations?

Most of the CBD work related to insuring the participation of indigenous politicians in the policy making and implementing activities was conducted and continues to exist under the general framework of activities aimed at implementation of the CBD Article 8(j) and Article 10(c). Following the adoption of the Convention the CBD Secretariat created a set of events to insure indigenous participation in the work on implementation of the Convention: the Regional Meeting on Intellectual Property Rights and Biodiversity (Bolivia, September 1994), the Asian Consultation Workshop on the Protection and Conservation of Indigenous Knowledge (Malaysia, February 1995) and the Consultation of Indigenous Peoples' Knowledge and Intellectual Property Rights (Fiji, April 1995) (UN Convention on Biological Diversity 1996a). Since the 1996 the Secretariat employs a program officer on traditional knowledge who works on implementation of Article 8(j) serving as a point of contact for representatives of groups that fall under the “indigenous and local communities” category. During the same year the International Indigenous Forum on Biodiversity was established that works currently in

advisory capacity to the Conference of the Parties, which is a body that governs and reviews the treaty during regular meetings and consists of representatives of the governments that ratified the treaty. The Working Group on Article 8(j) and Related Provisions open to participation of indigenous individuals in capacity of observers was established in 1998. At the 8th meeting of the Conference of the Parties (COP) Voluntarily Fund had been established to support participation of representatives from indigenous/local communities in the Working Group.¹²¹ In 2005 the Secretariat established another means for indigenous and local communities' participations, the Advisory Group/Steering Committee, presently functioning as an expert body on the questions of protection of those types of traditional knowledge seen as relevant to objectives of CBD. The key documents composed to insure implementation of the Article 8(j) on the level of moral obligation (i.e. voluntarily basis) are the Akwé: Kon guidelines adopted by the COP during its seventh meeting in 2004 and the Tkarihwaí:ri code of ethical conducted known as the Code of Ethical Conduct on Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant for the Conservation and Sustainable Use of Biological Diversity adopted at the tenth meeting of the COP in 2010. Yet the major accomplishment of the tenth meeting of the COP had been an adoption of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits developed to a significant degree in response to the normative principles of the Declaration on the Rights of Indigenous Peoples. The Protocol was opened for signature by the CBD parties on February 2011 and will come into effect after fifty countries ratify it.

One of the studies of the way in which the representatives of NGOs, indigenous politicians included, were able to influence policy development and implementation within the

¹²¹ Those interested in participating should contact the CBD Secretariat (the officer serving in capacity of TK officer) directly and/or members of the Advisory Group for Article 8(j) from the relevant region and as described here : <http://www.cbd.int/traditional/general.shtml>.

CBD framework had been the study Bas Arts. Arts concluded that the achievements of the NGOs in the issues directly related to the situation of indigenous peoples' in the processes of composition of particular decisions in response to the normative guidelines of the Convention as well as in implementation phase had been modest at most (Arts 1998, 177-183, 202-207). One of the most interesting findings from the Arts' study is that participation of NGOs in this area of policy activities had not been a decisive force in including the indigenous issues in the negotiations among governments at the first place. Thus, the discussion of the issues pertinent to indigenous peoples might have entered the CBD negotiations with little or no presence of indigenous politicians and in response to the general political climate within the UN in the 1990s and during the 2000s. At the same time it is the kind of inclusion that would have resulted from little or no NGOs activities becomes the question of the key importance. To what degree for example, the creation of the Voluntarily Fund as well as the kind of expert bodies that had been functioning and exist would be possible with no indigenous political interventions present? Also, would composition of the documents currently composing the normative framework for implementation of the CBD provisions related to protection of intellectual creations be possible with no participation on the side of indigenous peoples (even while no substantive decisions related to these issues having been formed yet)? While these questions remain open, the developments on the CBD implementation of the articles relevant to protection of intellectual creations of indigenous peoples bring additional evidences to the argument that the way in which the discourse had been formed was not solely a response to the interests of the states.

To further examine the kind of participation that had taken place and/or could possible lead to influencing policy making processes in the area of protection I examine indigenous participation in the work of WIPO in the following chapter.

Chapter 7. WIPO IGC Study

World Intellectual Property Organization was established in 1967 as a body responsible for overseeing the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. Prior to WIPO the United International Bureaux for the Protection of Intellectual Property administered the work related to these Conventions. In 1974 WIPO became a specialized agency of the UN system. Currently the organization oversees more than twenty treaties on behalf of its 185 member states with the mission to develop and implement legal and policy standards in the field of intellectual property. In this chapter I examine the WIPO work on protection in the past decade and conducted under the auspices of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). First I introduce the IGC area of competence and the accomplishments related to protection of TK. Next I discuss participation of indigenous politicians in the work of IGC. I conclude with an assessment of existing ways and the history of indigenous participation in the work of IGC.

Introduction

Established by the decision of WIPO General Assembly WO/GA/26/6 in 2000 as a committee of experts¹²² the IGC functions as a forum focused on creating a set of legal standards aimed at protection of fruits of intellectual and cultural activities created within the so-called traditional settings. TK is one of the three elements formulated as the subject of protection; the other two are genetic resources and traditional cultural expressions/folklore. The first session of

¹²² Patricia Goff traces establishment of IGC to the final days of negotiations of the WIPO Patent Law Treaty in 2000 when the member states representatives requested inclusions of the questions related to protection of traditional knowledge, folklore and genetic resources to the process of negotiating the Treaty. Resulting from these developments an ad hoc committee was created with an aim to study the relationship between protection of these entities and intellectual property system leading to creation of the IGC (Goff 2009).

IGC took place in 2001, with the key documents produced since then - the two Gap Analyses and the two sets of Draft Provisions for the protection. In the light of the 2011 WIPO General Assembly decision the construction of these texts should be concluded this 2013 year.

Participation of Indigenous Politicians in the Work of the IGC

Opportunities and means of participation

Indigenous politicians participated in the work of IGC since the first session of the Committee in 2001 as *ad hoc* observers or in a capacity of experts and consultants. To gain a state of an observer one must be a member of an organization accredited with the WIPO IGC. As of April first of 2012, there are 277 organizations accredited as *ad hoc* observers (see Appendix C).¹²³ This group apart from the indigenous organizations includes representatives of professional organizations, such as, for example, American Intellectual Property Law Association, International Literary and Artistic Association, International Council of Museums, CropLife International (trade association); human and indigenous rights non-governmental organizations (NGOs) such as, for example, Netherlands Centre for Indigenous Peoples; research institutions such as, for example, Max Planck Institute for Intellectual Property, Competition and Tax Law, and Queen Mary Intellectual Property Research Institute. At the premises of a session (Sunday before) the WIPO Secretariat conducts Consultative Forum with indigenous representatives as a way to educate the participants about the IGC structure, work and ways to participate at the negotiations. Indigenous politicians can also organize side events that take

¹²³ The accreditation process is similar to the way in which WIPO establishes relations with members of civil society and also those interest groups which would want to take a part in the work of the organization. First an organization must complete a form in which a description of the organization, history of establishment, aims and objectives, main activities and relationship to the work of IGC must be briefly described (see Appendix A; UN World Intellectual Property Organization Secretariat 2002). The form is then submitted to the WIPO IGC Secretariat at least two months prior to the next IGC session. The request is then considered during the session by the IGC participants and the status is granted by the vote of the IGC body. For more information and for listing of the observers refer to the WIPO website and also (UN World Intellectual Property Organization Secretariat 2011a).

place between the morning and afternoon gathering of the IGC delegates or at the end of the day. During the seventh IGC session in 2004 the delegation of New Zealand proposed to have a Panel that would feature presentations by participants representing *indigenous and local communities*, as a way to enhance participation of individuals representing these groups at the IGC. The Panel coordinated by the Secretariat featured seven participants, each representing a specific socio-cultural region, with the first Panel taking place during the eighth plenary session in 2005, and the last one at the seventeenth session in 2010. In 2005 the WIPO Voluntary Fund for Indigenous and Local Communities was established to support participations of representatives of accredited indigenous and local communities.¹²⁴ Representatives of indigenous organizations also participated in the recent inter-sessional working groups established to aid in completing the final text(s) of the legal mechanism(s).

In addition to directly supporting indigenous participation in the work of IGC the Secretariat conducted information sessions and consultative sessions with indigenous politicians during other UN forums related to the subject matter of protection of indigenous creativities, especially at the UN Permanent Forum on Indigenous Issues, the UN Expert Mechanism on the Rights of Indigenous Peoples and the meetings of CBD, FAO and UNESCO. Seminars and workshops organized by WIPO and in cooperation with other organizations had also been an aspect of consultative and information activities with and for indigenous politicians outside the IGC sessions.¹²⁵ Other means of engagement with representatives of indigenous peoples are

¹²⁴ Decisions on the candidates to be funded are made by the WIPO Director General and based upon recommendations of the members of the Advisory Board of the Voluntary Fund. The Board is the body elected by the plenary and consisting of 9 members. Three members of the Board are representatives of the accredited observers from indigenous and local communities; other six members include the Chair and the five individuals from the delegations of the Member states. Refer to the WIPO website for the rules and procedures of the way in which Fund operated.

¹²⁵ Examples of some of such events include: Workshop “Facilitating the Participation in the Intellectual Property and Traditional Knowledge Debate in WIPO’s IGC” supported by the Swiss Federal Institute of Intellectual Property and the International Centre for Trade and Sustainable Development (ICTSD) in cooperation with WIPO

capacity building programs, part of which is the Creative Heritage Projects initiative commenced in 2006. Under this initiative a cultural documentation pilot project was conducted in the Maasai community from Laikipia, Kenya (2008, 2009) and in cooperation with the American Folklife Center (Library of Congress) and the Center for Documentary Studies at Duke University (American Folklife Center n.d). The Secretariat also conducted studies and created thematic databases. Existing codes, normative guidelines and practices of protection of some of the indigenous peoples could be located in the Cultural Documentation database open to the public. Since 2009 WIPO features Indigenous Intellectual Property Fellowship as means to respond to the “*reciprocal needs for stronger capacity in the rapidly growing domain of indigenous IP law and for strengthened capacity on IP law and policy for indigenous lawyers and policy advisors*” (UN World Intellectual Property Organization. 2012). The Fellowships supports IP training of an indigenous individual at the WIPO headquarters in Geneva.

Constraints and forms of participation

Prior to conducting the examination it merits describing indigenous politicians as a political actors as well as the positioning of this groups in the overall structure of the political settings the IGC makes. The politicians who represent interests of what is termed within the mandate of IGC of *indigenous and local communities* is a somewhat heterogeneous group of individuals. They range from members of tribal governing structures that might have a formal

(February 2008, Geneva). The workshop aimed at helping indigenous politicians to fully participate at the upcoming IGC session as well as a way for them to meet with the representatives from governments and international organizations. The workshop was attended by indigenous politicians funded by the WIPO Voluntary Fund. The International Symposium on Intellectual Property and Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources: Towards Sustainable Development for Indigenous Communities (Saint Petersburg, Russian Federation, October 31 to November 4, 2010) organized by WIPO and the Ministry of Regional Development of the Russian Federation. Representatives of over 20 indigenous groups across the world participated (UN World Intellectual Property Organization Secretariat 2011b). Intellectual Property and Sustainable Development: Documentation and Registration of Traditional Knowledge and Traditional Cultural Expressions (Muscat, Oman, June 26 to 28, 2011) organized by WIPO and the Public Authority for Craft Industries (PACI), the Sultanate of Oman.

relationship with the home government, such as, for example, the representatives of the Tulalip Tribes of the state of Washington, the United States, to the leaders of indigenous peoples' organizations from the states where groups recognized as indigenous peoples have little or no control over the governing processes within their own communities, such as representatives from Ukraine, for example, and to a degree from the Russian Federation. This population at times substantially differs from the rest of the people in their home communities whose interests indigenous politicians represent or claim to; the men and women who participate at the IGC necessarily must be involved in the political life within their own home countries and have some knowledge of the way in which UN facilitates participation of the civil society members in the work of the organization. As apart from logistical difficulties associated with coming to Geneva and staying there for the duration of a session (e.g., financial constraints, getting a visa) participants must be members of an organization in some ways related to the UN work on protection of indigenous rights as well as directly to the work of the WIPO IGC.¹²⁶ These men and women also differ among each other; at times these people are activists who might not reside in the community of indigenous peoples whose interests they represent, or even the country

¹²⁶ According to the UN Charter, the key requirement for an entity to enter relationship with the United Nations in a form of a civil society partner is for an entity to be an NGO, namely a body with no governing capacities/aspirations functioning in a capacity of an organization. This requirement does not necessarily correspond to the realities of indigenous political settings. Members of traditional leadership, for example, could not be recognized as non-governing entities; the traditional governing structures (such as for example tribal councils) could not be defined as organizations. This requirement limits the representation of indigenous politicians at the IGC forum to those individuals who could comply by establishing an NGO that at times could be difficult due to the socio-political and economic constraints within their home countries.

Of course indigenous politicians could in principle participate at the UN forums without such an affiliation, yet the degree of political influence that they can practically attain at these events is very low, if any. For example, indigenous individuals could take part in the work of the UN Permanent Forum and of the Expert Mechanism on the Rights of Indigenous Peoples without having an affiliation with an NGO, which, however, does not guarantee any concrete opportunities to influence any of the processes that might have direct influence on their home communities due to 1) logistics of participating in these forums (many lack financial ability to travel to New York and/or Geneva and stay there for a duration of a forum), ability to speak languages (English, French, Spanish) and to understand the legal issues pertinent to the indigenous rights as well as to use tools available for influencing policy making (many lack this basic knowledge), 2) positioning of these bodies in the UN hierarchy which limits the role of indigenous individuals for the most part to the consultants/experts, and 3) possible negative consequences participation of indigenous politicians at the international events could have for them within their home countries.

where this community is located.¹²⁷ These individuals hold different social and political positions within their home countries, speak different languages, have different educational backgrounds and ways of getting into the UN political environment. They might also pursue very different personal interests shaped by particularities of the political and economic situations within their home states and communities as well as view each other as competitors for the limited funds UN has to support participation. This condition at times could lead to the controversies within this group of political actors that nevertheless and due to the IGC structural requirements must work together.¹²⁸ The conflicts within this group could potentially lessen the role of indigenous political influence at the WIPO IGC and other UN political forums.

Individuals I term indigenous politicians are recognized as a legitimate political voice at the WIPO IGC due to their role of representing the interests of the “key stakeholders” in the matter of protection, namely the target population toward which protection policies are

¹²⁷ Such as representative of Tupaj Amaru who participated in most of the IGC sessions due to his residence in Geneva.

¹²⁸ Such situation arises due to a set of factors. Some indigenous politicians might work and/or be in some ways supported by the government while others have interests very different from those that a government might want to pursue by having relationship with indigenous political leaders (such is for example the cases of Russia and Canada). In other cases, some, such as the U.S. representatives of domestic governing structures coming from communities whose interests likewise differ among each other, would not be interested in cooperating yet for reasons very different from those that arise from having (or not) established relations with the domestic government. Finally arguments might arise due to mere logistical reasons surrounding for example the way in which funds are to be distributed (Voluntarily Fund). Thus hardly cooperation among indigenous politicians arises on the basis of solidarity emerging from similarity of interests; rather they work together due to particularities of the settings. For more see, for example FAIRA (2011). Interesting examples in this regard are the Canadian and Russian indigenous organizations. In Canada, for example there are national level indigenous organizations and individual indigenous groups (personal communications with Greg Yong-ing). This situation is similar to Australia (Harty and Murphy 2005, 18, 113-116). The representatives of one of the national level organizations - the Canadian Assembly of First Nations — claimed to represent collective interests of more than 600 communities. At the same time the validity of these claims becomes problematic in light of the fact that participation of this organization had been supported by the Canadian government which in turn had a history of problematic relationship in cooperating with indigenous leaders. Similarly, in Russia, RAIPON by being the oldest and the largest indigenous peoples organization, and having a member of the organization working in the federal governmental structure, claims to represent the interests of small-numbered peoples of the North (or those with the status of indigenous peoples under the Russian legislation). To what degree however such claims are in fact realistic taking into account diverse difficulties of the socio-economic conditions in which Russian indigenous groups survive as well as possibilities of advancing indigenous rights in Russian political environment is the significant question. One of the way in which one might assess the validity of such representational activities may perhaps be by asking of the kind of relationship (if any) these organizations have with the members of traditional leadership in local communities across the country.

constructed. Such a condition allows indigenous politicians to enter negotiations with other political actors as a community that participates in the political debates on behalf of all *indigenous and local communities* as opposed to serving interests of specific indigenous peoples (which, in addition if compared would substantively differ from each other depending on concrete life circumstances of these groups). This condition also requires adopting an existing language to conduct negotiations, namely to express indigenous interests in the light of the currently existing norms of protecting indigenous rights. Thus, a most meaningful form of participation indigenous politicians could choose is by working as an indigenous caucus/delegation. As a caucus they might present their own claims, support those states that in principle align with the aims and objectives of the indigenous groups as a way to have a greater influence and to have a leverage against the states with different or opposite interests. At the same time the status of an observer significantly limits indigenous influence at the IGC negotiations. In accord with the Rule 24 of the WIPO General Rules of Procedure as observers indigenous politicians could only participate in the negotiations at the invitation of the Chair. They have no ability to submit proposals, amendments or motions (UN World Intellectual Property Organization 1970). In practice indigenous politicians did intervene in the debates regularly (see Table 4). They submitted individual and collective statements and consulted with members of the states regularly. At the twentieth session of the IGC (February 2012) they boycotted the session by walking out of the negotiation room to protest the non-recognition of their claims by the Committee and the delegates. (Appendix G). This move indicates that the degree of indigenous political influence on the IGC processes, despite all, remains low.

Participation: Analysis

I investigated indigenous participation at WIPO IGC during 2001-2012 using the three variables: frequency of participation on individual and organization levels; frequency of interventions on individual and group levels; and the content of claims.

Organizations

The total number of organizations that obtained the status of *an observer* with WIPO IGC from 2001 to 2012 was 277. The number of the organizations I classified as “indigenous” by which I meant the organizations created and maintained by indigenous peoples was 129, or 46% of total number.¹²⁹ When classified by socio-cultural regions of their location¹³⁰ the most organizations that obtained the status are from South America (38) and Africa (32).¹³¹ The countries with major concentrations of organizations that applied and obtained a status are Canada (11), Peru (8), Australia (6), Nepal (6), U.S. (5), India (5), Kenya (5) (see Table 2).

Among the 129 indigenous organizations with the status of *an observer* only 69 organizations, or 53.5% of the total of 129, had representatives participating in the IGC sessions at least once. The organizations from the North America, the Arctic and in those countries that fell in a category that embraces the former Soviet Union were among those whose representatives participated most: 87.5% for the North America and 66.7% for both, the Arctic and the Central and Eastern Europe (Table 2). The frequency of participation showed that for

¹²⁹ I conducted my classification using the descriptions submitted by representatives of these organizations to WIPO IGC with a purpose to obtain the status of an observer. These descriptions therefore are created in response to the WIPO IGC standards and might or might not correspond to the actual realities of existence of these organizations (up to the degree that such a existence amounts to a mere fiction).

¹³⁰ I employed the regional division criteria determined by the indigenous politicians who had functioned as members of the UN Permanent Forum on Indigenous Issues.

¹³¹ The numbers of organizations located in specific countries do not correspond to the total number indicated for this country due to the fact that I only provided numbers for those countries which housed 3 or more organizations. Further I used the location of an organization HQ as an indication of the location of the organization (vs. the region(s) in which it worked). Those classified as international organizations had their HQ in the countries with no indigenous groups/populations upon which their activities focused; these organizations mostly worked as networks/umbrella settings among smaller organizations located in different countries.

the most part organizations tend to participate in one to three sessions overall. Only one organization out of 69 total had a person participating in all nineteen sessions (see fig. 3).

Fig. 3. Indigenous Organizations: Pattern of participation at WIPO IGC

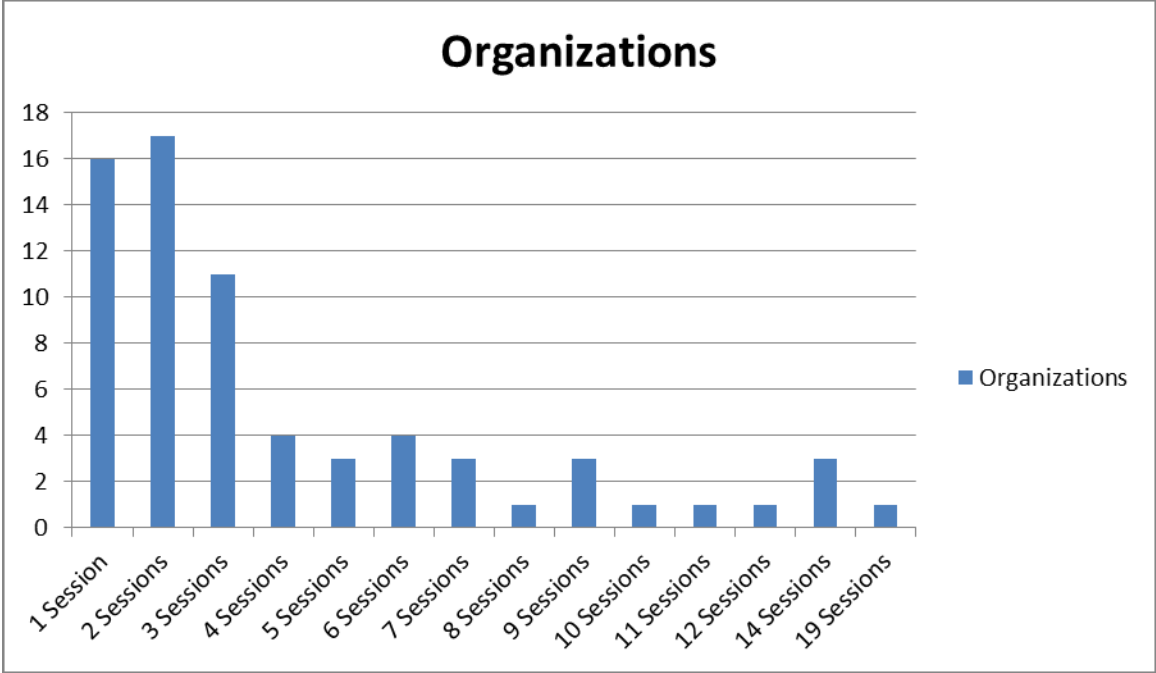


Table 2. Indigenous organizations participation at the WIPO IGC by location

	Africa	Asia	South America and the Caribbean	The Arctic	Central and Eastern Europe, Russia, Central Asia and Transcaucasia	North America	Pacific	<i>International (no region)</i>	Total
Status obtained	32 (24.8%)	19 (14.7%)	38 (29.5%)	3 (2.3%)	6 (4.7%)	16 (12.4%)	10 (7.7%)	5 (3.8%)	129 (100%)
Participated	17 (53%)	11(60%)	15 (40%)	2 (68%)	4 (68%)	14 (88%)	3 (30%)	3 (60%)	69 (100%)
	Cameroon (5) Kenya (5) Congo (3) Uganda Algeria Morocco Burundi Botswana Nigeria Tanzania Sudan Burkina Faso	Nepal (6) India (5) Japan Philippines Malaysia Bangladesh Indonesia	Peru (8) Ecuador (4) Brazil (3) Columbia Argentina Venezuela Panama Chile Caribbean Panama Guatemala Honduras Guyana Bolivia Costa Rica Mexico	Finland Sweden Norway	Russia (4) Ukraine	Canada (11) U.S. (5)	Australia (6) Hawaii New Zealand	N/A	

Participation: Individuals

Table 3: Indigenous participation at WIPO IGC: individuals and organizations

Year and sessions	2001 (2)	2002 (2)	2003	2004 (2)	2005	2006 (2)	2007	2008 (2)	2009 (2)	2010 (2)	2011 (2)	2012
Individuals participated	4/11	8/34	23	18/16	19	27/20	21	15/22	25/19	19/17	23/30	30
Organizations participated	4/5	15/8	16	15/12	12	20/19	17	15/22	19/15	13/12	16/20	15

The total number of individual participants for all the years was 197 persons; some participated more than once. Individuals from 7 organizations (7 individuals in total) participated in a half or more of the nineteen IGC sessions, which is little less than 4% of the total number of the participants (Appendix F). These individuals were: L. Paryanagua (Tupaj Amaru, Peru; 19 times), P. Hardison (Tulalip Tribes, United States; 14 times), M. Ahren (Saami Council, Sweden; 14 times), T. C. Cahuapaza (CISA, Peru, 14 times), S. Wuttke (Assembly of First Nations, Canada, 12 times), G. Young-ing (CRA, Canada, 11 times), R. Malezer (FAIRA Australia; 10 times). The somewhat low degree of participation suggested that a number of factors, the major one being, perhaps, financial constraints associated with coming to Geneva and staying there, made it difficult if not impossible for those indigenous individuals working and/or volunteering for the organizations recognized as observers to participate in the IGC.¹³² The second projection was that participation depended on the kind of domestic political structures: the representatives of United States, Canada, Australia and Sweden – those countries where relationship between indigenous and state provide indigenous groups with wider political choices (as well as where economic conditions were more favorable for participation) – tended to participate in the IGC

¹³² This projection is supported partly by the visible growth of the number of participants coming to Geneva after the establishment of the Voluntarily Fund in 2005 from 19 persons in 2005 session to 27 in the next, 2006 session (see Table 3). At the same time the projection is not that strong, as even before the establishing of the Fund the number of participants was somewhat significant in 2002, for example (34 persons).

more than representatives from other parts of the world. The projected importance of the session was also a factor as visible in the increasing level of indigenous engagement at IGC during the 2011 and 2012 sessions at the margins of the conclusion of the work of IGC (see Table 3).

Interventions

Next I examined the interventions conducted by indigenous politicians at the IGC. I identified the organizations whose representatives were most active (by calculating frequency of participation and of making interventions). The organizations included in this analysis are those functioning as umbrellas within their states: the Inuit Circumpolar Conference (ICC), IPBN, CISA, RAIPON, IPCB, FAIRA, CRA and AFN. According to my analysis of the IGC reports the indigenous politicians intervened at the negotiations during each of the sessions; during more than one half of the sessions the interventions were conducted as a group intervention (see Table 4).

Table 4. Interventions at the WIPO IGC by indigenous politicians. (*Those marked with an asterisk* are the interventions by a group*).

Organizations	2001		2002		2003	2004		2005	2006		2007	2008		2009		2010		2011	
	1 st	2 ^d	3 ^d	4 th	5 th	6 th	7 th	8 th	9 th	10 th	11 th	12 th	13 th	14 th	15 th	16 th	17 th	18 th	19 th
Tupaj Amaru	1	4	6	2	4	3	5	2	4	3	10	0	5	4	8	5	14	14	20
Saami Council	1	3	7*	3	3	3	3	3	4	n/a	6	3*	0	n/a	11	9*	n/a	n/a	n/a
IPBN	0	n/a	4	0	n/a	n/a	n/a	1	n/a	n/a	n/a	n/a	n/a	2*	5	n/a	n/a	n/a	n/a
Tulalip Tribes	n/a	n/a	0	0	2	n/a	2	1	5*	3	n/a	6	1	1	5	8	7	6	8
Inuit C.C.	n/a	1	2	3*	2	0	2	n/a	n/a	1	1	0	0	1	n/a	n/a	n/a	n/a	n/a
CISA	n/a	n/a	n/a	n/a	n/a	1	2	n/a	2	0	1	0	1	0	2	7	10	11	17
RAIPON	n/a	n/a	0	0	n/a	n/a	n/a	n/a	1	n/a	2	0	0	n/a	0	0	0	n/a	n/a
IPCB	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	6*	n/a	6	n/a	1*	5*	n/a	5	9*	13*
FAIRA	n/a	n/a	n/a	n/a	1	0	3	2*	n/a	n/a	n/a	n/a	0	n/a	n/a	0	5	5	2
CRA	n/a	n/a	n/a	n/a	0	0	0	1	0	0	2	0	0	0	n/a	n/a	n/a	1	n/a
AFN	n/a	n/a	n/a	0	0	1	1	n/a	1	1	n/a	3	0	1	n/a	n/a	0	2	1
Total	2	8	19	8	12	8	15	10	17	14	22	18	7	10	36	29	41	48	61

Claims

As a final step I examined the content of the claims by the indigenous politicians. The examination revealed that the discussions of the issues relevant to protection of TK had been conducted using the normative provisions of the UN Declaration on the Rights of Indigenous Peoples with an emphasis on the collective rights and self-determination.¹³³ Indigenous politicians insisted that collective rights to indigenous cultural heritage existed within the indigenous settings yet not recognized by the individual states and international community.¹³⁴ Specifically the currently recognized norms of the intellectual property system protected the rights of individuals not collectives and as such were inherently short of providing means for the protection that indigenous groups needed (Goff 2009; UN World Intellectual Property Organization Secretariat 2001, 48; 2002b, 5, 8, 15, 18, 87; 2002c, 24, 240, 245). The TK was discussed as the vital element of indigenous heritage and peoples' distinct identity, and as implied in the Daes' study (Daes 1993). The need to protect TK by means of recognition of customary laws on the side of international community (and by extension, individual states) was a way to express the indigenous claims for self-governance and land related claims as means to reinforce the relationship of people to their ancestral territories and the collective identities.¹³⁵ The interrelationship between a need to maintain forms of subsistence particular to a given territory and specific knowledge maintained essentially via indigenous lifestyle (vs.

¹³³ For indigenous criticism see Tulalip Tribes of Washington (2003); on discussion of indigenous positioning on customary laws see Ahren (2004).

¹³⁴ As, for example, expressed by a representative of the Tulalip tribes of Washington (U.S.) and before that by a representative of Saami Council (Sweden): "...*The representative particularly supported the Saami Council on the issue that rights could not be traded against interests. The representative stated that the Tulalip Tribes came from a nation which recognized the prior rights of indigenous peoples. These rights were not granted, but recognized. These rights were held to exist until ceded by treaty, voluntarily ceded by the indigenous peoples or extinguished by a deliberate act of the United States Congress. These rights were also not dependent upon their continual and unbroken exercise. Any abridgement of these rights by others who exercised their rights by virtue of state grant constituted an illegal abridgement of these rights. Simply put, their rights could not be balanced against privileges*" (UN World Intellectual Property Organization Secretariat 2006).

¹³⁵ For a detailed discussion see presentations of indigenous politicians featured as parts of indigenous panel.

documentation and conservation), emphasized by indigenous politicians was a strategy toward employment of the protection discourse toward regaining indigenous self-governance of their lands.

These claims were reinforced by references to the negative consequences of the history of discrimination that remains continuous throughout the existing economic, legal and political regimes of indigenous populations (UN World Intellectual Property Organization Secretariat 2002b, 158, 339, 425). The two major instruments that indigenous politicians struggle for as concrete tools of ensuring protection included 1) the prior and informed consent with an indigenous group whose knowledge is to be patented by a third party and 2) fair and equitable benefit sharing.

Conclusion

Participation at WIPO IGC is only an instance of political activities of a group of individuals I term “indigenous politicians” who in various ways had been involved in the UN work on protection of indigenous rights increasingly since the 1980s. Presence and activities of indigenous experts, activists and scholars at the UN resulted in some substantive changes with most significant ones being the change in the way in which the UN conducts relationship with the representatives of the groups classified as indigenous peoples as well as, and significantly resulting from these changes, adoption of the Declaration on the Rights of Indigenous Peoples. The current ways of influencing international policy and law making at the level of the UN open to indigenous individuals - such as the work of the UNPFII, the Expert Mechanism on the Rights of Indigenous Peoples, various working groups within specific UN agencies WIPO including, participation of indigenous experts in the conferences, workshops, seminars and actual

employment of indigenous individuals within the UN system – are significantly a result of many years of political activities and dedication to indigenous cause on the side of many individuals. The work of indigenous politicians at the WIPO IGC is a component toward further recognition of the role of indigenous political actors on the level of international politics with possible repercussions on the domestic level related to the subject matter of protection within a larger set of issues of protection of indigenous rights. The hope remains that the future will bring a possibility for further and more meaningful involvement of indigenous politicians in the work of UN agencies as perhaps *permanent participants*¹³⁶ working alongside with the representatives of member states and in the same legal capacity.¹³⁷

¹³⁶ I adopt this term from the inspiring development that took place in the work of the Arctic Council, where the role of indigenous participants evolved from the status of observers to the permanent participants, the status which while remaining a provision for the consultation rather than a right to vote on the final decision which remains a states' right, guarantees them a right to veto a specific proposal should they reject it (Koivurova and Heinamäki 2006). The Arctic Council was created in 1996 in response to developments initiated by signing in 1991 the Declaration on the Protection of the Arctic Environment and the Arctic Environmental Protection Strategy (AEPS) by the United States, Canada, Russian Federation and the five Nordic states. The Strategy specifically provided for cooperation of the states with the indigenous peoples residing in the Arctic region as observers, leading to establishment of the Council as means for such a cooperation yet in the status of permanent participants (Arctic Council 1996, par. 2,3).

¹³⁷ The factors leading toward this change (ignored here due to the focus and the scope of this study) are related to the wider transformations of global and domestic economic and social relations perhaps rooted in the causes of the gradual loss of political influence of the states in the international relations.

Chapter 8. Conclusion

In this study I focused on how United Nation policies have affected populations classified by international law as indigenous peoples. In particular, I examined the social content of the UN policies that aimed at the protection of these peoples' "traditional knowledge" and constructed since 1992, the year of adoption of the major instrument promoting protection of TK – the Convention on Biological Diversity. Although these policies were ostensibly aimed at protecting indigenous peoples from the misappropriation of the products of their cultural activities and intellectual labor (that is the entities classified under the legal category of TK) I conjectured that, to the contrary, the major factor leading to creation of these TK protection measures were the interests pursued by the governments of the countries in which these indigenous peoples lived and by profit-oriented corporate and research entities that wanted to obtain the rights to benefit from these peoples' intellectual resources.

This original conjecture rested upon a perception of legal knowledge as a tool to be used in response to a certain set of social problems. First I speculated that there must have been difficulties experienced across the indigenous groups that deemed international attention and intrusion by means of legal and practical actions. At the moment of my examination a history of misappropriation and misuse of cultural items, products of intellectual labor and of research data collected within indigenous settings, existed. At the same time a seemingly natural move of the international community to respond to indigenous peoples' problems seemed doubtful. Since the moment of its origination as a League of Nations (1919-1946) UN functioned as a tool that to a significant degree supported the activities of the states' governments related to the issues of international and domestic political concern. The organization enjoyed a degree of autonomy from particular states' influence in principle: it functioned as a space to support diplomacy and

international law making rather than a tool to be in use by the governments of powerful states. The UN bodies also engaged in making legal instruments as legitimate political actors. At the same time the UN remains funded by the states' governments donations, which, perhaps explains in part why some of the decisions of the international community that the UN facilitated to make - as the history of making indigenous rights at the UN particularly testifies - were significantly those supporting the interests of the most powerful governments. In addition, the very means of policy and law making at the UN - the international legal vocabulary, the norms and principles upon which the indigenous rights standards had been constructed - were and remain of non-indigenous (Western) origins. As a result, the very *kind* of rights and freedoms indigenous peoples can enjoy in accord with the human rights law, are the fruits of the intellectual tradition and products of, ironically, their colonizers.¹³⁸ As political actors only recently did indigenous individuals gain a right to participate in international politics, with, however, no right to influence decision making processes on the international level. Thus, it was, perhaps quite natural to speculate that the major factor leading to the work on the creation of the TK protection measures were the interests pursued by the states' governments and private corporate actors currently participating in the international politics to benefit from indigenous cultural and intellectual creativities. The UN thus assisted these entities in pursuing these interests.

To test my conjecture I examined the texts of relevant policies which I learned emerged from the work of the UN agencies in the area of economic development and conservation, and protection of intangible heritage. I analyzed policies as institutional records. I used archival theory, that is a set of ideas which allow characterizing records by stressing the prevalence of the records' origins, structure and function over the content, to conduct my examination. First I investigated the records produced by the authors working for the UN development and

¹³⁸ For more see for example, Koskenniemi (2002, 127-166), and Rodríguez-Piñero (2005, 11-22).

conservation bodies (UNEP, FAO, World Bank, UNCED and UNDP) with a focus on the work surrounding creation and implementation of the Convention on Biological Diversity (CBD), by far the major instrument promoting protection of TK. I learned that TK protection measures focused on necessity to protect and develop indigenous practices and expertise as tools that support sustainability and conservation projects, purportedly beneficial to indigenous peoples and to the conservation community. I examined 100 conservation projects conducted on the territories of indigenous peoples since 2002 till present to see if the conservation initiatives, created as a step toward implementing the CBD, benefitted indigenous peoples. I learned that despite the use of indigenous expertise and practices in these projects only certain indigenous communities benefitted from them, with a predominant part of those who benefitted being located in the states where indigenous individuals enjoyed a greater degree of legal and social protection as citizens. For the most part conservation projects were imposed upon indigenous groups, and had negative consequences. Next I examined the related work of UN agencies in the area of protection of intangible heritage: WIPO, UNESCO and the WGIP and used the UN records and related legal scholarship. This examination revealed that despite participation of indigenous politicians in the WGIP and the events organized by WIPO and UNESCO, the policy approach to TK protection remained fundamentally foreign to indigenous positioning on the issues of TK protection: UN policy makers targeted protection from a position of the Western intellectual property rights (IPR) while indigenous politicians lobbied for recognition of a collective rights approach to protection of TK and other forms of heritage. The IPR approach allowed turning the elements of TK into a form of intellectual capital at the cost of degrading the meaning of indigenous heritage as a foundation for indigenous communal and spiritual wellbeing. I assessed the “prior informed consent,” and “fair benefit sharing” - the currently discussed across UN

agencies mechanisms of protection intended to ensure that the indigenous groups are the ones to benefit from the potential uses of their TK by others - as weak: their implementation depends on the support of the government of the country in which the indigenous peoples live, and on the availability of funds to create policy framework and structures to implement the consent and the benefit sharing practices.

These findings supported my original conjecture that the creation of TK protection measures was linked to the interests pursued by the third parties in obtaining the rights to benefit from indigenous peoples' intellectual resources and forms of cultural creativities. At the same time I learned that the work of creating the TK policies had the unintended consequence of the growth of indigenous political engagement in the making of these policies, and thus at participating at the UN system at large. To further understand the phenomenon of indigenous political engagement with the UN, I examined the history of the indigenous participation and focused on the work of indigenous individuals at the WIPO IGC, the main body working on creating TK protection measures from a position of intellectual property rights. I assessed the degree of indigenous political influence in making the TK protection instruments at WIPO IGC, using the three variables: the frequency of participation on an individual level and on the level of an organization, the frequency of interventions during the texts negotiations on an individual level and by a group (indigenous caucus), and the content of the indigenous claims. Indigenous politicians engaged in the WIPO IGS as *observers*, a status which limited their participation to the position of actors with no right to engage in negotiations as decision makers. Although I assessed the indigenous political influence as low, the forms of indigenous engagement and the changes which their work at IGC helped to produce in the positioning of the indigenous caucus at this forum was unprecedented in the history of the UN agencies work with indigenous

politicians. Therefore I concluded, despite that the creation of the TK protection regime emerged as an initiative aimed to a significant degree at protecting interests of actors other than indigenous peoples, it created opportunities for indigenous political activities and as such supported indigenous interests related to wellbeing of the products of their intellectual and cultural activities.

This study makes both a substantive and a methodological contribution:

- (a.) Substantively it advances scholarly understanding of the social context of the UN policy making and the role and significance of published and unpublished archival records as tools of institutional and political practices. It establishes grounds for further research addressing this subject matter and also the forms and scope of indigenous political participation.¹³⁹
- (b.) Methodologically it complements multidisciplinary research across sociological and archival studies of records and political settings. Further as a praxis-oriented endeavor this study may also contribute to more effective indigenous advocacy.

¹³⁹ The further research emanating from this study will examine the role of records in the functioning of institutions, which I envision developing within a framework of the Weberian vision of bureaucracy. As a form of an “officialdom” as Max Weber put it, organized in accord with the principles of bureaucracy an institution – in this case the UN - is a social structure/form of social organization, characterized by 1) existence of specific set of rules (administrative procedures) upon which regularity and legitimacy of function of the institution rests; 2) an hierarchy which produces levels of “graded authority”, 3) existence of documents upon which the functioning and the actual legitimacy of the existence of the institution as a form of “officialdom” (Weber 1946, 196).

Thus conducted examination will allow to further assessing the relationship between what Weber terms formal and substantive forms of justice under the bureaucratic organization (the UN in this case). Weber argues that administration of justice conducted within the institution organized and maintained by means of bureaucratic organization, allows constructing legal norms upon rational, calculable rules and principles, which in turn make possible creation of justice which is not ethical despite that as the formal rules and principles the legal instruments are valid. Using Weberian ideas it becomes possibly to further see by what means the UN as a political space and the bureaucracy facilitated construction of indigenous rights norms in response to the states’ vision of rights and freedoms, yet at the same time allowed for indigenous political engagement with the UN.

Appendix A

1. Table 1: Conservation practices and the use of local knowledge 31
2. Table 2: Conservation through community management practices including collaboration with the outside actors 17
3. Table 3: Conservation achieved through tourism 15
4. Table 4: Conservation conducted by creating protected areas 19
5. Table 5: Alternative conservation strategies 19

Geographical regions: South America and Caribbean (16), Pacific (18), Asia (12), Africa (23), North America and the Arctic (32).

Types of ecosystems and abbreviation used: forestry (F) 18; marine ecosystems (M) 6; wild life, i.e. protection of particular plant, animal, fish species (WL) 74; river ecosystem and fisheries (R) 3.

Table 1: Conservation practices and the use of local knowledge

Region/Type	Title of the work	Positive aspects	Negative aspects
South America Puerto Rico (M)	Valdés-Pizzini, Manuel, and Carlos García-Quijano. 2009. Coupling of humans, habitats and other species: A Study of the fishers' traditional ecological knowledge (TEK) in La Parguera. <i>Caribbean Journal of Science</i> 45:363-371	"Ecological thinking" is reported to be foundational for the local fishermen' conceptualization of seascape and traditional ways of interacting with ecosystems.	
Mexico (F)	Fulé, Peter, et al. 2011. Fire regime in a Mexican forest under indigenous resource management. <i>Ecological Applications</i> 21:764–775	The Rarámuri (Tarahumara) people practice forest conservation using their traditional management and fire regime by burning.	
Mexico (WL)	Velázquez, Alejandro, et al. 2009. Building participatory landscape-based conservation alternatives: A Case study of Michoacán, Mexico. <i>Applied Geography</i> 29, no. 4: 513-526	Landscape-based conservation zoning derived from negotiating local perspectives and critical biodiversity indicators proved to be effective for achieving science-based, politically acceptable conservation approaches.	
Brazil (WL)	Alvesm, Rômulo, and Ierecê Rosa. 2006. From cnidarians to mammals: The Use of animals as remedies in fishing communities in NE Brazil. <i>Journal of Ethnopharmacology</i> 107, no. 2: 259-276	Protection of certain endangered animals is paramount for traditional healing practices while supporting conservation.	
Pacific Australia (R)	Gratani, Monica, et al. 2011. Is validation of indigenous ecological knowledge a disrespectful process? A case study of traditional fishing poisons and invasive fish management from the wet tropics,	Collaborative research among indigenous elders, scientists and a research institution functioning as a cultural "broker" led to understanding of causes of fish poisoning,	

Australia (WL)	Australia. <i>Ecology and Society</i> 16, no. 3: 25-39 Brennan, Karl, et al. 2012. Cross-cultural systematic biological surveys in Australia's Western Desert. <i>Ecological Management & Restoration</i> 13, no. 1: 72-80	helped to improve collaboration. Small scale collaborative projects between indigenous and science communities can support conservation and aid transferring of TK to younger generations.	
New Zealand (WL)	McCallum, Rua, and Debra Carr. 2012. Identification and use of plant material for the manufacture of New Zealand indigenous woven objects. <i>Ethnobotany Research & Applications</i> 10:185-198	Studies in support of dissemination of indigenous views on ways to use traditional plants help enhance Māori cultural practices, support their economic needs via collaboration, spread awareness of cultural significance of certain plants promoting their cultivation.	
Solomon Islands (M)	Aswani, Shankar, and Richard Hamilton. 2004. Integrating indigenous ecological knowledge and customary sea tenure with marine and social science for conservation of Bumphead Parrotfish (<i>Bolbometopon muricatum</i>) in the Roviana Lagoon, Solomon Islands. <i>Environmental Conservation</i> 31:69-83	A collaborative study between indigenous tribes who practice fishery and marine scientists helped to understand patterns of ecological change and their effects on the species of fish studied. Helped to promote conservation of the fish using local sea-tenure regimes.	
New Zealand (WL)	Lyver, Philip, Christopher Jones, and James Doherty. 2009. Flavor or forethought: Tuhoe traditional management strategies for the conservation of Kereru (<i>Hemiphaga novaeseelandiae novaeseelandiae</i>) in New Zealand. <i>Ecology and Society</i> 14, no. 1: 40-58	Collaborative research between indigenous individuals and science community aimed at documenting Māori practices of conserving a culturally important bird led to developing ways to alter existing indigenous harvesting practices toward conserving the birds.	
Asia Cambodia (WL)	Baird, Ian, and Philip Dearden. 2003. Biodiversity conservation and resource tenure regimes: A Case study from Northeast Cambodia. <i>Environmental Management</i> 32:541-550	Employment of indigenous tenure systems and ways of managing resource use can support conservation while responding to local groups' needs.	
China, Cambodia, Lao PDR, Myanmar, Thailand,	Rerkasem, Kanok, Yimyam, Narit, and Benjavan Rerkasem. 2009. Land use transformation in the mountainous mainland Southeast Asia region and the role of indigenous knowledge and skills in forest management. <i>Forest Ecology and Management</i>	Traditional knowledge can be employed in sustainable beekeeping while supporting community cultural activities associated with connections to the local land and mountains.	

Vietnam (F)	257:2035–2043		
China (F)	Jinlonga, Liu, Renhuab, Zhang, and Zhang Qiaoyuna. 2012. Traditional forest knowledge of the Yi people confronting policy reform and social changes in Yunnan province of China. <i>Forest Policy and Economics</i> 22:9–17	Local knowledge of forest management which incorporated cultural, social and subsistence related aspects found to be useful for sustaining the forests and supporting socially just ways of living, rendering irrelevant measures proposed by the state and industries.	
Thailand (F)	Wangpakapattanawong, Prasit et al. 2010. Fallow to forest: Applying indigenous and scientific knowledge of swidden cultivation to tropical forest restoration. <i>Forest Ecology and Management</i> 260:1399–1406	Local methods of planting trees and restoring forest areas proved to be as effective as scientific approaches and potentially viable ways to conserve the forest.	
South Korea (WL)	Park, Mi, and Yeo-Chang Youn. 2012. Traditional knowledge of Korean native beekeeping and sustainable forest management. <i>Forest Policy and Economics</i> 15:37–45	Indigenous expertise of management and organization of forest keeping proved to be essential for community subsistence and useful for tropical tree conservation and regeneration in mountain areas during changes of the land management and ecology.	
Africa South Africa (WL)	Makunga, Nox et al. 2008. Current perspectives on an emerging formal natural products sector in South Africa. <i>Journal of Ethnopharmacology</i> 119, no. 3: 365-375	Collaborative research among indigenous elders, scientists and a research institution functioning as a cultural “broker” led to understanding of causes of fish poisoning, helped to improve collaboration.	Commercial use of knowledge leads to commodification of local ideas and practices, cultivation of profitable plants, creates social stratification and danger of bio-prospecting.
South Africa (WL)	Chalmers, Nigel, and Christo Fabricius. 2007. Expert and generalist local knowledge about land-cover change on South Africa’s wild coast: Can local ecological knowledge add value to science? <i>Ecology and Society</i> 12, no. 1. http://www.ecologyandsociety.org/vol12/iss1/art10/	Small scale collaborative projects between indigenous and science communities can support conservation and aid transferring of TK to younger generations.	
Africa Botswana (WL)	Phuthego and Chanda. 2004. Traditional ecological knowledge and community-based natural resource management: Lessons. <i>Applied Geography</i> 24:57-76	Studies in support of dissemination of indigenous views on ways to use traditional plants help enhance Māori cultural practices, support their economic needs via collaboration, spread awareness of cultural significance of certain plants promoting thier	

Kenya (WL)	Lado, Cleophas. 2004. Sustainable environmental resource utilisation: A Case study of farmers' ethnobotanical knowledge and rural change in Bungoma district, Kenya. <i>Applied Geography</i> 24 (1): 281-302	cultivation. A collaborative study between indigenous tribes who practice fishery and marine scientists helped to understand patterns of ecological change and their effects on the species of fish studied. Helped to promote conservation of the fish using local sea-tenure regimes.	
Guinea (WL)	Leach, Melissa, and James Fairhead. 2002. Manners of contestation: "Citizen science" and "indigenous knowledge" in West Africa and the Caribbean. <i>International Social Science Journal</i> 54, no. 173: 299-311	Collaborative research between indigenous individuals and science community aimed at documenting Māori practices of conserving a culturally important bird led to developing ways to alter existing indigenous harvesting practices toward conserving the birds.	The hunters were drawn in to the project by environmentalists, who selectively represented local ideas and practices to comply with the donors' requirements.
North America and the Arctic Finland (WL)	Heikkinen, Jane, et al. 2004. Development of participatory institutions for reindeer management in Finland: A Diagnosis of deliberation, knowledge integration and sustainability. In <i>The Fifth International Congress of Arctic Social Sciences (ICASS V) Fairbanks, Alaska, 19-23 May</i>	The RENMAN project provided ways and methods for Sámi reindeer herders to participate in policy, research and planning via collaborative field work, seminars, and workshops.	The herders remained in disadvantaged position, where at times their experiences were not considered by policy authorities; communication difficulties due to different educational backgrounds and institutional affiliations.
Norway (WL)	Tyler, Nicholas, et al. 2007. Saami reindeer pastoralism under climate change: Applying a generalized framework for vulnerability studies to a Sub-Arctic social-ecological system. <i>Global Environmental Change</i> 17:191-206	Reindeer pastoralism- a way of life for Sámi – provided ideas and practices useful to sustain socio-ecological systems facing climate change, legal and governing constrains; collaborative work with policy and science communities helped managing the constrains and understand climate change issues.	Despite some success the state research remains rudimentary, does not allow to fully capture Sámi approaches and techniques. Some Norway conservation strategies proved to be ineffective due to their partial correspondence to the realities of the herders' life.
Finland (WL)	Vuojala-Magga, Terhi. 2011. Resonance strategies of Sámi reindeer herders in Northernmost Finland during climatically extreme years. <i>Arctic</i> 64, no. 2: 227-241	Study documents Sámi reindeer herders strategies to maintain population of reindeer faced with climate change challenges using traditionally employed ways of caring for the animals and new ideas in response to weather changes, changes in behavior of deer related to the use of new technologies in the region.	

Russia (WL)	Forbes, Bruce, et al. 2009. High resilience in the Yamal-Nenets social-ecological system, West Siberian Arctic, Russia. <i>PNAS</i> 106, no. 52: 22041–22048	Points out to the dynamic practice oriented strategies developed by adopting traditional techniques of human- animal relations to new social and environmental conditions, including herding practices, changes in the way herders live, work and cope with wider changes in their environments. The study documents conditions upon which nomadic life style of Nenets could be sustained in the face of industrial developments in the Russian North. The communities and the resources they use can be sustained in part with the aid of investments from the industry if used toward protecting local ecosystems vs. development of sedimentary communities.	
Russia (WL)	Forbes, Bruce, and Florian Stammer. 2009. Arctic climate change discourse: The Contrasting politics of research agendas in the West and Russia. <i>Polar Research</i> 28:28–42	Collaborative research, despite challenges for the science and indigenous communities, is the key step toward conservation when aimed at creating new knowledge out of joint work through respecting different values, worldviews and languages employed in describing nature.	
Russia and USA (WL)	Meek, Chanda, et al. 2008. Building resilience through interlocal relations: Case studies of polar bear and walrus management in the Bering Strait. <i>Marine Policy</i> 32:1080– 1089	An outstanding example of international collaboration between indigenous Arctic communities in Russia and the USA faced with similar conditions of managing walrus and polar bear populations, and aiding each other despite the poverty, and political pressures.	
Canada (F)	Turner, Nancy, and Helen Clifton. 2009. It's so different today: Climate change and indigenous lifeways in British Columbia, Canada. <i>Global Environmental Change</i> 19, no. 2: 180-190	The long term research between indigenous communities and scientific agency marks traditional practices and knowledge developed by indigenous groups essential in approaching climate change and health of forests and grasslands.	

Canada (WL)	Karjala, Melanie, and Stephen Dewhurst. 2003. Including aboriginal issues in forest planning: A Case study in Central Interior British Columbia, Canada. <i>Landscape and Urban Planning</i> 64, no.1-2: 1-17	Forest planning corresponding to indigenous interpretations of the meaning of plants and ecosystems and community involvement is the steps toward sustainable forestry.	
USA (WL)	Hunn, Eugene, et al. 2003. Huna Tlingit traditional environmental knowledge, conservation, and the conservation of a “wilderness” park. <i>Current Anthropology</i> 44, no. S5: S79-S103	An example of an indigenous group practicing conservation by sustainably harvesting strategies developed through the observation of the gulls’ breeding and nesting behavior.	
USA (WL)	Storm, Linda, and Daniela Shebitz. 2006. Evaluating the purpose, extent, and ecological restoration applications of indigenous burning practices in Southwestern Washington. <i>Ecological Restoration</i> 24, no. 4: 256-268	Indigenous burning practices maintained by the indigenous communities for hundreds of years are the means to sustain savanna and prairie ecosystems (plants specifically).	
USA (WL)	Underwood, Stephen, Arguello, Leonel, and Nelson Siefkin. 2003. Restoring ethnographic landscapes and natural elements in Redwood National Park. <i>Ecological Restoration</i> 21, no. 4: 278-283	The study documents employment of traditional Yurok land management practices to restore and preserve plants of the Bald Hills area of the Redwood Park by Park authorities contracting specialists the local tribe. Despite some benefits to the local people resulting from increase of number of plants hunting and fishing on the territory of the Park remain under question.	
USA (WL)	Shebitz, Daniela. “Weaving Traditional Knowledge into Restoration.” <i>Journal of Ecological Anthropology</i> 9 (2005): 51-68	Traditional knowledge of culturally significant plants helped to preserve the plants and manage their habitats toward supporting ecological and cultural goals.	

Table 2: Community management practices including collaboration with the outside actors

Region/Type	Title of the work	Positive aspects	Negative aspects
South America Brazilian	Hajjar, Reem, et al. 2011. Framing community forestry challenges with a broader lens: Case studies from the Brazilian Amazon. <i>Journal of</i>	Community forest management supports conservation when controlled vs. profit-oriented use of resources is practiced.	Problems related to legal issues and land ownership, illegal logging, lack of forest management skills among

Amazon (F)	<i>Environmental Management</i> 92, no. 9: 2159-2169		local peoples, difficulties to access the markets impede conservation.
Mexico (F)	Ellis, Edward, and Luciana Porter-Bolland. 2008. Is community-based forest management more effective than protected areas? A comparison of land use/land cover change in two neighboring study areas of the Central Yucatan Peninsula, Mexico. <i>Forest Ecology and Management</i> 256, no. 11: 971-1983	Conservation of forests is greater in the regions managed by the local community forestry institutions and as based on the landscape zoning. Regional land use management approach can aid conservation when local people are the key actors.	
Pacific New Zealand (WL)	Crawford, Stephen. 2009. Matauranga Māori and western science: The Importance of hypotheses, predictions and protocols. <i>Journal of the Royal Society of New Zealand</i> 39, no. 4: 163-166	"Mātauranga Māori, Science and Seabirds" documents 14 years of research partnership between the New Zealand Rakiura Māori and ecologists and statisticians (University of Otago) is an outstanding example of cross cultural collaboration toward sustainably managed ecosystems and harvest practices by Māori.	
New Zealand (WL)	Moller, Henki, et al. 2009. Guidelines for cross-cultural participatory action research partnerships: A Case study of a customary seabird harvest in New Zealand. <i>New Zealand Journal of Zoology</i> 36:211-241	Adaptive co-management and participatory research project between Māori elders and harvesters, scientists and the island administration served to develop strategies of sustainable harvesting in the conditions of climate change.	
Australia (WL)	Szabo, Steve, and Dermot Smyth. 2003. Indigenous Protected Areas in Australia: Incorporating indigenous owned land into Australia's national system of protected areas." In <i>Proceedings of the Fifth World Parks Congress: Sustainable Finance Stream. Durban, South Africa, September 2003</i>	Indigenous Protected Areas, a form of co-management of protected indigenous owned territories by the both indigenous communities and the state, proved to be a solution for a long termed conservation in cases when indigenous communities were consulted and financially supported. Helped to recognize Aboriginal land rights, strengthen traditional practices, promote interest of the wider population to conservation.	The co-management depends on the state's funds. Cultural perspectives of some indigenous communities are only partly realized: those that are not directly relevant and, at times, violate conservation ethics may find banning or no support.
Australia (WL)	Langton, Marcia, Rhen, Zane Ma, and Lisa Palmer. 2005. Community-oriented protected areas for indigenous peoples and local communities. <i>Journal of Political Ecology</i> 12:23-50	The strategy under favorable political conditions and the land managing agreements that recognize indigenous self-governance can support indigenous rights and economic interests, practices of subsistence, and aims of	

		biodiversity protection. Local people received employment opportunities, means to conduct intergenerational dialog, reestablish traditional burning practices.	
<p>Asia Nepal, Bhutan and India (F)</p> <p>Fiji (WL)</p>	<p>Persha, Lauren, et al. 2010. Biodiversity conservation and livelihoods in human-dominated landscapes: Forest commons in South Asia. <i>Biological Conservation</i> 143, no. 12: 2918-2925</p> <p>Clark, Paul. 2008. Social capital and Vanua: Challenges to governance development in a community-based natural resource management project in Cuvu Tikina, Fiji Islands. Master's thesis, University of Montana.</p>	Forests commons (the forests' areas populated by humans who use forests for subsistence) could be in certain settings a tool to conserve biological species while providing people with resources.	Community-based natural resource management projects failed to construct long term solutions toward sustainable use and protection of local ecosystems. Some initiatives worked only for the duration of external funds, others did not last due to conflicts over resource use on the local level, lack of trustworthy relations between villagers and external agents, and lack of interest in projects among the villagers.
<p>Africa Uganda (WL)</p> <p>Zimbabwe (WL)</p> <p>South Africa (F)</p>	<p>Solomon, Jennifer, Jacobson, Susan, and Ivy Liu. 2012. Fishing for a solution: Can collaborative resource management reduce poverty and support conservation? <i>Environmental Conservation</i> 39 (1): 1-11</p> <p>Logana, Ikubolajeh, and William Moseley. 2002. The political ecology of poverty alleviation in Zimbabwe's Communal Areas Management Programme for Indigenous Resources (CAMPFIRE). <i>Geoforum</i> 33, no. 1: 1-14</p> <p>Holmes-Watts, Tania, and Tacotney Watts. 2008. Legal frameworks for and the practice of participatory natural resources management in South Africa. <i>Forest Policy and Economics</i> 10, no. 7-8:</p>	<p>Collaborative resource management worked to support conservation on territory of a national park while allowing local people to fish in the park to insure local support of conservation and fulfillment of subsistence needs.</p> <p>Some form of conservation was possible to achieve.</p>	<p>Legal, social and political constrains prevented local groups from benefiting; communal lands were turned into the source of income for private companies who developed ecological friendly enterprises on the lands used prior by local people.</p> <p>The project benefited mostly those who controlled access to resources; created corruption. Local people were denied access to the protected</p>

	435-443		areas.
North America and the Arctic Canada (M)	Bastien-Daigle, Sophie, Vanderlinden, Jean-Paul, and Omer Chouinard. 2008. Learning the ropes: Lessons in integrated management of coastal resources in Canada's Maritime Provinces. <i>Ocean & Coastal Management</i> 51, no. 2: 96-125	Over thirty projects aimed at implementation of Canadian policies of integrated management approach in the Maritimes provinces along Atlantic coast led to creation of collaborative networks with representatives of the First Nations in the area.	Low degree of participation of indigenous individuals due to differences in social and cultural values, lack of capacities to participate and certain attitudes; position of other actors involved was reinforced as a result.
Canada (M)	Berkes, Fikret, Berkes, Mina, and Helen Fast. 2007. Collaborative integrated management in Canada's North: The Role of local and traditional knowledge and community-based monitoring. <i>Coastal Management</i> 35, no. 1: 143-162	Integrated management proved be an opportunity for representatives of First Nations to influence decisions related to the use of coastal ecosystems, and participate in collaborative research projects.	Despite recognition of indigenous expertise in research and policy, indigenous lack of experience made relations between indigenous and science communities challenging.
Canada (WL)	White, Graham. 2006. Cultures in collision: Traditional knowledge and Euro-Canadian governance processes in Northern land-claim boards. <i>Arctic</i> 59, no. 4: 401 -414	Co-management of wildlife proved to be an opportunity for indigenous communities to participate and at times lead the projects on sustainable use of natural resources using with traditional practices in support of indigenous values, cultures, and rights.	Novelty of the strategy, lack of transitional/ interpretive mechanisms to ease implementation of traditional ways of managing nature into institutional and legal frameworks created challenges.
Canada (WL)	Dowsley, Martha, and George Wenzel. 2008. The time of the polar bears: A Co-Management conflict in Nunavut. <i>Arctic</i> 61, no. 2: 177-189	Co-management of wildlife in Nunavut can rest upon local indigenous practices and resting upon local communities economic and cultural needs, as this research indicated.	Lack of insight knowledge of the indigenous perceptions of nature leads to conflicting observations about the state of nature/resources in the region (indigenous way of life vs. science information on conservation). Some forms of local knowledge may be limited to locally observed occurrences, others be a sign of compliance to group opinion rather than factual information.
Canada (F)	Mabee, Holly, and George Hoberg. 2006. Equal partners? Assessing co-management of forest resources in Clayoquot Sound. <i>Society & Natural Resources: An International Journal</i> 19, no. 10: 875-888	Co-management of protecting forests resting upon expertise developed within different cultural settings proved to be a potential strategy toward ecological restoration. Also provided opportunities for cross-cultural discussion, appreciation of indigenous views	Social, individual, organizational, political factors impeded cross-cultural ways of co-management of natural resources by preventing indigenous individuals to participate in planning and decision making as

Canada (WL)	Nadasdy Paul. 2003. Reevaluating the co-management success story. <i>Arctic</i> 56, no. 4: 367-380	and practices and financial support for indigenous communities.	equal partners; government agents remained the key voices taking only recommendations. Difficulties interpreting traditional views into scientific perspective occurred. Co-management may result in reestablishment/growth of control of the outside actors over indigenous land and resources. The Yukon government biologists retained de facto control over the management of Kluane people Ruby Range sheep; co-management enabled them to prepare for critique coming from indigenous individuals and to codify Kluane elders' and hunters' knowledge about the sheep.
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Table 3: Conservation achieved through tourism

Region/Type	Title of the work	Positive aspects	Negative aspects
South America Peru (WL)	Ohlschacherer, Julia, et al. 2008. Indigenous ecotourism in the Amazon: A Case study of 'Casa Matsigenka' in Manu National Park, Peru. <i>Environmental Conservation</i> 35:14-25	Ecotourism can help protecting biodiversity, conserve natural resources while creating means of communication between indigenous communities and political administration of local territory under the status of protected area toward creation of co-management strategies and economic solutions for the local people.	Tourism industries may impose services on local people who would adopt them out of economic necessities and lack of education. Competition for profits among private actors may affect local people.
Pacific Australia (WL)	Buultjens, Jeremy, Gale, Deborah, and Nadine White. 2010. Synergies between Australian indigenous tourism and ecotourism: Possibilities and problems for future development. <i>Journal of Sustainable Tourism</i> 18, no. 4: 497–513	The enterprise could be profitable for some families; helped also to sustain traditional practices of managing nature and support conservation.	The sector remained immature despite tourists' attraction to the area. Process of accreditation presented major difficulties for indigenous groups to operate the industry effectively.
Australia (WL)	Zeppel, Heather, and Sue Muloin. 2008. Aboriginal interpretation in Australian wildlife tourism. <i>Journal of Ecotourism</i> 7, no. 2-3: 116-	Involvement of indigenous individuals in eco-tourism helped to break stereotypes by introducing Aboriginal ways of seeing	Aboriginal interpretation of the wildlife remained at the minimum; cultural and subsistence practices within protected

<p>Australia (WL)</p> <p>Australia (WL)</p>	<p>136</p> <p>Higgins-Desbiolles, Freya. 2009. Indigenous ecotourism's role in transforming ecological consciousness. <i>Journal of Ecotourism</i> 8, no. 2: 144 –160</p> <p>Clark, Phil, and Rripanu Yidaki. 2009. Aboriginal social frameworks in a musical ecotourism business. <i>Journal of Ecotourism</i> 8, no. 2: 176-192</p>	<p>wildlife, educating tourists on the values and meanings of nature to indigenous groups toward conservation.</p> <p>Indigenous eco-tourism helped to foster transformations in ecological consciousness toward achieving more sustainable human – environmental relationships; provided aid to indigenous groups in teaching traditional values to younger generations.</p> <p>Ecotourism done as crafting, selling and entertaining tourists by using traditional instruments could be a solution to economic problems for certain small groups, helping to also enhance traditional spiritual and cultural practices and teach others to respect them.</p>	<p>areas were viewed at times as violating Western conservation ethics.</p>
<p>Asia</p> <p>Taiwan (WL)</p> <p>Taiwan (WL)</p> <p>Indonesia (WL)</p>	<p>Lai, Po-Hsin, and Sanjay Nepal. 2006. Local perspectives of ecotourism development in Tawushan Nature Reserve, Taiwan. <i>Tourism Management</i> 27:1117-1129</p> <p>Hunter, William, 2011. Rukai indigenous tourism: Representations, cultural identity and Q method. <i>Tourism Management</i> 32, no. 2: 335–348</p> <p>Hitchner, Sarah, et al. 2009. Community-based transboundary ecotourism in the heart of Borneo: A Case study of the Kelabit Highlands of Malaysia and the Kerayan Highlands of Indonesia. <i>Journal of Ecotourism</i> 8, no. 2: 193-</p>	<p>Ecotourism helped protecting natural resources and preserving indigenous cultural practices associated with managing nature.</p> <p>Tourism created economic opportunities and helped conserve cultural practices and landscapes.</p> <p>The initiative raised awareness of the problems related to logging (Sarawak) threatening to local ecosystems; was also potentially profitable to some groups.</p>	<p>Indigenous group lost the land management rights to conservation authorities; tourism related practices were imposed on the communities, created disturbance to sacred sites. Businesses owned by non-indigenous individuals brought no/minimum benefits to local people. Conflicting attitudes and opportunities related to tourism industry created social tensions.</p> <p>The project initiated commercialization of indigenous lifestyles, cultural artifacts, and sacred landscapes leading to some erosion of traditional values and beliefs toward currency oriented perspectives, and practices associated with them.</p> <p>Uneven spread of benefits among local communities and individuals due to the lack of norms on benefit sharing and means to implement them. The places turned into elements of economic</p>

	213		enterprise lost cultural significance to local people.
North America and the Arctic Canada (WL)/S	Bennetta, Nathan, et al. 2012. A capital assets framework for appraising and building capacity for tourism development in Aboriginal Protected Area gateway communities. <i>Tourism Management</i> 33:752-766	Tourism in the protected areas could help to conserve nature, provide economic and educational opportunities to indigenous groups, strengthen traditional values and community ties, promote respect for local cultures and in some cases lead to recognition of land title and increase local groups control over their land and resources	Tourism in the protected areas may cause: degradation of environment, social inequality and reliance on outside sources and donors. It may lead to appropriation of cultural knowledge, destruction of sacred sites and reduced access to the protected areas and at times allocation of funds away from local communities.
Canada (WL)	Lynch, Mary-Frances, et. al. 2010. Sustainable Mi'kmaw cultural tourism development in Nova Scotia, Canada: Examining cultural tourist and Mi'kmaw perspectives. <i>Journal of Sustainable Tourism</i> 18, no. 4: 539-556	Cultural tourism provided economic opportunities to indigenous groups, was means to support traditional education and teach indigenous values to outsiders.	Seasonal aspect of tourism made it only a partial response to the economic needs of indigenous groups, created inequality, and led to commodification of cultural items that lost their traditional role and function within communities. Increased traffic (people) coming to indigenous areas was hazardous to environments.
Canada (WL)	Lemelin, Harvey, et al. 2010. From hunting and fishing to cultural tourism and ecotourism: Examining the transitioning tourism industry in Nunavik. <i>The Polar Journal</i> 2, no.1: 39-60	Tourism developed in response to the global interest in exotic vacation spots provided some income to indigenous communities. Practiced in the protected areas, focused on preservation of caribou and led by local individuals helped to renovate cultural practices.	Unstable way to support economic needs of indigenous communities due to uncertainties related to seasonal nature of interest to the Arctic tourists spots and social and environmental challenges.
Canada (WL)	Dowsley, Martha. 2009. Inuit-organised polar bear sport hunting in Nunavut territory, Canada. <i>Journal of Ecotourism</i> 8, no. 2: 161-175	Polar bear hunting as a part of eco-tourism provided some income (20 times higher than a subsistence hunt), and could be a form of subsistence that supports cultural values.	Hunting violated conservation ethics leading to conflicts between conservationists and local people. Tourism created inequalities in benefits sharing among local people.
Sweden (WL)	Mu'ller, Dieter, and Stina Huuva. 2009. Limits to Sámi tourism development: The Case of Jokkmokk, Sweden. <i>Journal of Ecotourism</i> 8, no. 2: 115 –127	Existing practices conducted by Sámi were reported to be enjoyable, potentially profitable and supportive of cultural values of local communities.	Legislature did not allow local Sámi cooperatives to fully control the industry, and limited development of tourism to the reindeer herding only, alienating tourism activities, not directly related to herding, from the Sámi cooperatives.

Sweden (WL)	Olsen, Kjell. 2006. Making differences in a changing world: The Norwegian Sámi in the tourist industry.” <i>Scandinavian Journal of Hospitality and Tourism</i> 6, no. 1: 37–55	Stereotyped images of Sámi helped attracting tourists, had positive political implications when employed by Sámi in their rights struggle.	Tourism based on Sámi culture produced stereotyped images of Sámi as different from the rest of Norwegians, thus reproducing way to marginalize indigenous individuals.
Canada (M)	Lemelin, Harvey, et al. 2010. Voyages to Kitchi Gami: The Lake Superior national marine conservation area and regional tourism opportunities in Canada’s first national marine conservation area. <i>Tourism in Marine Environments</i> 2-3:101-118	In the region economically dependent of forestry and mining tourism provided an alternative nature friendly economic opportunity potentially supportive of local people’s perceptions and practices related to nature.	

Table 4: Conservation conducted by creating protected areas

Region/Type	Title of the work	Positive aspects	Negative aspects
South America Peru (F)	Cardozo, Mario. 2011. Economic displacement and local attitude towards protected area establishment in the Peruvian Amazon. <i>Geoforum</i> 42, no. 5: 603-614	The state sponsored measure resulted in some decrease of illegal logging.	Creation of the reserved areas caused social injustice and frictions among communities: those left outside of the protected areas lost their shared extractive territories, were displaced.
Mexico (WL)	García-Frapolli, Eduardo et al. 2009. The complex reality of biodiversity conservation through natural protected area policy: Three cases from the Yucatan Peninsula, Mexico. <i>Land Use Policy</i> 26, no. 3: 715-722	Natural protected areas could be a tool to conserve ecosystems and biodiversity.	The state conducted protected area policy created conflicts between environmental authorities and local communities over the management of natural resources; culturally different perceptions of nature held by local people were excluded from the conservation projects.
Brazil (F)	Vadjunecm, Jacqueline, and Dianne Rocheleau. 2009. Beyond forest cover: Land use and biodiversity in Rubber Trail Forests of the Chico Mendes extractive reserve. <i>Ecology and Society</i> 14, no. 2. http://www.ecologyandsociety.org/vol14/iss2/art29/	Federal Extractive Reserve System as means to prevent deforestation and protect rubber taper communities works in the communities where economic needs are met via selective logging or by other means than using timber.	Economic and livelihood constrains lead to logging for household and commercial purposes; lack of understanding and sufficient knowledge among local people of selective logging practices at times leads to killing the protected trees.
Pacific Australia (WL)	Hill, Rosemary. 2011. Towards equity in indigenous co-management of protected areas: Cultural planning by Miriuwung-Gajerrong	Promising way to support traditional institutions and practices, customary laws toward strengthening indigenous authority	Limited access to the government agencies leave many groups unable to participate; creation of dependency on

<p>Australia (WL)</p>	<p>people in the Kimberley, Western Australia. <i>Geographical Research</i> 49, no. 1: 72–85</p> <p>Gilligan, Brian. 2006. <i>The indigenous protected areas programme</i>. Canberra, Australia: Commonwealth of Australia. http://www.environment.gov.au/indigenous/publications/pubs/ipap-evaluation-contents.pdf</p>	<p>over the lands Aboriginal communities own. Creation of intercultural place to manage conservation and cultural and social ties.</p> <p>Cost effective way to practice conservation; means to transfer traditional knowledge and practices to younger generations, vehicle to facilitate cultural exchange, and science-indigenous collaboration on protection of nature; economic opportunities and social benefits (such as encouragement of school attendance among Aboriginal children, decrease in substance abuse, reinforcement of family and community values).</p>	<p>government funding. At times forms of management of lands are imposed on local communities where little or no initiative on the side of indigenous individuals occurred.</p> <p>Dependency on state funding and related difficulties of administrative nature limited opportunities for some to benefit from the program.</p>
<p>Asia China, Thailand, Nepal (WL)</p>	<p>Nepal, Sanjay. 2002. Involving indigenous peoples in protected area management: Comparative perspectives from Nepal, Thailand, and China. <i>Environmental Management</i> 30, no. 6: 748–763</p>	<p>Establishment of protected areas leads to some level of protection and conservation of the natural resources despite some exposure of the lands to the tourists.</p>	<p>Benefits are not necessarily shared with local impoverished communities; local individuals are as a rule not involved in managing the area, in some cases (Thailand) it is impossible, leading to conflicts over resources between local people and park management.</p>
<p>Africa Across 11 countries (16 reserves) (F)</p> <p>Cameroon (F)</p> <p>Tanzania (WL)</p>	<p>Struhsaker, Thomas, Paul, Struhsaker, and Kirstin Siex. 2005. Conserving Africa’s rain forests: Problems in protected areas and possible solutions. <i>Biological Conservation</i> 123, no. 1: 45-54</p> <p>Schmidt-Soltau, Kai, and Dan Brockington. 2007. Protected areas and resettlement: What scope for voluntary relocation? <i>World Development</i> 35, no. 12: 2182-2202</p> <p>Kaltenborn, Bjørn, et al. 2008. Serengeti National Park and its neighbors – do they interact? <i>Journal for Nature Conservation</i> 16, no. 2: 96-108</p>	<p>Protected areas had been the means to safeguard wild life and rain forests.</p> <p>Protected areas are means to support conservation of nature.</p> <p>Creation of protected areas and allowing forms of tourism on those areas can be a promising strategy to support local groups and conservation.</p>	<p>Local impoverished people use the reserves for survival at times creating destruction of protected species.</p> <p>Resettlement may not always be a voluntarily move leading some groups toward poverty.</p> <p>Only a small portion of local people benefit from the park revenues; the relations between park management and local groups are non-committing, despite significant funds coming to support the</p>

Benin (WL)	Vodouhê, Fifanou, et al. 2010. Community perception of biodiversity conservation within protected areas in Benin. <i>Forest Policy and Economics</i> 12, no. 7: 505-512	Protected areas support conservation.	park, tourism and existence of relevant regulations to support local communities.
Kenya (WL)	Wishitemi, Bobby, and Moses Okello. 2003. Application of the protected landscape model in Southern Kenya. <i>Parks</i> 13, no. 2: 12-21	Conservation in the fenced areas work if practiced with direct involvement of local people providing them with some economic solutions. Depending on the way of life, means of subsistence, the characteristics of the natural environment different strategies can be proposed (small wild life sanctuaries managed by indigenous groups that allow to continue access to pasture for means of growing cattle, picking plants for food; leasing community owned land to foreigners to develop tourism industries, or the state toward creation of park areas to which local can be allowed.	Local people are historically denied access to protected areas, impoverished, cannot practice agricultural activities.
Uganda (WL)	Kidd, Christopher, and Penninah Zaninka. 2008. Securing indigenous peoples' rights in conservation: A Review of South-West Uganda. In <i>Proceedings of the World Conservation Congress, Barcelona, Spain, 5-15 October, 2008</i>		History of forced relocation, taking lands with no compensation/consultation with local, i.e. conservation practiced as National Park model creation – with no concern for the welfare of local peoples caused poverty, resentment among those effected (Maasai). At the same time, poverty also causes local people to overuse the land, destroy species that are to be protected (use them for food); fencing territories also leads to destruction of cultural practices.
Congo basin (WL)	Cernea, Michael, and Kai Schmidt-Soltau. 2006. Poverty risks and national parks: Policy issues in conservation and resettlement. <i>World Development</i> 34, no. 10: 1808-1830		Creation of protected areas only marginally reduced poverty of local Batwa peoples. People were arbitrarily evicted from their homeland; the government efforts to make protected area management more socially responsible remains at the minimum despite the call for a new conservation paradigm from the international conservation community.
Namibia (WL)	Hoole, Arthur, and Fikret Berkes. 2010. Breaking down fences: Recoupling social-		Parks in the Congo basin resulted in the displacement and poverty for about 120–150 000 people; more to come with an arguments that conservation via park-establishment strategies is not credible.
			Creation of national park resulted in

Kenya (WL)	ecological systems for biodiversity conservation in Namibia. <i>Geoforum</i> 41, no. 2: 304-317 Okello, Moses. 2009. Contraction of wildlife dispersal area and displacement by human activities in Kimana group ranch near Amboseli National Park, Kenya. <i>Open Conservation Biology Journal</i> 3:49-56		poverty and eradication of cultural life of local Herero peoples who had been denied access to the territory protected. Local people living in close proximities to the protected areas create threats and at times destroy wild animals, overuse the water reserves for agriculture and the local plants for subsistence reasons; there is competition for resources between wildlife and local livestock, roads created also lead to animals to be displaced. With the growth of population these threats become more prominent.
South Africa (WL)	Faasen, Helena, and Scotney Watts. "Local Community Reaction to the 'No-take' Policy on Fishing in the Tsitsikamma National Park, South Africa." <i>Ecological Economics</i> 64, no. 1(2007): 36-46		Local communities denied access to protected areas illegally fish; inconsistency in understanding of conservation (officials sees it as denial of access, while local people as a sustainable use of fish).
North America and Arctic Canada (M)	Guenette, Sylvie, and Jackie Alder. 2007. Lessons from marine protected areas and integrated ocean management initiatives in Canada. <i>Coastal Management</i> 35:51-78	Analysis of cases studies implementing the Marine Protected Areas and Integrated Management strategies since 1990s aim to protect rights of the First Nations by insuring involvement of indigenous individuals in decision making where success partly depended on the kind of agreement related to the management of the area between the local community and the state.	Difficulties related to political and administrative aspects, lack of information on the norms regulating protected areas impede involvement of indigenous individuals in the projects and at times leave them uninformed and/or not included leading to conflicts related to violation of fishing rights.
Canada (WL)	Murray, Grant, and Leslie King. 2012. First Nations values in protected area governance: Tla-o-qui-aht tribal parks and Pacific Rim National Park Reserve. <i>Human Ecology</i> 40, no. 3: 385-395	Protected areas work as means toward conservation of natural resources, and also can be potentially promising ways of collaborative management with local indigenous groups.	Lack of clear jurisdiction leads to tensions related to the land and resource use; harvesting practices of indigenous groups may not be welcomed by the park authorities. Dependence on the park funders rather than local resources for economic survival.
USA	Thornton, Thomas. 2010. A tale of three parks:	Creating parks could in some cases be a step	National parks cannot conserve social and

(WL)	Tlingit conservation, representation, and repatriation in Southeast Alaska's National Parks. <i>Human Organization</i> 69, no. 2: 107-118	toward supporting indigenous ways of managing natural resources by co-management regimes imposed however upon groups living on the protected territories.	historical significance of the land to the people, especially in the cases of sacred sites, aiming to conserve rather than support local groups cultural and subsistence practices while cultural and natural landscapes are parts of the same entity for indigenous groups.
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Table 5: **Alternative conservation strategies**

Region/Type	Title of the work	Positive aspects	Negative aspects
South America Brazil, Bolivia, Peru (F)	Duchelle, Amy, et al. 2010. Evaluating the opportunities and limitations to multiple use of brazil nuts and timber in Western Amazonia. <i>Forest Ecology and Management</i> 268 (1): 39-48	Multiple forest strategies in managing commercial and communal forests could decrease of the use of forests toward cultivation of species toward non-timber forest products development (Brazil nuts).	Income from forests' venues was reinvested into cattle; legal codes on forests and product development at times stay unknown to illegal loggers.
Amazonian Brazil (WL)	Little, Paul. 2005. Indigenous peoples and sustainable development subprojects in Brazilian Amazonia: The Challenges of interculturality. <i>Law & Policy</i> 27, no. 3: 450-471	Analysis of 16 sub-projects of an initiative to support environmentally sustainable production among indigenous communities cooperating with diverse outside actors initiated means for indigenous political participation and training and awareness of tools to support defense of indigenous rights to their lands. Attention of Western academia in traditional medical plants and practices led to the growth of interest in these plants and practices among local people.	Project was imposed on indigenous groups despite incorporation of indigenous communities as voting members to the Board of Directors. Different cultural and educational backgrounds of those involved led to difficulties and in some cases failures to accomplish project goals. Distribution of funds led to the social and political tensions within indigenous groups. Lack of legal code regulating collection of traditional knowledge led to failure to continue the efforts by next project.
Brazil, Peru (WL)	Narloch, Ulf, Unai Pascual, and Adam Drucker. 2011. Cost effectiveness targeting under multiple conservation goals and equity considerations in the Andes. <i>Environmental Conservation</i> 38, no. 4: 417- 425	In the case of agro-biodiversity conservation payment for ecosystem services may encourage local farmers cultivate endangered plants and providing economic opportunities.	In cases of communal land holding payments may lead to competition for the land use and while benefiting some groups/individuals, take away from others. Conservation for profit may be a short term solution concluding with the end of the payments.
Mexico (WL)	Ros-Tonen, Mirjam, et al. 2008. Forest-related partnerships in Brazilian Amazonia: There is	Conservation by not over-using the resources is possible by creation of product oriented	

<p>Brazil (F)</p> <p>Brazil (F)</p>	<p>more to sustainable forest management than reduced impact logging. <i>Forest Ecology and Management</i> 256, no. 7: 1482-1497</p> <p>Heicht, Susanna. 2010. From eco-catastrophe to zero deforestation? Interdisciplinary, politics, environmentalisms and reduced clearing in Amazonia. <i>Environmental Conservation</i> 39. no. 1: 4-19</p> <p>Figel, Joe, Durán, Elvira, and David Bray. 2011. Conservation of the jaguar Panthera Onca in a community-dominated landscape in Montane forests in Oaxaca, Mexico. <i>Oryx</i> 45, no. 4: 554-560</p>	<p>partnership with a focus on sustainable use of forestry, civil society coalitions, advocacy and appropriate legal and political measures.</p> <p>Reports describes in deforestation in Brazil by 70% since 2004 resulting from complex and interrelated political, social and economic changes: new government policies promoting resilient land use, social movements and payments for environmental services, such as Reducing Emissions from Deforestation and forest Degradation.</p> <p>Conservation centered on communities may take place outside protected areas (example of jaguars' conservation). State payments for hydrological services to the local indigenous communities, education on the value of jaguar via means of this study helps to keep the population of animals protected.</p>	
<p>Pacific</p> <p>Papua New Guinea (R)</p> <p>Torres Strait between Australia and Papua New Guinea (WL)</p> <p>New Zealand (F)</p>	<p>Kirsch, Stuart. 2007. Indigenous movements and the risks of counter globalization: Tracking the campaign against Papua New Guinea's Ok Tedi mine. <i>American Ethnologist</i> 34, no. 2: 303-321</p> <p>Kwan, Donna, Marsh, Helene, and Steven Delean. 2006. Factors influencing the sustainability of customary Dugong hunting by a remote indigenous community. <i>Environmental Conservation</i> 33, no. 2: 164 - 171</p> <p>Jones, Christopher, et al. 2012. Serving two masters: Reconciling Economic and Biodiversity Outcomes of Brushtail Possum (<i>Trichosurus vulpecula</i>) Fur Harvest in an Indigenous New</p>	<p>A legal action taken by indigenous political groups supported by an NGO toward mitigating social and ecological consequences of the operation of a mining industry led to some economic benefits for the local people.</p> <p>Despite of importance of dugong fish to local indigenous communities for subsistence, commercial and cultural purposes no visible techniques among communities studied aimed at sustainable fishing leading to overexploitation of the fish. A state assistance may help to ease economic pressures, aid in reducing dugong use.</p> <p>Protection of biodiversity affected by the possums is possible though employment of local harvesters who use the animal for subsistence and economic reasons, leading to</p>	<p>The action failed to save the river already polluted by the mining industry.</p>

	Zealand forest. <i>Biological Conservation</i> 153:143-152	reduction of a number of potentially harmful species and some income to local people.	
Asia Fiji (WL)	UNDP Equator Initiative. 2012. <i>Sisi initiative site support group – Fiji. Equator prize 2012.</i> http://equatorinitiative.org/index.php?option=com_content&view=article&id=692&Itemid=683	A local conservation organization project supported by an international partnership of conservationists with involvement of indigenous landowners aimed at protecting endangered bird species by introduction of alternative to logging subsistence means.	
Africa Nigeria	Saheed, Alabi. 2012. Recent developments in the Niger delta of Nigeria. <i>International Union for Conservation of Nature Academy of Environmental Law eJournal</i> 1:162-169. http://works.bepress.com/saheed_alabi/2/	The report on the recent move by the Nigeria government to request UNEP to carry out an environmental assessment of Ogoniland related to the oil spillages and gas flaring by the oil companies, particularly, Shell Petroleum Development Company as a step to recover the degraded land.	
Tanzania (WL)	Levine, Arielle. 2002. Convergence or convenience? International conservation NGOs and development assistance in Tanzania. <i>World Development</i> 30, no. 6: 1043-1055	Provision of funds to support nature friendly ways of subsistence, creation of opportunities for local NGO to manage projects vs. the state (micro-credits programs, wild life tourism industry) can be possible through international assistance.	Dependency on international aid (vs. initiatives from the local indigenous communities).
South Africa (WL)	Wiersum, Freerk, et al. 2005. Cultivation of medicinal plants as a tool for biodiversity conservation and poverty alleviation in the Amatola Region, South Africa. In <i>Proceedings of the Frontis Workshop on Medicinal and Aromatic Plants, Wageningen, The Netherlands, 17–20 April, 2005.</i> http://www2.wur.nl/frontis	Conservation practices by cultivating interest of local groups to grow endangered plants that can be commercially profitable also help to conserve traditionally used medical plants and strengthen cultural practices.	Profits from potentially lucrative plants can lead to the over exploitation of the wild plants even in cases when these are endangered species and the local people are aware of it.
Ethiopia and Kenya (WL)	Zander, Kerstin, et al. 2009. Costing the conservation of animal genetic resources: The Case of Borana Cattle in Ethiopia and Kenya. <i>Journal of Arid Environments</i> 73, no. 4-5: 550-556	Conservation of certain animal breeds that face extinction due to environmental constrains and market needs is possible when local livestock keepers are compensated for keeping the endangered breeds threatened while using other breeds for subsistence.	
South Africa and Asia (WL)	Büscher, Bram, and Wolfram Dressler. 2012. Commodity conservation: The Restructuring of community conservation in South Africa and the		Policies/outside models of representing nature tend to commodity social relations and natural resources resulting in pressure

	Philippines. <i>Geoforum</i> 43, no. 3: 367-376		on local communities to employ and live by outside ways of looking at their lives.
North America and the Arctic USA (WL)	Ohlson, Davinna, et al. 2008. Advancing indigenous self-determination through endangered species protection: Idaho Gray Wolf recovery. <i>Environmental Science and Policy</i> 11:430-440	A set of efforts toward recovering gray wolf population in central Idaho between a Native American tribe and environmentalists concluded with some success in protection of the animals.	The policy and decision making kept in the hands of the governmental agencies due to social and political hierarchy of the relations between tribal and federal authorities.
USA (WL)	Burgera, Joanna, Gochfeld, Michael, and Karen Pletnikoff. Collaboration versus communication: The Department of energy's Amchitka island and the Aleut community. <i>Environmental Research</i> 109, no. 4: 503–510	The termination of Amchitka, the site of the past underground nuclear tests became a reality via participatory research between the Department of Energy of the Amchitka Island, a science community and the Aleutians whose views and needs were included in the planning.	
USA (WL)	Milholland, Sharon. 2010. In the eyes of the beholder: Understanding and resolving incompatible ideologies and languages in US environmental and cultural laws in relationship to Navajo sacred lands. <i>American Indian Culture and Research Journal</i> 34, no. 2: 103-124	One of the examples of the indirect conservation is the struggle to stop existing environmentally destructive developments and prevent future ones. The Navajo and Hopi individuals successfully used legal framework to protect their lands, sacred sites and communities and stopped construction of the Snowbowl sky resort.	
USA (R)	Gosnell, Hannah, and Erin Kelly. Peace on the river? Social-ecological restoration and large dam removal in the Klamath basin, USA. <i>Water Alternatives</i> 3, no. 2: 361-383.	Decision to remove four dams along the Klamah river (California and Oregon) is an example aimed at restoring ecology of the river while recognizing the local tribes rights, subsistence needs and cultural practices in light of the international and domestic regulations, the report of the World Commission on Dams and the Endangered Species Act, and the Federal Power Act.	

Appendix B

Request to participate in the WIPO IGC

To: Traditional Knowledge Division
World Intellectual Property Organization (WIPO)
34, chemin des Colombettes
1211 Geneva 20
Switzerland

Fax.: +41 (0) 22 338 70 20

Email: grtkf@wipo.int

Dear Traditional Knowledge Division,

Re: Request for accreditation as an observer in future sessions of the WIPO Intergovernmental Committee

I am writing to express the wish of my organization to participate in the sessions of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore as an *ad hoc* observer. Please find our application attached for the Committee's consideration.

Please do not hesitate to contact us if you require any further information.

Yours sincerely,

(Name and Signature of Representative)

Application Form for Accreditation as *Ad Hoc* Observer
to the
WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and
Folklore^{140,141}

BIOGRAPHICAL DETAILS OF THE APPLICANT
ORGANIZATION

Please do not enclose any attachment with your application.

¹⁴⁰ Please note that the decision on accreditation will not be made by the Secretariat, but by the Member States at the beginning of the session of the Intergovernmental Committee. It is therefore possible that certain organizations may not receive accreditation. Therefore, if the requesting organization is not based in Geneva, it might not be advisable to travel to Geneva for the sole purpose of participating in the session of the Committee until accreditation has been granted.

¹⁴¹ Please note that this application form may be presented to the Committee exactly in the form received. Please therefore, as far as possible, complete the form using a type-writer or word processor. The completed form should preferably be emailed to grtkf@wipo.int

Full name of the Organization:

Description of the Organization: (maximum 150 words)

Main aims and objectives of the Organization: (Please use a bulleted list)

-
-
-
-
-
-
-

Main activities of the Organization: (Please use a bulleted list)

-
-
-
-

Relationship of the Organization with intellectual property matters, including a full explanation of why you are interested in the issues under discussion by the Committee (Maximum 150 words)

Country in which the Organization is primarily active:

Additional Information:

Please provide any additional information which you feel might be relevant (maximum 150 words)

Full contact details of the Organization:

Postal address:

Telephone number:

Fax number:

Email address:

Web site:

Name of Organization Representative and Title:

[End of document]

Appendix C

WIPO IGC Accredited *ad hoc* observers (as per April 2012)

Abantu for Development Uganda (AFOD)
Aboriginal and Torres Strait Islander Commission (ATSIC)
ActionAid
Actions Genre et Développement/Gender and Economic and Social Development Actions (AGEDES)
ADJMOR
Association for Integration and Sustainable Development in Burundi (*Association pour l'Intégration et le Développement durable au Burundi*) (AIDB)
African Cultural Regeneration Institute (ACRI)
African Indigenous Women Organization (AIWO)
Afrikan Virtual Resource (NALANE)
Culture of Afro-indigenous Solidarity (Afro-Indigène)
Agency for International Trade and Cooperation (AITIC)
Ainu Association of Sapporo
Akuaiapa Waimakat – Asociación para la Divulgación, Promoción y Defensa de los Derechos Humanos e Indígenas
Altin Shore
Amauta Yuyay
American Association for the Advancement of Science (AAAS)
American Folklore Society
American Indian Law Alliance (AILA) – 2002, 4th United States
Arctic Athabaskan Council (ACC) – 2002, 4th Canada
Arts Law Centre of Australia
Art Law Center/Fondation pour le droit de l'art
Asia/Pacific Cultural Centre for UNESCO (ACCU), The
Asociación Civil Comunidad Aborigen - “Toba, Pilaga, Wichí” - To.Pi.Wi
Asociación de Pueblos Indígenas de Venezuela (APIVEN)
Asociación Ixacavaa de Desarrollo e Información Indígena (ASIDII)
Association of Kabyle Women
Association of Kunas United for Mother Earth (*Asociación Kunas Unidos por Napguana*) (KUNA)
Assembly of Armenians of Western Armenia
The Assembly of First Nations
Associação Metareilá do Povo Indígena Suruí/Metareilá Association of the Suruí Indigenous People
Associação Paulista da Propriedade Intelectual (ASPI)
Association Bouregreg
Association culturelle ASIDD/ASIDD Cultural Association
Association Internationale de la Promotion et de la Défense de la Propriété Intellectuelle/International Association for the Promotion and Defense of Intellectual Property (AIDPI)
Association for the Reconstruction and Development of the Moko-oh Peoples (AFTRADEMOP)
Association of Nepal Kirat Kulung Language and Cultural Development (ANKKLACD)
Association des Etudiants et Chercheurs sur la Gouvernance des Etats insulaires (AECG)
Association pour le Développement de la Société Civile Angolaise (ADSCA)
Association Tamaynut (Amazigh People)
Australian Folklore Association Inc.
Azerbaijan Lawyers Confederation
BAL'LAME
Berne Declaration, The
Bioresources Development and Conservation Programme (BDCP)
Biodiversity
B.I.S.O.N. International
Boomalli Aboriginal Artist Co-operative
Botswana Khwedom Council

Brazilian Association of Intellectual Property (ABPI)
 Busoga Youth Environment Protection Association (BYEPA)
 Call of the Earth (COE)
 Cadre de concertation des associations des veuves du Burundi (CCAVB)
 Cámara Paraguaya de la Propiedad Intelectual/Paraguayan Chamber of Intellectual Property (CAMPI)
 Canadian Indigenous Biodiversity Network (CIBN)
 Casa Nativa “Tampa Allqo”
 Centrale Sanitaire Suisse Romande (CSSR)
 Centre for African Culture and Traditional Indigenous Knowledge
 Centre for Documentation, Research and Information of Indigenous Peoples (doCip)
 Centre for Folklore/Indigenous Studies
 Center for International Environmental Law (CIEL)
 Center for Peace Building and Poverty Reduction among Indigenous African Peoples
 Centre for Research & Action on Developing Locales, Regions & the Environment (CRADLE)
 Center for Studies and Research in Law of the Intangible (CERDI)
 Centre for the Management of IP in Health R&D (MIHR)
 Centre for Youth Research
 Centre d’accompagnement des autochtones pygmées et minoritaires vulnérables (CAMV)
 Centro de Culturas Indígenas del Perú (CHIRAPAQ)/Centre for Indigenous Cultures of Peru
 Centro Folklórico Andino de Juliaca/Juliaca Andean Folklore Center
 Centro de Políticas Públicas y Derechos Indígenas (CPPDI)/ Center for Public Policy and Indigenous Rights
 Centre Togolais d’Assistance Juridique pour le Développement (CETAJUD)
 Cercle d’initiative commune pour la recherche, l’environnement et la qualité (CICREQ)
 Civil Society Organizations’ Network for Sustainable Agriculture and Environment in East Africa (CISONET)
 Christ is calling you (*Cristo te llama*)
 Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos (CAPAJ)
 Committee for the Promotion and Protection of Human Rights (*Comitato per la promozione e protezione dei diritti umani*)
 Confederación de Nacionalidades Indígenas (CONAIP)
 Confederación de Nacionalidades Indígenas del Ecuador (CONAIE)
 Congolese Association of Young Chefs and Gastrotechnie Consultancy International
 Consumers International (CI)
 Consumer Project on Technology (CPTech)
 Consejo de Caciques de la Nación Mbya Guaraní
 Consejo Maya de la Propiedad Cultural e Intelectual de Guatemala (SAQIL NAÒJ)
 Community Development and Empowerment Association (CEDA)
 Cooperativa Ecológica de las Mujeres Colectoras de la Isla de Marajó (CEMEM)
 Coordinadora Indígena de la Cuenca Amazónica/Indigenous Coordinating Agency for the Amazon Basin (COICA)
 Coordinadora Indígena de Mesoamérica y el Caribe/Indigenous Coordinator for Mesoamerica and the Caribbean (CIMCA)
 Coordinadora Nacional de Mujeres Indígenas de Panamá/ National Coordinator for Indigenous Women of Panama
 Coordination des ONG africaines des droits de l’homme/Coordination of African Human Rights NGOs (CONGAF)
 Copyright Research and Information Center (CRIC)
 Copyright Agency Limited
 Creators’ Rights Alliance (CRA)/L’Alliance pour les droits des créateurs (ADC)
 Egyptian Society for Folk Traditions
 El-Molo Eco-Tourism, Rights and Development Forum
 Elders Council of the Shor People
 Engabu Za Tooro (Tooro Youth Platform for Action)
 Ethio-Africa Diaspora Union Millennium Council
 Ethnic Community Development Organization (ECDO)
 European Network of Traditional Music and Dance (ENTMD), The
 Federación Folklorica Departamental de La Paz

Federation of Environmental and Ecological Diversity for Agricultural Revampment and Human Rights (FEEDAR & HR), The
 Fédération des Organisations Autochtones de Guyane (FOAG)
 First Peoples Worldwide
 Fondation Africaine pour le renouveau moral, l'apprentissage professionnel, universitaire international et le commerce électronique, et la coordination des trades points aux Rwanda, R.D.C., et Grands Lacs (FARMAPU — Inter & CECOTRAP — RCOGL)
 Fondation pour le droit de l'art/Art Law Center
 Fundación Ngäbe-Buglé (FUNGOBE-B)
 Foundation for Aboriginal and Islander Research Action (FAIRA)
 Foundation for Research and Support of Indigenous Peoples of Crimea
 Foundation for Solidarity and Social Welfare Projects (FOSBES NGO)
 Foundation of Support of Iranian Elites (FSIE), The
 France Freedoms - Danielle Mitterrand Foundation/France Libertés Fondation Danielle Mitterrand
 Franciscan International
 Free University Berlin
 Fridtjof Nansen Institute (NFI), The
 Friends World Committee for Consultation (represented by the Quaker United Nations Office, Geneva)
 Fundación Nuestro Ambiente
 Genetic Resources Action International (GRAIN)
 Genetic Resources, Traditional Knowledge and Folklore (GRTKF Int.)
 Global Coalition for Biological and Cultural Diversity (of the ISE)
 Global Development for Pygmy Minorities (GLODEPM)
 Global Education and Environment Development Foundation (GEED-Foundation)
 Graduate Institute for Development Studies (GREG)
 Grand Council of the Crees (Eeyou Istchee) (GCCEI)
 Groupe des jeunes agronomes actifs pour le développement intégré au Cameroun (JAADIC)
 Groupe de recherche sur les savoirs (GRS)
 Grupo de Investigación en Política y Legislación sobre Biodiversidad, Recursos Genéticos y Conocimientos Tradicionales/Policy and Legislation on Biodiversity, Genetic Resources and Traditional Knowledge (PLEBIO)
 Grupo de Trabajo sobre Asuntos Indígenas/Working Group on Indigenous Issues (GTAI)
 Hawaii Institute for Human Rights (HIHR)
 Health and Environment Program
 HealthChek
 Himalayan Folklore and Biodiversity Study Program IPs Society for Wetland Biodiversity Conservation Nepal
 Himalayan Indigenous Nationalities Preservation Association (HIWN)
 Human BioEthics Treaty Organization (HBTO)
 Incomindios Switzerland
 Indian Confederation of Indigenous and Tribal Peoples North-East Zone* (ICITP-NEZ)
 Indian Council of South America (CISA)
 Indian Movement “Tupaj Amaru”
 Indigenous Fisher Peoples Network (IFPN)
 Indigenous ICT Task Force (IITF)
 Indigenous Knowledge Systems of South Africa Trust (iiKSSA Trust)
 Indigenous Laikipiak Maasai Integrated Youth Organization (Ilamaiyo Foundation)
 Indigenous Peoples (Bethchilokono) of Saint Lucia Governing Council, BCG
 Indigenous Peoples' Biodiversity Network (IPBN)
 Indigenous Peoples' Council on Biocolonialism (IPCB)
 Indigenous Peoples Program
 Indonesian Traditional Wisdom Network (ITWN)
 Innu Council of Nitassinan (ICN)
 Institut Borja de Bioética
 Institut du développement durable et des relations internationales (IDDRI)
 Institute for African Development (INADEV)
 Institute for European Studies at the *Vrije Universiteit Brussel*
 Institute for Agriculture and Trade Policy (IATP)

Institute for Food and Development Policy
 Institute of Social and Cultural Anthropology, University of Oxford
 Instituto Indígena Brasileiro da Propriedade Intelectual (InBraPi)
 Intangible Cultural Heritage Network (ICHNet)/Comitato per la promozione del patrimonio immateriale
 Intellectual Property Assets Rights Management (IPARM)
 Intellectual Property Owners Association (IPO)
 International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL)
 International Centre for Trade and Sustainable Development (ICTSD)
 International Commission for the Rights of Aboriginal People (ICRA)
 International Committee for Museums of Ethnography (ICME)
 International Cooperation for Development and Solidarity (CIDSE)
 International Council of Museums (ICOM)
 International Council for Science (ICSU)
 International Environmental Law Research Center (IELRC)
 International Indian Treaty Council (IITC)
 International Institute for Environment and Development (IIED)
 International Organization for Sustainable Development (IOSD)
 International Plant Genetic Resources Institute (IPGRI)
 International Society of Ethnobiology (ISE)
 International Seed Federation (ISF)
 International Work Group for Indigenous Affairs (IWGIA), The
 Inuit Circumpolar Council (ICC)
 Jigyansu Tribal Research Centre (JTRC)
 Kadazandusun Cultural Association Sabah
 Ka Lahui Hawai'i
 Kabylia for the Environment (*Kabylia pour l'environnement*) (AKE) – 2012 20th session Africa Algeria
 Kanuri Development Association
 Kaska Dena Council (KDC)
 Kirat Chamling Language & Cultural Development Association (KCLCDA)
 Knowledge Ecology International (KEI)
 Kus Kura el León Sociedad Civil
 La Diablada Juventud Tradicional “Unión de Bordadores”
 L'Assemblée des Arméniens d'Arménie occidentale/The Assembly of Armenians of Western Armenia
 L'auravetl'an Information & Education Network of Indigenous Peoples (LIENIP)
 Lawyer's Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)
 League for Pastoral Peoples and Endogenous Livestock Development (LPP)
 Maasai Cultural Heritage Foundation (MCHF)
 Maasai Aid Association (MAA)
 Maasai Education Discovery (M.E.D)
 Massai Experience
 Mamacila Apo Ginopakan Higaonon Tribal Council Inc
 Mannheim Centre for European Social Research/Mannheimer Zentrum für Europäische Sozialforschung (MZES)
 Matonyok Nomads Development Organization (MANDO)
 Maya To'Onik Association
 Mbororo Social Cultural Development Association (MBOSCUA)
 Mejlis of Crimean Tatar People
 Métis National Council (MNC)
 Mulnivasi Mukti Manch
 Music in Common
 Nainyoie Community Development Organization (NCDO)
 Nama First Indigenous People's Forum (NIPFIN)
 National Aboriginal Health Organization (NAHO)
 National Council of Otomi/Consejo de la Nación Otomi
 National Education Social and Traditional Knowledge (NEST) Foundation
 National Indigenous TV Ltd. (NITV)
 Native American Rights Fund (NARF)

Natural Justice
 Nepal Federation of Nationalities (NEFEN)
 Nepal Indigenous Nationalities Preservation Association (NINPA)
 Netherlands Centre for Indigenous Peoples (NCIV)
 New England Conservatory of Music (NEC)
 New Zealand Institute of Patent Attorneys Inc (NZIPA)
 Ngāti Kahungunu Iwi Inc.
 Nigeria Natural Medicine Development Agency (NNMDA)
 Norwegian Council for Traditional Music and Traditional Dance
 Ogiek Peoples Development Program (OPDP)
 Olaji Lo Larusa Integrated Program for Agro-Pastoralists Development (OLIPAD)
 Ontario Federation on Indian Friendship Centres (OFIFC)
 Organisation d'appui aux organisations communautaires de base "Arc-En-Ciel"
 Organisation des Volontaires Acteurs de Développement-Action Plus (OVAD-AP)
 Organización Nacional Indígena de Colombia (ONIC)
 Pachamama Asociación Civil
 Organization for Social Action & Development (OSAD)
 Pacific Islands Forum Secretariat
 Pacific Island Museums Association (PIMA)
 Pauktuutit - Inuit Women's Association
 Peruvian Society for Environmental Law (SPDA)
 Programme d'intégration et de développement du peuple Pygmée au Kivu (PIDP-KIVU)
 Promotion of Traditional Medicines (PROMETRA)
 Punto Verde Association (*Asociación Punto Verde*)
 Queen Mary Intellectual Property Research Institute (QMIPRI)
 Rapa Nui Parliament
 Red de Cooperación Amazonica/Amazon Cooperation Network (REDCAM)
 Research Group on Cultural Property (RGCP)
 Rift Valley Voluntary Counsellors
 Rockefeller Foundation, The
 Rromani Baxt
 Rural Women Environmental Protection Association (RWEPA)
 Russian Association of Indigenous Peoples of the North (RAIPON)
 SAAMI Council – 2001
 Sámi Parliamentary Council (SPC)
 Samburu Women for Education and Environmental Development Organization (SWEEDO)
 Sámikopijja
 Sarawak Kayan Association/Persatuan Kayan Sarawak
 Satasanga Pallikaly Samity (SPS)
 Secretariat of the Pacific Community (SPC)
 Societé Internationale d'Éthnologie et de Folklore (SIEF)
 Society for Research into Sustainable Technologies and Institutions (SRISTI)
 Sonccoypa Cusicuynin
 South Center, The
 Southeast Indigenous Peoples' Center
 South Pacific Regional Environment Programme (SPREP)
 Sudanese Association for Archiving Knowledge (SUDAAK)
 Sustainable Development Policy Institute (SDPI)
 Swiss Society for Ethnomusicology
 Tebtebba Foundation - Indigenous Peoples' International Centre for Policy Research and Education
 Third World Network (TWN)
 Tin-Hinane
 Tanzanian Intellectual Property Rights Network (TIP-Net)
 Traditional Peoples and Communities Forum/ Fórum de Povos e Comunidades Tradicionais
 Traditions pour Demain/Traditions for Tomorrow
 Tsentsak Survival Foundation (Cultura Shuar del Ecuador)

Tulalip Tribes of Washington Governmental Affairs Department
Te Iwi Moriori Trust Board
Unisféra International Centre
Union for Ethical Bio Trade, The
United Nations of Indians
Vibe Australia Pty Ltd
Wara Instituto Indígena Brasileiro
West Africa Coalition for Indigenous Peoples' Rights (WACIPR)
Working Group of Indigenous Minorities in Southern Africa (WIMSA)
World Federation for Culture Collection (WFCC)
World Trade Institute (WTI)
World Wide Fund for Nature (WWF)
Yamatji Marlpa Barna Baba Maja Aboriginal Corporation
Youth Forum for Social Action (YFSA)

Appendix D

Indigenous organizations accredited with WIPO IGC (as per April 1 2012)

Aboriginal and Torres Strait Islander Commission (ATSIC)
Association for Integration and Sustainable Development in Burundi
African Indigenous Women Organization (AIWO)
Ainu Association of Sapporo
Akuaiwa Waimakat – Asociación para la Divulgación, Promoción y Defensa de los Derechos Humanos e Indígenas
Altin Shore
American Indian Law Alliance (AILA)
Amauta Yuyay
Arctic Athabaskan Council (AAC)
Asociación Civil Comunidad Aborigen - “Toba, Pilaga, Wichí” - To.Pi.Wi.
Asociación de Pueblos Indígenas de Venezuela (APIVEN)
Asociación Ixacavaa de Desarrollo e Información Indígena (ASIDII)
Association of Kabyle Women
Association of Kunas United for Mother Earth (KUNA)
The Assembly of First Nations
Associação Metareilá do Povo Indígena Suruí/Metareilá Association of the Suruí Indigenous People
Association culturelle ASIDD/ASIDD Cultural Association
Association for the Reconstruction and Development of the Moko-oh Peoples (AFTRADEMOP)
Association of Nepal Kirat Kulung Language and Cultural Development (ANKKLACD)
Association Tamaynut (Amazigh People)
B.I.S.O.N. International
Boomalli Aboriginal Artist Co-operative
Botswana Khwedom Council
Call of the Earth (COE)
Canadian Indigenous Biodiversity Network (CIBN)
Casa Nativa “Tampa Allqo”
Centre for African Culture and Traditional Indigenous Knowledge
Centre for Folklore/Indigenous Studies
Centre d’accompagnement des autochtones pygmées et minoritaires vulnérables (CAMV)
Centro de Culturas Indígenas del Perú (CHIRAPAQ)/Centre for Indigenous Cultures of Peru
Centro Folklórico Andino de Juliaca/Juliaca Andean Folklore Center
Centro de Políticas Públicas y Derechos Indígenas (CPPDI)/ Center for Public Policy and Indigenous Rights
Cercle d’initiative commune pour la recherche, l’environnement et la qualité (CICREQ)
Civil Society Organizations’ Network for Sustainable Agriculture and Environment in East Africa (CISONET)
Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos (CAPAJ)
Confederación de Nacionalidades Indígenas (CONAIP)
Confederación de Nacionalidades Indígenas del Ecuador (CONAIE)
Consejo de Caciques de la Nación Mbya Guaraní
Consejo Maya de la Propiedad Cultural e Intelectual de Guatemala (SAQIL NAÒJ)
Coordinadora Indígena de la Cuenca Amazónica/Indigenous Coordinating Agency for the Amazon Basin (COICA)
Coordinadora Indígena de Mesoamérica y el Caribe/Indigenous Coordinator for Mesoamerica and the Caribbean (CIMCA)
Coordinadora Nacional de Mujeres Indígenas de Panamá/ National Coordinator for Indigenous Women of Panama
Creators’ Rights Alliance (CRA)/L’Alliance pour les droits des créateurs (ADC)
El-Molo Eco-Tourism, Rights and Development Forum
Elders Council of the Shor People
Engabu Za Tooro (Tooro Youth Platform for Action)
Ethnic Community Development Organization (ECDO)
Fédération des Organisations Autochtones de Guyane (FOAG)

Fundación Ngäbe-Buglé (FUNGOBE-B)
 Foundation for Aboriginal and Islander Research Action (FAIRA)
 Foundation for Research and Support of Indigenous Peoples of Crimea
 Foundation for Solidarity and Social Welfare Projects (*FOSBES* NGO)
 Genetic Resources, Traditional Knowledge and Folklore (GRTKF Int.)
 Global Development for Pygmy Minorities (GLODEPM)
 Grand Council of the Crees (Eeyou Istchee) (GCCEI)
 Grupo de Trabajo sobre Asuntos Indígenas/Working Group on Indigenous Issues (GTAI)
 Hawaii Institute for Human Rights (HIHR)
 Himalayan Indigenous Nationalities Preservation Association (HIWN)
 Incomindios Switzerland
 Indian Confederation of Indigenous and Tribal Peoples North-East Zone
 Indian Council of South America (CISA)
 Indian Movement “Tupaj Amaru”
 Indigenous Fisher Peoples Network (IFPN and/or IFP)
 Indigenous ICT Task Force (IITF)
 Indigenous Laikipiak Maasai Integrated Youth Organization (Ilamaiyo Foundation)
 Indigenous Peoples (Bethchilokono) of Saint Lucia Governing Council, BCG
 Indigenous Peoples’ Biodiversity Network (IPBN)
 Indonesian Traditional Wisdom Network (ITWN)
 Innu Council of Nitassinan (ICN)
 Instituto Indígena Brasileiro da Propriedade Intelectual (InBraPi)
 International Indian Treaty Council (IITC)
 Indigenous Peoples’ Council on Biocolonialism (IPCB)
 International Work Group for Indigenous Affairs (IWGIA)
 Inuit Circumpolar Council (ICC)
 Jigyansu Tribal Research Centre (JTRC)
 Kadazandusun Cultural Association Sabah
 Ka Lahui Hawai’i
 Kabylia for the Environment (AKE)
 Kanuri Development Association
 Kaska Dena Council (KDC)
 Kirat Chamling Language & Cultural Development Association (KCLCDA)
 Kus Kura el León Sociedad Civil
 L’auravetl’an Information & Education Network of Indigenous Peoples (LIENIP)
 Lawyer’s Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)
 Maasai Cultural Heritage Foundation (MCHF)
 Mamacila Apo Ginopakan Higaonon Tribal Council Inc.
 Matonyok Nomads Development Organization (MANDO)
 Maya To’Onik Association
 Mbororo Social Cultural Development Association (MBOSCUDA)
 Mejlis of Crimean Tatar People
 Métis National Council (MNC)
 Mulnivasi Mukti Manch
 Nainyoi Community Development Organization (NCDO)
 Nama First Indigenous People’s Forum (NIPFIN)
 National Aboriginal Health Organization (NAHO)
 Council of Otomi/Consejo de la Nación Otomi
 National Indigenous TV Ltd. (NITV)
 Native American Rights Fund (NARF)
 Nepal Federation of Nationalities (NEFEN)
 Nepal Indigenous Nationalities Preservation Association (NINPA)
 Ngāti Kahungunu Iwi Inc.
 Ogiek Peoples Development Program (OPDP)
 Olaji Lo Larusa Integrated Program for Agro-Pastoralists Development (OLIPAD)
 Ontario Federation on Indian Friendship Centres (OFIFC)

Organización Nacional Indígena de Colombia (ONIC)
Pachamama Asociación Civil
Pauktuutit Inuit Women's Association
Rapa Nui Parliament
Rural Women Environmental Protection Association (RWEPA)
Russian Association of Indigenous Peoples of the North (RAIPON)
SAAMI Council
Sámi Parliamentary Council (SPC)
Samburu Women for Education and Environmental Development Organization (SWEEDO)
Sámikopijja
Sarawak Kayan Association/Persatuan Kayan Sarawak
Sonccoypa Cusicuynin
Sudanese Association for Archiving Knowledge (SUDAAK)
Tebtebba Foundation - Indigenous Peoples' International Centre for Policy Research and Education
Tin-Hinane
Tsentsak Survival Foundation (Cultura Shuar del Ecuador)
Tulalip Tribes of Washington Governmental Affairs Department
Te Iwi Moriori Trust Board
United Nations of Indians
Vibe Australia Pty Ltd
Wara Instituto Indígena Brasileiro
West Africa Coalition for Indigenous Peoples' Rights (WACIPR)
Working Group of Indigenous Minorities in Southern Africa (WIMSA)
Yamatji Marlpa Barna Baba Maja Aboriginal Corporation
Youth Forum for Social Action (YFSA)

Appendix F

Participation by number of times and names of participants

Organizations and individuals participated most:

Tupaj Amaru (Peru; 19 times; has an international representative) with a representative of the organization (L. Paryanagua) participating in all of the IGC session;
Tulalip Tribes (United States, 14 times) with the representative P. Hardison participating in all 14 sessions
Saami Council (Sweden, 14 times) with a representative M. Ahren participating in 14 sessions
CISA (Peru, 14 times, has an international representative) with a representative T. C. Cahuapaza participating in 13 sessions (for one session representation is missing)
Assembly of First Nations (AFN) (Canada, 12 times) with a representative S. Wuttke participating in 8 sessions;
CRA (Canada, 11 times) with a representative G. Young-ing participating in 10 sessions
FAIRA (Australia, 10 times) with a representative R. Malezer participating in 10 sessions.

Participation by a number of sessions, name of an organization and name(s) and number of times participated of the participants:

1 African Indigenous Women Organization (H. Hajara)
1 Akaupa Waimakat (M. V. Guauriyu)
1 B.I.S.O.N. International (G. R. Elk, S. Perrier, P. C Tohlakai, M. Ruegg)
1 Casa Nativa “Tampa Allqo” (M. M. Gutierrez)
1 National Council of the Otomi Nation (D. Thaayrohyadim, B. Muller-Lagunez)
1 ECDO (N. Sinha)
1 FOSBES NGO (T. N. Frachaha, G. Lufungula)
1 IFPN (S. Namadoa)
1 Ilamaiyo Foundation (J. Olesarioyo)
1 Indonesian Traditional Wisdom Network (ITWN) (A. Waspo, M. Wangsa)
1 Mamacila Apo Ginopakan Higaonon Tribal Council Inc. (A. Malo-ay)
1 Maya To’Onik Association (S. T. Julajuj)
1 NCDO (I. Leshore)
1 RWEPA (R. A. Mbah)
1 SWEEDO (J. Meriwas)
1 WIMSA (J. Useb)
2 Ainu Association of Sapporo (K. Abe, K. Tahara (2), P. Dallais)
2 Amauta Yuyay (C. G. Cando (2)
2 Call of the Earth (R. de la Cruz (2)
2 Centre for Folklore/Indigenous Studies (C. Rajagopalan (2)
2 CHIRAPAQ (T. Rivera-Zea (2)
2 CIBN (P. Oldham (2)
2 COICA (S. Manchineri, E. V Campos, J. J. Arcos)
2 GRTKF Int. (A. Deterville, E. Jeong)
2 Hawaii Institute for Human Rights (J. Cooper (2)
2 Innu Council of Nitassinan (V. Chainey, D. Boisselier)
2 JTRC (N. Mahanti (2)
2 MCHF (J. Ole Kaunga (2)
2 NAHO (T. O’Hearn (2)
2 Native American Rights Fund (NARF) (K. Gottshalk(2), M.McCoy)
2 OPDP (P. Cheruiyot (2)
2 Tebtebba Foundation (V. Tauli-Corpuz (2), D. Rogei)
2 Tin-Hinane (M. Aboubacrine (2), T. Walett)
3 Arctic Athabaskan Council (AAC) (B. MacDonald (3)
3 Hokotehi Moriori Trust (S. McMeeking, M. Solomon (2)
3 ICITP-NEZ (G. Ramchiary, P. Basumatary, B. Mushahara, U. Hazowary, J. Muchahary (2)

3 InBraPi (L. I. Belfort (2), (L. Kaingang)
 3 IPBN (A. Argumedo (3 times), C. Bonnard, F. Weber, C. Bourgogne K. Nnadozie)
 3 IWGIA (U. Stgier (2), B. Feiring)
 3 Kanuri Development Association (B. Abubakar (3)
 3 NINPA (N. Sherpa (3), C. Cherpa, B. Ghising, K. L. Moktan)
 3 Sámikopijja (J. Solbakk (3), K. Guttorm, J. Solbakk)
 3 Tamaynut (H. Idbalkassm (2), A. Hitous, L. Douch, M. Amrhar, H. Idbalkassm, M. Aidouch, B. Hocine)
 3 Tsentsak Survival Foundation (E. Chiriap (3) U. Chiriap, A. Juank)
 4 IITC (A. Gonzales, E. C. Diaz (3)
 4 Kaska Dena Council (KDC) (M. Alexander (4)
 4 Mejlis of the Crimean Tatar People (N. Bekirov (4), M. Dzhemilev, E. Seibekirov, M. Ozenbachli)
 4 SUDAANK (F. Y. Galaleldin (3), B. H. Mussa, S. Elhassan)
 5 COE (R. Cruz (3), K. Nnadozie, A. Argumedo (4) R. Smith)
 5 El-Molo Eco-Tourism, Rights and Development (C. Louwa 3, F. Saitoti)
 5 Panktuuit Inuit Womens Association (P. Bird (4), (M. Alexander)
 6 INCOMINDIOS (E. Scheibler, N. Gimpel-Sabarots, M. Bayer, C. Trescher, S. Venne (2), C. Ramon, B. Hunkeler, C. M. Condori, H. Nyberg, A. Sellek, E. Kofmel, P. Mund, D. Zingg, R. Rohner)
 6 LIENIP (G. Shermatova (4), D. Mamiev, J. Gosart, T. Kalyantagrau, E. Nechushkina (2), G. Kusenko)
 6 Métis National Council (MNC) (C. Chartier, K. Hodgson-Smith (3), J. Koebel, A. Still, B. Al)
 6 WACIPR (J. Ogierakhi (4), E. Aitokhuehi (3), P. Aguinede, D. Ogboi)
 7 Foundation for Research and Support of Indigenous Peoples of Crimea (N. Bekirov (3), P. Bursik (2), G. Abbasova (3), K. Kurtbelyalova)
 7 Inuit Circumpolar Conference (V. Ford (7)
 7 MBOSCUA (M. Ndamba (4), B. Diawara(2), A. Shatu (2)
 8 CAPAJ (M. Penaloza (2), T. Alarcon, A. Eyzaguirre (6), R. Mercado, G. Maringer (2), P. Hsu, R. L. Gonzalez, R.G. Luquer)
 9 BCG (A. Deterville (9), J. Ho-Kong Ciat)
 9 IPCB (D. Harry (8), L. Kanehe (5), R. Barnes, A. Anderson)
 9 RAIPON (N. Kaplan (2), M. Todyshev (3), R. Suyandziga (5), A. Chukhman (2), O. Danilova, P. Shulbaeva)
 10 FAIRA (R. Malezer (10); D. Gondarra, D. Curtis, S. Saban, P. Mills, S. Mills, J. Walker)
 11 CRA (G. Young-ing-10, J. Anderson)
 12 Assembly of First Nations (I. Lawrence, P. Wilson, S. Wuttke (8), Ford)
 14 CISA (T. C. Cahuapaza (13), R. Barnes (5), J. Quilaqueo, I. Watson)
 14 Saami Council (M. Ahren (14), A. Nuorgam (3), A. Javo (2), E. Eira(2), E. Jushkov)
 14 Tulalip Tribes (P. Hardison (14), S. Jones, T. Williams (5)
 19 Tupaj Amaru (L. Paryanagua (19), M. Corminboeuf (2) , Escalante, A. Pary A. Vera, R. Gonzales (2), D. Sapin (2), D. Cervantes)

Appendix G

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

Twentieth Session
Geneva, February 14 to 22, 2012

STATEMENT OF THE INTERNATIONAL INDIGENOUS FORUM

We, the Indigenous Peoples and Nations present at the International Indigenous Forum during WIPO IGC 20, have evaluated our participation in all of the proceedings of this Committee, and we note with concern the continued reduction of the amount and level of our participation in this process.

We Indigenous Peoples have participated as experts in the IGC sessions, we have worked in good faith, and we have made efforts over the years to submit to the IGC sessions our collectively developed and sound proposals, which have been ignored or left in brackets in negotiation texts.

The IGC, in its overall procedures, has systematically ignored our rights, as Indigenous Peoples and as Nations with internationally recognized collective rights, to self-determination and full and equitable participation at all levels.

The draft study of the Secretariat on the participation of observers before the IGC does not contain modifications proposed by the Indigenous Peoples to WIPO's rules of procedure. The States have obligations under their constitutions that have not been observed in the IGC, nor have they submitted proposals that could resolve the existing deficiencies in order to improve our participation.

Distinguished delegates: we, the Indigenous Peoples, are the titleholders, proprietors and ancestral owners of traditional knowledge that is inalienable, nonforfeitable and inherent to the genetic resources that we have conserved and utilized in a sustainable manner within our territories. For this reason, we appeal to the States to acknowledge that the discussion on intellectual property rights and genetic resources should include Indigenous Peoples on equal terms with the States since the work will directly impact our lives, our lands, our territories and resources, and will reach to the very heart of our cultures, which are the inheritance of future generations.

Therefore, the Indigenous Peoples present at IGC 20 have reflected seriously on our role in this process and have decided, unanimously, to withdraw our active participation in the work developed by this Committee until the States change the rules of procedure to permit our full and equitable participation at all levels of the IGC and until the instruments recognize and are consistent with the existing international frameworks for the rights and interests of Indigenous Peoples within the scope of the IGC.

February 21, 2012

Thank you, Mr. Chairman.

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