

# PERSPECTIVES OF DIFFERENTIATION: NEGOTIATING TRADITIONAL KNOWLEDGE ON THE INTERNATIONAL LEVEL

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## ABSTRACT

This article\* explores different perspectives on indigenous communities and their traditional knowledge on the national level as well as on the global stage. It aims to provide a survey of such perspectives and the links and interdependencies between them using the example of the World Intellectual Property Organization's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (WIPO's IGC). It is argued that different socio-political constellations and power relations lead to terminological perspectives of differentiation, i.e. the semantic construction of an external Other in the past that is used to evaluate the present and place oneself in a position of advantage.

**KEYWORDS:** cultural property • multiperspectivity • traditional knowledge • terminology • WIPO

## INTRODUCTION

Since 2001, the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) within the sphere of activity of the World Intellectual Property Organization (WIPO) had brought together state representatives, NGOs and indigenous communities to negotiate the development of a legal instrument for the protection of folklore and traditional knowledge. WIPO is certainly not the only institution dealing with issues of cultural property or cultural heritage at the international level, as they form part of the agendas of UNESCO, the World Trade Organization (WTO), the Convention on Biological Diversity (CBD) and others.<sup>1</sup> An understanding of the negotiation processes on cultural property or cultural heritage presupposes an overview of the various perspectives on the subject – be it traditional knowledge, folklore, traditional crafts or cultural heritage in the sense of the UNESCO conventions. The analysis of such perspectives on the international level is a specific

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constellation in which actors and issues from different temporal-spatial contexts and with various professional and socio-cultural backgrounds come together. Here, a shared usage of terminology can be viewed as a *conditio sine qua non*: without a basic shared understanding of the subject and the problems that it implies in specific negotiation contexts, these processes are hard to imagine. Yet, this does not mean that terminology in such arenas is free of controversy, unequivocal or unifunctional. On the contrary, the use of terminology is in most if not all cases already ambiguous and is writ large in pragmatic strategies of language use (Silverstein 1976: 47–48). Against the backdrop of diverse ideological or strategic interpretations of the subject matter (or referents) of terms, terminological constellations can be seen as perspectives on that subject matter. This article aims to provide a survey of such perspectives on the traditional knowledge of indigenous communities and the links and interdependencies between them using the example of international negotiations at WIPO.

In his groundbreaking paper “Diplomacy and Domestic Policy: The Logic of Two-Level Games”, Robert D. Putnam writes:

Domestic politics and international relations are often somehow entangled, but our theories have not yet sorted out the puzzling tangle. It is fruitless to debate whether domestic politics really determine international relations, or the reverse. The answer to that question is clearly “Both, sometimes.” The more interesting questions are “When?” and “How?” (Putnam 1988: 427)

Pointing to the relationship of different spatial levels that both influence the political sphere and each other, Putnam inquires into the interplay of two variables that are all too familiar to anthropology: the ‘local’ and the ‘global’.<sup>2</sup> As an axiom in political science, their interrelation suggests that policy-making on the national level is on occasion informed and influenced by conditions and developments on the international level – and vice versa.<sup>3</sup> As a well-established paradigm in anthropology, the relationship between the ‘local’ and the ‘global’ adverts to a shifted understanding of the discipline’s object of inquiry: the people who are studied, their social relationships and culture are no longer seen as bound to local and immovable settings, but as embodied in “global flows” (Appadurai 1990; 1996; see Tsing 2005 for a critique of the term) and thus as “moving targets” (Welz 1998) that in their “interconnectedness in space” (Hannerz 1996) demand “multi-sited” (Marcus 1995) methodology. The global turn in anthropology brings into focus trans- and international processes that transcend the local level. It throws light upon the interplay of local settings and the global sphere. In addition to the interconnectedness and mobility of people (see Clarke 2004; Ong, Collier 2004; Welz 2004; Tsing 2005) the circulation of cultural artefacts (see Appadurai 1986; Marcus, Myers 1995; Myers 2001; 2002; Brown 2003) is discussed. In a very similar way to the above quote by Putnam, the interesting question as regards to the entanglement of these two levels in anthropology is ‘when’ and ‘how’ they are intertwined. How are, for example, international discourses on human rights informed about norms and practices at national and local levels, and when is it expedient for actors at national and local levels to refer, or not to refer, to international discourses (Schneider 2010)? In addition, how and when do the local production of cultural artefacts and international practices of regulation and certification meet in the constitution processes of cultural property?

The study of international organisations is a most notable example of anthropological research that is concerned with this entanglement. On the one hand, NGOs and

indigenous communities negotiate global problems formally and informally in international settings and introduce arguments, documents and rhetorics to the national and local levels; on the other hand, diplomats, civil servants and officials from international organisations draw from local experiences and adjust policies and agendas to national and organisational interests. Global flows converge in international institutions and from there have an influence on regional, national and local settings. In bringing together local activists, state officials and civil society organisations in negotiations on local issues and global problems, international institutions are a key factor for the anthropological study of global flows.

To combine the anthropological paradigm-shift with the study of global flows with Putnam, the analysis of such institutions and processes must consider the multiplicity of actors and intention, as it can be found in the convergence of global discourses. Moreover, it needs to take into account the relationship between the different levels of the political decision-making process – speaking with Putnam's terms, domestic policy and international relations, and speaking from an anthropological perspective, also local and regional settings. Multiperspectivity in the context of international institutions is thus never just a question of specific actors and their intentions as well as interpretations, but it is also always the mediation between different levels. Legal, institutional and linguistic frameworks as well as the specific practices of negotiation of the subject matter have an influence on what is negotiated, how it is negotiated, and with what outcome it is negotiated. The convergence of different levels and actors results in a high degree of complexity that is at times difficult to untangle. In focus is not only one reference frame – for example, a national discourse including specific frameworks and actors – but the encounter of a multiplicity of discourses. Notwithstanding, this complexity yields the possibility to map positions and strategies, without claiming to be able to deduce actors' intentions or the precise genesis of said positions from observable practices.

This method of mapping is, for example, helpful in analysing contingent terminology: how and in what changing contexts are specific terms used, and what are the implications of the contextualised usage of terms? Are there multiple possible ways to interpret terminology, or can terminology have unifunctional significance? Can contingencies in terminology be harnessed strategically, and thus be used intentionally in specific constellations of interest? In legal linguistics, questions like these have been discussed in terms of 'vagueness' or 'ambiguity' of terminology (Bhatia et al. 2005; Hutton 2009), with a focus on the pragmatic dimension of dealing with such uncertainties in legal interpretation (Münch 2002). Transcultural (Bhatia et al. 2008) and multilingual (Hilf 1973; Jansen 1999; Luttermann 1999; Triebel, Balthasar 2004) settings have been taken into account as well, but the emphasis is on questions of legal certainty and legal interpretation. The strategic and ideological implications of contingent (and thus ambiguous) terminology in differing sociocultural and political context have mainly been neglected. Noteworthy exceptions from the field of legal semiotics – for example, Alan Audi's *A Semiotics of Cultural Property Argument* (2007) – do not limit themselves to formal analysis and provide a re-contextualisation of terms into linguistic and ideological systems, allowing for a location and interpretation of terminology as it relates to its social and cultural embeddedness.

Emphasising the embeddedness of transnational decision making processes and their terminology in locally or globally situated value and evaluation systems sheds

light on how perspectives on such processes and issues are constructed. For transnational financial markets, Garsten and Hasselström point out that

[...] transnational financial trading and the positioning of corporations as socially responsible actors are fields that merit anthropological attention for several reasons. First, the ideas and actions of financial traders and corporate leaders contribute in significant ways to the structuring of market transactions across the world. Second, they contribute to the diffusion of perspectives on markets and market actors and influence our understandings of the scope of individual action in market transactions. All in all, we argue, they play a vital role in the development and organisation of contemporary markets. (Garsten, Hasselström 2003: 250–251)

Exceeding the specific sphere of practice, perspectives constructed by actors, their ideas and actions have an influence on an object as well as on its reception and constitution. They re-contextualise it into social systems, often accompanied by a naturalisation of discourses and terminology attached to them. The naturalisation of discourse as apolitical and given (see, for example, Barthes 1972: 128; Hill 2008: 154; for the debate on cultural property Audi 2007: 142; Aragon, Leach 2008) is a product of their embeddedness. Embedding political or economic processes into, for example, moral discourses legitimises or delegitimises (cf. Beckert 2005; 2007) specific practices by connecting them to value-systems with specific rhetorics attached to them. Terminology on the global stage does not only accomplish the purpose of definition. It points to ideological perspectives that embed issues and positions into social contexts and influence their conceptualisation.

A survey of multiple perspectives in international negotiations that pays attention to the social dimension of contingent terminology offers the possibility to point to differences in the usage of terminology as well as to the ideological and strategic anchoring of terms.<sup>4</sup> Using the example of the IGC within the sphere of activities of WIPO, one of 16 specialised agencies of the United Nations, this article aims to analyse the different perspectives on indigenous communities<sup>5</sup> and their traditional knowledge as terminological constellations of differentiation in this international arena. The approach of mapping different perspectives is a first step in analysing ideologies of traditional knowledge. It is vital for an understanding of the strategic and intentional usage of cultural property terminology, and thus it is vital for an understanding of different conceptions of cultural property as well.

#### THE FIELD: WIPO'S COMMITTEE ON INTELLECTUAL PROPERTY AND TRADITIONAL KNOWLEDGE

Situated at the international level, WIPO's IGC brings together 184 nation states<sup>6</sup> and a growing number of NGOs and indigenous and local communities to focus on the development of legal frameworks relating to intangible cultural resources within the sphere of intellectual property. The foundation of the committee was preceded by increasing pressure from developing countries and indigenous groups within WIPO and the UN system.<sup>7</sup> Their dissatisfaction with the handling of intellectual property legislation as it related to cultural matters<sup>8</sup> was rooted in conflicts with pharmaceutical companies, who had been capitalising on traditional medicinal knowledge, and on the misappro-

priation of indigenous artworks or folklore for commercial purposes.<sup>9</sup> The expectations of member states and observers regarding the results of this process could not be more diverse: Western industrial nations are predominantly satisfied with the current state of copyright and patent regimes and are not at all interested in changes or in creating a new legal instrument for intellectual property as the current system works to their advantage. The 'classical' patented and copyrighted works are protected not only on the national, but also on the international level. However, for the resources under negotiation in the WIPO's IGC this does not hold true. There are no vigorous instruments against the transnational misappropriation of cultural resources within international intellectual property law. Therefore, countries with a high percentage of indigenous population or a broad range of traditional knowledge or traditional cultural expressions, like India, Brazil, Peru or a large number of African states, lobby for the installment of a legally binding agreement on the international level that protects or recompenses the holders of these resources.

Consisting of participants from a broad range of sociocultural and linguistic backgrounds, the IGC is thus challenged not only by different strategic agendas, but also a multitude of perceptions of 'culture', 'property' and 'community'. While NGOs and indigenous communities are admitted only as observers and have no voting power in the negotiations, they nonetheless frequently partake in the discussions and introduce their viewpoints. This leads to a multiplication of perspectives on the subject under negotiation, making it more and more ambiguous and reducing the degree of shared understanding of terminology and its interpretation among the different actors. A prime example of this is the fact that after almost ten years of IGC negotiations, there is still no consensual or binding definition of 'traditional knowledge' or 'traditional cultural expressions'.<sup>10</sup>

The IGC is a snapshot of a global flow: as part of larger processes – debates on the protection, preservation or commercialisation of (indigenous) culture, the restructuring of the intellectual property system, the divide between the global North and the global South, and so forth – it allows perspectives on the subject matter and substantially or strategically related issues to be tracked. This article aims to provide a survey of perspectives on traditional knowledge of indigenous communities and the connections and interdependencies between them. It will shed light on the constitution of terminological constellations by outlining different interpretations of terms used within WIPO's IGC, showing specific social conceptions and ideological distortions implicit in them. These conceptions and distortions can have an influence on negotiations and the interpretation of the subject matter on various levels.

## PERSPECTIVES OF DIFFERENTIATION

Five perspectives of differentiation and assimilation relating to traditional knowledge will be examined below. Two prefatory things have to be mentioned here: for one thing, the close connection between the concepts of traditional knowledge or traditional cultural expressions and the attribute 'indigenous' in IGC negotiations – at times, people use the expression 'indigenous knowledge' – makes it necessary to combine these concepts when analysing them. "Bearers" (cf. Carneiro da Cunha 2009: 9) of traditional knowledge in the context of the IGC are in most cases indigenous communities. An

analysis of perspectives on the traditional, therefore, inevitably has to deal with questions of indigeneity. However, this shall not at all be an attempt to grasp the complexity of the usages and meanings of indigeneity *in toto*.<sup>11</sup> On the basis of the specific usage of terminology within WIPO's IGC negotiations, the article will show how the interrelation between traditional knowledge and the attribute 'indigenous' has an influence on the different perspectives to be examined here.

For another thing, the examination of multiperspectivity – in diplomatic and therefore strategic contexts – requires the raising of questions of intentionality and agency of linguistic utterances and negotiation strategies: what do actors try to achieve by framing the subject matter in a certain way? Elizabeth Povinellis' work on practices of recognition in the context of indigeneity in Australia has shown that overtly direct claims to cultural property can be counterproductive to the interests of indigenous groups, as they are viewed as not 'authentic' to these groups (Povinelli 2002; see Trouillot 2003 for the limiting aspects of recognition for indigenous groups). Such limitations of discourse prohibit overtly conspicuous strategies in positioning oneself by use of the notion of indigeneity. Apart from this, the aspect of ideological distortion in using terminology has to be taken into consideration. Intentions cannot be induced directly from performance. First, they have to be contextualised and analysed with regard to potential distortions. While a contextualisation would require to add ethnographic material to each perspective, the analysis of ideological distortions would demand the theoretical embedding into debates on language ideology (cf. Silverstein 1976; 2004; Briggs 1993; Woolard, Schieffelin 1994; Schieffelin et al. 1998; van Dijk 1998; Kroskritt 2004). In this article the focus will be on a survey of different perspectives on the traditional knowledge of indigenous groups in international negotiations, as this is a prerequisite for specific contextualisations as well as for theoretical considerations.

### *Stigma*

In many African countries, the term 'indigenous' refers to those who were originally living on the land – it is a temporal difference,<sup>12</sup> a dichotomy that is only functional with a counterpart in the past, in this specific case with colonialism. As a discursive marker, the attribute 'indigenous' is open to interpretation and exploitation. It is used in varying contexts for different purposes, of which the dichotomy between colonialism in the past and sociopolitical regimes of the present is only one example, albeit a very powerful one. Indigeneity is thus a relational concept:

[S]ocial groups become indigenous or aboriginal or native by virtue of the recognition that someone else arrived in a place and found them or their ancestors 'already' there (Pratt 2007: 398).

Indigeneity exists and is constituted by virtue of difference, and the representation of difference exists and is constituted by opposition. As a semantic label, the poles of the aforementioned dichotomy point to interpretations and ideologies that attach meaning to it, be it positive or negative. To understand the possible meanings one needs to examine the different constellations of opposition between past and present in order to make sense of its potential meanings.

On one level the dichotomy between indigenous and non-indigenous is a national one, a case of domestic policy as it concerns history and its materialisation in a confined space that has been demarcated on maps – however artificial they might be. It influences social relations or the institutionalised forms of mutual recognition (Hegel 2006 [1807]). It fleshes out power relations between urban elites, and the holders of traditional knowledge and everybody in between and beyond. As a political concept, it points back to the past in order to have an influence on the present, to be used as political leverage. The large number of non-governmental organisations dealing with these power relations and the inequalities they cause are a vivid demonstration of how powerful this concept is.

In its negative connotation ‘indigenous’ is an attribute that is imposed on a social group as stigma: you are indigenous, therefore you are backward and not modern. Its semantic proximity to and frequent conjunction with the notion of ‘community’ as an outdated form of social structure points to the way in which it is conceptualised as negative ideological residue of pre-modernity:

As a rule, groups represented as ‘communities’ are comparatively isolated, subaltern, and not considered to be viable autonomous collective subjects. Indeed, ‘community’ is in part a euphemism conferring dignity and value on groups in a negative position: it is a verbal gift from the rich to the poor. At the same time, insofar as the label implies a refusal of individualism, it distances its referent from modernity. (Noyes 2006: 29)

In this terminological constellation, indigenous communities are construed as distancing themselves from the promises of modernity and adhering to the past without embracing and contributing to the present. While the concepts of traditionalism and conservatism are commonly linked to the idea that something from the past is pursued to redound to the benefit of society, the notion of community as a social actor grounded in the past is frequently associated with isolation, subalternity, and reproduction in lieu of innovation. This holds especially true for the realm of cultural creativity. As Valdimar Hafstein observes, not only European peasants, but also colonial subjects were (and are) denied the ability to artistically create: “The subaltern do not produce, they reproduce” (2004: 79). In consequence, indigenous communities are in a Catch-22: their indigeneity is accusation and impediment at the same time. As the Other of an externally established position of difference, they are confronted with opposition and dissociation. Yet, this imposed dissociation is simultaneously constructed as reprimand: you are indigenous, therefore you are not modern; and, therefore: we are modern.<sup>13</sup> Employing this ideology of exclusion distances oneself from the Other by way of ascribing a negative social position to it and placing it on another temporal level in the past (cf. Fabian 1983). Concurrently it places oneself at the other pole of this dichotomy in the present and as a part of modernity. To return to the question of cultural creativity, with it and the assent to individualism comes the acknowledgement of individual innovation that is at the same time denied to the Other:

[C]reativity and originality were the privilege of the bourgeoisie, while the masses were unoriginal and could only transmit the songs and tales of earlier generations. The art of the common people consisted only of copies. (Hafstein 2004: 79)

What Hafstein describes for the European concept of the original author in contrast to the unoriginal communal subject is analogously true for the relation between indigenous communities and their self-proclaimed modern counterpart, at least in this specific constellation. This is illustrated by a passage from a selection of case studies that constitutes one of the foundational documents of WIPO's IGC process (Janke 2003). In this particular instance, in 1989 a lawsuit was filed in an Australian court by an indigenous artist against a T-shirt manufacturer who used his artworks without permission. Prior to this case, however, Janke argues that it was generally assumed that indigenous artworks were not protected by copyright:

This assumption considered that Indigenous artworks were not 'original' because they are based on traditional creation designs; they are passed on through the generations; and, are not the independent creative effort of the individual artist (Janke 2003: 52).

The case was decided in favour of the indigenous applicant, emphasising the large amount of individual creativity that factored in the respective artworks (*ibid.*). Yet, the underlying notion that traditional knowledge and folklore do not fulfil the requirements of originality prevails in WIPO's negotiations as well as in national settings. The influence of this perspective of differentiation and negation of innovativeness on international processes that seek to reach an agreement on the protection of traditional knowledge and folklore is considerable and will be further explored below.

Of course, the practices of differentiation that are at play in this constellation are not bound to the national level. These social dynamics are potent locally as social encounters draw from broader narratives and discourses. And, while the status as a viable socialised entity might temporarily and sporadically be denied to indigenous communities, there is nonetheless socialisation. Mutual self-consciousness is a condition for intersubjectivity: in order to exist, the self-conscious subject needs to recognise other self-conscious subjects as such (Hegel 2006 [1807]: 120–136). The attribution of Otherness, as delimiting as it might be, is always acknowledgement of entanglement and correlation with other self-conscious subjects; and thus, the dichotomy in action is more fact than mere fiction, or to phrase it differently, more social practice than mere narrative.<sup>14</sup>

As property relations are social (as a process of recognition and differentiation of desires towards an object), so are the practices of differentiation. They are manifest in social events and rituals (in the sense of the notion of ritual as outlined in Silverstein 2004) and therefore influence communicative practices in and between social groups. To give an example, in a side event to an IGC meeting in October 2008 a joint pilot-project by WIPO's traditional knowledge division, the Library of Congress' American Folklife Center, the Duke Centre for Documentary Studies, the Maasai Cultural Heritage Foundation and the National Museums of Kenya was presented. The aim of the project was to convey the necessary competence to document and digitise traditional knowledge and folklore to the Maasai community of southern Kenya – a prime example of the so-called 'capacity building' programs that make up a large part of the UN's development initiatives. During the following discussion, an indigenous representative of the Samburu community of north-central Kenya voiced her concern that by documenting traditional expressions with a view to protect them in some way, other cultural communities might be legally excluded from their rights or discriminated against (author's

notes, October 16, 2008) – the Maasai and the Samburu share a significant number of cultural artefacts and a significant amount of traditional knowledge and expressions. A partly national initiative – the Kenyan government was involved in this project by courtesy of the participation of the National Museums of Kenya – to seek protection for these resources would automatically challenge other claims to these, for example by the Samburu. Hence these types of local entanglement in a way multiply difference: international processes such as the joint initiative depicted above might lead to the valorisation of one indigenous community while continuing to stigmatise the other; difference, in this instance, is extended to an area of contestation between ‘competing’ stakeholders seeking to improve their social status: in addition to the reservations she voiced, the Samburu representative inquired whether it was planned to include her community in the documentation and preservation efforts, as this would clearly mean a revaluation and strengthening of their situation. This change of attitude towards indigenous communities on the national level is, however, selective and ambiguous, as the statement given by a representative of the Maasai Cultural Heritage Foundation at a WIPO panel on traditional knowledge illustrates:

The Maasai heritage in its all forms is facing serious problems and challenges. In most circumstances, the indigenous governance systems are not recognized by the Government as most of these cultural practices are considered to be primitive and do contribute to underdevelopment of the Maasai people. (Ole Kaunga 2006: 4)

When considered opportune – think of tourism and the above-mentioned international prestige project – indigenous communities are supported; apart from that, the stigmatisation of indigenous communities is the rule rather than the exception.

### *Potential*

Moreover, the ‘indigenous stigma’ that is described here does not only apply to individual and communal subjects, but also to material artefacts (Martínez Novo 2005), biological resources (Pilcher 1998), and traditional knowledge. Especially the latter is frequently conceptualised as something of potential value that is stuck in an archaic, irrational and mythical belief system; thus it is seen as something premodern that needs to be subjected to modern science or rational calculation in order to be utilisable and exploitable (cf. Latour 1997). Yet,

[...] it is not considered so when non Maasai have expropriated and used the same culture and used it for economic gains. The Maasai culture is a resource and it is being used by un-authorized non Maasai for their own benefits. (Ole Kaunga 2006: 4)

The devaluation or valorisation of traditional knowledge goes hand in hand with its perceived potential, be it for tourism, the marketing of crafts, biodiversity or the development of pharmaceuticals. Its potential needs to be revealed and to a certain degree it needs to be separated from its aboriginal background: for tourism, a touch of ‘authenticity’ is vital, yet it should be clean and free of conflict (Graburn 1976); for crafts, it needs to be standardised and connoted with something positive (Chibnik 2003); for technological and agricultural innovation, it needs to be registered in databases and connected with modern knowledge (Seleti 2009); for biodiversity and its usage as medi-

cine, its components need to be uncoupled from interfering folklore and transferred to the laboratory (Hayden 2003).

The following are a few examples of how this stigma appears in the WIPO process:

Traditional Medicine is a source of prosperity proper to Oman. However this intellectual asset has so far not been fully exploited, mainly because Omani are not yet fully aware of the value of the wealth they own. (Ghafele 2005)

Reminiscent of the Marxist doctrine that the proletariat needs to be led by a 'proletariat elite' to free themselves from oppression, according to this passage the 'wealth' that is hidden within archaic knowledge systems can only be converted to capital by transferring it to scientific processes outside of these knowledge systems. Similarly, the following excerpt from a WIPO report alludes to the *potential* of Egyptian traditional knowledge for the production of pharmaceuticals:

The Delegation [of Egypt] stated that traditional knowledge and its experiences were of paramount importance to many species, particularly to consumers, producers and breeders in general. In addition, the Delegation stressed the importance and potential of traditional knowledge in the field of pharmaceutical production. (WIPO 2001: 60)

It is not so much the current use and traditional practice that constitute the value of traditional knowledge, but so much more the prospect of transforming it to be put to use for "the development of scientifically acceptable products and processes" (Satish 2003) as the abstract for a paper on the potential of traditional knowledge on the neem tree suggests. The 'indigenous stigma' is, as it is expanded to the realm of knowledge, a rhetoric that requires something premodern and irrational to be translated into the language of science and rationality. Thus, it is also separated from its origin in indigenous communities whose ability to create and innovate has been negated (see above). Translation is in this sense also acquisition: by transferring knowledge from a state of 'uselessness' into something exploitable, one acquires the right to use this new knowledge. Bioprospecting, i.e. the patenting of genetic resources that have been discovered by studying traditional cultural expressions and plant use in traditional medicine (Hayden 2003) is an poignant example of this practice.

### *Right*

Viewed from a different perspective, social struggles are fought with terminology: *we are indigenous, therefore we have rights*. In numerous instances, indigenous representatives in WIPO's negotiations have referred to the UN Declaration on the Rights of Indigenous Peoples (2007) to legitimise their claims as indigenous people. The perspectives of differentiation are reversed in this case: in its positive connotation, the attribute of being 'indigenous' is used by a social group as political and legal leverage. It points to existing regimes on the national and international level that aim to guarantee established rights – rights to property, rights to land, and human rights. To gain access to these rights, one needs to link up to their respective discourses. For indigenous communities and non-governmental organisations in the UN system, there are different possibilities to frame an issue. For example, UNESCO processes have often singled out language,

or an endangered language, as a distinct marker to define if a group is indigenous and deserves protection or not. Thus, NGOs or indigenous communities in such processes would be well advised to frame their concerns and desires from the perspective of an endangered linguistic community (cf. Toivanen 2007). WIPO, on the other hand, deals with intellectual property rights in the context of traditional knowledge, so it would be advisable to refrain from the language issue and focus on traditional knowledge and folklore. Different organisational settings or constellations require issues to be framed accordingly, to translate oneself and one's desires into that framework. Moreover, one attempt by indigenous communities in WIPO's IGC process is "to bring human rights language into the IGC" (author's notes, July 2009); i.e. to frame and translate issues of tradition as issues of human rights and thus be recognised by international bodies that deal with human rights issues, thereby increasing the pressure on those who want nothing to come out of WIPO's IGC. Tapping into these discourses is, however, not limited to the international sphere. Global rights discourses are entangled with local practices: international processes are referred to in national negotiations by presenting national legislative or administrative bodies with conventions from the UN system. Again, as indigeneity is used as a dichotomising marker, it can at the same time be used as leverage. The terminology that is designed to denigrate a social group can be flipped over by translating it from a negative perspective into a constellation in which a positive connotation is ascribed to it. The requirements for this process of translation is a knowledge of rights discourses and the constellations of differentiation as well as the competence to frame issues according to these discourses and constellations.

#### PERSPECTIVES OF ASSIMILATION

So far, we have looked at three different perspectives on indigenous communities and their traditional knowledge: stigma, potential, and right. They all – in varying degrees – highlight differences. As a stigma, indigenous communities are deprecated while their antonyms are positively elevated. As potential, their traditional knowledge is nullified and separated from valuable knowledge as long as it is not translated. And, as a right, indigenous communities point out their difference in order to tap into discourses that can grant them rights.

#### *Unity*

Yet, there are also perspectives that underline commonalities on the national level and externalise difference: while the Declaration on the Rights of Indigenous Peoples does not encompass a definition of the term 'indigenous' (nor does the mandate for the United Nations Permanent Forum on Indigenous Issues), more recent and critical definitions focus on the social and economic marginalisation of groups of people (Lee 2006; Cadena, Starn 2007). This is, of course, problematic for the perspective of 'national unity': the principle of national sovereignty and domestic policy discourses would in all likelihood not concede with reproaches of racism that are implicit to claims of marginality that are forced upon somebody on account of their ethnic background or social group. Such a position would contradict national identity building processes and strug-

gles for national unity (cf. Anderson 1983). Again, the resistance against this political concept (for example, by NGOs and indigenous communities in WIPO's IGC) is a vivid demonstration of how powerful it is.

One possibility to 'solve' this inadvertent dichotomy is to externalise difference. To revert to the beginning of this chapter, the term indigenous is a temporal difference to something else, a dichotomy that is only functional with a counterpart in the past. Points of reference can be specific historical events (like national independence) or, more general, phases of colonialism. Colonialism is, and is used as, a shared experience, as a national memory that in its amalgamating spirit temporarily bridges social gaps. Susan A. Philips' analysis of language ideologies in Tongan courtrooms is a vivid demonstration of how linguistic regimes are used to construct a national identity that bridges social stratification by referring to the past:

[T]hey are invoking a relationship that establishes continuity between past and present political regimes. The distinctive features of the Tongan sister-brother relationship are viewed by Togans as having existed prior to European contact. (Philips 2000: 254)

Terminology is used to construct a national identity that refers to the past to externalise difference: (national) unity is possible because the negative pole of the dichotomy is someone or something else. In a way, social stratification makes way for an imagined national egalitarian identity. In Zimbabwean president Robert Mugabe's speech, the invocation that "the white man is not indigenous to Africa. Africa is for Africans. Zimbabwe is for Zimbabweans" (CBC News 2000), moreover illustrates the violent potential of this concept (cf. Anderson 1983). Held during the uprising against white farmers in Zimbabwe in 2000, Mugabe used colonialism not only as a marker in the past, but also as a political and ideological tool in the present. The Zimbabwean Indigenisation and Economic Empowerment Act, passed 2007 and now in force – if not consistently enforced (The Economist 2010) – proposes that 51 per cent shares of foreign enterprises or enterprises owned by white Zimbabweans must be transferred to "indigenous Zimbabweans". It is a continuation of a policy that makes reference to the past (in this case, to a specific day: independence day) in order to constitute and implement practices of exclusion by using the marker of indigeneity. The act is based on the following definition:

"[I]ndigenous Zimbabwean" means any person who, before the 18th April, 1980, was disadvantaged by unfair discrimination on the grounds of his or her race, and any descendant of such person, and includes any company, association, syndicate or partnership of which indigenous Zimbabweans form the majority of the members or hold the controlling interest (Indigenisation and Economic Empowerment Act 2007: 4).

The twist is: the time of colonialism is over. The temporal difference of this dichotomy has changed: if colonialism is conceptualised as an object of negativity, a marker or a cut that is used to evaluate the past and the present, those who have been living on the land before become another group of persons that is not judged by sociocultural realities, but by means of an externalised entity that is in the past. Everyone who was living on the land before colonialism is indigenous – and this is a claim that in diplomacy and on the international level, especially in WIPO's IGC, can be heard by African state representatives (author's notes, February 2008 and July 2009). Of course, NGOs and indig-

enous communities contest this notion as it is expanded to the international level: there is a struggle of recognition (Honneth 1995) as the interests of traditional knowledge holders and NGOs are not identical with national domestic policy and national international politics. The monopolisation of the representation of interests by nation states is, in effect, a continuation of the politics of difference of the national level. It denies indigenous communities the right to represent and argue their own causes and desires. At the same time, it appropriates traditional knowledge from these communities as it claims that everybody in Africa is indigenous. Thus, it is argued that the administration of rights to traditional knowledge lies with the national government and not the community. National unity functions as political leverage in international negotiations such as WIPO's IGC.

### *Justice*

To add emphasis to this argument, another dichotomy is invoked: the global South versus the global North, and as a consequence thereof the question of (transnational) justice. Inequalities between developing and developed countries are dealt with in numerous fora of the UN and under various aspects such as technology transfer, patents on essential medicines, education, and so forth. Whether the current UN system is fair in terms of equal representation of developing countries and industrialised nations (Gad 2006) and how it could be reformed are questions that still require answers. The combination of this divide between North and South with the cause of indigenous people and their rights is especially powerful as it combines the domains of economic/moral rights and human rights. With that in mind, in WIPO's IGC the claim was voiced, by a delegate from a developing country, that the current system (in this case intellectual property rights) for the most part benefitted the industrialised nations and continues to do so, but that "now it is time for us to finally get something" (author's notes, July 2009). In this constellation, the practices of differentiation refer to injustices in the past and use a constructed national (and regional) unity to make an argument. Indigenous communities and their traditional knowledge are subsumed into one pole of the dichotomy between North and South as witnesses to these injustices, not as autonomous communal subjects.

### CONCLUSION

In these last two perspectives on indigenous communities and their traditional knowledge – national unity and justice – the practices of differentiation subsume the indigenous subject and incorporate it against an externalised entity in the past (colonialism and national unity) or the present (South versus North and international justice).

Altogether, the five perspectives outlined in this article are comprised of differing temporal and social parameters. They *all* relate to the past and organise the present by creating dichotomies and differentiating perspectives. The multiplicity of perspectives on the traditional knowledge of indigenous communities in international negotiations – here in WIPO's IGC – is in addition accompanied by isofunctional terminological fragments that refer to conceptions of 'property' (cf. Carpenter, Katyal, Riley 2009),

'heritage' (cf. Bendix 2009) or 'value' (cf. Myers 2001; 2004). Thus, the analysis of said negotiations in general and of constitution processes of cultural property in particular depends on a survey of perspectives to reveal contingencies and contested denotations (cf. Silverstein 2004) in the usage of terminology.

In a further step, the mapping of such a semiotic space must be accompanied by a (meta)pragmatic analysis. This would take into consideration cultural and ideological conceptions of language and social structure and their intersubjective distribution in negotiation processes, making it possible to reveal intentionality and (meta-)pragmatic strategies by analysing contextualised terminological constellations.

## NOTES

1 A conference entitled "Intellectual Property and Public Policy" organised by the WIPO in July 2009 illustrated the linkages concerning issues of traditional knowledge. Such diverse United Nations (UN) organisations as the WIPO, the WTO, the CBD, the World Health Organization (WHO), the United Nations Conference on Trade and Development (UNCTAD), the International Labour Organization (ILO) or even the World Meteorological Organization (WMO), as well as pharmaceutical companies, a broad range of NGOs and nation states all deal – in varying degrees, of course, and never exclusively – with issues of cultural property.

2 An overview of anthropological literature on the relationship between the 'local' and the 'global' and its implication for theoretical models and methodology is for example provided in Kearney 1995.

3 Putnam illustrates this using the example of the G7 summit in Bonn in 1978 and simultaneous domestic political decisions as a reaction to the first oil crisis (Putnam 1988: 1–2).

4 For a discussion of the concept of anchoring in linguistic anthropology see Irvine, Gal 2000; Gal 2005.

5 For the – mostly negative – connotations of the notion of community see Noyes 2006 and below. The term is problematic, yet it is used in WIPO negotiations and will thus also be used in this paper.

6 For a list of WIPO member states see <http://www.wipo.int/members/en> (accessed April 17, 2010). For a list of accredited observers see <http://www.wipo.int/export/sites/www/tk/en/igc/ngo/accreditedlist.pdf> (accessed April 17, 2010).

7 Cf. Wendland 2002a; 2002b; Hafstein 2004: 312; for a broader overview on traditional knowledge in the global discourse on intellectual property see Dutfield 2008: 327–355.

8 For a discussion on different notions of culture and tradition in such a context see Carneiro da Cunha 2009; Noyes 2009.

9 See Brown 2003 and Janke 2003 for a broad overview of examples.

10 The absence of binding definitions also has strategical reasons. As multiple perspectives on a subject matter and contingent terminology are examined in this article, this will be further elaborated below.

11 For an overview of anthropological research on the notion of indigeneity and its discursive constructions see, for example, Niezen 2003; Lee 2006; Cadena 2007.

12 Using the example of Europe, Kamusella shows that such a differentiation as mediated by communication and language policy is also related to spatial imagination: "When I did research in Vienna in 2005, I ran a small experiment. I asked Austrian, German, and other Western colleagues in the Institute of Human Sciences (Institut für die Wissenschaften vom Menschen) how far Vienna was from Bratislava. The usual guesses were 200 to 500 kilometers. In reality, it is 66 kilometers by car from city center to city center. This clearly shows how much even an educated

Austrian or German sees her or his country as part of the West, even to the defiance of actual geography.” (Kamusella 2009: 2)

13 See Bauman, Briggs 2003 for a discussion of the connection between language ideologies, modernity and tradition, and the perception of others.

14 Which does of course not mean that there is no pragmatic dimension of narratives. The argument here is that specific social practices at times supersede this dimension.

## SOURCES

Field notes, interviews and informal conversations from WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions, Geneva, February 2008, October 2008, June 2009.

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