

Resourcing for inclusion in transnational governance: the work of indigenous peoples in the Nagoya Protocol

Natalia Aguilar Delgado
Desautels Faculty of Management
McGill University

A thesis submitted to McGill University in partial fulfillment
of the requirements of the degree of
DOCTOR OF PHILOSOPHY

Advisory Committee

Supervisor: Prof. **Paola Perez-Aleman**, Desautels Faculty of Management, McGill University

Member: Prof. **Yuan Li**, Desautels Faculty of Management, McGill University

Member: Prof. **Linda Rouleau**, Department of Management, HEC Montreal

December 2016

Abstract

Existing research points to a proliferation of new global institutions that regulate, guide and monitor social interactions and activities across national territories in recent years. This phenomenon is accompanied by the efforts of non-state actors to influence these global regulations. Little is known about what the affected communities do to become active participants in global governance despite limited access to resources to engage in these processes. ***How do marginalized actors work for their inclusion in the process of creating a new global institution?*** This thesis presents a novel understanding of how vulnerable and under-resourced actors become more included in creating institutions that are consequential for them. The research context is the construction of a new global regulation in the United Nations, the Nagoya Protocol on access and benefit-sharing for bioprospecting, that is, the exploration of biodiversity for commercially valuable genetic and biochemical resources. This study focuses on the work of indigenous peoples, non-state actors historically excluded from policy-making and in a disadvantaged position for shaping this new institution that affects the access to their traditional knowledge. The research builds on a multi-event ethnography using as units of analysis the intergovernmental meetings taking place from 2011 to 2014, based on various data sources: participant observation, documentation, and interviews. The results point to the emergence of the mechanism “resourcing work”, or the recursive process through which interactions and relationships enable the creation of resources and affect the actors’ positions in different negotiation spaces where institutions are created. The mechanism includes three different types of resourcing: organizational, discursive, and material. Based on the findings, I elaborate a model for inclusion in institutional creation that captures the continuous interplay among “negotiation spaces”, “positions”, and “resourcing work” as events evolve over time. This research contributes to the transnational governance literature by illuminating the practices of non-state actors in creating resources that affect changes in positions, rules and understandings, affecting their participation and inclusion. Furthermore, it advances the literature on institutional work by demonstrating a key mechanism for increased agency in institutional creation processes, improving understanding of the antecedents of institutional work. In addition, the findings expand the literature on resourcing, by accounting for power differentials and the role of context, and developing a typology of the practices involved in creating the varied resources required for inclusive governance.

Résumé

La recherche existante suggère la prolifération de nouvelles formes d'institutions globales qui régulent, orientent et surveillent les interactions et les activités sociales à travers différents territoires nationaux dans les dernières années. Ce phénomène est accompagné des efforts des acteurs 'non étatique' pour influencer dans ces régulations globales. Par contre, on sait peu sur ce que les communautés affectées par ces régulations font pour devenir de participants actifs dans le processus de gouvernance globale, même ayant accès à des ressources limitées. ***Comment des acteurs marginalisés travaillent pour leur inclusion dans le processus de création de nouvelles institutions globales ?*** Cette thèse présente une nouvelle compréhension de comment des acteurs vulnérables et sous-ressourcés agissent pour être inclus dans la création des institutions qui auront un impact sur leur vie quotidienne. La recherche a été faite dans le contexte de la construction d'une nouvelle régulation globale dans les Nations Unies, le Protocole de Nagoya qui se base sur l'accès et le partage de bénéfices pour la 'bioprospection', c'est-à-dire, l'exploration de la biodiversité pour l'obtention des ressources génétiques et biochimiques qui possèdent de la valeur commerciale. L'étude se base sur le travail de peuples autochtones, des acteurs non étatiques qui ont été historiquement exclus de la définition des politiques publiques et qui sont normalement dans une position désavantagée pour influencer les nouvelles institutions qui affectent l'accès à leur connaissance traditionnel. La recherche se base sur une ethnographie de type multi événement et utilise comme unité d'analyse les réunions intergouvernementales qui ont été réalisées entre 2011 et 2014, en utilisant multiples sources de données : observation participante, documentation, et entrevues. Les résultats indiquent l'émergence du mécanisme de 'resourcing work', c'est-à-dire, le processus récursif à travers lequel les interactions et les relations permettent la création de ressources qui affectent les positions des acteurs dans différents espaces de négociations dans lesquels les institutions sont créées. Le mécanisme inclut trois différents types de 'resourcing' : organisationnelle, discursive, et matériel. Par conséquent, on a élaboré un modèle qui explique l'inclusion dans la création des institutions. Ce modèle reflète la constante interaction entre 'des espaces de négociations', 'les positions', et 'le resourcing work' au fur et à mesure que les événements évoluent à travers le temps. Cette recherche contribue pour la littérature en gouvernance transnationale en démontrant les pratiques des acteurs non étatiques dans la création de ressources qui affectent les changements de positions, de règles et de compréhensions, ce qui impacte leur participation et inclusion. En plus, l'étude contribue pour la littérature en travail institutionnel par la démonstration d'un mécanisme clé pour l'augmentation de l'agence dans le processus de création des institutions, ce qui améliore la compréhension des antécédents du travail institutionnel. Finalement, les résultats font avancer la littérature en 'resourcing', en considérant les différences de pouvoir et le rôle

du contexte, ainsi qu'en développant une typologie des pratiques associées à la création de différents types de ressources demandés pour une gouvernance inclusive.

Acknowledgements

Since I began this PhD journey, I have contemplated the day I would be writing the acknowledgements for my thesis. Whose names would appear here? How would I be feeling? Well, this day has finally arrived and with it, a strong anxiety caused by the fear of being unable to express the immense gratitude I feel for all of those who have, in one way or another, contributed to the completion of this ride to the unknown that began about 6 years ago. I guess I am one of the few people who loves to read acknowledgments. In fact, for every book and dissertation I read, I always began with the acknowledgement section, due to the belief that it gives a glimpse into the life of the writer, and a sense of the vast array of people involved in producing this type of intellectual effort even when there is just a single official author.

My research addresses the efforts made by marginalized actors to achieve inclusion. I was lucky enough to have found people who opened the doors that enabled me to study this very important phenomenon. Primarily, I acknowledge the generosity and enthusiasm of the group of actors I studied, the members of the International Indigenous Forum on Biodiversity. Through the years, they have taught me much more than I could have learned from books. Thank you for the trust in allowing me to experience the hardships of becoming a negotiator with few resources in such a hostile environment. I also thank the Secretariat and its staff, for always having trust that the access I was given to the backstage of meetings would be used wisely.

I would also like to express my profound gratitude to Professor Paola Perez-Aleman. Since our first meeting, she has been very supportive and open-minded to some non-traditional ideas I had for my research. Once again, I was fortunate to have crossed paths with her as I was able to learn so many things through her compassionate and understanding guidance. Thank you so much for the material and intellectual support provided over so many years.

I extend this thanks to the McGill and the joint PhD program communities. Special thank you go to professors Yuan Li and Linda Rouleau for being members of my thesis committee. You contributed so much with our stimulating discussions and I'm really thankful for all your patience and instrumental assistance. Through the years I also had, the opportunity to make incredible and loyal friends, Hyehyeon Gong, Diego Mastroianni, Isla Milne, and Nollywe Delanon, and to cross paths with so many other colleagues with whom I had the chance to share theories, fears, joys, doubts, concerns and achievements. Thank you for helping me to find time to laugh through some challenging moments! I also thank Stella Scalia, Grace Pawelec and Suzanne Selitto for the professionalism and kindness with which they have treated me throughout my program.

This work would have been impossible without the support of my family. My parents, Susana and Francisco, have always been the source of my inspiration, with their personal trajectories of hard work and determination. Mom and dad, I want you to know that your caring love and confidence in my abilities have always pushed me to go a step further. This is something that my husband Luciano has also become a specialist in since we have been together. Amor, your unconditional faith in me has been critical to my

perseverance on this project and for that I'm forever grateful. The love for my son Leo helped to keep me grounded throughout the process of writing this thesis. Thank you, baby, for reminding me every day what really matters in life. My siblings, Camila and Federico, have always rooted for me in everything I have decided to do in my life. Thanks for always being there for me, through my successes and failures: your affection and our silly jokes have always been a safe haven for me. Finally, I thank my grandmothers, Elena and Vicenta for being role models of strong women who I really aspire to emulate. In your own ways, you have taught me the meaning of relentless dedication to whom and to what we love and in this PhD I see as the fruit of such effort.

A big thank you to those organizations who have provided funding for my studies and research: Social Sciences and Humanities Research Council of Canada (SSHRC), Fonds Québécois de Recherche Société et Culture (FQRSC); National Bank, Rathlyn Foundation, Edith & Norman Foundation, Robert D. Tamilia Foundation; Centre for Strategy Studies in Organizations and the PhD Program of the Desautels Faculty of Management at McGill University.

And although all have contributed in one way or another to this thesis, I alone am responsible for its content, in particular any, errors or omissions.

Dedication

Para meus guris Lu e Leo,

o amor por vocês me inspira a fazer deste um mundo melhor!

Table of Contents

Abstract	ii
Résumé.....	iii
Acknowledgements.....	v
Dedication	viii
Lists of Figures/ Tables/ Pictures.....	xiii
List of Acronyms	xvi
SECTION I – MOTIVATION AND RESEARCH DESIGN.....	1
<i>CHAPTER 1. Research Context and Motivation</i>	<i>1</i>
<i>CHAPTER 2. Literature Review</i>	<i>7</i>
2.1 Transnational Governance.....	7
2.1.1 Three schools of thought in transnational governance	8
2.1.2 Non-state actors in transnational governance	11
2.1.3. How and which NSAs get to participate in transnational governance?.....	17
2.1.4 Summarizing and moving forward	21
2.2 Creating institutions: work, resources and events	25
2.2.1 Institutional work for creating institutions.....	28
2.2.2 Resources in institutional work.....	31
2.2.3 The role of field-configuring events in institutional work.....	36
2.2.4 Summary and moving forward	42
2.3 Revisiting the phenomenon: from resources to resourcing.....	46
2.3.1 On structuration and resources	48
2.3.2 Insights from the resourcing literature.....	51
2.3.3 Summarizing and moving forward	55

2.3.4 Insights of the resourcing lens	58
CHAPTER 3. Research Design	63
3.1 Research Question.....	63
3.2 Research Setting.....	63
3.2.1 Building the Nagoya Protocol on access and benefit-sharing	63
3.2.2 Negotiating at the United Nations	67
3.3 Research Strategy	73
3.3.1 Case Study Selection	74
3.3.2 Sampling Meetings	75
3.3.3 Sampling Actors	76
3.3.4 Sampling Issues	80
3.4 Data collection.....	82
3.4.1 Participant Observation.....	82
3.4.2 Interviews.....	88
3.4.3 Documentation.....	89
3.5 Data analysis	91
3.5.1 Visual Mapping.....	91
3.5.2 Narrative	93
3.5.3 Grounded Theory	95
SECTION II- FINDINGS.....	100
CHAPTER 4. What are the marginalized actors trying to achieve over time?	101
4.1 The indigenous activism on the Nagoya Protocol.....	101
4.2 Getting representation in compliance mechanisms	103
4.3 Ensuring capacity-building for marginalized actors	114

4.4 Sharing relevant information about local practices	124
4.5 Shaping an emergent approach to ABS.....	133
4.6 Comparing participation and inclusion in different issues.....	141
CHAPTER 5. What do marginalized actors do in different types of meetings?.....	147
5.1 Preparatory Meeting.....	147
5.1.1 Episode 1 - “The (ir)relevant stakeholders”	149
5.1.2 Analysis of participation of actors in this meeting	154
5.2 Expert Meeting.....	163
5.2.1 Episode 2 – “The anonymous experts”	168
5.2.2 Analysis of the participation of actors in this meeting	171
5.3 Negotiation Meeting.....	174
5.3.1 Episode 3 – “The informal consultants”	180
5.3.2 Analysis of the participation of actors in this meeting	184
5.4 Comparing different types of meetings.....	200
CHAPTER 6. How do marginalized actors work to be more included in the institution building process?.....	207
6.1 The emergence of resourcing work.....	207
6.1.1 Organizational Resourcing Work	210
6.1.2 Discursive Resourcing Work	223
6.1.3 Material Resourcing Work.....	228
6.2 Integrating the results chapters.....	232
6.2.1 Understanding interactions between different spaces, positions and resourcing work	232
6.2.2 A grounded model of inclusion via resourcing work	241
SECTION III - DISCUSSION AND CONCLUSIONS	247

CHAPTER 7. Discussion	247
7.1 Summary of Findings	247
7.2 Implications to the transnational governance literature	259
7.3 Implications to the literature on institutional work	263
7.4 Implications to the literature on resourcing	268
CHAPTER 8. Concluding Remarks	272
8.1 Limitations and directions for future research	272
8.2 Practical Implications	276
8.3 Concluding Remarks	279
REFERENCES	282
Appendix 1 – Semi-structured interview guide	295
Appendix 2 – Consent Form	296
Appendix 3 - Dimensions, Themes, Categories and Quotations	297

Lists of Figures/ Tables/ Pictures

Figures

Figure 1 : Empirical example of a resourcing cycle	54
Figure 2 : Theoretical Framework	62
Figure 3 : Lifecycle of a decision	73
Figure 4: Meetings selected for the embedded single-case design	76
Figure 5: Legend for visual mapping of issues	93
Figure 6: Data Structure.....	98
Figure 7: Summary of chapters in findings section	100
Figure 8: Visual mapping of Compliance Issue.....	113
Figure 9: Visual mapping of Capacity-Building Issue	123
Figure 10: Visual mapping of Clearing-House Issue.....	132
Figure 11: Visual mapping of Global Multilateral Approach Issue	140
Figure 12: Participants of Expert meeting on Global Mechanism.....	166
Figure 13: Interaction between different positions and resourcing work	237
Figure 14 : A grounded model of inclusion via resourcing work	242
Figure 15 : Illustration of the grounded model	246

Tables

Table 1 : Comparing different approaches in transnational governance	21
Table 2 : Summarizing key dimensions of Institutional Work literature.....	44
Table 3 : Mapping the views on resources in transnational governance studies	47
Table 4 : Resourcing lens.....	56
Table 5 : Summary of the theoretical gaps identified	57
Table 6 : Applying a resourcing lens to the phenomenon	60

Table 7: Distinctive features of meetings	70
Table 8: Issues selected.....	81
Table 9: Participant Observation in Meetings	83
Table 10: Interviews conducted	89
Table 11: Document collection.....	91
Table 12: Initial Capacity-building measures	116
Table 13: Activities proposed by experts for capacity-building	118
Table 14: Comparative Analysis of Issues.....	145
Table 15: Profile of IPLCs participating at ICNP1	156
Table 16: Actor representation at ICNP1.....	157
Table 17: IPLCs participating at Expert Meeting	173
Table 18: Actor representation at Expert Meeting.....	173
Table 19: IPLC Participants at COP-MOP1	185
Table 20: Actor representation at COP-MOP1	186
Table 21: Awareness-raising of IPLCs through side events during COP.....	193
Table 22: Requirements for organizing a press conference.....	196
Table 23: Press Conferences by actor at COP	196
Table 24: Comparing positions in different types of meetings	205
Table 25: Data structure and definitions	209
Table 26 : Summary of the main contributions of this research	279

Pictures

Picture 1: IPLC representatives in plenary with their computers and materials.....	160
Picture 2: Protesters at COP12.....	175
Picture 3: Cold conditions during the COP-MOP1 meeting.....	177
Picture 4:Contact group on compliance at COP-MOP1	181
Picture 5: Logistics at COP-MOP1	189
Picture 6: Interpreters and equipment for IIFB coordinating sessions	190
Picture 7: IIFB Press Conference - "Indigenous Peoples and Local Communities"	198
Picture 8: IIFB representative speaking in side event of international organization	199

List of Acronyms

ABS - Access and benefit-sharing of genetic resources

CBD – Convention on Biological Diversity

COP- Conference of Parties

COP-MOP – Conference of the Parties serving as the Meeting of Parties

ENB - Earth Negotiations Bulletin

ICNP - Intergovernmental Committee for the Nagoya Protocol

ILC or IPLC – Indigenous Peoples and Local Communities

IIFB – International Indigenous Forum on Biodiversity

IPO – Indigenous People Organization

MAT- Mutually Agreed Terms

NGO- Non-governmental organization

NSA- Non-state actors

PIC – Prior Informed Consent

UNEP - United Nation Environmental Program

WGABS – Working Group of Access and benefit-sharing

WSSD - World Summit on Sustainable Development

SECTION I – MOTIVATION AND RESEARCH DESIGN

This section problematizes the phenomenon under investigation. It starts describing the motivations behind this study. Following this chapter, I present the theoretical foundations and concepts informing this work. Finally, I describe the research design adopted in this research.

CHAPTER 1. Research Context and Motivation

The situation of indigenous peoples in many parts of the world continues to be critical: indigenous peoples face systemic discrimination and exclusion from political and economic power; they continue to be over-represented among the poorest, the illiterate, the destitute; they are displaced by wars and environmental disasters...dispossessed of their ancestral lands and deprived of their resources for survival, both physical and cultural; they are even robbed of their very right to life. In more modern versions of market exploitation, indigenous peoples see their traditional knowledge and cultural expressions marketed and patented without their consent or participation.

(Mr. Sha Zukang, Under-Secretary-General for Economic and Social Affairs on the foreword to the State of the World's Indigenous Peoples, 2009).¹

¹ Available at: http://www.un.org/esa/socdev/unpfii/documents/SOWIP_web.pdf

Members of many communities around the world work daily to become active participants in policy-making, despite lack of the resources that are commonly required for taking part in the process. How can individuals who live in remote communities, speaking only their native languages understand the meaning of a legally binding decision made by states in a global forum? How can local advocacy networks with meagre resources engage in negotiations with experienced professional diplomats? And finally, how can local knowledge and views be included in the shaping of a new global institution? This thesis is about the story of a group of marginalized people who have experienced the adversities of striving to participate in a process that, despite not being designed by or for them, significantly affects their way of life. The goal here is to present a novel understanding of how extremely vulnerable and under-resourced actors can find ways to become more included in creating institutions that have important consequences for them. This is the research question that is at the center of this study: **How do marginalized actors work for their inclusion in the process of creating a new global institution?**

To examine this issue I set my research in the process of constructing a new institution in the United Nations. Specifically, I examine the new legally-binding Nagoya Protocol, negotiated under the Convention on Biological Diversity (CBD) to regulate access and benefit-sharing (ABS) initiatives in the context of biodiversity-based innovation. ABS is a mechanism that requires the consent of involved actors and the distribution of the benefits among the users and providers of resources (Morgera and Tsioumani, 2010). The Nagoya Protocol applies this mechanism to the practice of “bioprospecting”, or the exploration of biodiversity for commercially valuable genetic

and biochemical resources (Reid et al., 1993). Importantly, there is evidence that the research for natural products, drugs and cosmetics alike, is often directed by traditional knowledge² held by indigenous peoples or local communities all over the world (Robinson, 2010). However, few indigenous peoples have ever received any kind of benefit from these technological developments and some have even experienced further exclusion in the form of denied access to knowledge or plants that have become privatized (Wynberg, 2010). Thus, a paradoxical situation takes place. At the same time that they are the holders of the traditional knowledge applied in bioprospecting and for, that reason, are highly affected by the decisions taken in this protocol, they are in many instances in a disadvantaged position for influencing the design of the new institution regulating such practices. Hence, despite being significant stakeholders, they are marginalized actors in institutional creation.

One of the fundamental questions pertaining to the pervasive phenomenon of transnational governance is the actual role of non-state actors (i.e. actors other than states) in creating and implementing new global regulations (Djelic and Sahlin-Andersson, 2006). In the case of intergovernmental negotiations, all non-state actors are in a disadvantaged position to participate because, after all, the process is supposed to engage member-states, while all other participating actors hold mere observer status. However, previous research has showed that non-state actors can and do influence decision-making in this setting (Betsil and Corell, 2008). These studies have shown the importance of possessing certain types of resources in order to engage in these processes,

² The knowledge held collectively by communities in the current, previous and potential use of plants and animals (Bubela & Gold, 2012).

including organizational, material and discursive resources (Betsil and Corell, 2008). This finding explains why most studies have focused largely on resourceful actors, such as international NGOs and multinationals, who are perceived as the entities, apart from states, that are positioned to have an influence in global regulation (Banerjee, 2012).

In the field of global environmental governance, as compared to other non-state actors (NSAs), indigenous peoples and local communities have higher stakes in the results of the negotiations because of how directly these affect their way of life (Banerjee, 2003). Moreover, in addition to the common challenges faced by NSAs (Betsill and Corell, 2008), these actors cope with significant resource constraints, including shortage of material resources, linguistic and educational barriers and little leverage with their respective local governments (Lindroth, 2013; Dahl, 2012). Under these conditions, one would assume that their capacity to participate is very limited. However, extant literature has shown that these actors have been able to utilize the United Nations platform to carve out a new space from which to advocate for their own rights (Dahl, 2012; Niezen, 2003).

Another key question is related to the processes through which institutions are created (Lawrence and Sudaby, 2006). Many authors would agree that institutional creation results from a combination of material resources, formal authority, or discursive legitimacy mobilized by skilful and resourceful actors (Hardy and Maguire, 2010; Lawrence et al. 2013). However, actors without access to necessary resources must deploy creative processes to respond to evolving circumstances (Levy & Scully, 2007). The institutional work literature offers a useful angle from which to analyse this phenomenon because it pushes us to focus more on the work done to create institutions, rather than the impact generated from the institution's creation (Lawrence et al. 2013).

However, this literature is less successful at explaining how actors become the “agents” to perform institutional work (Hwang & Colyvas, 2011). In this thesis, building on previous understandings brought by this literature, I aim to show that while marginalized actors cannot simply impose any particular practice or interpretation in institutional creation, they may develop the ability to participate in the construction of the institution (Lawrence et al. 2011). By setting the focus of this research at the bottom of the “resource hierarchy”, I am willing to understand how actors who are resource-constrained are able to work creatively for greater inclusion in the creation of a new global institution.

To do so, I embrace a relational ontology (Giddens, 1984), that affords me the lens through which to appreciate that resources are processes recursively interacting with the practices of actors (Giddens, 1984). Understanding the important resource constraints that the group of actors have to deal with in trying to be included in the process of creating a transnational institution, I further elaborate and refine the idea of resourcing, or the creation of resources in situated interactions (Feldman, 2004; Howard-Grenville, 2007). With a four-year longitudinal case-study based on ethnographic immersion in the phenomenon, I look in-depth into the practices of a group of actors who are highly affected by the implementation of the decisions taken in a transnational regulation, but who have at their disposal few of the resources and opportunities required to influence it, to see how resourcing unfolds in this context.

This thesis is structured as follows. Chapter 2 presents the theoretical background informing this thesis, including overviews of the transnational governance literature with particular interest in the role of NSAs in this context, of the literature on the creation of new institutions and of previous research on resourcing. Chapter 3 describes the research

design for the empirical work, where I highlight the research question, research strategy, research setting and specify the methods for data collection and analysis. Chapters 4, 5 and 6 present the findings of this work, which includes the visual mapping of the most salient issues arising from these meetings to highlight particular points of increased participation by and inclusion of these actors, the narratives of events I observed to find the different roles actors may adopt and, finally, the inductive coding to find the mechanism allowing for creation of resources by the group under study. Chapter 7 summarizes the findings and discusses the major implications of this thesis to research. Finally, chapter 8 outlines the limitations of this work, along with opportunities for future research, and offers practical implications and some concluding remarks.

CHAPTER 2. Literature Review

2.1 Transnational Governance

In recent years, the rise of transnational governance has called the attention of scholars to a phenomenon that blurs national frontiers as well as public and private divides (Djelic & Sahlin-Andersson, 2006; Levy & Egan, 2003). Transnational regulations have become more pervasive with the deepening of globalization processes. These are aimed at guiding and monitoring social interactions and activities across national territories (Djelic & Sahlin-Andersson, 2006). Empirical examples of transnational regulations are abundant, ranging from treaties to regulate climate change (Banerjee, 2012), pacts to guide socially responsible business (Rasche & Gilbert, 2012), or labels to standardize practices in the forestry, textile and coffee industries (Bartley, 2007; Turcotte et al. 2004). A definition of transnational governance provided by Keohane and Nye's (2000:12) summarizes this idea:

“the processes and institutions, both formal and informal, that guide and restrain the collective activities of a group. (...) Governance need not necessarily be conducted exclusively by governments and the international organizations to which they delegate authority. Private firms, associations of firms, NGOs and associations of NGOs all engage in it, often in association with governmental bodies, to create governance; sometimes without governmental authority.”

To introduce the literature on transnational governance, I build on three schools of thought that have developed different explanations to the emergence of transnational regulations: the sociological, economic and political. In what follows, I present their assumptions and their views on the rise of transnational governance. Next, I outline important aspects of non-state actor engagement with transnational governance. Finally, I revisit each theoretical tradition in trying to understand how and which non-state actors (NSAs) get to participate in transnational governance.

2.1.1 Three schools of thought in transnational governance

Sociologically inspired studies depict the emergence of transnational regulations as the reflection of embeddedness in complex meaning systems. Transnational regulations in this view are built within an institutional context, defined as those collective frames and systems that provide stability and meaning to social behavior and social interaction and take on a rule-like status in social thought and action (Meyer and Rowan 1977). These institutions constrain action, but may also enable it through the disposition of tools and resources (Djelic and Quack, 2010).

Within the sociological tradition, the “World Society” approach emphasizes the role of globalized cultural templates in shaping governance mechanisms within and between organizations and states (Meyer, 2010). This approach advances the idea that expanded and globalized modern systems of social control are constructed by individuals and organizations with the standing of “agentic actors” acting on behalf of globally desired values (Meyer 2010). One instance of the pervasiveness of this phenomenon is the rise of science as a largely legitimate mode of authority in modern society (Drori & Meyer 2006), which is believed to lead to the homogenization of transnational regulations (Meyer 2010).

Otherwise, the “Stockholm School” (Brunsson & Jacobsson, 2002; Brunsson et al., 2012; Djelic & Quack, 2010) is less radical in the view of the pervasiveness of cultural influences in transnational governance. Even if it shares the idea that regulations reflect broader templates and forces that shape and structure the transnational world, scholars in this school admit that these are created within particular situations and configurations of

actors and resources (Djelic & Sahlin-Andersson 2006). This literature centers on the study of the processes and actors involved in the creation (Djelic & Sahlin-Andersson, 2006; McNichol, 2006; Djelic & Quack, 2010), implementation (Brunsson & Jacobsson, 2002; Seidl, 2007) and enforcement (Hülse & Kerwer, 2007; Sandholtz, 2012) of transnational regulations by revealing the key mechanisms that sustain their legitimacy. Moreover, scholars have looked into who is able to claim and provide legitimacy for rule-setting and monitoring, as well as how other actors in the field respond to these activities (Quack, 2010; Helfen et al., 2015). Transnational blueprints and institutional frames are not simply out there, but they are historically constructed through processes where national toolkits and actors play important roles (Djelic & Sahlin-Andersson 2006).

Still under a sociological tradition, the “discursive school” looks into how new discourses provide both incentives (potentially altering power relations among actors) and resources (production and distribution of texts designed to influence the institution-building process and its outcomes) for transnational regulation building (Maguire & Hardy, 2006). As an example of this approach, Hardy and Maguire (2010) explored the interplay between three specific discursive spaces within intergovernmental negotiations: “plenary speak” (official documents and interventions in the plenary session), “corridor talk” (materials displayed and distributed for informational and lobbying purposes), and “external communication” (texts that circulated beyond the conference itself). They argue that the different spaces allow for different narratives to be told, opening up opportunities for change. In this perspective, new global regulations emerge out of discursive struggles between state and non-state actors when meanings are momentarily stabilized, resulting in particular institutional outcomes.

In studies inspired by an economic approach, institutions are created and designed to address shortcomings in the market or the political system as a means of producing collectively desirable outcomes (Williamson, 1975). In the economic perspective, actors are depicted as rational, despite being bounded by incomplete information, and choice and decisions are made regarding the relative costs and benefits associated with “expected consequences” (Turcotte et al. 2014). Studies under this view have accounted for the emergence of international institutions (Keohane, 1984; Tallberg, 2002), and also for their design (Abbott and Snidal, 2000; Ostrom, 2010) in terms of the search of more efficiency in policy making. This view is built on the “conception of institutions as solutions to collective action problems” (Bartley, 2007: 307).

Instead, political studies focus on the actors’ strategic initiatives and their different interests to understand how power is mobilized to build regulations dispersed beyond state boundaries (Ahrne et al. 2007). Transnational regulations are depicted as the results of processes of negotiation and contestation (Bartley 2007). In this view both state and non-state actors play entrepreneurial roles in building such regimes (Bartley 2007), as they are driven by distributional considerations (Tallberg, 2010).

Aligned with this political view are studies under the social movement tradition. These studies have a specific focus on the role of transnational activists in shaping transnational governance. In successfully mobilizing resources (e.g. informational, symbolic or material) in politically favorable settings, they are able to contest global and local shared meanings and understandings (Tarrow, 2008; Keck and Sikkink, 1998). For instance, Sell & Prakash (2004, p. 149) claim that “success in influencing policy processes lies not in claimed moral superiority of the agenda but in the network’s

superior abilities to create and make the most of political opportunities”.

Within the political perspective, a more critical branch emphasizes the role of dominant actors in pushing the outcomes of transnational governance (Levy and Egan, 2003; Banerjee, 2012). These studies explore the politics of contestation and representation that shape policies and production systems, ideologies and identities, and alliances and accommodation in relation to different global issues (Levy & Newell, 2005). Some studies adopt a neo-Gramscian approach that highlights struggles for hegemony, which refer to a condition of relative stability in this system, in which a dominant alliance, or “historical bloc,” will emerge and dictate the rules (Levy, 2008). Accordingly, particular arrangements of ideas and material capabilities are sustained by institutions that are in turn subject to the same forces of change (Banerjee 2012). In what follows I look into more detail the different perspectives of these schools of thought on the participation of non-state actors in transnational governance.

2.1.2 Non-state actors in transnational governance

Despite their theoretical differences, the three schools of thought agree that there is a rise in the presence of non-state actors (NSAs), or actors other than states, in transnational governance. The increased mobilization of NSAs to change the course of events or the outcomes of global policy processes has been referred to as “agency beyond the state” (Biermann & Pattberg, 2012). This phenomenon manifests the diffusion of authority in the transnational governance arena in two ways: in the rise of private regulation forms and in the increased participation of NSAs in intergovernmental negotiations. In the first set of studies, research shows how NSAs have been able to

project authority in global governance as standard-setters in many different issues (Brunsson and Jacobsson, 2000). In particular, these studies focus on the patterns of diffusion and competition of different labels and certification schemes (Abbot & Snidal, 2009; Bartley, 2007; Cashore, 2004; Turcotte et al. 2014).

More important to the present work is the increased participation of NSAs in international negotiations of state-led regulations. While international organizations were long limited to member governments, recently NSAs such as nongovernmental organizations (NGOs), indigenous peoples organizations (IPOs), scientific communities, and business coalitions, have been increasingly involved in their governance (Biermann & Pattberg, 2012). Whether as policy experts, service providers, compliance watchdogs and stakeholder representatives, more and more windows of interactions have been opening for NSAs (Tallberg, Sommerer, Squatrito and Jonsson, 2014).

Important distinctions should be made at this point in terms of the meanings of different forms of engagement of actors in policy-making. Despite sometimes being used interchangeably, the notion of access is distinct from participation, which is in turn different from inclusion (Quick and Feldman, 2011). Moreover, democracy, also a related concept in this debate, has been developed under a “local” context and its transposition to the global arena has been source of contestation by scholars and practitioners alike (Bexel, et al. 2014; Nasstrom, 2010). In what follows I present the understandings of these concepts as they are being used in this thesis.

Access consists of the institutional mechanisms whereby NSAs may take part in the policy process of a specific intergovernmental instrument (Tallberg, Sommerer, Squatrito and Jonsson, 2014). Therefore, it refers mainly to the admittance of NSAs into

negotiations and it can be expressed in terms of their status (Betsill & Corell, 2008). NSAs in intergovernmental negotiations may enjoy observer or consultative status. Observer rights limit the actors to attendance, with no right to speak (Vabulas, 2013). Consultative status is the formal recognition that the actor can participate regularly in the discussion of the global policy forum, perhaps by submitting information or points of view prior to a meeting and voicing opinions during the meeting (Vabulas, 2013).

Participation denotes NSAs' actual presence and engagement in these institutional venues (Tallberg, et al. 2014). Participation broadly refers to the "efforts to increase public input" (Quick & Feldman, 2011: 272). *Representation* is a related concept because it has been taken as an important indicator of the capacity of the delegation to participate as it affects the ability to follow the discussions (Nanz & Steffek, 2004). It has usually been measured as the number of participants both in global numbers and in comparison to other delegations (Betsill & Corell, 2008). In addition, in trying to exert some sort of influence in the field, NSAs may adopt a broad range of strategies of participation (Betsill & Corell, 2008). For instance, advocacy activities in the plenary are intended to formally amend the evolving legal text under negotiation (Orsini, 2013). The corridors of meetings are used to inform and/or influence state delegates, either through lobbying or awareness-raising (Hardy & Maguire, 2010). Conversely, if the actor is an outsider to the negotiation, he might resort to public pressure strategies (e.g. protests, naming and shaming campaigns) (Orsini, 2013).

Differently, **inclusion** implies opportunities for co-production of the institution and learning for the engaged actors, involving multiple ways of knowing (Quick & Feldman, 2011). Certainly, participation is a pre-requisite to inclusion in the sense that it

brings in different perspectives to the table. However, inclusion is oriented to augment the capacity of communities of practice to formulate and implement the decisions related to specific issues (Quick & Feldman, 2011). In this sense, the rules of procedures in this setting are important to understand the dynamics of inclusion. Extant literature has corroborated the idea that negotiation outcomes depend on who participates in the process but also how the process itself is handled (Helfen & Sydow, 2013). Deliberation implies that participants listen to each other's positions and generate group choices after due consideration (Fung & Wright, 2001). In contrast, negotiation entails strategic bargaining to advance self-interest and it is mainly driven by the resources, status and power of involved actors (Fung & Wright, 2001). In a similar vein, Helfen & Sydow (2013) have found that more integrative practices, such as those depicted in deliberative processes, are more inclusive and are more likely to generate creative outcomes. Conversely, distributive practices, based on bargaining and negotiation, are less likely to be inclusive (Helfen & Sydow, 2013).

Generally speaking, the more inclusive the decision-making process, the more democratic it is (Bexell, et al. 2010). Bexell et al. (2010) outline the three basic theories of democracy: representative, participatory and deliberative. **Representative democracy** provides citizens the right of being indirectly represented by nationally elected governments and their designated bureaucratic agents. In contrast, the model of **participatory democracy** stresses direct citizen participation, avoiding exclusion and marginalization based on, for instance, gender, ethnicity, and class. Finally, **deliberative democracy** emphasizes informed public debate among citizens or their representatives as the mode for realizing democracy.

However, theories of democracy come into question when one speaks of a transnational setting. Traditionally, states have been the sole constituent members of international institutions, controlling the major decision bodies and carrying the primary responsibility for implementing agreements (Bexell, et al. 2010). This model has been based on the tenets of representative democracy, following a national boundary logic. However, in the contemporary landscape of transnational issues, regulated beyond any particular national entity, millions of people experience a ‘democracy without choices’ where as citizens of sovereign states they can vote to elect national political elites but have little or no say in influencing global policies that highly affect their lives (Banerjee, 2011).

Different theoretical approaches have looked at this issue of the exclusion of civil society and historically marginalized groups, which are often silenced in transnational governance. The rationale behind calls for reinventing democratic practices is that no electorate can authorize transnational actors to represent politically neglected issues (Bexell et al. 2014). Shapiro (1999: 235) proposes a way of democratizing global institutions through the “all-affected principle”, defining affected as those whose basic interest are at stake and, for that reason, have a stronger claim in a decision. The scope of the issue would define then who participates in global political decision making. This idea of having all-affected people involved in policy-making is also shared by the “cosmopolitan approach”, which avoids a single hierarchical form of authority and tries to take into account the will of stakeholders, according to the nature of the issues at stake (Archibugi, 2008).

In a different vein, the “discursive representation” approach by Dryzek & Niemeyer (2008: 482) puts forward the idea that “all relevant discourses should get represented, regardless of how many people subscribe to them.” The idea is that the diversity of opinions would make global institutions more in tune with the opinions of the public sphere and deliberation would replace the need for voting. The role of science in this approach would be preeminent. These views have been criticized, mainly on the terms of who would define a stake and a stakeholder and how would we define what a relevant discourse is (Nasstrom, 2010).

Finally, there is an emergent pragmatist school calling for ‘experimentalist governance’, which entails rule-making based on recursive review of implementation experience in different local contexts (Sabel and Zeitlin, 2012). It is developed in an iterative cycle of four steps (Sabel and Zeitlin, 2012): (i) broad participatory goal-setting; (ii) decentralized experimentation with alternative implementation approaches; (iii) performance monitoring, information pooling, and peer review; and (iv) revision of goals, metrics, and procedures based on deliberative comparison of experience. This approach delegates authority for decision making, under conditions of dynamic accountability, to local units building on their concrete experience and creating space for local innovation. An example of implementation is the EU’s initiative on Forest Law Enforcement Governance and Trade, which is aimed at combating illegal logging in developing countries (Overdevest & Zeitlin 2014). This initiative accommodates local diversity and promotes recursive learning of the actors involved as local civil society stakeholders participate both in the definition of ‘legally harvested wood’ and in monitoring its

certification, each of which are explicitly conceived as revisable in light of the other (Sabel and Zeitlin, 2012).

2.1.3. How and which NSAs get to participate in transnational governance?

There is no doubt that there has been an increase in the number of NSAs registered to intergovernmental meetings in recent years (Green, 2010). Nevertheless, many authors and practitioners agree that the reality of NSA participation is that it remains both **limited** and **inequitable** (Nanz & Steffek, 2004; Banerjee 2012). These considerations affect both how NSAs get to participate as well as which NSAs participate in intergovernmental processes. For instance, while UN programs claim to involve civil society in policy-making, formal mechanisms for NSA inclusion within many parts of the UN system remain restricted (Gemmell and Bamidele-Izu, 2002; Bexell et al. 2014). Some arenas, such as those involving environmental and social issues have been more open in accepting the participation of NSAs in comparison with economic and peacekeeping discussions (Steffek, 2010). In most cases, however, NSAs remain excluded from setting the agenda or having a pivotal role in the decision-making process (Bexell et al. 2014; Steffek, 2013; Green, 2010; Banerjee, 2012). An exception is the International Labour Organization, where the Governing Council is composed by a tripartite arrangement with employer and labor organizations next to governments (Bexell et al. 2014). Other forms of collaboration or coordination between state and NSAs are most frequently used: civil society participation in advisory bodies, accreditation to international conferences,

performing services on the part of international institutions, or complaining to compliance mechanisms (Bexell et al. 2014).

Extant literature has showed that participation is inequitable because NSAs have different capacities to effectively engage in the discussions (Nanz & Steffek, 2004; Banerjee, 2012). Several authors have emphasized the importance of resources (e.g. financial, technological, knowledge, etc.) in being able to make a difference in negotiations (Betsill and Corel, 2008; Orsini, 2013). Indeed, economically powerful transnational corporations and well-organized and well-funded NGOs tend to have easier access to negotiations in comparison to marginalized groups from developing countries (Bexell et al. 2014; Banerjee, 2012). It is usually not hard for these resourceful actors to find means to be present in intergovernmental meetings. First, accreditation procedures that screen and select NSAs to participate in meetings reinforce a tendency in selecting the most resourceful based on their usefulness (e.g. economic influence, availability of information, expertise, legitimacy) for the international institution (Bexell et al. 2014). Second, these actors may easily obtain the funds to travel to the different meetings and to guarantee at least their presence. Third, once in the meetings, resourceful actors have more resources to intervene in the corridors. For instance, they have funds to sponsor side-events and receptions, producing opportunities for indirect influence by lobbying government delegates. They also have more capacity to produce reports and documents that may be taken into account in the negotiations.

So, why do some NSAs seem to participate more in transnational governance than others? Following previous literature, there is an important role of resources underlying these dynamics of who gets in and how to make a difference in international negotiations.

Revisiting the different theoretical traditions on transnational governance it is interesting to see that they account for the increased participation of NSAs in a different way. However, resources remain an important key factor in the explanation in all of the approaches, as I show below.

The sociological tradition would argue that institutional design is a process in which concerns of legitimacy are prioritized over matters of efficiency (Stone, 2008). Accordingly, the rise in NSA participation in transnational governance is closely related to the spread and consolidation of a new norm of what constitutes legitimate governance at the global level. This norm would embrace the discourse of an emerging global civil society as a symbolic resource to redress the democratic deficits of traditional international institutions (Djelic, 2011). Importantly, NSAs' participation is highly influenced by their capacity to draw on discursive resources and try to fix understandings, shape interpretations, and justify practices in ways that are commensurate with their interests (Hardy & Maguire, 2010).

In contrast, the economic view is informed by rational choice institutionalism and proposes that actors are recruited in the formulation or implementation of a transnational regulation based on identifiable functional needs (Tallberg, 2010). This approach is based on the idea of incentives and constraints, admitting the participation of NSAs as long as they are able to exchange valuable resources such as information or expertise (Raustiala, 1997; Kahller, 2005). Tallberg (2010) has identified at least three instances where states would bring in NSAs to participate in intergovernmental negotiations: to overcome information deficits, to secure the credibility of commitments and to help improve policy efficiency. As a result, Steffek (2010) suggests that different policy fields require

different resources from NSAs, which would explain the variation of participation of NSAs in different intergovernmental instruments.

Finally, in the political view, actors in transnational governance possess asymmetric resources, leading to a context where relations of imposition and domination enable and constrain agents in terms of their abilities to shape regulations according to their interests (Barnett and Duval, 2005). In particular, in the social movement tradition, important elements to understand the rise of NSA participation in transnational politics are the configuration of political opportunities in particular arenas but also the mobilization of resources of transnational advocacy networks (Tarrow, 2005). In a more critical perspective, NSA participation is explained by the accommodation of subordinate groups to some degree, through a measure of political and material compromise of the hegemonic actors that disseminate ideologies of mutuality of interests (Levy, 2008). For instance, organizers of climate negotiations assert that the process is inclusive and democratic, but participants don't enjoy the same capabilities in making their voices heard (Banerjee, 2012). Indigenous peoples and other minority groups in these settings are particularly disfavored (Banerjee, 2011).

To conclude, the sociological approaches associate NSA participation with the democratic deficit of global governance. The expectation is that NSAs will be more and more present in international negotiations as the democratic norm diffuses (Djelic and Sahlin-Andersson, 2006) and as these actors take advantage of this discourse as a symbolic resource (Maguire and Hardy, 2009). Differently, the economic perspective predicts that NSAs gain access to IGOs if they can help the respective IGO reach its goals in an efficient manner (Tallberg, 2010). The role of resources is also central to the

explanation, as NSA exchange resources that are considered valuable for states. Finally, the political view puts forward that NSA participation should follow the balance of power in a particular setting (Barnett and Duvall, 2005). The logic is that access is granted to particular actors according to their capacity to mobilize resources (Tarrow, 2008; Betsill and Corell, 2008) and to the accommodation and compromise strategies of dominant actors (Levy and Egan, 2003; Banerjee, 2012). Once again, resources are essential to understand NSA participation from a political point of view, as actors bargain their positions with others through the mobilization of resources.

2.1.4 Summarizing and moving forward

Summarizing, each perspective (i.e. sociological, economic and political) reflects a different view on the rise of transnational governance and the increased participation of NSAs. Table 1 consolidates the different perspectives of the three schools of thought in transnational governance.

Perspectives/ Dimensions	Sociological	Economic	Political
<i>View on transnational regulations</i>	Reflects broader institutional templates (Meyer, 2010)	Rules of the game in the global arena (Tallberg, 2002; 2010)	Emerges out of strategic negotiation (Bartley, 2007)
<i>Explanation for NSA participation</i>	<u>Pull</u> : IO's need for democratic legitimacy <u>Push</u> : NSA mobilize resources to participate	<u>Pull</u> : IO's need for efficiency	<u>Push</u> : Outcome of contestation/ negotiation
<i>Views on agency</i>	Actors institutionally embedded	Actors rationally choose specific arrangements	Actors driven by distributional interests
<i>Exemplary studies</i>	Djelic and Sahlin-Andersson (2006); Maguire and Hardy (2009)	Tallberg (2010); Steffek (2010); Reinecke et al. (2012)	Barnett and Duval (2005); Betsil and Corell (2008); Banerjee (2012)

Table 1 Comparing different approaches in transnational governance

Two basic different dynamics seem to be at play in these changes in the context of transnational governance: push and pull drivers³. On the one hand, push drivers are related to NSAs' capacity to act on their interest of participating in international negotiations while pull drivers relate to the need or perceived need of international organizations to grant access to NSAs. In the sociological tradition, a combination of push and pull drivers coexist. The "World-Society" approach (Meyer, 2010) privileges an explanation where international organizations open their doors to increase their legitimacy based on normative pressure. Differently, both the "Stockholm" (Djelic and Shalin-Andersson, 2006) and the "Discursive" schools (Hardy and Maguire, 2010) in the sociological tradition believe in the important role of actors in pushing their entrance in transnational governance through strategic moves based on the global frames available out there (e.g. democracy, science, etc). In the economic tradition, the basic argument is that NSA participation is determined by the need of international organizations to improve their efficiency through the addition of NSA's knowledge, expertise and monitoring capacity (Tallberg, 2010). In contrast, political explanations tend to hold a mixed view. In this tradition, NSAs may push their access to international organizations or may be pulled in a process of bargaining and negotiation (Barnett and Duvall, 2005).

So, what is still left to know about transnational governance? While there is a common understanding that authority in the context of transnational governance has been diffused, NSA participation/inclusion in the context of intergovernmental negotiations is

³ The framework created by Steffek (2013) inspired this conceptualization. The author proposes a model of "push and pull" factors for NSA participation that varies according to the policy cycle. However, in this proposal all the underlying explanations are based on an economic view and here I expand the idea to introduce the possibility of including more sociological and political explanations as well.

an understudied phenomenon in organization studies (Banerjee, 2012; Levy & Newel, 2005). Extant literature within this tradition in organization studies has focused mainly on the rise of private regulation forms (Djelic and Sahlin-Andersson, 2006), leaving important questions unanswered with regards to what actually actors do to get included in practice: the neglect of extremely vulnerable and under-resourced actors, the distinctions in practice of participation and inclusion and the interconnectedness of local and global arenas in transnational governance in equitable ways.

First, a glaring gap in the context of intergovernmental negotiations is the large focus on resourceful NSAs, such as business coalitions and international NGOs (Bled, 2009, 2010; Levy & Newell, 2005; Maguire and Hardy, 2006). Previous research has justified this choice because of these actors' increased capacity in organizing to shape the outcomes of negotiations, leaving aside other actors that are extremely affected by the outcomes of transnational governance but with less capacity and fewer opportunities to engage effectively in these arenas. This bias prevents us from getting a better understanding of the actual role of resources, whether subjective or objective, in enabling participation in transnational governance (Banerjee, 2012; Djelic and Quack, 2010; Tallberg, 2010). I argue that exploring in more detail the practices of actors that are the most vulnerable to transnational governance could shed more light on the importance of resources.

Second, are there differences between participation and inclusion for NSAs in practice? Most studies in the literature of transnational governance use these terms interchangeably, without problematizing the significant distinctions they entail (Schussler et al. 2014). Even though there is some literature dedicated to this question, most explore

it from a theoretical point of view (Nanz and Steffek, 2004) or look at it disregarding power issues (Feldman and Quick, 2011). In fact, in intergovernmental negotiations, states are central players that define the rules through which negotiations will take place, leaving little room for NSAs to shape both the rules and the outcomes of decisions. How would participation and inclusion of NSAs look like in intergovernmental negotiations? And in particular, in the case of the most vulnerable, would that make a difference in the outcomes of decisions? Previous research has pointed that being given a “voice, but not a seat at the table” represents a real threat to the survival of these actors (Banerjee, 2011; Escobar, 2008), which is why having a better understanding of this dynamics of participation versus inclusion is so critical.

Finally, an often neglected point in transnational governance studies is equitable linkages between global and local political arenas in the case of NSAs. Some literature has looked into the “boomerang effect” (Keck and Sikkink, 1998), which speaks to the phenomenon of local NSAs directly seeking international allies to try to pressure for change in a state’s behavior in national policy. Actors operating transnationally usually have multiple affiliations (local and global) which allows for the flow of ideas, resources and strategies beyond national divides (Vieira and Quack, 2016). This mobilization implies networks of actors who collaborate on a particular issue and use informational and symbolic resources to influence power holders (Kraemer, Whiteman and Banerjee, 2013). Previous studies emphasized the role of international NGOs who strategically use information to influence power holders and provide know-how and material resources to domestic activists and social movement organizations in the periphery (Keck & Sikkink, 1998, p. 12). Interestingly, studies have shown that they often fail to fulfil the ‘promises

of empowerment’ (Rodrigues, 2011, p. 3) and underrepresent the interests of local communities (Khan, Munir and Willmott, 2007). It would be relevant then to unveil practices in transnational governance networks that could lead to more equitable results in the local level. In what follows, I explore the literature on field-configuring events and the tools that could help in reaching a better understanding of the phenomenon of transnational governance.

2.2 Creating institutions: work, resources and events

Scholar interest in the creation of institutions is recent in organization studies (Lawrence et al. 2013; Lawrence and Suddaby, 2006). Studies subscribing to new institutionalism were interested on the diffusion of institutions, stability and homogenization (DiMaggio & Powell, 1991) since institutions are portrayed as taken-for-granted patterns of behavior embedded in complex cultural meanings (Meyer 2010). Questions on how institutions emerge, change and vanish were neglected by this stream of research, something for which this tradition has been long criticized (Clegg, 2010; Leblebici et al., 1991). To countervail that criticism, a new stream of research has developed around the role of institutional entrepreneurs for institutional change. They were defined as actors who initiate changes that contribute to transforming existing, or creating new, institutions (DiMaggio, 1988): “new institutions arise when organized actors with sufficient resources (institutional entrepreneurs) see in them an opportunity to realize an interest that they value highly” (DiMaggio 1988: 14). These self-interested agents are capable of mobilizing resources in order to modify or create institutional structures (Battilana, Leca, & Boxenbaum, 2009; Maguire, Hardy, & Lawrence, 2004),

even if they are constrained by them (Dacin, Goodstein, & Scott, 2002). This version has been criticized for being over-voluntaristic by reverting the issue of institutional change to accounts of heroism (Battilana et al., 2009).

Institutional work as a recent stream of literature has tried to provide an alternative to the determinism of institutions (Meyer & Rowan, 1977) and the heroic depictions of actors (Battilana et al., 2009) in trying to understand institutional processes (Lawrence and Suddaby, 2006). To do this, it has built on the institutional entrepreneurship (DiMaggio, 1988), deinstitutionalization (Oliver, 1992), and practice literatures (Bourdieu, 1990; Giddens, 1984) to understand the “purposive action of organizations and individuals aimed at creating, maintaining, and disrupting institutions” (Lawrence and Suddaby, 2006:215). This approach favors a view of agency as both constrained and enabled by institutions (Giddens, 1984).

At least three innovations result from the effort of integrating the practice perspective lenses to understand the phenomenon of institutional creation. First, institutions, in this view, “are the product of specific actions taken to reproduce, alter and destroy them” (Lawrence and Suddaby, 2006). By bringing in the ontological assumptions of the sociology of practice perspective (Bourdieu, 1990; Giddens, 1984), both institutional change and stability are thought to require persistent efforts from knowledgeable agents (Lawrence, Suddaby & Leca, 2011).

Second, the study of institutional work has focused on the situated practices of actors and on how actors respond locally, creatively, incrementally and reflexively to a diversity of institutional pressures (Lawrence et al., 2011). Emphasis is given to the effort in the practices directed to achieve an effect on an institution (Lawrence, Suddaby &

Leca, 2009) because this is what differentiates “work”, which entails a “physical or mental effort done in order to achieve an effect on an institution or institutions” (Lawrence et al. 2009:15), from action relying on automatic cognition. In that sense, individual and collective actors are aware, skillful and reflexive, which emphasizes rationality of actors to the extent that they are able to creatively adapt in dynamic and demanding conditions (Lawrence and, Suddaby 2006). Nevertheless, institutional innovations are institutionally embedded, which restrains the sets of resources and skills available to perform institutional work to those available in the field (s) actors operate (Lawrence and, Suddaby 2006).

Finally, differently from previous accounts of institutional change, for shedding light in practices, this perspective recognizes the importance of unintended consequences and distributed agency. In this sense, institutional work comprise actions that are “successful and not, simultaneously radical and conservative, strategic and emotional, full of compromises and rife with unintended consequences” (Lawrence et al. 2011: 52). It also admits that agency may be distributed along large groups of actors and some may be more purposeful than others who have supportive roles but also influence in institutional change (Lounsbury, 2007; Zietsma & Lawrence, 2010). Institutions are not driven by one single group but are in fact shaped by many players, in a distributed type of agency (Maguire & Hardy, 2009), including non-human entities (Raviola & Norbäck, 2013). For instance, unintended consequences of the performance of specific types of work were examined in the context of the creation of a standard and have elucidated the dynamic interplay between design and implementation of institutions (Slager et al., 2012). In a similar vein, Quack (2007) cites the emerging effects of institution-building in

the context of transnational rule-setting for commercial and corporate law. In this conceptualization, cycles of incidental institutional work (where ambivalent legal rules are applied to solve the cases of specific clients and result in incremental innovations) are nested within cycles of strategic work (where actors engage in active persuasion and lobbying of their peers and governmental agents in order to change the written law). By highlighting unintended consequences, scholars not only provide a more balanced perspective to the role of single actors in very dynamic settings, but also account for the frustrated attempts of actors (Kaghan & Lounsbury, 2011; Kraatz, 2011).

In what follows, I examine studies within this tradition that have explored important aspects that are consistent with the phenomenon under study. First, I bring an overview of the different types of institutional work for institutional creation identified in previous research. Second, I explore how institutional work has dealt with resources. Third, I address the importance of critical events in institutional work, including a brief overview of the literature on field-configuring events.

2.2.1 Institutional work for creating institutions

Three broad categories of institutional work are proposed by Lawrence and Suddaby (2006) in their seminal work: creating, maintaining and disrupting⁴. Creating

⁴ In the category of maintaining institutions, activities intended to ensure compliance (Lawrence and Suddaby, 2006), contesting the assumption of self-reproducing institutions (Scott, 2001) is contested. Some research in this tradition has looked at the purposive acts to maintain institutional arrangements (e.g., Currie et al., 2012; Lefsrud and Meyer, 2012; Micellota and Washington, 2013; Dacin, Munir and Tracy, 2010). Institutional work aimed at disrupting institutions involves “attacking or undermining the

institutions, which is the focus of this research, is primarily based on the literature on institutional entrepreneurship, but with two major departures. Firstly, in this literature not only institutional entrepreneurs (resourceful and skillful actors) enact work in institutions, but also other groups of actors have supportive roles and interactions among a broader array of actors can produce institutional change (Lounsbury and Crumley, 2007; Zietsma and Lawrence, 2010). Secondly, the focus is on what institutional entrepreneurs do instead of the conditions in which institutional entrepreneurs are more likely to emerge (Battilana et al. 2009). Lawrence and Suddaby (2006) have proposed the following types of institutional work for creating institutions: advocacy, defining, vesting, constructing identities, changing normative associations, constructing normative networks, mimicry, theorizing, and educating.

The scholarship has been refined as other authors have built on this typology to incorporate new types of institutional work involved in the process of institutional creation. Some of the new types of institutional work include practice work (Gawer and Phillips, 2013; Smets and Jarzabkowski, 2013; Zietsma and Lawrence, 2010); boundary work (Helfen, 2015; Zietsma and Lawrence, 2010); contextualization work (Gond and Boxenbaum, 2013) and direct versus indirect work (Bertels, Hoffman and DeJordy, 2014). Practice work is directed to the work of actors to create, maintain, and disrupt the practices that are considered legitimate within a field, while boundary work refers to the effort to change the boundaries between sets of individuals and groups, regrouping activities concerned with protecting the autonomy of a field, bridging fields or breaching

mechanisms that lead members to comply with institutions” (Lawrence and Suddaby, 2006: 235) focusing on the substitution of old by new institutions (Maguire and Hardy, 2009).

other fields (Zietsma and Lawrence, 2010). In a different vein, contextualization work refers to work that supports the construction of relationships between a foreign practice and the institutional contexts of its import and export settings (Gond and Boxenbaum, 2013). Finally Bertels et al. (2014) explores different configurations of identity, social position and institutional work that characterize distinct challenger roles of ENGOs within the movement. The study reveals how these characteristics enable and constrain ENGOs to specialize and undertake direct (i.e. purposeful efforts to create, maintain, or disrupt institutions) or indirect (i.e. work that enables or amplifies the work of movement actors or the movement as a whole) forms of institutional work.

More recent studies have suggested that institutional work is very dynamic and does not fit neatly into the categories of creating, maintaining and disrupting institutions proposed by Lawrence and Suddaby (2006). For example, the case of an international NGO engaged in Haiti to promote cooperative banking points to important differences in the types of institutional work identified, more specifically before and after a major earthquake hit the region (Barin-Cruz, Delgado, Leca and Gond, 2015). While in the beginning the actors were engaged in more traditional types of institutional work to foster an emergent industry in that country, after the natural disaster they had to perform different activities to ensure its resilience. Another example is risk work (Labelle and Rouleau, 2015), in a study where hospital risk managers engage with multiple levels: at the intra-organizational level (building bridges, autonomizing teams, legitimizing risk work, and pragmatizing interventions) and at the extra-organizational level, (networking with colleagues, hybridizing knowledge, shaping identity, and debating solutions). With these different bundles of work, they contribute to articulating a professionalization

project. In a similar vein, Zietsma and Lawrence (2010) examine the institutional work of different organizations to affect boundaries and practices of the British Columbia forestry field, suggesting that distinctive patterns of boundary work and practice work supported different cycles of institutional stability and change.

2.2.2 Resources in institutional work

Having the skills to mobilize distinct resources is essential for actors engaged in institutional work (Lawrence et al. 2013). However, it is common sense that not all actors are equally adept at producing desired outcomes (DiMaggio, 1988; Fligstein, 2001). To be able to mobilize such resources, actors must develop a set of skills (Perkmann & Spicer, 2008): political, technical and cultural. Political skills involve influencing the development of rules, property rights and boundaries in order to place an institution in a wider social system, which includes advocating a new practice or vesting others with specific roles (Perkmann & Spicer, 2008). Technical skills concern crafting technical and legitimate responses to explain why changes should or should not take place, including the work of theorization and education (Greenwood, Suddaby & Hinings, 2002). Finally, cultural skills are related to framing institutions in terms of a broader audience, appealing to values and attitudes that can reconcile divergent identities (Perkmann and Spicer, 2008). A number of studies illustrate that actors with different skills and resources participate in institutional work and the explanations for variations in their capacities rely on the characteristics of the field (Garud, Jain & Kumaraswamy, 2002; Leblebici et al., 1991; Maguire et al., 2004), on the different social positions they

hold (Creed et al., 2010; Gond & Boxenbaum, 2013; Riaz, Buchanan & Bapuji, 2011; Rojas, 2010), and on episodic forms of power (Daudigeos, 2013; Helfen & Sydow, 2013; Waldron, 2015).

Some studies have highlighted the fact that the characteristics of the field determine in a great deal the resources available to the actors. In particular, emerging fields are relatively unconstrained spaces where resources have to be assembled in ways that appeal to and bridge disparate groups of actors (Maguire et al., 2004). This characteristic facilitates the importation of new practices into a field (Garud, Jain & Kumaraswamy, 2002; Leblebici et al., 1991) and the bridging of social and cultural capital (Maguire et al., 2004). Since the boundaries of the field are not still clearly defined, empirical studies in emerging fields have shown that marginalized actors are likely to have more opportunities to make a difference (Maguire et al., 2004).

In more stable fields, many studies have argued that this capacity for mobilizing resources to exert power is affected by the actor's positions in the field (Fligstein, 2001). Dominant or central actors are the ones who, in general terms, enjoy more influence in the field (Fligstein and McAdam, 2011: 7). In that sense, they tend to work to maintain the status quo through the understanding that fields operate to reproduce the power and privilege of these groups (Greenwood, 2008; Roy Suddaby et al., 2007). However, elite actors who are aware of field contradictions can skillfully exploit them to serve their own interests even in situations of institutional change (Hoffman, 1999; Lounsbury, 2007; R. Suddaby & Greenwood, 2005). Marginal or peripheral actors, on the other hand, promote a somewhat fringe ideology (Hensmans, 2003) and ordinarily exercise less impact over the field's operations (McAdam & Scott, 2005).

Previous empirical studies in institutional work have largely focused on actors occupying central positions in a field, like professionals and top executives for being resourceful and more capable to put forward their agendas (Lawrence et al., 2013). From scientists (Ritvala and Kleymann, 2012; Lefsrud and Meyer, 2012), to lawyers (Empson et al., 2013; Smets and Jarzabkowski, 2013), doctors (Currie et al., 2012), and bankers (Riaz et al. 2011), studies have pointed to their favorable social positions, power, expertise, and legitimacy lending them the capacity to push for the change or the maintenance of institutions (Lawrence et al., 2013). For instance, Gibassier's (2015) illustrates how the French elite drew on their privileged position to influence the construction and popularization of an environmental management accounting tool in France. Suddaby and Viale (2011, p. 423), in reviewing previous research tackling professions and institutional change, describe four 'dynamics through which professionals reconfigure institutions and organizational fields': using 'expertise and legitimacy to challenge the incumbent order'; using 'their inherent social capital and skill to populate the field with new actors and new identities'; introducing 'nascent new rules and standards'; and managing 'the use and reproduction of social capital within a field'.

In looking at peripheral actors, studies in the institutional work tradition have identified that these actors engage in different practices to be able to achieve their agendas (Daudigeos, 2013; Van Bockhaven et al., 2015; Labelle and Rouleau 2016; Waldron et al., 2015; Marti and Mair, 2009; Zietsma and Lawrence, 2010; and Tracy, Munir and Jarvis, 2011). First, studies have pointed to the importance of experimentation and pragmatism for actors with limited power and resources (Labelle and Rouleau, 2016; Marti and Mair, 2009). For instance, Labelle and Rouleau (2016) show that hospital risk

managers performed two sets of risk work to disseminate risk management programs and policies in Quebec hospitals: democratizing the risk management practices at intra-organizational level by “building bridges, autonomizing teams, legitimizing risk work, and pragmatizing interventions” and professionalizing these practices at the extra-organizational level by “networking with colleagues, hybridizing knowledge, shaping identity, and debating solutions”. Likewise, Martí and Mair (2009) studied social entrepreneurs in the context of poverty alleviation in Bangladesh, showing that these actor had to: (1) engage in institutional work in a relatively experimental and non-aggressive way; (2) enhance existing institutions by complementing and broadening the scope of these institutions (3) challenge existing myths, traditions, and cultural beliefs; (4) create provisional institutions that serve their interest for a certain period of time; and (5) use multiple institutional logics across different fields in order to promote change in one particular field.

Second, the role of coalition building for marginalized actors in overcoming lack of resources has been emphasized (Zietsman and Laurence, 2010; Waldron et al. 2015). Zietsma & Lawrence’s (2010) study of conflict over harvesting practices and decision authority in the British Columbia coastal forest industry has shown. In this case, First Nations groups were excluded from decisions about the land they laid claim to and also lacked the capacity to attract the publicity and the financial resources needed to assert their claims legally. In this study, the authors show how the First Nations group had to rely on environmental groups for technical advice and material resources necessary to engage in disruptive institutional work. In a similar idea that different organizations complement different resources, Bertels et al. (2014) show how in a constellation of

organizations in the US environmental movement some are specialized in gathering and providing the resources necessary for other to do institutional work.

Indeed, most authors in the scholarship have equated resources and power with actors' social positions (Currie et al., 2012; Empson et al., 2013; Gibassier, 2015), but some have focused more on "episodic power" in institutional work (Daudigeos, 2013; Waldron, 2015; Helfen & Sydow, 2013). Episodic power refers to 'relatively discrete strategic acts of mobilization initiated by self-interested actors' (Lawrence et al., 2001, p. 629). An example is in Daudigeos (2013) case of staff professional in a French construction company. They used forms of episodic power (i.e. influence tactics) to promote new work safety practice: adaptive framing of issues; instrumental use of organizational processes, programmes, and systems; and using their organizations' market power to promote practices externally. In a similar vein, Waldron et al. (2015) explored how The Rainforest Action Network (RAN), environmental NGO, influenced retailers through rhetoric practices (i.e. "contextualization", "elicitation", and "incentivization") to adopt more environmental friendly practices for sourcing wood-based products while also improving their social mobility (i.e. moving into more elite social positions in the field). Similarly, Helfen and Sydow (2013) explored three negotiation processes taking place around International Framework Agreements on global labor standards. They studied three types of outcomes produced by these efforts: institutional creation, modification and stagnation. The key variable explaining the different institutional trajectories is the negotiation work. Whereas integrative practices of negotiation entail joint problem-solving and collaborative attitudes, distributive

practices pre-determine rules for bargaining in a zero-sum game. Outcomes were more positive under the integrative negotiation mode compared to the distributive mode.

2.2.3 The role of field-configuring events in institutional work

Some literature has looked at the role of field-configuring events (FCEs) in affecting the conditions under which actors perform institutional work (Hardy and Maguire, 2010). People from diverse organizations assemble temporarily in these critical events with the conscious, collective intent to build new industries, markets and regulations (Meyer, Gaba and Colwell, 2005), by sharing information, coordinating actions, shaping or subverting agendas, and mutually influencing field structuration” (Anand & Jones, 2008: 1037). They are of special interest because they assemble in one location, for a limited period of time, actors from diverse backgrounds and provide structured and non-structured opportunities for interaction (Lampel and Meyer, 2008). FCEs have been found to affect the flow of resources among actors (Schüßler et al. 2014) and to modify previously established understandings and rules of a field (Oliver & Montgomery, 2008; Hardy and Maguire, 2010).

In particular, in the case of regulatory fields⁵, they typically form around a contested issue and evolve as actors struggle over the rules, positions, and understandings dominating the field (Hoffman, 1999; Levy, 2008; Rao et al., 2000). Particularly

⁵ Fields have long been characterized as “relational spaces that provide an organization with the opportunity to involve itself with other actors” (Wooten & Hoffman, 2008: 138).

important to this study, previous work has shown that transnational regulatory fields are enacted in intergovernmental negotiation meetings, which become critical events in the institutional work process: "(...) international conferences are important catalysts of change, especially as organizations and governments struggle to develop global solutions to complex problems (...)" (Hardy & Maguire, 2010: 1365). These meetings can be characterized as field-configuring events (FCEs), since they create spaces for actors to convene and negotiate such regulations (Hardy & Maguire, 2010; Banerjee, 2012; Schüßler, Rüling & Wittneben, 2014). In what follows I explore three basic characteristics that affect the capacity of actors to be engaged in such events (Hardy and Maguire, 2010; Schüßler et al. 2014): 1) positions (i.e. structure of actors in the field who can be generally viewed as possessing more or less power); 2) understandings (i.e. interpretive frames that shape the view of what is appropriate in a field); and 3) rules (i.e. regulations to which actors must comply to as to not suffer penalties).

First, in terms of the change in positions⁶, FCEs play an important role as “tournaments of value” (Anand & Watson, 2004; Anand & Jones, 2008), where rewarded participants can hope to achieve future benefits, such as increased funding for their activities. Two studies come to mind to exemplify this effect. First, McInerney (2008) showed how a particular event was pivotal in shifting the resource allocation in the field of ‘non-profit technology assistance providers’. After their successful intervention in the event, the model promoting market values was able to gather more support of funders,

⁶ With the constitution of a field, social positions emerge within which struggles take place over resources and influence in the field (Bourdieu, 1990; Maguire, Hardy and Lawrence, 2004). Depending on their position in the field, actors hold a particular “point of view” about it and a different access to resources (Bourdieu, 1988; Battilana 2006). When actors gain a different access to resources in the field, there is a change in positions and the field is more likely to change (Battilana, 2006).

winning subsequent grants over the model promoting more civic values. With time and the lack of financial support, all the initiatives that originally established the field, which were more idealistic, disappeared and only the ones anchored in the market frame remained. Second, Anand and Watson (2004) highlighted how award ceremonies such as the Grammys affect directly the sales of award winning artists and also provides them a wide range of benefits and privileges due to the increased reputation it brings. A similar dynamic was described by Delacour and Leca (2011) in their work about the Paris Salon of arts, where artists who gained acceptance enjoyed huge exposure and sold more paintings. Therefore, gaining a distinction in FCEs favored access to more resources (e.g. higher values for paintings, more possibilities for reproduction, etc).

As a result, the shift in the flow of resources in these events and the way they are setup may contribute to establishing patterns of domination (Glynn, 2008; Banerjee, 2012). Glynn (2008) in examining the effects of the Olympic Games in Atlanta 1996, realized that the allocation of the legacy benefits of the games were not equitable. Those who occupied central positions in the organization of the games seemed to collect more benefits. Corporate interests and real-estate development were at the center of discussions in the management of the Olympic project. As a result, the event ended-up triggering the displacement of more than two million people in the years following it, disproportionately affecting minorities.

A final point in terms of potential position shifts is the fact that FCE may generate resources that can be deployed elsewhere (Schussler et al. 2014), bringing the potential of a position change in another field. Schussler et al. (2014) argue that COP conferences provide to delegates engaged in negotiations new expertise and to other participants a

platform to access different resources that can be used for their work in national or local arenas. Therefore, as much as discussions within the event may be important, some participants are more attracted to the possibility of gathering resources to intervene in the local level.

Second, FCEs may create opportunities for actors to produce and distribute new understandings of how the field ought to operate (McInerney, 2008; Hardy and Maguire, 2010; Zilber, 2011). In this sense, a FCE may be a catalyzer of change not only on the level of the participants and their role in the organizational field, but also on the level of ideas and their attributed importance (Oliver and Montgomery, 2008). Studies in this tradition have looked at the dynamics within specific events to understand how actors shape what others consider legitimate (McInerney, 2008, Garud, 2008, Oliver and Montgomery, 2008), how relational and symbolic systems are interdependent motors of reconfiguration (Zilber, 2011) and how narratives create new meanings that serve as the basis of new global regulatory institutions (Hardy and Maguire, 2010).

FCEs have been described as occasions for actors to express their own cognitions about what would be legitimate action in a field and to explore and develop joint cognitions (Oliver and Montgomery, 2008). For instance, McInerney (2008) showed how FCEs create critical moments where actors articulate and justify their visions and present organizational models by which those visions can be realized. In the study of the nascent field of 'non-profit technology assistance providers', a FCE was pivotal for institutional entrepreneurs to take advantage of ambiguities generated by competing accounts and make the case for their own projects to important actors, in this case funding parties. The FCE resulted in a new way of seeing and enacting the field. Instead of framing the

delivery of technology to the non-profit sector as social justice by bounding the services to social justice or environmental groups, actors shifted to a more pragmatic and market-oriented view in which they would work with any non-profit who could afford its services. Likewise, Garud (2008) suggests that conferences had a major role in defining the very meaning of what it meant to help the profoundly deaf and by institutionalizing the specific metrics against which performance ought to be measured.

Finally, FCEs can produce significant effects on the creation or modifications of rules and laws that set the guidelines of organizational practices (Lampel & Meyer, 2008), such as the case of the regulations for combating climate change (Schussler, et al. 2014; Banerjee, 2012) and for proscribing the use of specific chemicals (Hardy and Maguire, 2010). Importantly, previous studies have showed that the rules through which a FCE is governed affect the flow of information (Hardy and Maguire, 2010), the results of interconnected events (Schussler et al. 2014) and the reproduction of the privilege of its dominant members (Banerjee, 2012).

Hardy and Maguire (2010) identified that the different rules governing different discursive spaces in a FCE affects the flow of different texts to circulate among the participants of an FCE (Hardy and Maguire, 2010). In their analysis of one FCE leading to a transnational regulation, Hardy and Maguire (2010), showed the interplay between three specific discursive spaces: “plenary speak” (official documents and interventions in the plenary session), “corridor talk” (materials displayed and distributed for informational and lobbying purposes), and “external communication” (texts that circulated beyond the conference itself). Their study demonstrates how the production, distribution, and consumption of texts in different discursive spaces allow new narratives to be told and

how ongoing translation in ways that reproduce (or transform) key narrative elements result in a new regulation. Importantly, the rules of each discursive space constrain and enable who translates, how, and for whom, affecting the ways a narrative gets reshaped.

Examining different types of interconnected events, Schussler et al. (2014) revealed that, from the outset the governing body of the climate change convention established universal membership, which involves openness to all countries, the mandate of producing legally binding instruments and the principle of unanimous consent as primary rules. It relied on the standard instruments of transnational environmental policy processes, which authors argue was problematic in the face of the enduring and complex issue of climate change. These rules affected the ability of the COPs to be effective in developing a new encompassing climate agreement

Banerjee (2012) in the analysis of a specific climate change COP showed how the set-up of the conference influenced its regulatory outcomes of further marginalization of the least developed countries that are the most vulnerable to climate change. The author reveals that the rules for inclusions and exclusions to the conference are carefully orchestrated (e.g. access to attend the conference, granting of different statuses) and tend to favor governments, corporations and NGOs based in developed countries. Most of the actual negotiation sessions involve representatives of states in ‘closed sessions’ or ‘informal consultations’ with selected industry groups, NGOs, multi-country networks, inter-governmental organizations. As negotiating groups in informal sessions become progressively smaller and delegates more tired, parties usually get closer to striking a deal that is likely to be dominated by the larger and more powerful delegations.

2.2.4 Summary and moving forward

In studying the creation of new institutions, the literature on institutional work has identified a large number of practices that skilful and effortful actors must perform (Lawrence and Suddaby, 2006; Zietsma and Lawrence, 2010; Gond and Boxenbaum, 2013; Labelle and Rouleau, 2015). Importantly, agency in institutional work is not only concerned with strategic action - it is broadened to comprise actions that are “successful and not, simultaneously radical and conservative, strategic and emotional, full of compromises and rife with unintended consequences” (Lawrence et al. 2011: 52). Actors in this tradition are aware and reflexive to the extent that they are able to creatively adapt to dynamic and demanding conditions (Lawrence and Suddaby 2006), even when in disadvantaged positions (Zietsma and Lawrence, 2010). In particular, FCEs in the form of regulatory events (Hardy and Maguire, 2010; Banerjee 2012) often give rise to critical turning points in the creation of institutions. The compression of time and the intensity of interactions in spaces governed by particular rules and understandings may bring important effects in terms of positions, understandings and rules (Hardy and Maguire, 2010). Table 2 summarizes these key dimensions linking them to exemplar studies.

Institutional Work Literature	
1. <i>Important innovations</i>	<ul style="list-style-type: none"> ✓ Institutions: the product of specific actions taken to reproduce, alter and destroy them” (Lawrence and Suddaby, 2006) ✓ Actors : aware, skillful and reflexive to the extent that they are able to creatively adapt to dynamic and demanding conditions (Lawrence and Suddaby 2006); ✓ Focus on practices: account for unintended consequences and distributed agency
2. <i>Types of institutional work</i>	<ul style="list-style-type: none"> ✓ Lawrence and Suddaby’s typology (2006) on creating institutions: advocacy, defining, vesting, constructing identities, changing normative associations, constructing normative networks, mimicry, theorizing, and educating ✓ New types of institutional work include: practice work (Gawer and Phillips, 2013; Smets and Jarzabkowski, 2013; Zietsma and Lawrence, 2010); boundary work (Helfen, 2015; Zietsma and Lawrence, 2010) contextualization work (Gond and Boxenbaum, 2013); direct and indirect institutional work (Bertels et al. 2014).
3. <i>Resources in institutional work</i>	<ul style="list-style-type: none"> ✓ Capacity to mobilize resources essential for actors engaged in institutional work (Lawrence et al. 2013); variations explained by: <ul style="list-style-type: none"> ○ <i>Characteristics of the field</i> (Garud, Jain & Kumaraswamy, 2002; Leblebici et al., 1991; Maguire et al., 2004), ○ <i>Social positions</i> (Creed et al., 2010; Gond & Boxenbaum, 2013; Riaz, Buchanan & Bapuji, 2011; Rojas, 2010), ○ <i>Episodic forms of power</i> (Daudigeos, 2013; Helfen & Sydow, 2013; Waldron, 2015).
4. <i>Field – configuring Events</i>	<ul style="list-style-type: none"> ✓ Positions: Structure of actors in the field who can be generally viewed as possessing more or less power ✓ Understandings: Interpretive frames that shape the view of what is appropriate in a field ✓ Rules: Regulations to which actors must comply to as to

	not suffer penalties (Hardy and Maguire, 2010)
--	---

Table 2 : Summarizing key dimensions of Institutional Work literature

Remarkably, many authors have emphasized the importance of discursive practices as key forms of institutional work for institutional creation (Zilber, 2009; Riaz, Buchanan, and Bapuji, 2011), which is consistent with Lawrence and Suddaby's (2006) observation that most institutional work is language centered. Indeed, much less interest has been placed on the lived experiences of actors and the world of practices involved in engaging in institutional work (Lawrence, Leca and Zilber, 2011). Zilber (2011) points out that a focus on broader practices would benefit the literature in providing a less functional account of what actors actually do, as well as a better articulation of the effects of unintended consequences and actors' efforts. In this sense, the typology of institutional work could be enriched with new types of work that go beyond what actors say.

Another point is that even though the institutional work stream emphasizes the reflexive agency and the skillfulness and resourcefulness of actors in shaping institutions, the empirical studies largely take for granted the sources of agency for actors (Hwang & Colyvas, 2011). To account for the variation in the capacity of actors to act, extant literature highlighted the role of professions (Currie, Lockett, Finn, Martin & Waring, 2012; Lefsrud & Meyer, 2012; Suddaby & Viale, 2011), and of actors' positions in the field (Creed et al., 2010; Gond & Boxenbaum, 2013; Riaz, Buchanan & Bapuji, 2011; Rojas, 2010). Similarly, Perkman and Spicer (2008) highlighted the skills needed to perform certain types of institutional work. However in cases in which actors are highly vulnerable or dispose of limited resources (Marti & Fernandez, 2013), how institutional

work is even possible? Knowing more about the antecedents of institutional work, or what actors do to become capable of performing institutional work is essential to understand the important shifts that lead to the inclusion and exclusion of actors in the context of creation of new institutions.

In particular, focusing on practices and on marginalized actors may bring more insights in how space and time affect the role of critical events in institutional work. In what concerns the role of space, previous work has mainly focused on the distribution and consumption of texts in different spaces of critical events, with no further analysis of how they are produced (Zilber 2011). This is due primarily to the emphasis on more formal performances, such as plenary speeches (Hardy and Maguire, 2010) and keynote presentations (Zilber 2011). In these settings, the role of the “backstage⁷” spaces has been neglected (Zilber, 2011; Hardy and Maguire, 2010). In particular, UN conferences generate many exclusive spaces, such as closed strategizing meetings of delegates and contact groups convened to propose alternative texts, especially when negotiations are blocked. These settings are of extreme relevance to the understanding of how the outcomes of a decision are reached, because these smaller meetings have been characterized as the really defining ones (Banerjee, 2012). Therefore, in trying to better understand the dynamics of inclusion and exclusion of actors in critical events, it would

⁷ Goffman (1959) compared the behavior of actors in the ‘frontstage’ and in the ‘backstage’ to uncover how social meaning is attributed to everyday action, emphasizing the importance of looking what is ‘behind’ when lights turn off. When applied in organization studies, the concept of backstage developed by Goffman (1959) contributed to the understanding of dramatic performances to build and sustain organizational reputation (Schreyägg & Häpfl, 2004) and to the study of corporate political activity (Cho, Laine, Roberts, & Rodrigue, 2016).

be critical to include analysis in such spaces. Importantly, we still know little about how the process of engaging in different spaces over time produces recursive effects in the cumulative experience and on the incremental advancement of specific actors' agendas, changing their practices and promoting learning along the way. In what follows, I show how revisiting this literature with a resourcing lens may be helpful in addressing these shortcomings.

2.3 Revisiting the phenomenon: from resources to resourcing

In the previous sub-chapters I outlined the key concepts of the literatures on transnational governance and field-configuring events in trying to reach a better understanding of how actors that are not central in transnational regulatory processes, enacted in intergovernmental meetings, get more included in regulation-making. Previous studies have accounted for diverse reasons for non-state actor (NSA) inclusion but underlying all explanations is the importance of resources to some extent. More often than not, previous accounts equate the capacity of being included in the process of regulation-making with the actors' ability of successfully mobilizing resources in aid of their interests (DiMaggio, 1988). Importantly, the diverse approaches in transnational governance differ on their view on resources. While some characterize them more as “things” that are exchangeable between actors (e.g. knowledge, expertise and monitoring capacity) others tend to perceive them more in terms of their normative and symbolic value for actors (e.g. legitimacy). In this sense, I argue that economic perspectives in transnational governance hold an objective view of resources in that it emphasizes

resource exchange as entities and sociological perspectives treat resources more subjectively, in that actors interpret resources. Political approaches hold a mixed view: at the same time that material resources (e.g. financial, technological) are essential for actors to have a leverage on others, more symbolic claims can also be valuable in negotiations. In table 3, I outline the alternative views on resources in previous accounts of the transnational governance literature.

Perspectives	Sociological	Economic	Political
<i>Views on resources</i>	<u>Subjective</u> : Discourse of NSA participation as a symbolic resource to improve legitimacy of regulation	<u>Objective</u> : NSA participation provides exchange of objective resources (e.g. information, expertise) to improve efficiency of regulation	<u>Subjective and Objective</u> : NSA participation based on bargaining asymmetric resources (e.g., knowledge, financial, legitimacy)

Table 3 Mapping the views on resources in transnational governance studies

These literatures, however, do not confront the question of how extremely vulnerable actors, who more likely than not to be under-resourced, engage themselves in this context to begin with. While previous work has pointed to the central role of resource mobilization in the capacity of actors to participate in transnational regulatory fields (Banerjee, 2012; Keck and Sikkink, 1998; Betsil and Corell, 2008; Hardy and Maguire, 2010), the literature is silent as to how actors engage in these transnational regulatory arenas in practice when they are in a disadvantaged position to mobilize such resources. In fact, being given access to transnational arenas in the form of UN conferences, formally or informally, does not translate in any sense in meaningful participation or inclusion (Banerjee, 2012; Schussler et al. 2014). In this sense, I argue that revisiting this

phenomenon with a practice lens (Giddens, 1984; Feldman, 2004; Howard-Grenville, 2008) would shed more light on how these actors work to get included in transnational regulation making. In particular, I investigate a segment of extremely vulnerable and under-resourced NSAs⁸, looking for the mechanisms they use to get more included in spite of their disadvantages.

In adopting a practice lens, I propose to shift from a view of resources to one of resourcing. To substantiate this shift, in what follows I provide a brief overview of structuration theory and its conceptualization of resources. I then present previous literature in resourcing, showing the novel insights that this approach brings to different phenomenon in organization studies and also pointing to potential gaps still unanswered in this literature. Finally, I apply the concept of resourcing to the phenomenon under investigation.

2.3.1 On structuration and resources

The turn of social sciences to practice has put into the spotlight “what actually people do” (Giddens, 1984; Schatzki et al. 2001; Whittington, 2006). The practice turn⁹ has “contributed to the questioning of the systematic and deterministic approaches that dominated American sociology until the end of the 1970s” (Denis et al., 2007: 196), by

⁸ In this work, this group is represented by the indigenous peoples.

⁹ The so-called “practice turn” incorporates a large body of authors with very diverse approaches to practice (Schatzki et al. 2001). In terms of theoretical foundations, practice-oriented researchers draw on a number of sociological theorists, including Giddens (1984), Bourdieu (1977), Foucault (1980), de Certeau (1984), Vygotski (1962), Sztompka (1991) and Schatzki (1996). The practice approach has been incorporated in organizational studies by some scholars in strategy research (Rouleau 2005; Whittington 2006; Golsorkhi et al. 2010), and also in organizational institutionalism (Barley 1986; Barley & Tolbert 1997), especially across studies on institutional entrepreneurship (Maguire et al. 2004; Maguire & Hardy 2009; Garud 2008; Dorado 2005) and institutional work (Gherardi & Perrotta 2011; Hardy & Maguire 2010; Zietsma & Lawrence 2010).

proposing alternatives to overcome classical dichotomist thinking, such as agency-structure, meaning-cause, relativism-objectivism, atomism-holism, autonomy-tradition, micro-macro (Pozzebon, 2004). Within this tradition, a theoretical lens that has made an impact in organization theory is Giddens' structuration theory (Seidl & Whittington, 2014).

For Giddens (1984:256), "structure is what gives form and shape to social life, but is not itself that form and shape": it exists as memory traces in our minds and is being continuously recreated by human actions, reactions, voices, and silent compliances. Agency depends upon the capability of the individual to make a difference (Giddens, 1984: 139). Giddens tries to conceptualize structures without reification and agents without voluntarism (Stones, 2006). Taken together, these two notions help us understand the concept of "duality of structure", where structure is embedded in practice, or in a series of practices, in which it is recursively implicated (Giddens, 1976, 1984). For him, practices cannot be detached from agents or structures as one enables and constrains the other.

The possibility of change is at the heart of structuration processes and it is achieved through two recursively linked dimensions: structures and interactions. Structures are comprised by rules and resources that facilitate and constrain action. Rules are "generalizable procedures applied in the enactment/reproduction of social practices" (Giddens, 1984: 21), and are based upon the actors' meanings and norms. Rules, whether formal or informal refer to the practical knowledge of actors on how to behave in empirical situations: "This is how we do it in this organization" and "This is how we should do it". The most significant rules are those that are "locked into the reproduction

of institutionalized practices, that is practices most deeply sedimented in time-space” (Giddens, 1984: 22). It is important to emphasize that these rules are known and felt by reflexive agents in specific empirical contexts of interaction, serving as general guidelines of how to live in the world. He refers to this tacit ability as practical consciousness (Giddens, 1984).

Resources for Giddens (1984) are material equipment and organizational capacities necessary for actors to get things done. They reflect domination and the distribution of power in the system, answering the question: “Who is in charge here?” He proposes two different natures of resources: allocative or authoritative. Authoritative resources are non-material sources of power resulting in the dominion of some actors over others, i.e., command over the coordination of the activity of human agents. Allocative resources are material sources of power, i.e., natural and physical materials and artifacts.

Resources and power are two interlinked concepts in structuration theory as resources are translated into power in the interactional level (Giddens, 1984). Power is defined as capacity of the agent to mobilize resources to constitute the means to achieve outcomes (Giddens, 1976:176). Only actors, not structures have the capacity to act and achieve outcomes. Power is a productive force and it has simultaneously enabling and constraining properties. Constraints to action may derive from different types of limitations (Giddens, 1984: 176): material (i.e. deriving from the character of the material world and from the physical qualities of the body); sanction: (i.e. deriving from punitive responses on the part of some agents towards others); and structural (i.e. deriving from the contextuality of action vis-à-vis situated actors).

Importantly, power in structuration theory is always relational, processual and the

outcome of interactions (Den Hond, et al. 2012). In this respect, power is inseparable from the context of action in which it is created, produced, reproduced, and transformed and for that reason it is not a possession (Tello-Rozas, Pozzebon, Maillot, 2015). Indeed, the remote possibility of agents actually being able to exert power will rest on the agents' perception and understanding of the external context and conditions of action (e.g. distributions and configurations of power, prevalent meanings and norms) (Stones, 2006).

The rules by which people act and the resources that actors draw upon to exercise power are not equal or evenly distributed, and thus enable what Giddens refer to as systems of domination (Giddens, 1984). However, “all forms of dependence offer some resources whereby those who are subordinate can influence the activities of their superiors” (Giddens, 1984:16). To the extent that people may command more resources, and play upon more rules, their capacity for action is greater (Whittington 2010). Nevertheless, one should not equate resources and outcomes (Keohane and Nye, 1989), since having access to resources is one thing and using them effectively is another (Arts, 2003). That is the gap the resourcing literature aims to fill, which I explore in more detail next.

2.3.2 Insights from the resourcing literature

Acknowledging the centrality of resources to organizing, a perspective anchored on a structurationist view (Giddens, 1984) referred to as *resourcing* has been gaining track in organizational studies for its potential to unveil the dynamism of resources and the way they take on meaning in relation to practices (Feldman, 2004; Feldman and Quick, 2009; Feldman & Worline, 2011; Howard-Grenville, 2007; Howard-Grenville, Golden-Biddle,

Irwin, and Mao, 2011; Sonenshein, 2014). While for the most part resources in organization theory are viewed as valuable because of some innate quality contained within them (Pfeffer and Salancik, 1978; Barney, 1991), resourcing theory defines resources differently.

Rather than focusing on resource as a stable entity, resourcing theory suggests that a resource is defined in relation to what it is connected to (people, ideas, materials) in practice (Feldman and Worline, 2016). This relational view helps scholars to see how resources may be useful to organizations when they are actually brought into use by actors who pursue activities in line with what they wish to make happen in the world (Feldman and Worline, 2016). This definition is in line with Giddens' (1984) view on resources in the sense that resources affect the capacities of actors of getting things done but their utility is always changing depending on 'the rules at play in situated interactions'.

The addition of "ing" in resource points to an important process element of the theory. Action is consequential to the way a potential resource will be brought into use. Here is an example of how some "thing" can be "resourced" differently: Rocks can be used to build bridges and resource connections or to build fortresses and resource defense (Feldman and Worline, 2011). Therefore, the way in which the potential resource is used determines what kind of a resource it becomes (Feldman and Worline, 2011).

Importantly, resources cannot be detached from rules¹⁰ (i.e. norms and understandings, in Giddens' sense) as they are mutually constituted. Resources are seen

¹⁰ In her initial formulation, Feldman (2004) adopted "schema" to reflect the "rule" element proposed by Giddens in structuration, sometimes using the concepts interchangeably. Other work has adopted "framework" in a similar way (Feldman and Quick, 2009). I return to the original concept of "rule" because

as “anything that can serve as a source of power in social interactions” (Sewell Jr, 1992, p. 9), however actions only bring a potential resource into use in relation with the rules operating in a situated interaction. That is how assets such as material artifacts, skills, information, time, and money become valuable enough to be turned into resources (Feldman & Quick, 2009; Feldman & Worline, 2011).

This theoretical development has been the source of inspiration for some interesting work. In the seminal article defining the resourcing lens, Feldman (2004) looked at the role of resourcing in changes in routines. She defined resourcing as the “creation in practice of assets such as people, time, money, knowledge or skill; and qualities of relationships such as trust, authority, or complementarity such that they enable actors to enact schemas.” (Feldman, 2004: 296). Through the study of the work routines in residence halls in a large state university for 4 years, Feldman (2004) was able to show that incremental change can occur as a result of endogenous organizational processes. The key element in explaining this phenomenon is the understanding of the context-dependent and dynamic nature of resources. As similar assets were “resourced” differently to reflect the actors’ preferences and understandings, incremental changes took place and over time gave room for the emergence of a new organizational structure. In figure 1, Feldman (2004:303) represents an empirical example of the resourcing cycle in her work.

its meaning is more encompassing, in the sense that it grasps both cognitive and normative dimensions of guidelines for action (Giddens, 1984).

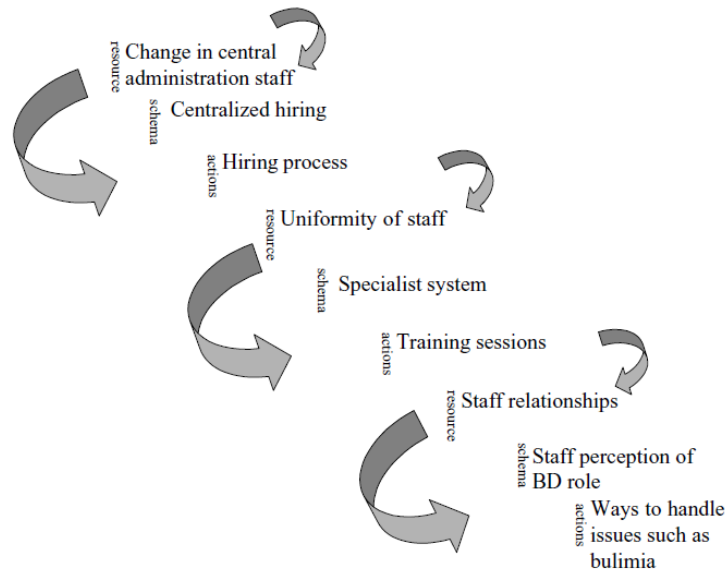


Figure 1 Empirical example of a resourcing cycle

Resourcing theory was also used to explain how issue sellers become more effective over time (Howard-Grenville, 2007). In her study of a high-tech manufacturer, she looked at the mechanisms through which members introduced environmental considerations into the design of new manufacturing processes. Two key empirical mechanisms contributed to this. First, sellers accumulated assets such as formal authority and normative knowledge that enabled them to launch moves; second, they learned from experiences of failure or resistance to adjust their moves. The author suggests that resourcing is an excellent tool to analyze power in contexts where actors cannot simply impose particular interpretations on others or adopt others' practices to advance their causes (Howard-Grenville, 2007). Since resourcing attends to the dynamic creation of resources during interaction, it brings new insights to the importance of normative factors and the accumulation of assets and learning from situated interactions that lead to the differential capacity for actor to achieve desired outcomes.

Finally, the resourcing lens was applied to analyze the practices involved in implementing participatory decision making in city budgeting (Feldman & Quick, 2009; Quick & Feldman, 2011, 2014). This case illustrates how city managers dealt with the difference between their intentions and the way their actions were interpreted and taken up by others in the community. Among many practices, city managers emphasized innovative and open-ended problem solving with residents. In an effort to broadening involvement of the population, they organized a survey that backfired. Instead of increasing the community's voice, the biased design of the survey created mistrust and frustration in the population. The survey is an example of how a resource that was employed to energize a specific schema (i.e. inclusive public management) ended up being resourced as a non-collaborative tool. This work shows the importance of looking at other actors involved in the process, not only the ones who are directly involved in promoting a particular way of resourcing.

2.3.3 Summarizing and moving forward

Summarizing the literature in resourcing, three key takeaways emerge. First is that resourcing embraces a relational ontology (Giddens, 1984). With this, resources are always defined in relation to something else (e.g. people, ideas, materials) (Feldman and Worline, 2016) and they are always changing depending on the rules at play in situated interactions (Giddens, 1984). In this sense, rules and resources are embedded in actors' practices (Giddens, 1984). Second is that assets become resources only when put into use (Feldman & Quick, 2009; Feldman & Worline, 2011). Resourcing is then an achievement

of actors according to constraining and enabling effects posed by different actors, situations and spaces (Howard-Grenville, 2007). Finally, because resourcing is an achievement situated in time and space, it should be seen as a process and for that reason the utility and value of a resource can change over time (Feldman, 2004).

Insights from the resourcing Lens		
Relational ontology - resources always defined in relation to something else (e.g. people, ideas, materials) (Feldman and Worline, 2016)	Focus on practices - Assets become resources only when put into use (Feldman & Quick, 2009)	Process view of resources - utility and value of a resource can change over time (Feldman, 2004)

Table 4 Resourcing lens

Importantly, some important antecedents and consequences of resourcing are still not explored in-depth. First, despite focusing on the role of resources to get things done (Giddens, 1984) and seeing resources as a “source of power in social interactions” (Sewell Jr, 1992, p. 9), the resourcing literature surprisingly does not directly address issues of power. Except for a few examples (Howard-Grenville, 2007), power differentials between actors are downplayed. While the ontological position that the resourcing literature builds on advances a relational view of power, even Giddens (1984) recognizes that actors who have more resources available, are indeed more likely to accomplish whatever it is that they want to accomplish. In that sense, the resourcing literature could benefit from getting a better understanding of what actors largely regarded as under-resourced or less powerful do to get more resourced.

Second, even if recognizing that resourcing is achieved in situated interactions (Feldman, 2004), there is no clear understanding of the effects of different spaces in different types of resourcing. The focus of previous literature on resourcing has been on

the interactions established with people and material assets, neglecting the spaces where these interactions take place. Looking in more depth at rules, understandings and positions governing different spaces could help in illuminating how they recursively interact with the practices of actors (Hardy and Maguire, 2010). Specifically, FCEs seem to be convenient venues to study this aspect of resourcing because they "are contexts where all resources relevant to the field's strategies are valued in relationship to each other, and they are contexts where actors use resources entrepreneurially to create and obtain other resources that further these strategies" (Lampel, 2011: 334).

Finally, this literature is not specific about what practices are involved in resourcing specific types of resources. In fact, previous work in the resourcing literature has showed how different actions resource different things (Feldman and Quick, 2009; Feldman and Worline, 2011), but it has not gone into the detail of establishing clear differences of how resourcing for some particular resource may differ from other. More specifically, knowing better how the practices of actors are modified as they resource to or through a certain resource may be helpful in getting a more finely grained view of resourcing. Table 5 provides a summary of the theoretical gaps identified.

Literature	Theoretical Gaps
1. Transnational Governance	<ul style="list-style-type: none"> ✓ Little understanding of the practices leading to further inclusion of extremely vulnerable actors in instances dominated by states; ✓ No clear distinction between participation and inclusion in practice; ✓ Neglect equitable relations between global and local political arenas in transnational governance.
2. Institutional Work	<ul style="list-style-type: none"> ✓ Focus mainly on discursive practices; ✓ Incomplete picture of antecedents to institutional work; ✓ Role of space and cumulative experience in changing the practices of actors in a series of critical events not well understood.
3. Resourcing	<ul style="list-style-type: none"> ✓ Neglect for power differentials in resourcing; ✓ Overlook the role of different spaces in resourcing; ✓ Dismiss differences in resourcing for different types of resources .

Table 5 Summary of the theoretical gaps identified

In what follows, I apply the resourcing lens to the phenomenon under study in the hope of addressing these gaps.

2.3.4 Insights of the resourcing lens

The dynamics of inclusion and exclusion are a central aspect of the constitution of transnational governance fields. Previous studies have argued that actors with greater access to resources will have the best chance of success in influencing the field (Djelic and Sahlin-Andersson, 2006; Betsill and Corell, 2008; Banerjee, 2012). Some traditions in transnational governance have adopted a more objectivist view, focusing on the exchange of tangible resources and recognizing the importance of incentives and rules in defining who gets in and out (i.e. economic approach to transnational governance – see Tallberg, 2010). Others have emphasized the subjective role of resources (i.e. sociological approach – see Djelic and Shalin-Andersson, 2006) highlighting norms, social relations and intersubjective understandings.

The resourcing lens brings the possibility of going beyond this dichotomy because it refocuses three important aspects of the phenomenon under study. First, the resourcing lens adopts a relational view of power that is useful in analyzing actors who are in a disadvantaged position in relation to others in a field (Howard-Grenville, 2007). In this view it is not the “possession” of resources that get things done, but the way actors utilize them in situated interactions that affect their capacity of “making a difference” (Giddens, 1984) in a given context. Giddens (1984) suggests that resources are dependent on the rules and understandings they interact with, proposing a view of power very fluid and

dynamic. Specifically, this renewed conception would be helpful in justifying the study of under-resourced actors, a gap identified in the transnational governance literature. Despite not being pivotal in the negotiations of transnational regulations, these actors can and do try to get more participation and inclusion in the process, which is in itself an essential phenomenon that leads us to better understand issues of private authority rise in transnational governance. The emphasis on the relational aspect of power may also be helpful in the exploration of the antecedents of institutional work because it does not assume that actors possess any particular ability to achieve an outcome (Perkman and Spicer, 2008). Rather, resourcing highlights how these capacities are provisional and created in situated interactions (Feldman, 2004).

Second, with resourcing, instead of listing which resources are necessary in the venture of getting more included in transnational governance (Betsill and Corell, 2008), the focus can be on the practices and processes leading to resources. This would indeed advance knowledge in transnational governance processes by recognizing the importance of working towards developing resources that enable more participation and inclusion according to the context they are built. Moreover, the literature on institutional work has overlooked the lived experiences of actors performing institutional work (Lawrence et al. 2013), focusing more actors' formal performances and discourses (Zilber, 2011). Resourcing gives a chance to look at the different practices as they evolve in situated interactions, recognizing that specific configurations of actors and spaces may lead to different results in terms of the creation or not of resources.

Finally, resourcing sees resources as achievements in a processual view (Feldman, 2004). The practices involved in resourcing unfold and interrelate over time, creating the

possibility of recursive loops. On the one hand, resourcing at a point in time seeds the potential for the creation of other potential resources in the future (Feldman and Worline, 2016). On the other hand, a particular resource may have its value decreased or meaning changed as interactions progress and disruption or resistance from other groups takes place (Feldman 2004). Since transnational regulation building is usually a very lengthy process (Schussler et al. 2014), taking into account the aspect of time is essential to understand the phenomenon at hand. In particular, in the institutional work literature, there is still not a complete understanding of the implications of cumulative experience in changing the practices of actors as the institutional creation process also evolves. In table 6 I summarize how the resourcing lens brings the potential to address some of the gaps of the literatures in transnational governance and institutional work.

Insights from the Resourcing lens	Application to the phenomenon
Relational view of power	<ul style="list-style-type: none"> ✓ Justifies the focus on under-resourced actors (Banerjee, 2012) ✓ Gives room for the examination of antecedents of institutional work (Lawrence et al. 2013)
Focus on practices	<ul style="list-style-type: none"> ✓ Focus on practice leading to resources for NSA participation and inclusion, instead of a list of resources needed (Betsill and Corell, 2008) ✓ Sheds light on lived experience (Lawrence, et al. 2013) and the role of situated interactions in different spaces , including the backstage (Zilber, 2011)
Process-view of resources	<ul style="list-style-type: none"> ✓ Improves understanding of how cumulative experience may affect the practices of actors in a series of events (Schussler et al., 2014)

Table 6 Applying a resourcing lens to the phenomenon

In concluding this theoretical discussion, I show that the resourcing lens inspires my work in highlighting the micro-practices through which actors create and make use of resources to affect their position in institution making in a transnational field. In particular, in the domain of intergovernmental negotiations, states and international organizations are at the center of decision-making. With the practice approach, I intend to go beyond the recognition that NSAs are in a disadvantaged position in relation to states to focus on the practices involved in working to modify their situation. To do so, this research looks at how marginalized actors, in trying to be more included in transnational governance, create and make use of resources (Feldman, 2004) that affect their capacity to perform institutional work (Lawrence and Suddaby, 2006; Hardy and Maguire, 2010).

Figure 2 illustrates the key concepts used in this research for analyzing the dynamics of inclusion and exclusion in transnational governance as they are used in this work. The creation of transnational institutions is enacted in a series of critical meetings (i.e. FCEs) which establish the different positions (i.e. structure of actors in the field who can be generally viewed as possessing more or less power); understandings (i.e. interpretive frames that shape the view of what is appropriate in a field); and rules (i.e. regulations to which actors must comply to as to not suffer penalties) governing a field (Hardy and Maguire, 2010; Schussler et al. 2014). The capacity of agents to be more included in the co-production of policies in these settings (Feldman and Quick, 2011) lies on their ability to create and use resources (i.e. anything that can serve as a source of power in social interactions) (Sewell Jr, 1992; Giddens, 1976). In a recursive process (Giddens, 1984), effortful and knowledgeable actors build on potential resources to change the positions, rules and understandings of the field, which in turn affect their

inclusion in different meetings. Through time, resourcing (i.e. creation in practice of resources in situated interactions) opens/closes opportunities for actors to create new resources and increasing/decreasing chances of inclusion, in unpredictable cycles.

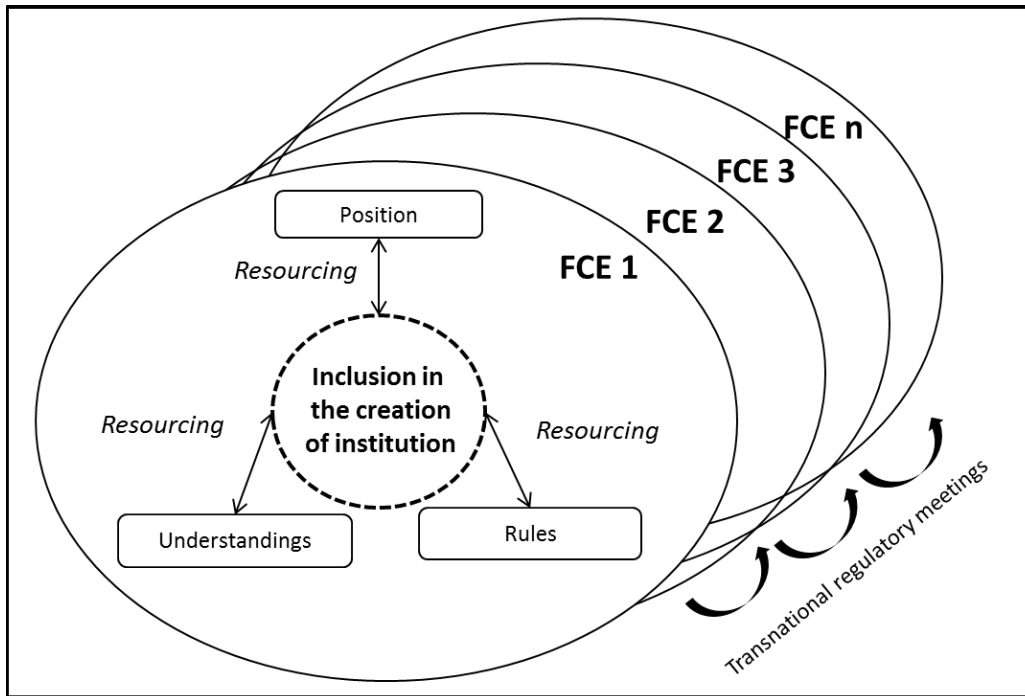


Figure 2 Theoretical Framework

CHAPTER 3. Research Design

This section presents the research design for this dissertation. I first restate the research question. Second, I present the research strategy. Third I provide an overview of the research setting and also a briefing of the participation of indigenous peoples in the CBD. Fourth, I present the procedures for data collection. I finish with the techniques applied in data analysis.

3.1 Research Question

The most general question addressed by my research is the following:

**How do marginalized actors work for their inclusion
in the process of creating a new global institution?**

3.2 Research Setting

This sub-chapter provides readers with technical and background information aiming at facilitating later reading of the findings. I first provide a broader context for the creation and the current status of the Nagoya Protocol. I then describe in more detail the general processes involved in the intergovernmental negotiations for the creation of a protocol.

3.2.1 Building the Nagoya Protocol on access and benefit-sharing

The twists and turns that resulted in the creation of the Nagoya Protocol date far

back to the creation of the Convention on Biological Diversity (CBD). The year of 1992 was a milestone for global environmental governance initiatives. In the Rio "Earth Summit" three framework conventions were opened for signature: Climate Change, Desertification and Biodiversity. The CBD entered into force on 29 December 1993 with 3 main objectives:

1. The conservation of biological diversity
2. The sustainable use of the components of biological diversity
3. The fair and equitable sharing of the benefits arising out of the utilization of genetic resources

Recognizing the alarming rates of biodiversity loss all over the world, the United Nations Environmental Program (UNEP) convened a group of experts on biological diversity in November 1988 to explore means of elaborating an international framework to oversee activities affecting biodiversity conservation. The meetings and negotiations within the Intergovernmental Negotiating Committee for a Convention on Biological Diversity (INCCBD) were marked by conflicts between “conservationist” (led by the United States and like-minded countries and NGOs) and “developmental” groups (led by the “Group-77”¹¹). Following up on a historical controversy over the fairness of imposing limits to “progress” on sovereign States, the Southern coalition wanted to insure that conservation initiatives would be paired-up with social or economic benefits.

¹¹ The Group of 77 (G-77) was created in 1964, at the end of the first session of the United Nations Conference on Trade and Development (UNCTAD). This initiative, which now holds 130 members, materializes the concerns of countries with a developmental orientation. This bloc highlights the challenge of rising out of poverty and providing means for its citizens to access a better quality of life while promoting environmental conservation.

The inclusion of the third objective, referring to fair and equitable sharing, was intended to serve as an incentive to Southern countries to join the convention. The convention achieved near universal membership (there are currently 193 signatory countries), but the United States, one of the key players in the beginning of the negotiations, never signed it.

The Nagoya Protocol is an effort to achieve the third goal of the CBD. Accordingly, this protocol discusses matters of North-South equity. In this setting, developing countries play the role of “providers” as they own mega diverse biomes wherein there is unexplored potential in terms of genetic resources to be explored by “users” (usually developed countries). The main challenge addressed in this protocol is how to create mechanisms in which “providers” and “users” are able to share benefits derived from the process of exploring and exploiting biodiversity.

Another distinctive feature of this protocol is that it has direct and serious implications in indigenous peoples’ and local communities’ quality of life across the world, as it also touches on the issue of traditional knowledge possessed by these relevant stakeholders. It is reported that in some Asian and African countries, 80% of the population depend on traditional medicine for primary health care¹² (CBD, 2016). It is also known that thousands of plants are used for medicinal purposes and only a few of these are known to scientists and utilized for commercial purposes (Aguilar, 2001). For instance, new antimalarial drugs were developed from the discovery and isolation of artemisinin from *Artemisia annua* L., a plant used in China for almost 2000 years (Hsu, 2006). However, most new products developed using traditional knowledge did not

¹² CBD, 2016. Factsheet: Traditional knowledge innovation and practices. Available at: <https://www.cbd.int/iyb/doc/prints/factsheets/iyb-cbd-factsheet-tk-en.pdf> Accessed: on 30/03/2016

involve prior informed consent of the knowledge holders or share benefit fairly and equitably with them (CBD, 2016)

The discussions over the issue of equitable sharing in the biodiversity discussions started prior to the adoption of the CBD. During the 1990s, concerns of misappropriation of genetic resources and traditional knowledge continued to be raised by international NGOs such as the Canadian-based Rural Advancement Foundation International (RAFI)¹³, the Europe-based Genetic Resources Action International (GRAIN) and the Third World Network, operating mainly in Asia. Social justice activists such as Pat Mooney, Alejandro Argumedo and Vandana Shiva contributed extensively to the dissemination of the concept of “biopiracy” through the denunciation of multiple cases, such as the Hoodia Gordonii plant and the Neem tree.

In 1998, at the 4th Conference of Parties (COP4)¹⁴, a panel of experts was established to assess the status of implementation of the third objective of the Convention. With the realization that countries were slow in creating the means to implement it, in 2000, at COP5, a working group was created to develop voluntary guidelines for assisting countries and stakeholders. In 2002, at COP6, these guidelines came to be called the “Bonn Guidelines”. The Bonn Guidelines contain similar contents to the Nagoya Protocol. However, since it was voluntary, it did not contain specifications on how to ensure compliance.

¹³ Currently ETC Group.

¹⁴ The Conference of Parties (COP) is the governing body of the Convention. It meets every two years, or as needed, to review progress in the implementation of the Convention, to adopt programs of work and to provide policy guidance. The decisions adopted by the COP are legally binding. The COP activities are supported by a permanent Secretariat located in Montreal, which is staffed by civil servants.

That same year (during Rio+10), the Southern coalition pushed a mandate for the creation of a legally binding international regime to replace the Bonn Guidelines. Negotiations for what came to be the Nagoya Protocol began in 2004 and 92 countries adopted the protocol 6 years later, in Nagoya in 2010, at COP10. The Nagoya Protocol entered into force after receiving the 50th instrument of ratification (i.e. when countries develop national legislations for the implementation of the protocol) on 12 October 2014, when the first meeting of the Parties (COP-MOP1) took place. Once countries ratify the instrument, they must develop national legislations for the effective implementation of the protocol. Currently most of the ratifications come from developing countries (usually “provider” countries). Only those countries that ratified the instrument were allowed in the decision making process, even though other countries actively participated under the promise they will soon ratify the instrument as well.

3.2.2 Negotiating at the United Nations

The United Nations is an international forum where global issues are debated. In this context, governments convene meetings¹⁵ to take collective decisions that shape new international, regional and national policies and actions. These meetings provide a structured place for individuals and groups interested in a specific subject matter. In addition to governments, a wide variety of stakeholders attend these meetings in trying to contribute to UN decision-making processes. Importantly, only governments can

¹⁵ The description of the different types of meetings - expert, preparatory and negotiation - are based on my observations and on the “Intergovernmental negotiations and decision making at the United Nations: the NGLS Guide for NGOs” (NGLS, 2007).

negotiate, vote and affirm or reject official UN agreements. However, stakeholders do many efforts to participate, including offering position papers on issues under discussion.

At the start of any decision-making process, governments must agree that an issue is of relevance. In particular, in the case of legally binding protocols, such as the Nagoya Protocol, this consensus is important because whatever is the outcome of the decision-making process, countries must adjust their own domestic laws to be compatible with the global agreement. Decisions are composed by relatively short texts and documents that include preambular paragraphs that offer the background for the decision followed by a list of operative paragraphs, which constitute agreements on future actions.

A decision starts as a draft text that is usually prepared by the Secretariat, generally based on advance inputs from governments and sometimes from stakeholders. The Secretariat collects views of Parties and relevant stakeholders on specific issues through electronic submissions and compiles them in information documents that become the source for the draft text of a decision. Another source of input for the draft texts are reports serving as the outcomes of expert meetings on specific points considered more critical or controversial. The expert meetings are convened as mandated by the Conference of Parties. Experts indicated by the countries and invited by the Secretariat compose the expert group. The group of around ten to twenty experts has to be regionally and gender balanced. Stakeholders invited by the Secretariat are observers, but the discussions supposedly more deliberative in nature. No other observers are allowed in the room and the content of the discussions are not publicized, only the outcomes. The meeting has a one-week duration and is conducted only in English, with no interpretation or translation of documents. This is how the mandate of an expert meeting is described:

“It was stressed by the Co-Chairs that although this was not a negotiating meeting, the experts should strive towards reaching a common understanding of the issues addressed in the annex to the note, to the extent possible, as that would enhance the value of their expert advice. It was also recognized that alternative options could be reflected in the refined annex provided that they benefited from shared support from a number of experts. Issues which were the subject of in-depth discussions by experts would be reflected in footnotes and the meeting report as appropriate in order to explain the nature of the debate and capture the diversity of views expressed on these issues. In light of the above and taking into account the discussions by the experts, the text included in the refined annex was intended to provide a full range of options for consideration by the Intergovernmental Committee. The use of brackets in the text was intended to denote options and did not imply that the rest of the text was agreed. In addition, footnotes were inserted throughout the text to help the Intergovernmental Committee in understanding the background to the discussions and the variety of views put forward on particular issues. Finally, when it was not possible to reflect all the information in the footnotes, additional information was provided in the text of the report of the meeting.” (Final report Expert Meeting on Compliance Document UNEP/CBD/ICNP/2/12, March 2012, paragraphs 26 and 27, page 4)

The draft text then becomes the focus of discussion and reaction among governments in preparatory meetings. The preparatory meetings are also convened as mandated by the Conference of Parties. In the case of the Nagoya Protocol, the Committee responsible for the meeting is the Intergovernmental Committee of the Nagoya Protocol (ICNP) and is composed by the countries that adopted the instrument and credentialed observers (non-parties, other international organizations, business coalitions, NGOs and indigenous peoples and local community organizations). In these meetings, observers have the right to speak after countries, but not to vote. This is the first cycle of negotiation, during which this committee drafts recommendations to be forwarded to COP. The meeting has a one week duration and is interpreted and translated into all of the UN official languages. In addition to the plenary sessions, these meetings also comprise a number of side events organized by the participants of the meeting.

The negotiation meetings use the recommendations created by the ICNP as the baseline documents for a final round of negotiations where the decisions will become legally binding. The negotiation meetings take place every two years to make the major

legally binding decisions. For the Nagoya Protocol, the Conference of the Parties serving as the Meeting of the Parties (COP-MOP) is the governing body. The COP-MOP is composed by the countries that ratified the instrument and credentialed observers. The negotiation meeting has two weeks in duration and is translated into all of the official UN languages. In contrast to the preparatory meetings, the second week is usually limited to high-level participants, like ministers and presidents. In addition to the plenary sessions, these meetings also comprise a number of side events organized by the participants of the meeting. They usually attract media attention because the decisions taken in these meetings become legally binding.

Table 7: Distinctive features of meetings

Meetings	Characteristics	Outcomes
----------	-----------------	----------

Expert	<ul style="list-style-type: none"> - Experts indicated by the countries and invited by the Secretariat (closed to observers). - 20 experts - regionally and gender balanced. - Relevant stakeholders have the same status. - Deliberation mode. - 1 week duration. - Conducted in English (no translation). 	Recommendations forwarded to preparatory meeting.
Preparatory (ICNP)	<ul style="list-style-type: none"> - Committee composed by the countries that adopted the instrument and credentialed observers. - Observers have the right to speak after countries, but not to vote. - Negotiation mode. - 1 week duration. - Translated into the UN official languages. - Side events. 	Recommendations forwarded to negotiation meeting.
Negotiation (COP-MOP)	<ul style="list-style-type: none"> - Conference composed of the countries that ratified the instrument plus credentialed observers. - Observers have the right to speak after countries, but not to vote. - Negotiation mode. - Two weeks duration (second week high-level). - Translated into the UN official languages. - Side events. - Publicized in the media. 	Legally binding decisions adopted by States.

Source: Elaborated by the author, based on NGLS (2007).

In both preparatory and negotiation meetings, the draft texts, after a first round of discussion become CRPs (Conference Room Papers- draft texts submitted by the Chair of the meetings). Sometimes, paragraphs become “bracketed” – when there is no complete consensus and Parties want more time to negotiate means to compromise. When Parties agree on the contents of the CRPs, the documents turn into L documents (Limited distribution documents that reflect the decisions agreed in the meeting). In the case of

preparatory meetings, L documents contain the recommendations for the governing body. In the case of negotiation meetings, they become the decision agreed by Parties.

Preparatory and negotiation meetings turn around plenary sessions that are coordinated by a chairperson (a government delegate previously nominated), who controls the pace of the discussion, organizes the order of speakers and proposes solutions for impasses. There is always a pre-established agenda for the day and for the week. Usually, the chairperson also explains the rules of procedures for participation in plenary. It is accorded that observers have the right to speak only after all Parties of the Convention have spoken. Other organizations linked to the UN have a preference in the order of the list of speakers, followed by other observers. Observers only have their statements taken into account in the modifications of a text if supported by at least one Party and if not objected by any other Party. Other Parties have the right to veto the support and this procedure is very common. The meeting works based on consensus among government delegates, even if it requires compromise from one or more sides.

When controversies among Parties arise during a meeting, there is the possibility of creating smaller spaces of negotiation outside the plenary session time. These smaller meetings, which happen in the backstage of plenary sessions, are usually convened when Parties do not reach a consensus and parts of a text become “bracketed”. Contact groups (CG) meet outside the main negotiation rooms bring together governments with an interest in a particular issue that has caused disagreement, seeking to reach consensus. “Friends of the Chair” (FOC) put together only the handful of governments with opposing positions on a particularly contentious subject seeking to bring widely conflicting positions closer together. Observers may be invited to join CGs or FOCs,

depending on the subject matter, at the request of governments. Figure 3 provides a graphic representation of the lifecycle of a decision and the different spaces for negotiation.

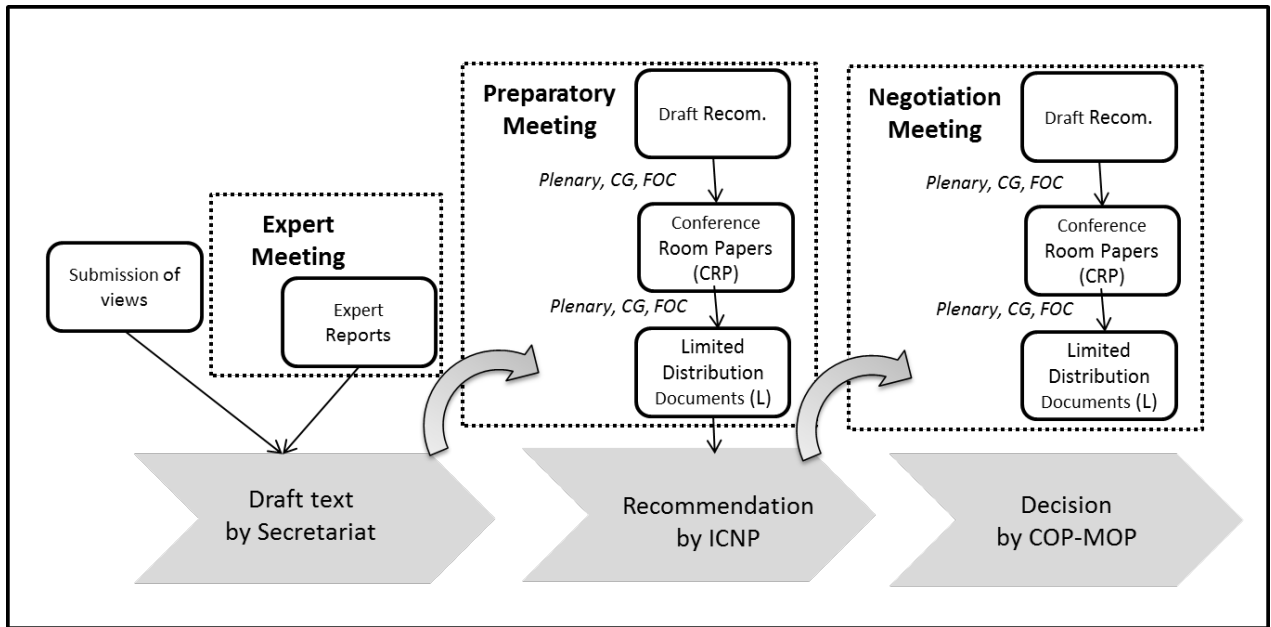


Figure 3 Lifecycle of a decision

3.3 Research Strategy

This study aims at unveiling the practices and mechanisms that better explain the enhancement of inclusion in a particular context. An inductive and longitudinal methodological approach is coherent with such an objective (Patton, 2001). This research is also qualitative (Patton, 2001), because it aims at generating a richly nuanced contextualized account (Mintzberg, 1979), which permits the transferability of findings to other settings and contexts (Guba & Lincoln, 1985). In this research project, I strive to

“establish intimate familiarity with the setting(s) and the events occurring within it, as well as with the research participants” (Charmaz, 2006). Following the principles of naturalistic inquiry (Guba & Lincoln, 1985) I put myself close to the action, which allows me to engage with the actors “in doing whatever it is that they do every day, with whatever is required to do it” (Miettinen, Samra-Fredericks & Yanow, 2009).

3.3.1 Case Study Selection

The research design adopted for this dissertation is an embedded single case design (Yin, 2008) based on the Nagoya Protocol. The rationale for the use of a single case in this research is that it is representative of many intergovernmental negotiations in the context of the UN and other international agencies and hence has wider significance (Yin, 2008). For instance, as it is the common practice within intergovernmental negotiations, in the context of the Nagoya Protocol negotiation, only states can negotiate, vote and confirm or reject official decisions. Therefore, states are the central actors in these settings that represent centres of deliberation for institution building. Moreover, aside from states, a wide variety of non-state actors (NSAs), including NGOs, business coalitions and indigenous peoples organizations attend and in some cases contribute to the decision-making processes but do not take part in the definition of the agenda or the rules of procedure. While the institution in the making, the Nagoya Protocol, is emergent, the field where this process takes place is highly institutionalized (Hardy & Maguire, 2010).

3.3.2 Sampling Meetings

As mentioned before, this research gives attention to the subunits of the single case, as distinct from holistic single-case study designs (Yin, 2008). Previous research in these settings has identified the importance of meetings in enacting intergovernmental negotiations (Banerjee, 2012; Hardy & Maguire, 2010; Schussler et al., 2014). These meetings convene many actors interested in a particular issue, including a range of government officials and NSAs (Banerjee, 2012; Hardy & Maguire, 2010; Schussler et al., 2014). To that extent, intergovernmental negotiations have been characterized as processes embedded in a longer-term event series with changing dynamics over time (Schussler et al. 2014). For that reason, the units of analysis (UA) of this case are the different meetings taking place and issues evolving in the context of the Nagoya Protocol over time, which makes this case study also longitudinal (Yin, 2008).

Referring to the sampling strategy, this research examines all the meetings of the Nagoya Protocol taking place since its adoption in 2010. Currently, the Nagoya Protocol is in its implementation phase, meaning that the framework for the global regulation has been agreed upon by states but its entry into force is dependent on the creation of national legislation (Greiber & Moreno, 2012). This phase of implementation is crucial for the development of the regulation. Uncertainties remain in relation to the most controversial issues (e.g. means to achieve compliance, types of sanctions, temporal and geographic scope). To achieve compromise among divergent parties, the Nagoya Protocol has left these options for open discussion once it enters into force (Greiber & Moreno, 2012). Therefore, the discussions in this phase directly affect the ways in which the regulation

will be translated by the actors. Countries willing to ratify the instrument must produce national legislation coherent with the framework previously adopted, but they also reference their positions on the current debates (Greiber & Moreno, 2012).

After the adoption of the Nagoya Protocol, between the period of June 2011 and October 2014, a total of nine meetings took place. As explained before, each meeting (expert, preparatory and negotiation) has distinctive features. In figure 4, I present a graphical depiction of the meetings encompassed in the analysis, by year and by type. The arrows indicate how the outcomes of one meeting directly feed the discussions in subsequent meetings. The highlighted boxes indicate the meetings where I was able to perform participant observation.

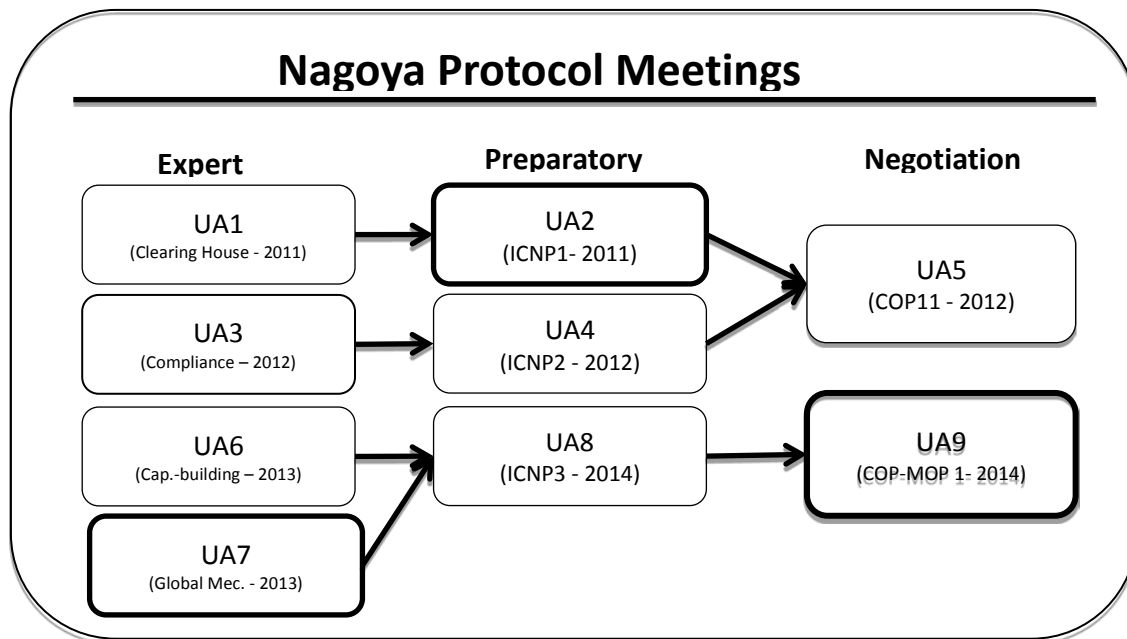


Figure 4: Meetings selected for the embedded single-case design

3.3.3 Sampling Actors

The choice of the focal actors also merits some consideration. Extant literature on NSAs' inclusion in this setting has pointed to the fact that this process is resource-intensive, as it requires time, people and material resources to sustain the groups' participation in intergovernmental negotiations (Stone, 2008). In the particular case of indigenous peoples, previous literature has pointed to their distinct status when compared to other NSAs. Historically they have had difficulties in mobilizing material resources (Niezen, 2003). This situation is reflected in the "State of the World's Indigenous Peoples" report (2009), as indigenous peoples continue to represent a portion of the world's populations most likely to suffer from discrimination, marginalization, extreme poverty and conflict. They are also distinguished from other NSAs in having higher stakes in the decisions made and implemented because these directly affect their very existence and ways of life (Wallbott, 2014). Despite their distinctiveness, they are not politically autonomous, but live under a political system that fails to recognize their right to sovereignty, language, culture and religion (Iyall Smith, 2007). They are also often excluded from state-led formal decision-making processes at the national level and are disfavored with regards to the distribution of material resources at the international level (Wallbott, 2014).

Interestingly, previous research has indicated that indigenous peoples are amongst the NSA groups who historically have been able to claim their role in these settings, despite difficulties in obtaining basic resources to do so (Dahl, 2012; Niezen, 2003). The United Nations has been an important space for these claims. In 1982, the Working Group on Indigenous Populations of the Sub-Commission was created as the first United Nations task force on indigenous peoples' issues. In 1983, in an

unprecedented breakthrough, the Working Group decided to allow the participation of representatives of indigenous peoples and their organizations (United Nations, 2009). One of the first big milestones was the adoption of the International Labor Organization (ILO)¹⁶, Convention No. 169 in 1989¹⁷, the Indigenous and Tribal Peoples Convention. Indigenous peoples have been able to gradually participate in human rights' international negotiations and have also pushed for the creation of the Permanent Forum on Indigenous Issues (Dahl, 2012). Within this framework the United Nations Declaration on the Rights of Indigenous Peoples¹⁸ was created and signed in 2007, in which their right to self-determination was reaffirmed.

In the context of environmental transnational discussions, indigenous peoples have appealed to their distinctive relation to nature based on their ancestral knowledge of natural processes and their vulnerability to environmental changes (Lindroth & Sinevaara-Niskanen, 2013) to claim their inclusion in the discussions (Dahl, 2012; Wallbott, 2014). In addition, indigenous peoples have been said to intervene in a distinctive way than other NSAs in intergovernmental negotiations (Dahl, 2012), expressed in the use of traditional clothing and strong language, which creates an identity of difference and resistance, intended to exclude the oppressors (Dahl, 2012). In general terms, this literature explores the history of indigenous participation (Niezen, 2003; Durban-Ortiz, 2006), issues of identity (Dahl, 2012) and the discursive strategies used to achieve desired institutional outcomes (Lindroth & Sinevaara-Niskanen, 2013). These

¹⁶ ILO is an agency of the United Nations dedicated to improving working conditions of the citizens of its member states.

¹⁷ Available at: <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

¹⁸ Self-determination refers to the right to freely determine political status and freely pursue economic, social and cultural development. Available at: http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

insights inform the current research in terms of providing an encompassing background of the participation and inclusion of these actors within the UN.

I believe that examining the practices of these actors in the context of the Nagoya Protocol to enhance their inclusion in the decision-making process is representative of a wider trend in intergovernmental negotiations. It is also instrumental because these actors represent a group of NSAs that is particularly vulnerable taken in these negotiations, as opposed to other actors such as international NGOs and business coalitions (Iyall Smith, 2007).

Indigenous peoples in the CBD are represented under an advocacy alliance, the International Indigenous Forum on Biodiversity (IIFB), a coalition created to promote the rights of indigenous peoples in the CBD negotiations. The IIFB is “a collection of representatives from indigenous governments, indigenous non-governmental organizations and indigenous scholars and activists that organize around the Convention on Biological Diversity (CBD) and other important international environmental meetings to help coordinate indigenous strategies at these meetings, [who] provide advice to the government parties, and influence the interpretations of government obligations to recognize and respect indigenous rights to the knowledge and resources” (IIFB, 2014). The CBD is considered an important international environmental convention for these actors, because it contains numerous passages that recognize traditional knowledge and indigenous rights. Among the main demands of the group in the context of the CBD are

the right to be considered as “Peoples”, and more importantly, the right to be involved in the decision-making and implementation processes of the Convention (Borraz, 2000¹⁹).

Previous empirical studies have shown that it has been possible for this network to be included in the process incrementally and sometimes even to have influenced the outcomes of negotiation (Bavikatte & Robinson, 2011; Orsini, 2013), but much less is known on the mechanisms that allowed it to do so. These mechanisms are exactly what this research is aimed at unveiling.

3.3.4 Sampling Issues

It is important to note that the issues discussed under each meeting are carried over and evolve. For that reason, another important aspect that was taken into account was the actual issues under discussion. In order to keep the data analysis more focused, I concentrated on the most salient issues of the implementation phase of the Nagoya Protocol. The issues were selected based on how much the actual actors living in the phenomenon directed their attention and efforts to debate and try to shape those issues. This was reflected in the mobilization of actors with divergent views in two different moments: in-between meetings and during meetings. Concerning the former, high issue salience was identified by the need of convening dedicated expert meeting and other forms of intersessional consultation, such as the submission of views, online discussions, surveys and the request for establishing an Informal Advisory Committee and for the

¹⁹ Borraz, Patricia (2000). Indigenous participation on Biological Diversity Process. Available at: http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc_122182.pdf Accessed on: 02/02/2016

commissioning of specific studies. Concerning the dynamics during meetings, the establishment of contact groups or Friends of the Chairs sub-groups for negotiations, the number of “brackets”²⁰ within a text, as well as the attention dedicated in Plenary session or in media coverage to a specific agenda item also served as indicators of the salience of the issue.

Following these criteria and under informal consultation with the Secretariat staff, a total of 4 issues were selected (table 8): compliance, capacity-building, the clearing-house and the global multilateral approach. Further explanation on the meaning and stakes under each of those issues will be given in chapter 4.

Table 8: Issues selected

²⁰ “Brackets” in negotiation texts point to different options to resolve a controversial point. A decision can only be taken under the UN System when consensus is reached or, in unlikely cases, through majority vote (which seems to be avoided at all costs, at least in this specific arena).

Issue/Indicators	In-between meetings	During meetings
Compliance	<ul style="list-style-type: none"> - Request for submission of views - Request for convening Expert Meeting 	<ul style="list-style-type: none"> - Contact Group (ICNP2, ICNP 3 and COP-MOP1) - Highly bracketed text - More than half of plenary time dedicated to Compliance at ICNP 1. - Extensive media coverage (ENB Report)
Capacity-Building	<ul style="list-style-type: none"> - Request for submission of views - Request for convening Expert Meeting - Survey needs and priorities - Request for establishing an Informal Advisory Committee 	<ul style="list-style-type: none"> - Eventual brackets - Low media coverage (ENB Report) - Little time dedicated in plenary
Clearing-House	<ul style="list-style-type: none"> - Request for submission of views - Request for convening Expert Meeting - Request for establishing an Informal Advisory Committee 	<ul style="list-style-type: none"> - Moderate media coverage (ENB Report) - Average time dedicated in plenary
Global Multilateral Approach	<ul style="list-style-type: none"> - Request for submission of views - Request for convening Expert Meeting - Online discussions - Commission study 	<ul style="list-style-type: none"> - Contact Group (ICNP2 and COP-MOP1) - Eventual brackets - Long time dedicated in plenary - Extensive media coverage (ENB Report)

Source: Elaborated by the author

3.4 Data collection

3.4.1 Participant Observation

From June 2011 to October 2014, I had the opportunity to observe 10 meetings convened by the CBD, totaling 420 hours of participant observation of meetings. Not all the meetings were directly related to the Nagoya Protocol, but the participant observation in these meetings allowed me to better understand the processes through which transnational regulations are developed and to start to engage with the actors living in the phenomenon. This process of familiarization also allowed for the problematization to emerge from the phenomenon. Table 9 provides a summary of the meetings observed, highlighting the 3 meetings directly related to the Nagoya Protocol.

Table 9: Participant Observation in Meetings

Meeting	Type	Role	Date	Hours	Topic
ICNP1*	Preparatory	Participant Observer – “translator” IIFB	June 2011 (6 days)	50h	Nagoya Protocol implementation challenges.
WG8j 7	Preparatory	Participant Observer – “translator” IIFB	October 2011 (6 days)	50h	Mechanisms for protection of traditional knowledge.
SBBSTA 16	Preparatory	Observer	April 2012 (5 days)	30h	Technological advancements on biodiversity / Monitoring emergence of new issues.
WGRI 4	Preparatory	Observer	May 2012 (5days)	30h	Implementation of the convention (mobilization of resources).
Rio+20	Negotiation	Observer	June 2012 (5 days)	30h	Scaling-up sustainable development through “green economy”.
Expert Meeting Art.10*	Expert	Participant Observer -Intern CBD	September 2013 (4 days)	40h	Expert meeting for assessment of need and modalities of a multilateral mechanism.
IAC ABSCH	Preparatory	Participant Observer -Intern CBD	September 2013 (3 days)	30h	Informal advisory committee for the establishment of the clearing-house for the Nagoya Protocol.
WG8j 8	Preparatory	Participant Observer -Intern CBD	October 2013 (5 days)	45h	Mechanisms for protection of traditional knowledge.
SBBSTA 17	Preparatory	Participant Observer -Intern CBD	October 2013 (5 days)	35h	Technological advancements on biodiversity.
COP-MOP1*	Negotiation	Participant Observer - Consultant CBD	October 2014 (10 days)	80h	Adoption of legally binding decision for the Nagoya Protocol

Source: Elaborated by the author

Note: The meetings marked (*) are directly related to the Nagoya Protocol

In following the same group of actors in different events, I performed a *multi-event ethnography* (Delgado and Barin-Cruz, 2014). This technique entailed the application of traditional ethnographic tools in a series of meetings where multiple organizations convene (i.e. FCEs) and their ideas, interests, relations, tools and practices become interconnected.

In my field notes, I took extensive notes on the main discussions, as well as notes about the mobilization of the indigenous peoples group. In some meetings, I only observed from a distance, while in others I participated closely with the actors living in the phenomenon. I personally attended three events comprising the series of meetings under analysis for this research: one preparatory (ICNP1 in 2011), one expert (Expert Meeting on Article 10 in 2013) and one negotiation meeting (COP-MOP1 in 2014). In the preparatory meeting, I served as an unofficial interpreter and translator of the IPLC group, following them very closely as they were trying to get included in the meeting. In the expert meeting in 2013 I was doing an internship at the CBD. Finally, the negotiation meeting closing the implementation phase, COP-MOP1, I had the chance of once again do an internship at the CBD. More details about each of these three meetings are provided in section II.

The participant observation in the meetings entailed the documentation of how the event unfolded in plenary and also in other spaces (Hardy & Maguire, 2010). The main outcomes of preparatory and negotiation meetings' plenary sessions are easily accessible through documents (e.g. official reports, ENB reports), but other aspects of the meetings are not recorded. Moreover, expert meetings do not have any media coverage and the sole document produced is a final report developed by the Secretariat that usually only records the consensus achieved by experts.

In the “plenary” space, actors negotiate over the agenda points of the meeting. As mentioned before, NSA proposals are only taken into consideration and included in the outcome reports if states agree with them. For that reason, not all interventions appear in the formal outcome reports. This means that frustrated attempts at participation are not

captured in formal reports. Since a better understanding of inclusion in this context is at the center of this proposal, documenting when participation was denied is of fundamental importance.

In addition, the “corridors” of the meetings are informal spaces where materials are displayed and distributed for informational and lobbying purposes (Hardy & Maguire, 2010). The mobilization in the backstage of meetings has been deemed of great importance for NSAs due to the fact that it provides an unconstrained space where issues can be discussed more broadly (Betsill and Corell, 2008). Also in the corridors, actors organize side-events where they publicize their positions (Hardy & Maguire, 2010). These side-events may be organized by state representatives, NSAs or other UN agencies. They may involve a coalition of actors interested in the same issue and usually require material resources (e.g. to print reports, or to provide food to the participants) (NGLS, 2007). In this sense, side-events open possibilities of indirect participation in the discussions at the plenary sessions through like-minded state actors.

In my observations within these different spaces, I was attentive to all aspects related to the participation/inclusion and potential resources of NSAs. Participation comprises issues of representation, status and rules of procedures. These points are usually pre-defined and vary according to the type of meeting (NGLS, 2007). Despite the fact that UN conferences are highly formalized spaces, the rules of the game are sometimes bent with the revision and negotiation of positions (Dahl, 2012). In this sense, access is dynamic and attentive observation captures opportunity windows for further participation of the actors.

In terms of the resources, they have been classified along three broad dimensions in the political view in transnational governance (Betsill & Corell, 2008; Orsini, 2013): material, organizational and discursive. Material resources refer to the access to financial and technological assets (Orsini, 2013). Commonly, material resources have been concentrated in business actors, even if international NGOs (e.g. Greenpeace and WWF) have also been successful in gathering such resources (Betsill and Corell, 2008). Organizational resources refer to the capacity to build networks that increase the access, efficiency, visibility, credibility or legitimacy of a certain organization (Orsini, 2013). Finally, discursive resources are related to the ability to master information and expertise in favor of a particular way of debating an issue (Orsini, 2013).

In searching for instantiations of the creation and use of resources in the field I was attentive to many aspects of the events. Things like spatial arrangements, equipment, and dress code have some significance in manifesting the availability of material resources (Zilber, 2011). The mobilization of side-events and of caucus meetings to discuss the agenda, also points to the organizational resources of actors (Betsill & Corell, 2008). Discursive resources can be grasped in materials distributed in the corridors of meetings (Hardy & Maguire, 2010). In terms of the relationship-based resources, some of them can be revealed in the examination of co-authorship of statements or information documents. Informal social events (meals, coffee breaks, and activities in the exhibition hall, taking place in between the plenary sessions) indicate in a more subtle way the relationships established between the actors.

The participant observation in the Nagoya Protocol division of the CBD Secretariat took place for a period of 3 months in 2013 and another 6 months in 2014,

totalling 1200 hours and 300 pages of transcribed notes. The participant observation in the Secretariat was particularly useful for two reasons. First, the Secretariat concentrates all the doubts, concerns and requests made by all concerned actors, prior to and also during the meetings. The internships gave me direct access to information and submission of views of NSAs feeding the construction of materials produced by the Secretariat distributed prior to the meeting and also documents created during the meetings. Second, while working at the Secretariat I had the chance to observe two important meetings. The participant observation in an expert meeting in 2013 was only possible because I was doing an internship at the CBD. I served as staff at this meeting that is otherwise closed to general observers not selected by the Secretariat. In addition I had my expenses paid for by the Secretariat to attend the negotiation meeting that took place in October 2014 in South Korea. I worked on the logistics and the preparations for the event providing assistance in writing statements and documents. These occasions allowed me to see very closely the backstage mobilization behind putting these formal events together.

Along with the classic field notes, I made extensive use of a combination of three techniques²¹: shadowing, practitioner's diary and reflexive notes. First, shadowing, which involves a researcher closely following an actor (McDonald, 2005), an object (Czarniawska, 2007) or a practice (Nicolini, 2009). As an itinerant technique, it provides a rich context wherein actions are produced, and it allows the researchers to be in places where they would not usually go (Czarniawska, 2007; McDonald, 2005). The second tool

²¹ These techniques have been thoroughly presented in a methodological paper published by the author, which was based on part of the fieldwork contained in this manuscript (Delgado and Barin-Cruz, 2013).

applied in this approach is the practitioner's diary, which was necessary for gaining access to the practitioner's way of seeing, understanding, describing and interpreting the events. This technique was applied in the first meeting of the series (i.e. the preparatory meeting). After each day of the event, the shadowed actors were asked to reflect on their own expectations, activities and achievements a series of short and very situated interviews. This tool enabled me to better understand previous behaviors observed within the context of shadowing. The third and final tool was a reflexive journal in which I described concerns, doubts and feelings (Guba and Lincoln, 1985), helping me to reflect on my own participation in the field by disclosing personal feelings and the justification for some methodological choices.

3.4.2 Interviews

Between 2011 and 2015, I have been able to conduct a total of 51 interviews (approximately 900 pages of transcriptions). The first 10 interviews did not follow pre-structured interview guide, since they were very exploratory, and topics ranged from the views of actors on the Nagoya Protocol, to their motivations to engage in negotiations, as well as to their strategies and the skills required to getting their claims heard at the meetings. For the following interviews, a semi-structured instrument was developed (Appendix 2). The interviews lasted from 15 minutes to 1.5 hours and most were digitally recorded and transcribed. Some interviewees asked that I only take notes of their answers and these notes were also transcribed. All interviewees (Table 10) were aware of the nature of the research and signed the informed consent form (Appendix 3), keeping a copy for future consultation.

Table 10: Interviews conducted

Organization	Number	Mean Duration	Topics
IIFB	20	30'	History of negotiation, Participation of indigenous peoples in meetings, learning process, local struggles, connections with global arenas, implementation of local initiatives.
CBD	10	40'	History of negotiation, participation of indigenous peoples in meetings, role of Secretariat in national implementation.
IGO	2	20'	History of negotiation, participation of indigenous peoples in meetings, role of IGOs.
NGO	9	30'	Participation of civil society in meetings, implementation of local initiatives.
Academic	2	50'	Participation of academics in meetings, challenges for the academic community in implementing the protocol.
Business	4	30'	Opportunities/challenges for the business community in implementing the protocol, interaction with local communities.
Government	3	25'	History of negotiation, Participation of indigenous peoples in meetings, local implementation challenges.

3.4.3 Documentation

Concerning the archival data, since this phenomenon entails a public negotiation, most of the primary data is available on the CBD website for preparatory and negotiation meetings. Previous research has utilized the primary data source to get a sense of the formal discussion and outcomes of meetings (Hardy & Maguire, 2010; Schussler et al., 2014). These include pre-session documents (e.g. information documents with submission of views prior to the meetings, draft recommendations, etc.), outcome documents (e.g. the final reports with recommendations or decisions), and other supportive documents (e.g. list of participants, list of side events).

Another source of primary data is the material produced and distributed by the focal actors during the events - what I call “in-session” documents. These include the statements read in the plenary sessions, and also position papers and materials distributed at the information booths and side events. These materials have been utilized in previous research to account for the positions and outcomes expected by NSAs in the meetings (Hardy & Maguire, 2010). Another “in-session” document is a publication called “ECO” produced by civil society organizations during UN meetings. This publication includes IIFB members’ statements and puts forward the main concerns of civil society organizations related to the agenda points discussed in the meetings. Previous research has used this publication to grasp the positions of NSAs (Betsill & Corell, 2008). The lengths of the materials vary (table 11).

In terms of secondary data, a daily coverage of the preparatory and negotiation meetings is available with the Earth Negotiations Bulletin (ENB), a source of information deemed neutral and credible and for that reason used extensively in research in these settings (Hardy and Maguire, 2010; Schussler et al. 2014). During the internships, I was also able to collect a wide range of materials on capacity building and awareness-raising, as well as other publications produced by UN agencies that are informative of the background negotiations of the Nagoya Protocol.

In contrast to preparatory and negotiation meetings that are public, the expert group meetings are closed to observers and the only pieces of information publicly available are a pre-session document and the outcome report. On one occasion in 2013, while doing my internship at the CBD, I had privileged access to one of these expert

group meetings. Thus, for that meeting, I was able to collect the different versions of the outcome document.

Table 11: Document collection

Meeting	Year	List of Part.	Side Events	Pre-session document	In-Session	Outcome documents	Daily coverage (ENB)
UA1- Expert Meeting Clearing-House (Montreal, Canada)	2011	Yes	No	30 pages	No	16 pages	No
UA2- ICNP1 (Montreal, Canada)	2011	Yes	Yes	95 pages	20 pages	36 pages	15 pages
UA3- Expert Meeting Compliance (Montreal, Canada)	2012	Yes	No	50 pages	No	2 pages	No
UA4- Expert Meeting Capacity Building (Montreal, Canada)	2012	Yes	No	20 pages	No	8 pages	No
UA5- ICNP2 (Hyderabad, India)	2012	No	Yes	100 pages	15 pages	30 pages	15 pages
UA6- COP11 (Hyderabad, India)	2012	Yes	Yes	150 pages	6 pages	50 pages	15 pages
UA7- Expert meeting Global Mechanism (Montreal, Canada)	2013	Yes	No	50 pages	6 pages	2 pages	No
UA8- ICNP3 (Pyeongchang, South Korea)	2014	Yes	Yes	90 pages	6 pages	30 pages	15 pages
UA9-COP-MOP1 (Pyeongchang, South Korea)	2014	Yes	Yes	150 pages	100 pages	30 pages	20 pages

3.5 Data analysis

3.5.1 Visual Mapping

The first step was to examine the evolution of the main issues under discussion in

the meetings over time in trying to understand what the actors were trying to achieve. Adopting “process thinking”, I looked at how indigenous peoples’ inclusion came to be constituted, reproduced, adapted and defined through ongoing processes (Langley, 2007). To do that, I used “visual mapping” as a graphic device (Gehman, Treviño & Garud, 2013) because this strategy allows the simultaneous representation of many dimensions, and it can be used to easily show the passage of time (Langley, 1999).

In order to proceed with this phase of the data analysis, all documents of events involving the discussions of the main issues selected for this study were examined. This included all the documents referring to each issue produced prior to the meeting (e.g. information documents, submission of views), during (e.g. statements, CRPs, L Documents), and after the meetings (e.g. meeting report produced by the Secretariat and newsletter produced by IPLCs), as well as descriptions made by the Earth Negotiations Bulletin of the daily negotiations in the case of preparatory and negotiation meetings.

After a thorough description of the focal actors’ views expressed in each event versus the actual outcomes of these events, I identified the points where there was participation or inclusion (i.e. presence in meetings versus co-production of policy). I then proceeded with the graphic description of each issue, mapping these points for easier reference.

To enrich the visual map, I used a legend (figure 5) to help in tracking how the different views of the group under study were considered or not and how the issues evolved over time in terms of their participation and inclusion in the institutional building process. The squares are related to the degree in which the requests of the focal actors

were taken into consideration or not in the particular meeting: included, partially included or not included. The circles refer to the different options raised in the outcomes of preparatory meetings. The filled circle signifies an option that would include more the focal group, while the empty circle the opposite. The diamond represents an option that was suppressed during a meeting. Finally, the triangles reflect the decisions taken by Parties that are legally binding. The filled triangle in black signifies an option that would include more the focal group, while the empty triangle the opposite. The filled triangle in gray indicates the points where there was participation (P) or inclusion (I). The different types of meetings are also identified through different borders and the star indicates the ones I was able to observe.

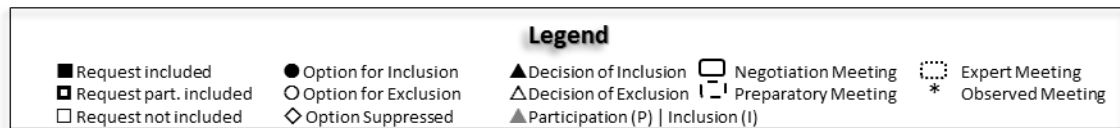


Figure 5: Legend for visual mapping of issues

After constructing this graphic representation, I compared them in terms of their salience, the negotiation process, the participation and inclusion of the focal group and the group's level of achievement in for each issue. Understanding what the actors were trying to achieve and the outcomes of that effort in specific points of the process of institution building was important to later unveiling the mechanisms that lead to participation or inclusion.

3.5.2 Narrative

The second step in the data analysis was to construct narratives for each meeting

(Langley, 1999), with a special emphasis on the meetings I was able to perform participant observation since in these occasions I was able to get richer and more contextualized data of the actual mobilization of actors. The main source of information was my field notes from participant observations, but I also combined the observation data with interviews and documentation to provide a thick description of the events. I first developed 3 in-depth narratives of the observed meetings (one preparatory, one expert and one negotiation meeting). I started the narrative describing the significance of the meeting and relationship with other events, details about venue and logistics, and also a summary of main discussions and stakes for the indigenous people group. Then I described relevant episodes in each event that zoomed-in on situations where the indigenous people group was seeking for more inclusion in the meeting in particularly focusing on the role they played in different negotiation spaces. I also provided some insights and reflexive notes on my own participation in the phenomenon in the boxes entitled “being there”²².

I complemented the narratives with information contained in documents about the participation of the indigenous peoples group in each meeting. The examination of the list of participants for the meetings allowed for a detailed description of the participant organizations and the credentials of each delegate, as well as the relative size of their delegation. The list of side events also gave a sense of the participation of the IIFB in organizing but also in participating in other organization’s events. The list provides the topics and also the list of the organizations involved. Sometimes power-point

²² In line with calls for more reflexive research (Hardy, Phillips & Clegg, 2001), it is important to disclose information on my interference in the courses of action of the actors involved in the phenomenon.

presentations are also made available on the CBD website. I also analysed the IIFB website to look at how they described their participation in the events. Sometimes this would include photographs, statements, press- releases and other materials created and distributed by them. Based on the narratives and complementary information, I analysed the participation and inclusion of the focal group.

Finally, I contrasted the different types of meetings in search for similarities and differences that would account for more or less inclusion on the focal group. In particular, I focused on the different roles the actors played in the episodes I narrated. From the three narratives, three different positions emerged as key dimensions to understand how the actors were included or not in the meetings observed. These positions became important elements to later in the analysis unveil the interactions between the practices the actors performed in the different negotiation spaces.

3.5.3 Grounded Theory

In the third and final step, I coded the data using emergent themes (Glaser & Strauss, 1967; Strauss & Corbin, 1990) driven by the interest in how the actors enhanced their opportunities and capacities to interact in the process of building the Nagoya Protocol. To systematize the data coding, I used a computer-based qualitative analysis program, NVivo9, which enabled the recording and cross-referencing of the emerging codes. In the initial round, I coded each interview, documents and field notes separately on the basis of “in vivo” words, phrases, terms, or labels offered by the informants; that is, first-order codes. After going through multiple data sources, I began discerning codes that were similar in order to create first-order categories, employing language that expressed similar ideas. This process continued until I could not establish different

conceptual patterns. These first-order categories were then clustered into distinct groups representing emerging theoretical concepts, the second-order themes. Finally, in an effort of abstraction, I assembled the second-order themes into overarching dimensions that delineate an emergent theoretical framework.

Following a traditional grounded theory approach, I contrasted these findings with previous theory. In an iterative process of going back and forth from literature to data, I built on previous research that has looked at the creation of resources in practice (Feldman, 2000; Howard-Grenville, 2010). The concept of “resourcing” brings the idea that actors “turn something from a potential resource into a resource in use” (Feldman, 2000). This concept adopts a practice approach to understand how actors create resources through situated interactions and it has been mostly applied in the organizational level.

Due to its relevance in untangling the puzzle presented by my empirical field and its ontological coherence with the institutional work literature, I applied the notion of resourcing to the context of institutional building.

A total of 12 first-order categories, 6 second order themes and 3 overarching dimensions emerged from the data (figure 6). The overarching dimensions theorize about three categories of resourcing work, namely organizational, discursive and material, coinciding with what previous literature had found in term of NSA participation in intergovernmental negotiations (Betsill and Corel, 2008).

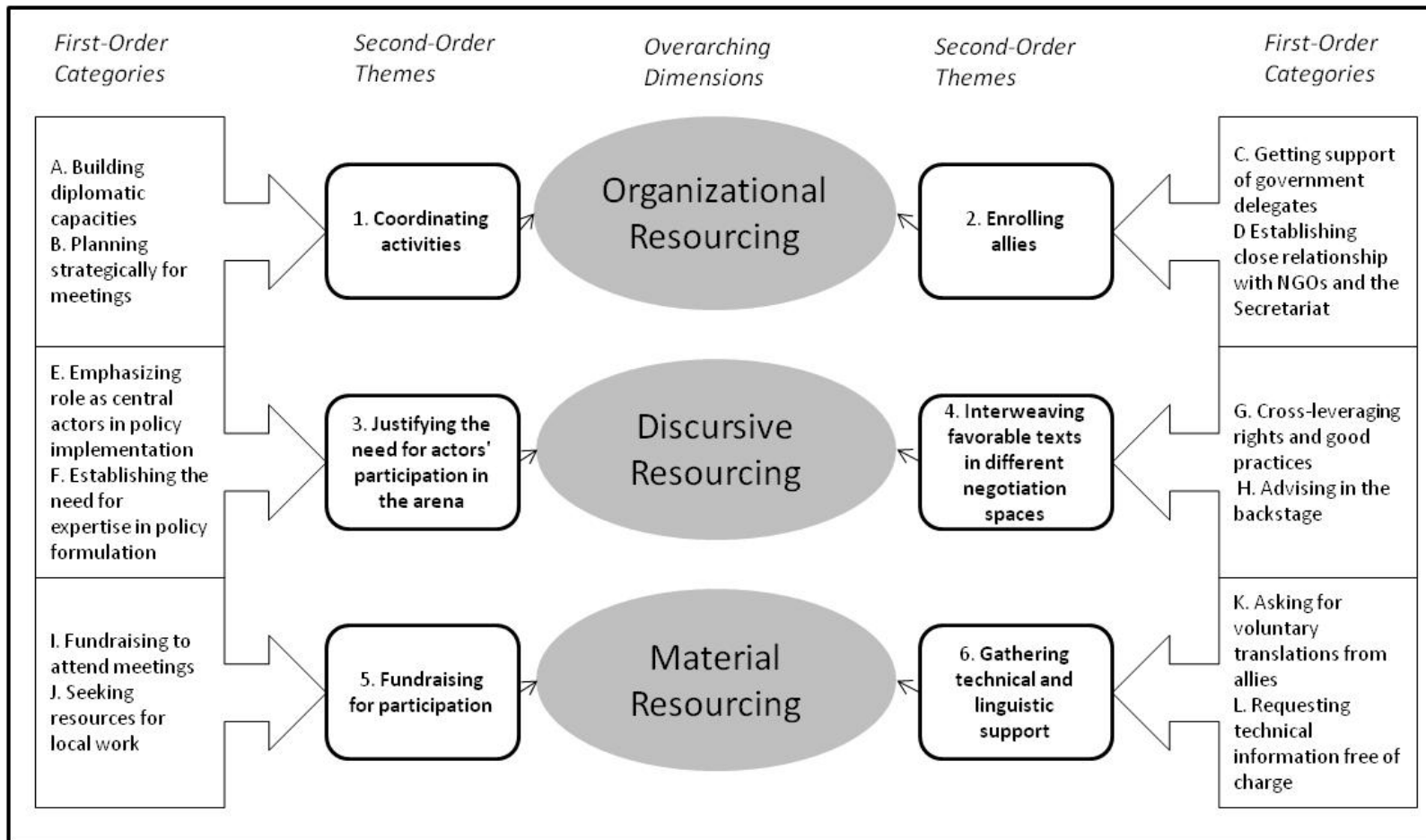


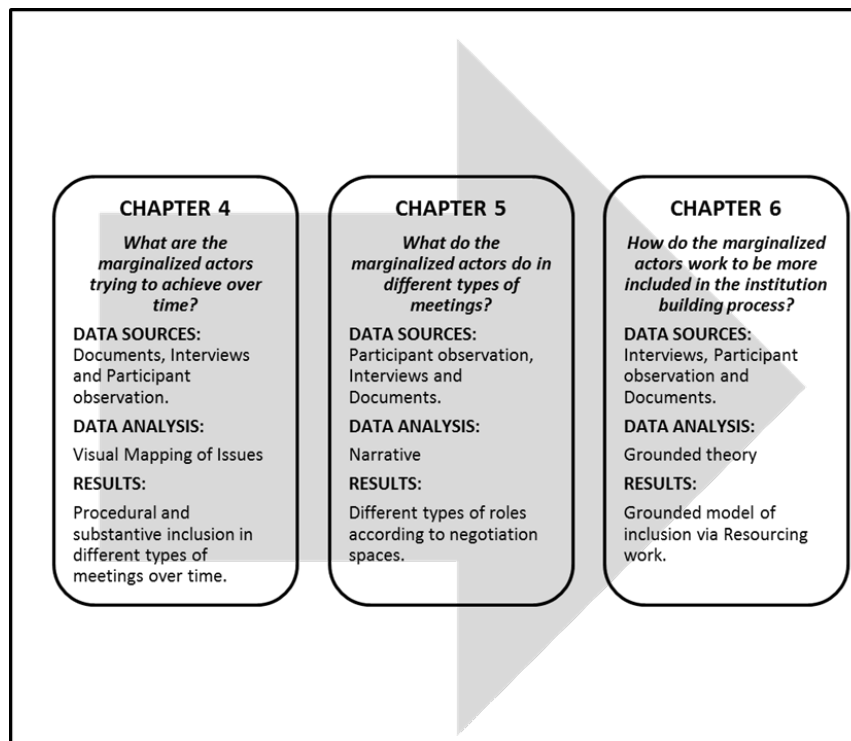
Figure 6: Data Structure

In a further abstraction effort, I theorize about the interplay between the different negotiation spaces, positions actors occupy, the types of resourcing and the outcomes in terms of participation and inclusion and build a grounded model, which is presented at the end of section II, on findings. To do so, I re-coded all the first-order codes that emerged from the mechanism of resourcing work according to examples where the actors were acting as one of the positions found in chapter five (i.e. relevant stakeholder, anonymous expert, informal consultant). I arrived at a number of examples to infer the types of resourcing work according to negotiation spaces, once the different positions are linked to the spaces where actors are engaging with. With that finding, I was able to re-construct in theoretical terms the evolution of issues in terms of the resourcing works performed to achieve participation and inclusion.

SECTION II- FINDINGS

This section describes the findings of this dissertation. It begins with the mapping of the specific requests and achievements of the group in the Nagoya Protocol's negotiations. Following this chapter, I present finely grained narratives of the different types of meetings involved in the process. Finally, I propose a grounded model based on emergent categories coming out from the data. Figure 7 presents a summary of the findings presented in this section.

Figure 7: Summary of chapters in findings section



CHAPTER 4. What are the marginalized actors trying to achieve over time?

In this chapter I describe in more detail what the actors under study are trying to accomplish in the negotiations of the global agreement and their achievements on specific issues through time. I describe the evolution of each of the four most salient issues (i.e. compliance, capacity-building, clearing-house, global multilateral approach) in the implementation phase of the Nagoya Protocol. Finally, I present a comparative analysis of issues.

4.1 The indigenous activism on the Nagoya Protocol

The Nagoya Protocol establishes in its content mechanisms to rectify asymmetries between actors who are willing to establish an agreement for access and benefit-sharing to genetic resources and associated traditional knowledge. Not only was it designed to strike a balance between industrialized and developing countries. With the efforts from indigenous activists, the global agreement also became a tool to protect traditional knowledge and the rights of communities engaged in commercial or research partnerships for biodiversity-based innovation. Throughout the negotiations of this international regime, indigenous peoples and local communities (IPLCs) have sought ways to insure the legal protection of traditional knowledge and genetic resources before access and benefit-sharing (ABS) agreements are established and also the right to deny access to their resources and knowledge. In that sense, IPLCs are at the same time potentially the most vulnerable groups to and also important beneficiaries of the Nagoya Protocol (Bavikatte and Robinson, 2011).

Bavikatte and Robinson (2011) indicate that IPLCs had the following agenda for negotiations of the Protocol: a) To retain references to compliance with customary laws and community protocols, establishing a seed for the recognition of self-governance models; b) To ensure reference to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in the preamble of the Protocol to give room for interpreting the provisions of the Protocol from a perspective of “self-determination”; c) To prevent the discussion from shifting to WIPO in issues related to traditional knowledge because this is a less welcoming forum to indigenous peoples. All in all, they were very successful in achieving those goals. The authors account for an expert group meeting in 2009 on Traditional Knowledge associated with Genetic Resources, where a sizeable number of chosen experts nominated by countries were from indigenous communities along with indigenous observers. These experts infused many ideas to support indigenous rights and their self-determination, including the recognition of customary law and community protocols, in the final recommendation report. This report set the stage for lobbying efforts afterwards and activists were very successful in convincing states of the importance of maintaining those points in the final text of the Nagoya Protocol.

After the adoption of the Nagoya Protocol, a new phase in the creation of this regulation was inaugurated. In the implementation phase of the Nagoya Protocol, the focus in this research, indigenous representatives and their allies tried to insure that the rights obtained throughout the negotiations continued to be respected. *Participation* is related to their presence and engagement in the discussions over issues. So, it meant more than access as observers to formal meetings, but the creation of opportunities for them to

be engaged in the ongoing discussions over an issue even in the backstage. *Inclusion* is related to finding instances where the actors are actually able to co-produce the regulation, infusing the text of the regulation with indigenous views and demands.

In this sense, they fought for representation in the compliance mechanism, in an effort of having an insider in the committee that would advise in favour of IPLCs in cases that involve traditional knowledge. Another key point for them was the need for communities to develop the abilities for ABS implementation on the ground. In addition, IPLCs were of the view that sharing their information on customary laws and community protocols through the dedicated online platform (the ABS Clearing-House) would be something relevant for implementation. However, this would require some assistance to establish a link between the information generated in the communities and the platform. Finally, in the emerging negotiations for a parallel system that would cover cases not addressed by the Nagoya Protocol, IPLCs were of the view that there would be a need for such a mechanism in cases where prior informed consent for traditional knowledge could not be obtained. In what follows, I present each of these major demands of the IPLC group, describing in detail the evolution of negotiations and the outcomes obtained.

4.2 Getting representation in compliance mechanisms

International treaties normally devise a compliance mechanism to support the fulfillment of Parties' obligations. In the Nagoya Protocol there are specific articles dealing with the issue of compliance. Two different instances of compliance are distinguished: the compliance of Parties to the Protocol itself and the compliance of users

and providers of genetic resources and traditional knowledge to the terms of an ABS agreement. While both are essential for the effective implementation of the Protocol, the discussions around this theme in the meetings revolve around the first type of compliance. More particularly, the issue on the table is the creation of a set of cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance, including procedures and mechanisms to offer advice or assistance. In its article 30, the Nagoya Protocol has previewed the creation of such a mechanism but did not provide any specific guidelines on how this compliance mechanism would work in practice:

“Article 30. Procedures and Mechanisms to Promote Compliance with this Protocol: The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate.” (Nagoya Protocol text, 2010, p. 22)

Since the adoption of the Nagoya Protocol’s text in 2010, Parties have started negotiating cooperative procedures and institutional mechanisms to promote compliance and to address cases of non-compliance. At the first preparatory meeting, in 2011, the Intergovernmental Committee of the Nagoya Protocol (ICNP) discussed two documents prepared by the Secretariat. The first document ([UNEP/CBD/ICNP/1/INF/1](#)) provided an overview of compliance procedures and mechanisms established under other multilateral environmental agreements, such as the Cartagena Protocol on Biosafety, the Montreal Protocol on Ozone Layer depletion, the Kyoto Protocol on Climate Change and the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.

The other document ([UNEP/CBD/ICNP/1/6/rev/1](#)) drew upon the overview of the existing procedures and mechanisms adopted in the first document and also on the views submitted by Parties, international organizations, IPLCs and relevant stakeholders. A total of 3 submissions were made by IPLC organizations on this theme and all seemed to agree that there should be advice and assistance for IPLCs and non-compliance should be met with strict sanctions. This document provided a draft of the elements and options Parties should consider in devising the procedures and mechanisms for the Nagoya Protocol. Some of the elements raised in the document were: establishment of a standing or ad hoc body to administer the compliance regime (raising questions about its size, procedures for nomination of members, status of members, and rules of procedures); triggering procedures (whether complaints should come from submissions by party regarding another party, by the secretariat, by the governing body and/or by members of the public); information and consultation sources; and measures to promote compliance and to address non-compliance.

The final report of the expert meeting reported the discussion on the inclusion of IPLCs as follows:

“There was a discussion about whether it was appropriate for indigenous and local communities to be able to nominate members to the committee, or serve on the committee and if so, whether as a full member or as an observer. The procedures for nominating representatives of indigenous and local communities were also discussed. A range of views were expressed, with some suggesting that given their prominence in the Protocol, indigenous and local communities should have representation on the committee, while others noted that current global precedents suggested that compliance of Parties with their obligations is appropriately assessed by nominations of such Parties, although a Party could choose to nominate a representative of indigenous and local communities.”
(Final report Expert Meeting on Compliance -Document UNEP/CBD/ICNP/2/12, March 2012, page 6, paragraph 41)

The Intergovernmental Committee at its first preparatory meeting reviewed these options and elements for most of the time available during plenary sessions, as it is described in the previous chapter in episode 1. During the discussions, the participation of IPLC representatives was minimal with only two interventions: a request to replace the reference to “indigenous and local community organizations” by “Indigenous and local communities”, and also a request of guaranteeing ILCs’ participation in a future expert group meeting.

“Solicitamos que se borre la palabra “organizaciones” en el párrafo 1 considerando que la expresion organizaciones de Comunidades Indigenas y Locales no figura en el Protocolo. Respeto al párrafo 3 el Foro Indígena Internacional sobre Biodiversidad solicita que en el taller de expertos, en los Grupos de Contacto y Amigos del Presidente, ademas del balance regional se garantice la participación de las Comunidades Indigenas y Locales. El Foro Indigena quisiera asegurar la participación plena y efectiva de los Pueblos Indigenas y Comunidades Locales en todas las discusiones q se lleven a cabo sobre el tema de cumplimiento, por lo tanto solicitamos que en el texto del párrafo 3, se pueda añadir despues del taller de expertos, “con representacion de las distintas regiones y la participación de las Comunidades Indigenas y Locales””. (IIFB statement read in plenary, June 9 2011, highlights added).

As a result of this meeting, the Intergovernmental Committee created a draft recommendation containing the options available for each of the elements signaled by the Secretariat. In what refers to the specific options including IPLCs, Parties opened the possibility to have an IPLC nominated by a Party. They also left open the possibility of having IPLCs as triggers for the compliance mechanism. Concerning the sources of consultation and information, initially only affected IPLCs could be consulted. Finally, in measures to address non-compliance, Parties considered the option of having the non-compliant Party notified when an IPLC is entitled to benefit-sharing. There was no clear understanding as to how the rights of IPLCs could be protected in cases of non-

compliance, as it is described in the editorial text of the Earth Negotiation Bulletin for this meeting:

“Another specificity of the Nagoya Protocol that was only touched upon at this meeting but that will no doubt be discussed in more depth at the next is how the compliance mechanism will address non-compliance with the traditional knowledge-related provisions of the Protocol and the role of ILCs. One option is to allow for a stakeholder trigger, which was suggested at this meeting, but is politically quite unlikely, as parties to the CBD and other MEAs have clearly shown their preference for state-controlled compliance mechanisms. Other options could be found in human rights compliance mechanisms, although these assume states’ lack of political will to comply, while MEA compliance procedures tend to focus on capacity issues. Nonetheless, the ICNP, in the end, left the door open for participants to look beyond environmental treaties in such a difficult quest, reflecting the fact that the Nagoya Protocol not only calls for inter-state cooperation on environmental issues, but also for states’ protection of the rights of indigenous and local communities.”(ENB, ICNP1 Summary Report 5-10 June 2011, Vol 9 No. 551 page 12; highlights added)

Parties also defined a process to continue the discussions. They once again requested the submission of views by Parties, international organizations, IPLCs and relevant stakeholders. The Secretariat was requested to convene an expert meeting to consider these draft elements and options for compliance procedures and mechanisms even further. In this request for convening a meeting, there was no particular mentioning of any group that should be included, despite the request from IPLC representatives in a statement read in plenary. The expert group meeting was convened in 2012 and 2 IPLC participants were invited by the Secretariat and had their expenses paid for by the CBD. The outcome document of the expert meeting maintained the same options referring to IPLCs inclusion.

The second preparatory meeting (ICNP 2), held in 2012, continued to discuss a recommendation on the draft elements and options for compliance under the Nagoya Protocol. A contact group was established with the participation of IPLCs. One of the

main points of discussion under this agenda item was the participation of IPLCs. IPLC representatives read a statement in plenary on this point:

“The Nagoya Protocol is expected to have innovative procedures and mechanisms to implement its provisions related to indigenous peoples and local communities and traditional knowledge, and supported inclusion of indigenous representatives in a compliance committee” (ENB, ICNP2 Summary Report 2-6 July 2012, Vol 9 No. 579 page 11, highlights added).

Parties were divided on this issue, with some arguing that the openness was necessary for the effective operation of the mechanism, others expressing concerns of IPLCs utilizing a compliance committee to “bypass” national institutions. During the contact group, following the daily descriptions of the Earth Negotiations Bulletin, IPLCs tried to push for discussion on the “role” of IPLCs on the compliance mechanism and got some support from governments (Ecuador and Mexico) but the proposal was opposed by the Canadian delegation. IPLC representatives also asked the committee to consider information acquired from “other sources” in addition to formal submissions, which was supported by one government (Malaysia) but opposed by a coalition of governments (the African Group).

This is how the Earth Negotiations Bulletin summarized negotiations of compliance in this meeting:

“Although ILCs themselves were not vocal at this meeting due to the small number of representatives present, possibly resulting from a combination of visa issues and funding shortages, certain countries put forward a variety of possible avenues to ensure a community “voice” in the compliance mechanism. Options ranged from a community trigger of the procedure, to enabling community representatives to participate in the compliance committee as members or as observers, to the possibility for communities to submit information directly to the compliance committee, or the possibility for the committee to directly consult with relevant communities. The African Group also “resurrected” its proposal to create an ombudsman (which had been included in certain drafts of the Protocol but disappeared from the compromise text adopted in Nagoya). As

revamped, the ombudsman could create an intermediate layer in the compliance procedure where the party concerned and its relevant communities could initially address implementation challenges with some international facilitation, but without too much interference in domestic affairs. In light of the recent proposal to allow for ILCs' submissions to the compliance committee only if they meet certain screening criteria, the ombudsman could be an alternative way to select well-founded community submissions for transmission to the compliance committee.”(ENB, ICNP2 Summary Report 2-6 July 2012, Vol 9 No. 579 page 15 highlights added)

In the final document of the ICNP2 preparatory meeting containing the draft options for the mechanism, Parties added an option of having IPLC as members of the committee and having them as triggers as long as supported by a Party. There was also an option of coordinating efforts of the compliance mechanism with customary law. Finally, they added the possibility of creating an ombudsman figure that would assist developing country Parties and IPLCs in filing complaints to the compliance committee, something that was alluded to in IPLC views submitted prior to ICNP1.

In the end of 2012, the COP held its eleventh negotiation meeting. Since this was not a meeting of the Parties to the Protocol because the number of ratifications necessary for the entry into force of the instrument had not yet been achieved, Parties to the CBD decided to forward the draft recommendations to the third preparatory meeting of the Intergovernmental Committee for another round of discussions.

In early 2014, Parties met for the third preparatory meeting (ICNP3). Concerning the participation of IPLCs in the compliance mechanism, the IIFB read a statement in plenary in which it requested: “including in the compliance committee ILC representatives from each UN region; establishing regional ILC committees to advise and support ILC submissions to the compliance committee; and enable ILCs to make

submissions to the compliance committee independently from national authorities” (ENB, ICNP3 Summary Report 24-28 February 2014, Vol 9 No. 617 page 7).

Since Parties were still divided among the many alternatives available for the elements of the document, a contact group was established. Among other issues, the contact group discussed modalities of participation of IPLC representatives in a compliance committee, their status and their capacity to trigger as well as to provide information to the mechanism. Parties decided to leave three alternatives for participation: as observers, as members and as non-voting members. They also included another option for the selection criteria: either by Parties or self-nomination. Two options favorable to IPLCs were suppressed in this meeting: coordinating compliance mechanism efforts with customary law and having direct measures to address non-compliance in cases of traditional knowledge where Parties would be notified. This meant that there would be no requirement for states to establish a direct link between compliance under national jurisdiction and under community jurisdiction, something that would be very hard to be put in practice. The other suppression referred to the idea that IPLCs themselves could directly notify Parties in cases of non-compliance with terms for ABS on traditional knowledge. In what concerns triggering the mechanism, a new option was included that would consider only affected IPLCs. The alternative of creating an ombudsman to assist developing country Parties and IPLCs in filing complaints remained.

Later that year, Parties considered the draft recommendation at the negotiation meeting, COP-MOP. Once again a contact group was established and discussions

continued to turn around the composition of the compliance committee (in particular regarding participation of IPLC representatives), triggering of the compliance procedures (in particular regarding triggers by the Secretariat or the committee itself, the public and IPLCs) and a proposed ombudsman. After more than one week of negotiations, the contact group was able to “clean the text”, which is described in more detail in the next chapter (episode 3).

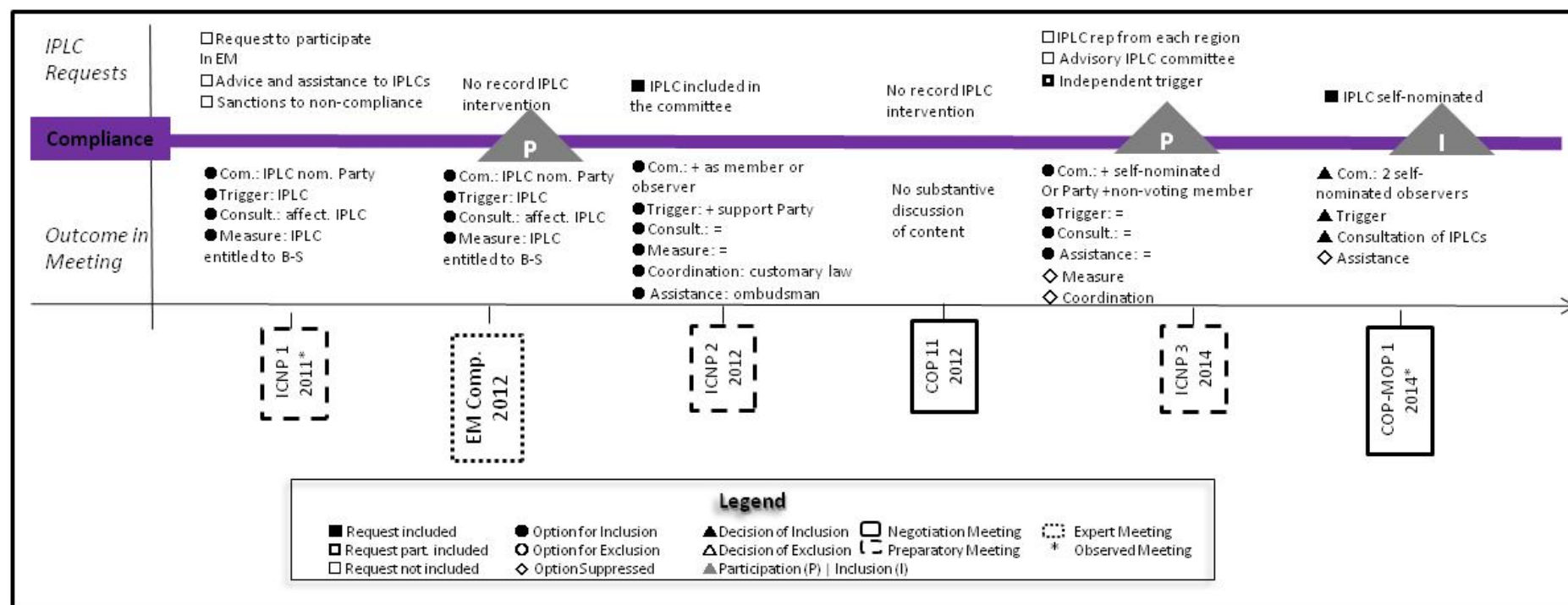
On the composition of the compliance committee and ILCs’ participation in it, Parties decided that: two IPLC representatives will serve on the committee as observers (at least one of them coming from a developing country), meaning they are entitled to participate in the deliberations of the committee, except in the taking of decisions, and they will be self-nominated. Regarding triggers, Parties suppressed the option of a direct trigger from IPLC. However, they agreed that the Secretariat shall review information received from affected IPLCs against the information received from the party concerned. Finally, Parties eliminated the option of the establishment of an ombudsman to assist developing countries and ILCs in identifying instances of non-compliance. However, they agreed that the compliance committee should, in its first meeting, consider the need for a possible flexible mechanism to assist developing countries and IPLCs in addressing compliance challenges.

In summary, in the compliance issue, the stake for IPLCs was to find a way of being integrated in the compliance mechanism. The modalities for this inclusion were not clear in the beginning, but IPLCs got invested in defending the view that they had to have a role in the compliance committee to be established. This compliance committee has as one of its main functions reviewing cases of non-compliance, which is of critical

importance for IPLCs. For instance, the types of sanctions in cases of non-compliance shall be established by this committee. Another attempt of inclusion was in influencing the design of the triggers for such a committee. IPLCs intervened trying to assure that there would be a direct trigger, meaning that IPLC actors could file directly complaints against non-compliant States.

In terms of outcomes, in this issue IPLCs achieved many important wins. They are allowed to participate in every meeting of the committee under funding of the CBD, even though they are not allowed to vote in case a voting process is needed. The reason given by Parties is that they are not signatories of the Protocol, so the regulation is not binding for IPLCs. Even if they were not able to constitute a direct trigger to the mechanism, they may still bypass national bureaucracies by submitting information to the Secretariat, which will forward this to the committee. The IPLC requests, the outcomes in each meeting and the results in terms of participation and inclusion are visually depicted in figure 8.

Figure 8: Visual mapping of Compliance Issue



4.3 Ensuring capacity-building for marginalized actors

The Nagoya Protocol previews cooperation in the development and strengthening of human resources and institutional capacities in access and benefit-sharing (ABS) for the purpose of its implementation. Many countries do not yet have in place functional domestic legislative, administrative or policy measures on ABS and have not yet set up the institutional arrangements to support implementation of the Protocol at the national level. However, the importance of capacity-building goes beyond setting up national structures to accommodate the Protocol. It also has implications for ABS stakeholders, including IPLCs, in the sense that these actors have to understand better the Protocol to be able to make use of it. For this reason, the Protocol establishes the need for Parties to facilitate the involvement of IPLCs and relevant stakeholders in capacity-building in its Article 22, paragraph 3:

“As a basis for appropriate measures in relation to the implementation of this Protocol, developing country Parties, in particular the least developed countries and small island developing States among them, and Parties with economies in transition should identify their national capacity needs and priorities through national capacity self-assessments. In doing so, such Parties should support the capacity needs and priorities of indigenous and local communities and relevant stakeholders, as identified by them, emphasizing the capacity needs and priorities of women.” (Nagoya Protocol text 2010, p. 16)

In the first preparatory meeting, ICNP1 in 2011, IPLC representatives supported by Guatemala, underscored the “need to take into account IPLCs’ capacity-building needs on the basis of the Protocol and to emphasize the role of women in capacity-building initiatives” (IIFB Statement read in Plenary, June 7 2011). Parties agreed on a draft

recommendation for the creation of a strategic framework to assist in capacity-building on the basis of domestic needs and priorities identified by Parties and also by IPLCs. In the annex to the recommendation, Parties agreed on a number of proposed elements as a starting point for the establishment of the strategic framework, all of them based on the Protocol text.

Parties also requested the Secretariat to develop a questionnaire²³ to collect detailed views and information by Parties and stakeholders on domestic needs and priorities. In the questionnaire, there was one specific session addressing particular capacity needs and priorities of indigenous and local communities and relevant stakeholders and it listed the following particular capacity needs and priorities²⁴:

- a) Participating in legal, policy and decision-making processes;
- b) Understanding the obligations under the Nagoya Protocol;
- c) Developing capacity to negotiate mutually agreed terms;
- d) Managing traditional knowledge associated with genetic resources;
- e) Developing community protocols in relation to access to traditional knowledge associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of that knowledge;
- f) Developing minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge associated with genetic resources;
- g) Developing model contractual clauses for benefit-sharing arising from the utilization of traditional knowledge associated with genetic resources.

²³ Available at: <http://www.cbd.int/doc/notifications/2011/abs-capacity-building-questionnaire-en.doc>

²⁴ Submissions available at <https://www.cbd.int/icnp2/submissions/>.

A total of 30 Parties, 5 IPLC organizations²⁵ and 1 NGO answered to the questionnaire. The views and information were then synthesized by the Secretariat (document [UNEP/CBD/ICNP/2/10](#)). In the annex of this synthesis document, a table consolidated the measures to build or develop capacity to effectively implement the Protocol that in fact is identical to the points that were raised in the questionnaire. The difference is that the table²⁶ presented the list of the capacity needs and priorities of IPLCs in a phased manner prioritizing some points over others (table 12). Interestingly, IPLCs who answered the questionnaire indicated that all these capacities should be addressed in the short term.

Table 12: Initial Capacity-building measures

²⁵ IPLC organizations that answered questionnaire on capacity-building: Consejo Regional Otomí del Alto Lerma, Foundation Batwa, Kanuri Development Association, Metis National Council, Organización Indígena del Ecuador Andes Chinchansuyo and Waikiki Hawaiian Civic Club.

²⁶ The complete table had 5 columns representing key areas of the strategic framework: a) capacity to implement, and to comply with the obligations of the Protocol; b) capacity to negotiate mutually agreed terms; c) capacity to develop, implement and enforce domestic legislative, administrative or policy measures on access and benefit-sharing; d) capacity of countries to develop their endogenous research capabilities to add value to their own genetic resources and e) Particular capacity needs and priorities of indigenous and local communities and relevant stakeholders

Phases	Particular capacity needs and priorities of indigenous and local communities and relevant stakeholders
Phase 1	<ul style="list-style-type: none"> -Participating in legal, policy and decision-making processes. - Developing minimum requirements for mutually agreed terms (MAT) to secure the fair and equitable sharing of benefits arising from the utilization of traditional knowledge (TK) associated with genetic resources. - Developing community protocols in relation to access to TK associated with genetic resources and the fair and equitable sharing of benefits arising out of the utilization of that knowledge. - Developing model contractual clauses for benefit-sharing arising from the utilization of TK associated with genetic resources.
Phase 2	<ul style="list-style-type: none"> - Capacity to negotiate MATs. - Understanding the obligations under the Nagoya Protocol
Phase 3	<ul style="list-style-type: none"> - Managing TK associated with genetic resources.

Source: Document UNEP/CBD/ICNP/2/10

Available at : www.cbd.int

The second meeting of the Intergovernmental Committee (ICNP2) discussed the results of the questionnaire. In this point of the agenda, IPLC representatives stressed the need for active participation of IPLCs, including women, in capacity-building activities, noting that training and research activities need to include traditional knowledge (ENB ICNP3 Summary report, vol9, n. 579 page 8).

Parties agreed at ICNP2 on a number of measures to develop capacities following the phases established on table 12 which was based on the results from the questionnaire. Parties also requested the Secretariat to organize an expert meeting to develop a draft strategic framework, taking into account the synthesis of views. In this request there was no mentioning of the need for participation of IPLCs or other stakeholders. The request from the Intergovernmental Committee for convening an expert meeting was forwarded

to COP-11, along with the draft elements and measures for the strategic framework. The recommendation was agreed upon with no further changes.

In 2013, the expert meeting was convened to further develop the strategic framework. Fifteen experts nominated by Parties and four observers, including one IPLC representative participated in the meeting²⁷. After the deliberations in the expert meeting, the capacity needs and priorities of IPLCs and relevant stakeholders became one of the key areas of the strategic framework. The previous list of capacity needs and priorities was modified to include two more items (UNEP/CBD/ABS/EM-SFCB/1/3):

- a) Enhancing the capacity of ILCs, in particular women within those communities, in relation to access to genetic resources and/or TK.
- b) Enhancing the capacity of relevant stakeholders in relation to ABS.

Participants also created a list of practical capacity-building and development activities to support the implementation of the framework. In key area 4, which concerns building capacities of IPLCs the following measures were proposed and reflected in the expert meeting report (table 13):

Table 13: Activities proposed by experts for capacity-building

²⁷ Two IPLC representatives were selected but only one went to the meeting.

Strategic measure	Indicative capacity-building and development activities
1. Participating in legal, policy and decision-making processes	<ul style="list-style-type: none"> • Organization of training of ILCs, including women within those communities, on the provisions of the Protocol and how it will work, including the understanding of legal, policy and decision-making processes on ABS issues, acknowledging the value of their TK, • Provision of technical assistance and trainings to enable indigenous and local communities and relevant stakeholders to participate in the development of ABS measures • Organisation of trainings for other relevant stakeholders, including the business sector and the research community, on the implementation of the Protocol
2. Developing minimum requirements for MAT to secure the fair and equitable sharing of benefits arising from the utilization of TK	<ul style="list-style-type: none"> • Development of minimum requirements for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of TK • Development of 'train the trainer' workshops for ILCs and other relevant stakeholders including the business sector and the research community, on how to use minimum requirements for MAT in order to secure the fair and equitable sharing of benefits arising from the utilization of TK
3. Developing community protocols in relation to access to TK and the fair and equitable sharing of benefits arising out of the utilization of that knowledge	<ul style="list-style-type: none"> • Development of 'train the trainer' workshops, including the production of materials for ILCs on how to develop community protocols in relation to access to TK and the fair and equitable sharing of benefits arising out of the utilization of that knowledge • Development of e-learning modules and other tools on how to develop community protocols in relation to access to TK and the fair and equitable sharing of benefits arising out of the utilization of that knowledge
4. Developing model contractual clauses for benefit-sharing arising from the utilization of TK	<ul style="list-style-type: none"> • Development of 'train the trainer' modules for developing and using contractual clauses and ABS agreements for benefit-sharing arising from the utilization of TK • Development of practical guidance tools on model contractual clauses on TK

Strategic measure	Indicative capacity-building and development activities
5. Enhancing the capacity of ILCs, in particular women within those communities, in relation to access to genetic resources and/or TK.	<ul style="list-style-type: none"> • Translation of relevant materials into local languages • Provision of technical assistance for establishment of help desks for indigenous and local communities and relevant stakeholders • Provision technical assistance for establishment and implementation of peer-to-peer learning programmes, including mentorship and on-the-job training programmes • Orientation and training programmes to enable ILCs to realize the potential of TK through its documentation, protection and use.
6. Negotiating favourable MAT	<ul style="list-style-type: none"> • Development of templates and guidelines to facilitate capacity needs self-assessments for MAT • Organisation of training workshops/ courses for ILCs and other relevant stakeholders, including the business sector and the research community, on negotiation of mutually agreed terms; • Development of tailored e-learning modules for ILCs and other relevant stakeholders, including the business sector and the research community, on negotiation of MAT/ ABS agreements
7. Increasing understanding of the obligations of Parties under the Protocol with regard to TK and ILCs	<ul style="list-style-type: none"> • Organization of seminars and workshops on the obligations of Parties under the Protocol with regard to TK and ILCs • Development of guidelines on how to establish mechanisms to facilitate coordination across government departments/agencies and local authorities governing ABS with regard to TK and ILCs • Documentation and dissemination of case studies on good practices with regard to TK and ILCs relating to ABS in order to enable practitioners to learn and build on the experience of others • Supporting the establishment of online learning platforms to facilitate self-directed learning on ABS provisions

Source: Document UNEP/CBD/ABS/EM-SFCB/1/3

Available at : www.cbd.int

The outcomes of the expert meeting were forwarded to the third meeting of the Intergovernmental Committee (ICNP3) that took place in early 2014. In this meeting, IPLC representatives requested to prioritize capacity building efforts related to the ABS

Clearing-House, particularly for women but there was no support for the proposal (ENB, ICNP3 Summary Report 24-28 February 2014, Vol 9 No. 617 page 6). The draft strategic framework was maintained and Parties also recommended the creation of an Informal Advisory Committee (IAC) that would include IPLC representatives and relevant organizations.

Later that year, the first meeting of the Parties (COP-MOP 1) adopted the strategic framework. During the meeting, IPLC representatives made one intervention about this agenda item, requesting the necessary financial resources to develop IPLC-led initiatives, such community protocols and registries about traditional knowledge (IIFB Statement read in plenary, 14 October 2014). No Party supported the proposal and it was not included in the text. Parties agreed to establish an Informal Advisory Committee with the inclusion of IPLC representatives.

No major changes were done to the actual strategic framework (annex to decision NP-1/8) except for the inclusion of 2 points favoring IPLCs. In the practical activities for strategic Measure 2.5²⁸, Bolivia asked for the inclusion of the highlighted portion of the text: “Development of guidelines for holistic and integrated approaches for ABS and particularly for strengthening the role of indigenous and local communities”. In the practical activities for strategic Measure 4.2²⁹, Peru asked for the inclusion of text “with the participation and involvement of ILCs”. The final version reading: “Development of

²⁸ Strategic Measure 2.5 referred to: “Establishing institutional arrangements and administrative systems for ABS”

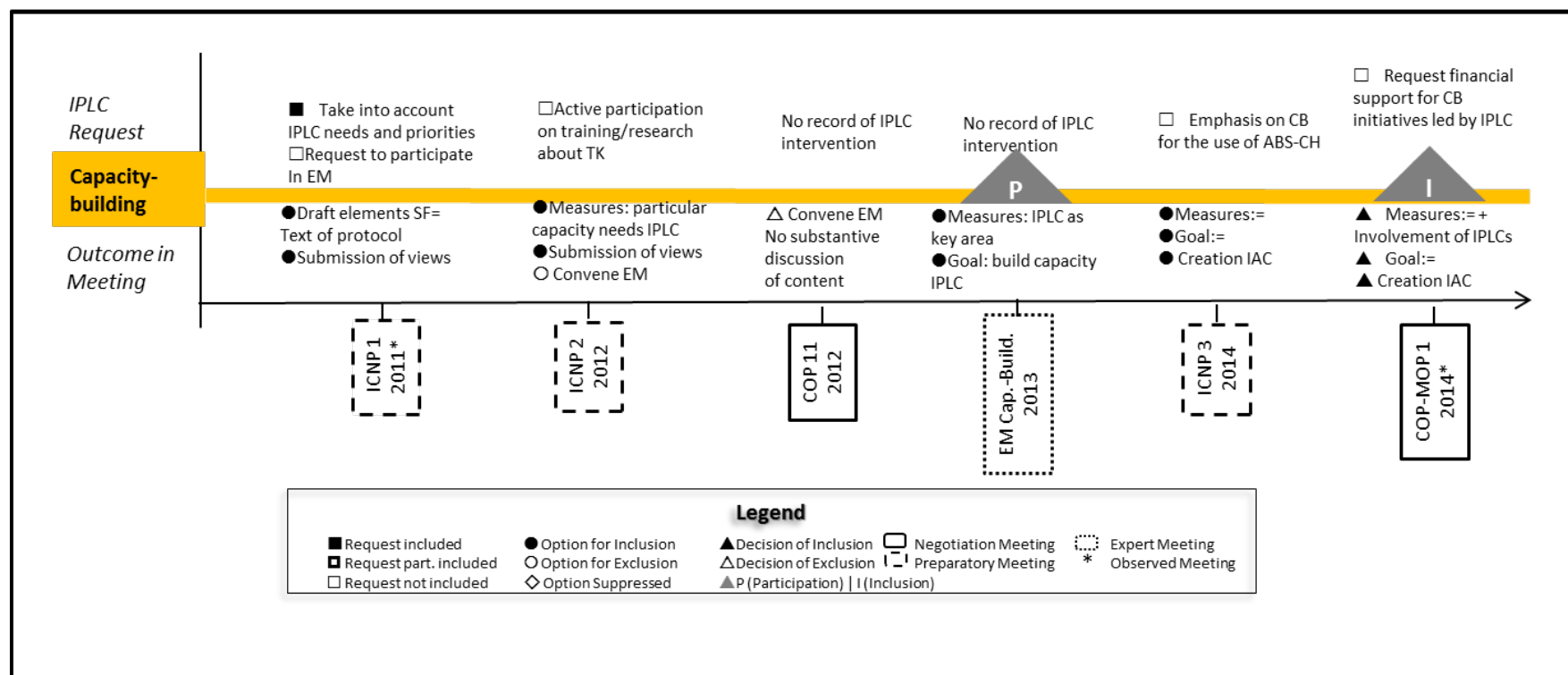
²⁹ Strategic Measure 4.2 referred to: “Developing minimum requirements, as appropriate for MAT to secure the fair and equitable sharing of benefits arising from the utilization of TK”

minimum requirements, as appropriate, for mutually agreed terms to secure the fair and equitable sharing of benefits arising from the utilization of TK, with the participation and involvement of ILCs”.

In summary, IPLCs’ main request was that their priorities and needs could be taken into account in the design of capacity building programs and activities. The concern was to guarantee that these programs would be culturally appropriate to attend to the specificities of IPLC participants, respecting their worldviews and considering communication gaps. Moreover, IPLC intervened in trying to include their best practices within these programs and to get funding for IPLC-led initiatives. The attempt there was to find ways to create autonomous programs in which IPLC would be the responsible actor for designing and delivering capacity-building programs.

In this issue, IPLCs were very successful in including their views in terms of needs and priorities in the design of capacity-building programs, more particularly through the submission of views and in the expert meeting. However, they were less successful in pushing for more autonomous programs, designed and implemented by IPLC organizations. In the future, they might be able to change this as they have been accepted as members of the Informal Advisory Committee (IAC) for capacity-building. This committee will meet periodically to define and refine capacity-building programs for the Nagoya Protocol. The IPLC requests, the outcomes in each meeting and the results in terms of participation and inclusion are visually depicted in figure 9.

Figure 9: Visual mapping of Capacity-Building Issue



4.4 Sharing relevant information about local practices

The Nagoya Protocol establishes an Access and Benefit-sharing Clearing-House (ABS Clearing-House), an online platform for globally sharing information related to access and benefit-sharing. The ABS-CH is expected to work as a centralized website where Parties and other stakeholders make available information that is relevant for the implementation of the Protocol. Furthermore, the ABS-CH performs the function of providing “internationally recognized certificates of compliance”. These certificates are automatically created as authorities provide information to the ABS-CH on their nationally issued ABS permits. Once made public in the global ABS-CH platform, the national permits become traceable, facilitating the monitoring process and increasing the transparency of the system.

Even though the Nagoya Protocol’s text requires the creation of this tool for information-sharing, it was not specific on the ways it should be done. Moreover, since the creation of the tool was seen as an important element of monitoring compliance of the system, there was an understanding that it should be functional by the entry into force of the Protocol. Therefore, there was a pressing need to discuss the modalities of operation of the ABS-CH as the tool had to be developed. In CBD COP decision X/1, Parties decided to take this matter in the first meeting of the Intergovernmental Committee of the Nagoya Protocol (ICNP), but recognized the need for a previous discussion in an expert group meeting and also requested views from Parties, IPLCs and other relevant stakeholders.

The views submitted were compiled in a document (UNEP/CBD/ABS/EM-CH/1/3). A total of 3 submissions were received from IPLC organizations. In all cases, the statements asked for the participation of IPLCs in the process of constituting the mechanism but also in the actual provision of information to the tool. One of the views submitted also suggested that the appointment of focal points and competent authorities (information that should be available on the Party profile in the platform) should be determined by IPLC themselves, respecting their own governance and organizational structures.

This compilation document was made available to the expert meeting held in April 2011 on practical considerations related to the establishment of the ABS Clearing-House. To assist the experts in their deliberations, the Secretariat also developed a document in which, among other things, it addressed the role of the ABS Clearing-House in implementing the Protocol, undertook a preliminary needs assessment and suggested some considerations on priorities for a pilot phase of the ABS Clearing-House (document UNEP/CBD/ABS/EM-CH/1/2). In what concerns the role of the ABSCH for the Nagoya Protocol, the referred document highlighted that the ABS Clearing-House could play a role in informing potential users of traditional knowledge associated to genetic resources about their obligations. The document reminded that information of any relevant competent authorities of indigenous and local communities may be provided to the ABS Clearing-House, following the text of the Protocol. It also suggested some issues for consideration by IPLCs:

“Indigenous and local communities may also need to consider, in light of obligations arising from participating communities, what information, and at what level of detail, is

appropriate for sharing via the ABS Clearing-House. Such information could include the process of prior informed consent, including community protocols and procedures, as well as information for potential users of traditional knowledge associated with genetic resources about their obligations to indigenous and local communities who are knowledge holders” (UNEP/CBD/ABS/EM-CH/1/2, Section F, Paragraph 29)

In the expert meeting, which was held in April 2011, a total 4 IPLCs were invited (out of 12 requests), but only 3 came to the meeting. The outcome document of the expert meeting (document UNEP/CBD/ABS/EM-CH/1/4) highlighted some potential points of inclusion of IPLCs raised by the participants³⁰. Related to capacity-building needs with regards to the operation of the ABS Clearing-House, the IPLC representatives suggested that Parties should determine the relationship between indigenous competent authorities and the competent national authorities and also include information on best practices of the involvement of IPLCs in implementing the Protocol. The IPLC representatives also noted that there are cultural and technical barriers for many IPLCs and suggested that Parties should consider the establishment of an IPLC focal point to facilitate communication. Finally, IPLC representatives also suggested that Parties could mobilize resources for capacity-building initiatives on the use of the ABS-CH led by IPLCs.

The first meeting of the Intergovernmental Committee (ICNP1) in June 2011 considered the recommendations coming out of the expert meeting. Parties agreed to implement the ABSCH in a phased manner according to guidance for the pilot phase based on the expert meeting outcome document. Two points were retained in terms of what had been requested by IPLCs: the encouragement of resource mobilization for IPLC

³⁰ In the outcome document of the expert meeting report, the label of participants providing recommendations is not identified. Instead, all actors involved in the meeting are referred to as “experts”, independent of the fact that they were nominated by Parties or are observers selected by the Secretariat. It came to my knowledge that these suggestions were given by IPLC representatives in informal conversations with the group in later meetings.

capacity building initiatives and the inclusion of best practices of involvement of IPLC. On the discussions about creating an IPLC Focal point, as requested by IPLC representatives in the expert meeting, Parties decided to continue considering a possible role for an IPLC “contact” point. This is how the Earth Negotiations Bulletin describes the discussions on this point:

“Thailand proposed deleting reference to ILC focal points to the clearinghouse. Ethiopia, supported by China and Switzerland, stressed that selecting multiple national focal points should be for each country to decide. Peru proposed that additional national focal points only submit information other than that required by the Nagoya Protocol. Uganda and Egypt expressed concern that additional focal points would create confusion. Canada proposed clarifying that “each party” should consider the establishment of an ILC focal point. The EU and Norway highlighted that Protocol Articles 13 and 14, on national focal points and competent national authorities and on the clearinghouse and information-sharing mechanism, provide full flexibility for national authorities to identify more than one focal point, although there is no obligation to do so. Egypt proposed adding a reference to Protocol Articles 13 and 14, and Brazil to Protocol Article 12(2) on traditional knowledge associated with genetic resources. Uganda, supported by Nepal and India, observed that Article 13 of the Protocol provides for national but not ILC focal points, and suggesting that ILC “contact persons” be identified instead. Uganda and India objected to information from ILCs being located separately from national information, due to possible confusion, with the EU proposing to qualify this by “with appropriate” and take into account alternatives. Guatemala supported indigenous peoples’ inclusion in decision-making, as more than half of the Protocol provisions are relevant to them. The Métis National Council urged developing the process for submitting information with ILCs in an inclusive manner, respecting community protocols, confidentiality and MAT. She also noted that indigenous focal points do not have authority to grant access to community resources, since this authority rests with the communities. The EU noted that not all parties have ILCs, suggesting that the recommendation address only concerned parties, and favored referring to parties establishing ILC contact “points” in plural.”(ENB, ICNP1 Summary Report 5-10 June 2011, Vol 9 No. 551, page 5. Highlights added)

Also during ICNP 1, IPLC representatives supported by South Africa, suggested adding information on relevant customary authorities that grant access to traditional knowledge associated with genetic resources. Even if supported by a Party, this request did not appear in the final recommendation.

At its second meeting in early 2012, the Intergovernmental Committee (ICNP2) worked once again on the modalities of operation of the ABS Clearing-House. Some points that were favorable to IPLC's inclusion were suppressed from the text of the final recommendation coming out of this meeting: consideration of an IPLC focal point, resource mobilization for IPLC capacity building initiatives and the inclusion of best practices of involvement of IPLC. There was also the discussion about the need for the establishment and the mandate of an Informal Advisory Committee (IAC) to help the Secretariat in solving issues arising with the pilot phase of the ABSCH. Malaysia proposed including IPLC representatives in this committee but there was no support from other Parties, so there was no participation of IPLCs in this committee that met twice in between preparatory meetings. There is no record of any intervention of IPLC representatives in this agenda item for this meeting. The recommendation, which updated a work plan for the implementation of the pilot phase, was forwarded to and approved by COP at its eleventh meeting in late 2012.

At its third meeting in early 2014, the Intergovernmental Committee (ICNP3) analyzed the progress made in the pilot phase of the ABSCH (document UNEP/CBD/3/6) and did not discuss the modalities of operation of the ABS Clearing-House. IPLC representatives suggested that "Parties appoint a national focal point on CBD Article 8(j) to help address the communication gap with ILCs" (ENB, ICNP3 Summary Report 24-28 February 2014, Vol 9 No. 617, page 15), but this request was not supported. The Intergovernmental Committee in its recommendation also required Parties to provide feedback on the platform, with no specific mentioning of IPLCs.

In the final recommendation, the Intergovernmental Committee at ICNP3 requested submissions from Parties and relevant stakeholders on the possible role of IPLCs in the ABSCH, something that had been alluded at the Informal Advisory Committee (IAC) meeting in September 2013 and was suggested at the draft recommendation by the Secretariat³¹. The Secretariat was supposed to synthesize the views submitted and provide that information to Parties at COP-MOP1, as follows:

“Paragraph 10. Invites Parties, other Governments, international organizations, indigenous and local communities, and relevant stakeholders to submit to the Executive Secretary views on: (i) the possible functions of a competent authority of indigenous and local communities and of a contact point for the indigenous and local communities for the Access and Benefit-sharing Clearing-House in relation to the implementation of the Nagoya Protocol; (ii) their possible role and responsibilities with respect to the Access and Benefit-sharing Clearing-House; and (iii) who should be responsible for submitting the information on these authorities to the Access and Benefit-sharing Clearing-House.” (ICNP 3 Recommendation 3.4 on modalities of operation of the ABSCH, February 2014)

At COP-MOP1, the modalities of operation of the ABSCH were finally adopted. Regarding the role of IPLCs in the ABSCH, only one submission was received by the Secretariat and it was from an IPLC organization. The answers provided to the questions were synthesized as follows:

Paragraph 58. Regarding the possible functions of a competent authority of indigenous and local communities and of a contact point for the indigenous and local communities for the ABS Clearing-House in relation to the implementation of the Nagoya Protocol, the submission suggested that a national authority should work with an inter-cultural team that would include representatives from different indigenous and local communities and have the financial and technical capacity to carry out its functions in a sustained and transparent manner.

Paragraph 59. Regarding the possible role and responsibilities of a competent authority and a contact point with respect to the ABS Clearing-House, the submission noted that a competent authority should have ABS expertise and combine both western and indigenous perspectives, and should communicate with indigenous and local communities in a transparent and culturally appropriate manner, including in indigenous languages.

³¹ This was confirmed through informal conversation with staff member of the CBD Secretariat

Paragraph 60. Regarding the question of who should be responsible for submitting the information on these authorities to the ABS Clearing-House, the submission proposed that a competent authority should be selected by the indigenous and local community's authorities and be recognized by the local, regional and national authorities as well as the competent Ministry. (Document UNEP/CBD/NP/COP-MOP/1/2; COP-MOP/1 October 2014)

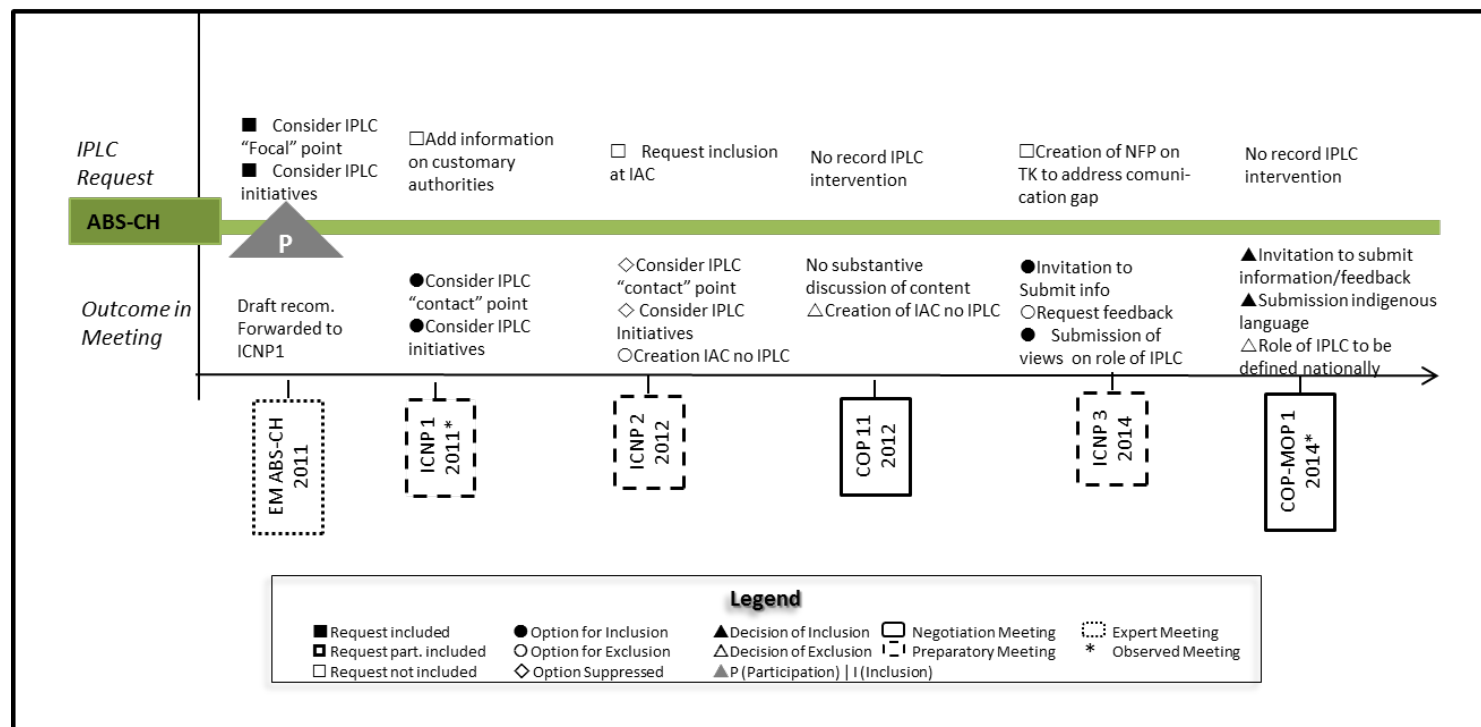
As it would be expected from the lack of submissions on the point of the role of IPLCs in the ABSCH, Parties did not go into deep discussions on the subject matter during the meeting. Some Parties argued that the designation of competent authorities and the specific roles of IPLCs are subject to national arrangements (ENB Summary Report Pyeongchang Meetings of the CBD and its Protocols: 29 September – 17 October 2014 vol 9 no. 641, page 14).

There was no record of intervention of IPLC representatives in this agenda item during the COP-MOP1 meeting. The final decision concerning the ABS-CH operation ended up containing a total of 4 references to IPLCs (Decision NP/1-2). The first is an invitation to IPLC to submit information and to provide feedback to the Secretariat on the implementation and operation of the tool. The second refers to the role of the Secretariat in providing timely technical assistance to Parties, non-Parties, IPLCs and other stakeholders for the registering and retrieving information. The third is a reminder that primary data should be submitted to the ABSCH in an UN official language but the substantive content could be in any language, including indigenous language. Finally, the decision encourages the role of Parties in enabling the active participation of IPLCs for the exchange of information related to traditional knowledge associated with genetic resources. However, how this should be done is not specified.

In summary, IPLC representatives wanted to guarantee a central role in the functioning of mechanism. In acknowledging the possible challenges arising from a communication gap, not only in terms of linguistic but also technological barriers, IPLC representatives intervened in proposing the creation of an IPLC focal point dedicated to function as a bridge between communities and the platform. This focal point would be an official under the state government and would help communities in transmitting their relevant information, such as procedures to obtain prior informed consent to traditional knowledge and model contractual clauses for ABS contracts established with communities. This information would then be “official”, as it would fall under the approval of the respective State that would input the information in the platform.

In terms of outcomes, State actors did not accept the proposal of creating a bridge between IPLCs and the platform and did not accept the inclusion of an IPLC representative as an IAC member. The IAC was actually the negotiation space where most of the negotiations on this issue occurred and usually the recommendations made by the committee were taken as consensus in plenary, without further discussions. Furthermore, no Party answered to a call for the submission of views on the possible role of IPLCs in the implementation of the platform. During the negotiation meeting, Parties agreed that this should be defined in national legislation, so this topic was left out of negotiations. The IPLC requests and the outcomes in each meeting are visually depicted in figure 10.

Figure 10: Visual mapping of Clearing-House Issue



4.5 Shaping an emergent approach to ABS

Article 10 of the Nagoya Protocol instructs Parties to consider the need for and modalities of a global multilateral benefit-sharing approach to situations in which requirements linked to access to genetic resources and the sharing of benefits resulting from their utilization cannot be met on a bilateral level. The Nagoya Protocol indicates two situations to which such a mechanism could apply: transboundary situations (where genetic resources or traditional knowledge are spread under different national jurisdictions) and situations where it is not possible to grant or obtain prior informed consent. This is how the Earth Negotiations Bulletin describes the origins of this article during the negotiations of the Protocol in 2010:

This provision was included in the COP 10 Presidency's compromise text that was put forward and adopted in the final, late hours in Nagoya. As such, it was not negotiated: according to insiders, it was "offered" to the African Group as a way to incorporate their concerns on the limits to geographic and temporal scope of the Protocol, specifically the status of genetic resources accessed before the entry into force of the Nagoya Protocol, and possibly also before the entry into force of the CBD, and of those resources in areas beyond national jurisdiction. (ENB, Summary of ICNP2 : 2-6 July 2012, Vol 9 No. 579 page 14)

The geographical scope of the Nagoya Protocol refers to situations where the same genetic resource is found in more than one place. User countries usually argue that it is possible to identify where the actual genetic resource is originated through DNA analysis. Moreover, the Nagoya Protocol also previews the creation of regional cooperative arrangements to deal with genetic resources and traditional knowledge spread in the same region. With both alternatives available, user countries insist that there would be no need to recur to a multilateral approach. However, from the point view of provider countries, this would lead to a race to the bottom for genetic resources; e.g. many companies

making deals with who sells the resource for less. The problem, they say, is that the ultimate goal of the Protocol is to share benefits in views of conservation and sustainable use and a race to the bottom would produce fewer benefits. As a result, ABS agreements would not achieve the goal attached to the Protocol, while perpetuating unfairness in these relations.

The temporal scope of the Nagoya Protocol refers to situations where is not possible to get prior informed consent for access to genetic resources and traditional knowledge. The vagueness about the actual starting point of ABS obligations makes the issue even more complicated. While user countries believe that obligations only arise in cases of access to genetic resources and traditional knowledge after the entry into force of the protocol, provider countries make the point that benefits are attached to utilization and not to access. In the latter case, samples that were accessed prior to the NP or the CBD but are utilized currently should also be included in a benefit-sharing mechanism, even if it is not a bilateral agreement. The goal again would be to mobilize resources for conservation and sustainable use of biodiversity.

This issue is of importance for IPLCs because it opens the possibility for establishing benefit-sharing in cases where the bilateral approach proposed by the Nagoya Protocol would not be sufficient. For instance, a multilateral approach could be beneficial in regions where IPLCs are spread under different national jurisdictions and they possess similar traditional knowledge. Moreover, the multilateral approach could apply to situations where indigenous peoples had not been properly approached and there is no prior informed consent in place. In such cases, this multilateral system could

provide a way redressing an unlawful situation while also generating funds for conservation of biodiversity and traditional knowledge.

The Multilateral Benefit-sharing Approach was considered for the first time since the adoption of the Protocol at the second meeting of the Intergovernmental Committee for the Nagoya Protocol (ICNP2). In preparation for the second meeting, Secretariat prepared a synthesis of views and information (document [UNEP/CBD/ICNP/2/7](#)) submitted by governments and other stakeholders. No interventions under this issue were done by IPLC organizations in this call for submissions or during the plenary sessions in the meeting.

Due to the high level of divergence, a contact group was established during the ICNP2 meeting to negotiate a process to discuss the need and modalities for such an approach. Since I was not able to perform participant observation during this meeting and there are no records of the conversations at the contact group, I'm not able to specify whether or not IPLCs intervened. The only trace of the contact group is the outcome results, which is a draft recommendation where Parties agree on a list of indicative questions for a broad consultation process to be conducted by the Secretariat. Many questions addressed situations where traditional knowledge would be involved, for instance: In which situations could genetic resources or associated traditional knowledge be accessed without prior informed consent while not violating the obligations in the Nagoya Protocol?; As a provider/user of genetic resources or associated traditional knowledge, what problems would a global multilateral benefit-sharing mechanism (a) create and (b) solve?

The recommendation drafted at ICNP2 was forwarded to and adopted by COP11 in 2012. Once again, there is no recorded intervention by IPLC representatives on this agenda item in this particular meeting. However, the decision highlighted the participation of IPLCs in the expert group meeting as follows:

Convene a meeting of a regionally balanced expert group, including representatives from indigenous communities to: (i) review the synthesis; (ii) identify potential areas of common understanding with respect to Article 10; and (iii) identify areas that could be further examined. The expert group is to submit the outcomes of its work for consideration by the third meeting of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol (ICNP) which, in turn, should consider the need for an additional study, including on non-market-based approaches. (Decision XI/1 B, CBD COP11, highlights added)

To conduct the broad consultation process, the Secretariat promoted online discussions³² from April to May, based on the list of indicative questions agreed by Parties at ICNP2. There were 142 participants registered, among which 4 were IPLC representatives. A total of 350 interventions were made (14 of them from IPLC representatives). For instance, in the question about situations where PIC for TK could not be granted, an ILC representative suggested that the issue of how to obtain PIC will need to be settled, perhaps through a ‘due diligence’ hierarchy allowing a user to know when it has exhausted avenues to obtaining PIC. Another point raised in the question of destination of funds gathered in a multilateral approach, an IPLC representative suggested that funds could be used to create national, regional or global biocultural heritage trusts targeted to projects and both monetary and non-monetary benefit-sharing activities that benefit IPLCs and help to support the biocultural contexts for generating and sustaining biodiversity. Finally, arguing in favor of the constitution of a multilateral

³² Information available at: https://bch.cbd.int/abs/art10_groups/

approach, an IPLC representative emphasized that limiting benefit-sharing to only those situations where bilateral contracts may be negotiated could leave a significant gap in maintaining traditional knowledge and genetic resources, especially where there are problems in identifying traditional rights holders.

A synthesis of this consultation process (document UNEP/CBD/ABSEM-A10/1/2) served as the basis for discussions on the expert meeting. Moreover, participants for the expert group meeting were selected from among those who participated in the online discussion groups, based on their contributions.

During the expert group meeting convened in September 2013, which is described on episode 2 in chapter 4, experts agreed on some areas of common understanding and also areas for further examination. During the meeting one of the two IPLC representatives suggested that Article 11 (on transboundary cooperation) could be well applied in situations of TK shared in different countries and that IPLC should be included in sharing experiences about TK and the granting of PIC. In informal conversations with the IPLC representatives, they revealed their support for the creation of the multilateral approach, indicating that this could be beneficial to IPLCs. However, the results of this meeting were vague. Participants could not find many convergent points, especially on what concerns the actual need for the creation of a Global Multilateral Approach. The report of the expert meeting (document UNEP/CBD/ABSEM-A10/1/3) was forwarded to the Intergovernmental Committee in its third meeting (ICNP3).

In ICNP3, once again Parties could not agree on the need to develop the multilateral approach. During this meeting, IPLC representatives called for indigenous

peoples, including women, to be active participants in all stages of the discussion of this new mechanism; and requested additional studies on Article 11 (transboundary cooperation), based on a non-market approach that is fair and transparent (ENB, ICNP3 Summary Report 24-28 February 2014, Vol 9 No. 617, page 15). The draft recommendation coming out of this meeting indicated a process in which a study would be conducted by an independent consultant, views would be submitted (including those of IPLCs) and all these inputs would feed another expert meeting prior to COP-MOP2. The request from IPLCs for more studies on the implications of article 11 was included. However, there was no mentioning of IPLC participation in this new expert meeting that is going to be convened.

Later that year, at COPMOP1, Parties to the Protocol adopted a decision that defined the process to continue discussing the issue until COP-MOP2, following the recommendation coming from ICNP3. In the decision, Parties, IPLCs and other stakeholders are invited to submit views on the issue, a point that was raised by an IPLC representative during the expert meeting. The decision also requests the Secretariat to:

Commission a study, subject to the availability of funds, on: (i) the experiences gained with the development and implementation of the Nagoya Protocol and other multilateral mechanisms; and (ii) the potential relevance of ongoing work undertaken by other processes, including case studies in relation to ex situ and in situ genetic resources, traditional knowledge associated with genetic resources, and transboundary situations. (Decision NP-1/10, October 2014)

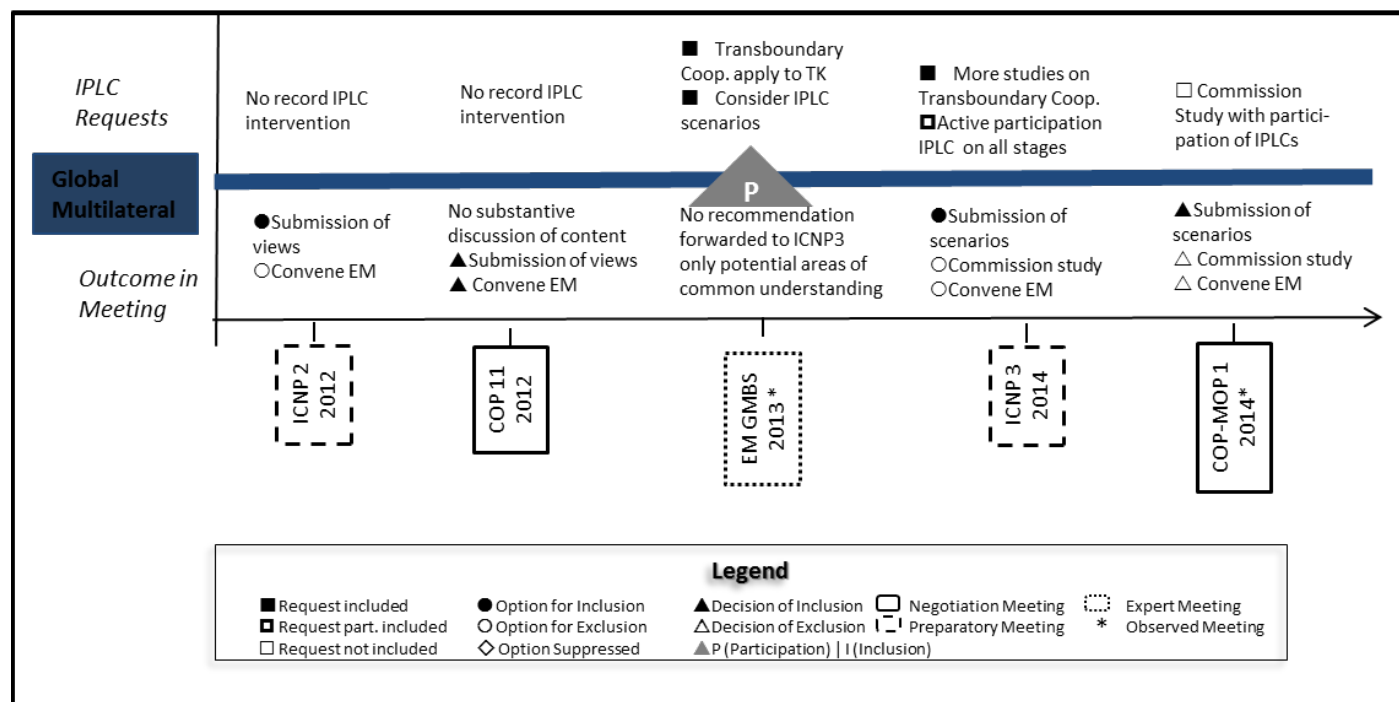
With regards to this study that is going to be commissioned, the IPLC representatives requested to include the participation of IPLCs in what concerns their experiences with the implementation of the Nagoya Protocol but no Party supported this

intervention so it was not included in the decision. Moreover, there was no mentioning of IPLC participation in the expert meeting decision.

In summary, IPLCs were of the view that the creation of a multilateral benefit-sharing approach could be beneficial to them, especially in cases where communities are scattered in different nation states but share similar traditional knowledge. In such cases, even if the potential user of a traditional knowledge wanted to be compliant, prior informed consent this would turn out to be very challenging to challenging to obtain. A way to redress these situations, would be to have a global fund where users could share benefits for conservation of biodiversity and this could assist communities in a more encompassing way. In their interventions, IPLCs asked for more studies on the possible implications of such a mechanism and asked to have their views included in this subject matter.

In terms of outcomes, Parties have not yet agreed on the need for establishing such a mechanism, so the implication for IPLCs is not something that constitutes a priority for States at this point. For the moment, state actors agreed to continue discussing the need for this approach. To do so, they requested once more the submission of scenarios (which include those submitted by IPLCs), the establishment of an expert group meeting and the conduction of a study by an independent consultant, who does not necessarily, has to take into account the views of IPLCs. The IPLC requests and the outcomes in each meeting are visually depicted in figure 11.

Figure 11: Visual mapping of Global Multilateral Approach Issue



4.6 Comparing participation and inclusion in different issues

In terms of issue saliency, all issues presented in this chapter are salient to the stakeholders involved in this process of institutional creation. All of them required the establishment of expert group meetings (while others did not) and other inter-sessional activities, such as submission of views or requests for in-depth studies. However, two of them were relatively more salient than the others, in the sense that they entailed more debating among the actors involved and more challenging negotiations to reach shared outcomes, something that is evidenced by the need of creating smaller negotiation groups (contact groups). In particular, the issues of compliance and the global multilateral approach took more time of plenary sessions and required the orchestration of contact groups that would happen in parallel to plenary sessions in an attempt to advance negotiations more rapidly to a consensus. In this sense both issues are high in saliency, while the other two (i.e. capacity-building and the clearing-house mechanism) are of moderate saliency.

In terms of the interventions of IPLCs, a common underlying theme is the actor's request for inclusion, not only in the design, but also in the implementation of these important constitutive elements of the Protocol. The quest for inclusion appeared in different forms. In the issues of compliance, capacity-building and the global multilateral approach came about through requests to participate in the expert meetings. Even if in most cases their request to participate did not explicitly appear in the recommendation or decision, the Secretariat invited at least two representatives with paid expenses for each

expert meeting in this period. In the issue of compliance, they requested inclusion materialized in the composition of the compliance committee, in the triggers to compliance procedures and in the sources of information and advice. In capacity-building, IPLCs wanted to include their views on needs and priorities, converting them into a key area of implementation. Another point raised by IPLCs was the need for fostering capacity-building programs designed by and for IPLCs. They also requested the inclusion of best practices for interaction with IPLCs as content of capacity building programs. In the clearing-house, the IPLCs tried to create a “bridging” role between the platform and IPLC actors and also include information on customary practices in the clearing-house. Moreover, in this issue, IPLCs wanted to include a representative in the IAC designing the implementation of the online platform. In the multilateral benefit-sharing approach, they also requested to submit scenarios of how this approach could work, when initially only Parties would do so. In these cases, IPLCs wanted to provide input for the design on an emergent approach to ABS.

Considering the participation in this event series, IPLCs were able to participate in all the expert meetings established. In relation to contact groups, IPLCs participated in two of them established for the issue of compliance at ICNP3 and COP-MOP1. There is no record of their active participation in the contact groups established at ICNP2 for the issues of the global multilateral approach and compliance. In the cases of capacity-building and the clearing-house, Parties did not find necessary to establish contact groups during negotiations in judging that these issues did not require lengthy discussions apart from plenary sessions. In addition, in the clearing-house issue, they did not participate in the informal advisory committee (IAC) established to discuss technical and political

specificities of the system being created for information sharing as Parties understood this was a matter for governments to resolve.

In terms of inclusion, IPLCs were successful in many points and not so much in others. In the issue of compliance, which was very controversial since the beginning of the negotiations of the Protocol, 2 IPLC representatives were included as permanent observers in the Compliance Committee. Moreover, affected IPLCs can trigger compliance procedures indirectly, through submissions to the Secretariat. Finally, the Committee may seek advice from independent experts, including, in particular where indigenous and local communities are directly affected, from an indigenous and local community expert. The meaning of these achievements is that these actors can influence compliance of Parties from “outside” and from “inside”. On the one hand, they can denounce non-compliant Parties by triggering the committee even if directly or provide advice as “independent experts”. On the other hand, they can also influence from inside in the decision-making process on the complaints filed, since they have a reserved seat as permanent observers.

In the capacity-building issue, IPLCs were also successful in including their views on their needs and priorities and in turning them a key are of implementation. Interestingly, even if they did not request this in plenary, they were granted the role of permanent observers at the IAC for capacity-building. This could signal either a successful lobbying effort or just an understanding from Parties that their contributions in the IAC could be valuable. Inclusion in this issue is related to the integration of IPLC concerns in the content of IPLC programs, even if these programs are still to be managed by the Parties themselves. Moreover, having a seat as permanent observers of the IAC

also provides an opportunity for IPLCs to monitor and influence the way capacity-building programs will be implemented in the future.

Differently, inclusion in the Clearing-House Mechanism turned out to be challenging for IPLCs. Not only States dropped the idea of establishing a contact point between IPLCs and the platform but they also delegated the discussions of the role of IPLCs in the platform to national jurisdiction. Furthermore, there was no support for the participation of IPLC in the IAC established to design the platform. Combined, these decisions have repercussions in terms of the ways in which the actors will be able to interact with the platform. As for now, the platform is designed to receive submissions from Parties and the IPLCs' information is not a priority. IPLC's concerns lie on the fact that this type of technology may not be friendly enough for IPLCs to actually engage with and profit from if there is not a strong push from Parties to include IPLCs.

Finally, the discussions on the need of creating a Multilateral Benefit-sharing emerging approach, also a very salient and controversial issue, have still an uncertain future. Even though the IPLC suggestion of further studies on transboundary issues was taken, these are not to be conducted by IPLCs but by an independent consultant. However, they were successful in being allowed to submit scenarios of how this system could operate, which in turn could influence the ways in which this parallel approach would work. Most IPLCs seem to believe that this approach could be beneficial to them in some cases, but many Parties question the actual need for the establishment of such an approach. Until this crucial question is solved, it remains difficult to envision the modalities of operation of such a mechanism and the ways in which IPLCs could benefit as well. In table 14, I summarize these findings.

Table 14: Comparative Analysis of Issues

Issue/ Dimension	Compliance	Capacity-Building	Clearing-House	Multilateral Benefit-sharing Approach
Issue Saliency	High	Moderate	Moderate	High
IPLC Interventions	<ul style="list-style-type: none"> • Request for participation in Expert Meeting • Membership in Compliance Committee • Direct Trigger to committee • IPLC as information source 	<ul style="list-style-type: none"> • Request for participation in Expert Meeting • Priority/needs taken into account • Funding for IPLC initiatives in Capacity Building 	<ul style="list-style-type: none"> • Creation of IPLC Focal Point • Request for participation in IAC • Submission of customary practices • Creation of focal point on TK 	<ul style="list-style-type: none"> • Request for participation in Expert Meeting • Request for submission of IPLC scenarios • More studies on transboundary issues with participation of IPLCs
Participation	<ul style="list-style-type: none"> • Participated in Expert meeting • Participated in Contact Groups at ICNP3 and COP-MOP1 (also in ICNP2, but no participation) 	<ul style="list-style-type: none"> • Participated in Expert meeting • No contact groups established for this issue 	<ul style="list-style-type: none"> • Participated in Expert meeting • No participation in IAC established for this issue • No contact groups established for this issue 	<ul style="list-style-type: none"> • Participated in Expert meeting • Contact Group established at ICNP2 but no participation from IPLCs recorded
Inclusion/ Exclusion	<ul style="list-style-type: none"> • Inclusion of 2 IPLCs permanent Observers in the Committee • Inclusion of indirect Trigger from affected IPLCs • Consultation from IPLC expert in relevant cases 	<ul style="list-style-type: none"> • Inclusion of IPLC needs and priorities as key area of capacity-building • No specific funding for IPLC initiatives in Capacity Building • Inclusion of IPLC representative as IAC member 	<ul style="list-style-type: none"> • No creation of “bridging” role • Unsuccessful in conducting possible IPLC roles - left to national jurisdiction 	<ul style="list-style-type: none"> • No IPLC participation in Transboundary Issues studies • Submission of scenarios from stakeholders (including IPLCs) • No decision from Parties on need for creating approach
Level of Achievement	High	Moderate	Low	Uncertain

Source: Elaborated by the author

In conclusion, the levels of achievement in the different issues varied significantly. Importantly, in the cases presented, actors were not always successful. Even if holding a similar vision of inclusion for all issues, they were partially included in some issues and in others they were not included at all. Moreover, some of the outcomes were unintended: the micro instances where inclusion could materialize were not completely clear from the beginning of the process and evolved as the negotiations evolved.

Contrasting the achievements in the different issues, one can also raise important questions. For instance, how is it possible that the highest level of achievement for IPLCs was on the most salient issue? Compliance was the most debated issue and the one that Parties seemed farthest away of reaching consensus but even in this unlikely situation, IPLCs were able to get included. Does the negotiation process affect the outcomes? Even though all these issues were discussed in expert meetings, not all of them required contact groups for in-depth and more informal negotiations. All in all, these questions point to the importance of understanding the underlying mechanisms that allow for more inclusion of marginalized actors, which are at the center of the following chapters.

CHAPTER 5. What do marginalized actors do in different types of meetings?

In this chapter, I narrate the mobilization of indigenous peoples in three different types of meetings: expert, preparatory, and negotiation. The goal is to provide a better understanding of what these actors actually do in the different spaces of negotiation, analyzing the different positions they occupy. To do this, I describe the significance of the meetings and their relationship with other events, provide a summary of main discussions and stakes for the indigenous people group, narrate relevant episodes and present an analysis of the participation of actors in the meetings. Finally, I compare the different dynamics of participation of these actors in the different types of meetings.

5.1 Preparatory Meeting

The preparatory meeting described here is one of the three³³ that took place within the period under analysis and was convened to produce draft recommendations to be forwarded to negotiation meetings on issues regarding the implementation of the Protocol. When the Nagoya Protocol was adopted in 2010, Parties decided to establish an Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol (ICNP) as an interim governing body for the Nagoya Protocol to advance the preparations necessary for the first negotiation meeting of the Parties to the Protocol, where binding decisions are taken.

³³ Initially, Parties agreed that the ICNP should meet twice. The first meeting of the ICNP was held from 5 to 10 June 2011 and the second meeting was held from 2 to 6 July 2012 in New Delhi, India. By COP11, which convened in October 2012, there was not the sufficient number of ratifications to the Protocol to allow for its entry into force, so Parties decided to reconvene the interim body for one last time in February 2014, in Pyeongchang, South Korea.

This description refers to the first meeting of the ICNP (ICNP1). The 5-day meeting was held in Montreal, in June 2011, at the International Civil Aviation Organization building³⁴. The coordination of the meeting was conducted by a previously officially elected Bureau presided by two co-chairs, all of them nominated by Parties to the Convention on Biological Diversity (CBD). The co-chairs were responsible for controlling the pace of the meeting, always assisted by technical information and documents produced by the CBD Secretariat. Most of the formal sessions took place in the morning and afternoon in 3 hour sessions, in the Plenary room, with the simultaneous interpretation in the 6 official languages of the UN. In two occasions there were evening sessions to try to tackle contentious points about compliance with the protocol. In one case, interpretation was not available³⁵ and discussions went on only in English, to the detriment of some of the participants. The agenda for this meeting was pre-established at the negotiation meeting that adopted the Nagoya Protocol in 2010:

- a. Modalities of operation of the Access and Benefit-sharing Clearing-House (information-sharing);
- b. Measures to assist in the capacity-building;
- c. Measures to raise awareness;
- d. Cooperative procedures and institutional mechanisms to promote compliance with the Protocol.

In this event that inaugurated the implementation phase of the Protocol after its adoption, indigenous peoples' and local communities' (IPLC) main concern seemed to be

³⁴ All major events of the CBD that take place in Montreal are held in this venue. The venue comprises the necessary equipment and material conditions to hold this type of meeting, including security facilities, a plenary room with the capacity of about 800 seats, interpretation equipment, screens, microphones and smaller meeting rooms for coordination and negotiation between groups.

³⁵ In this occasion, interpreters did not reach an agreement with the CBD Secretariat for working overtime.

assuring their participation in the unfolding of the issues on the agenda. For instance, it remained not clear how IPLCs would contribute to a Clearing-house platform that would support information-sharing and monitoring of ABS permits. In what concerned the agenda point on Compliance, for IPLCs the concern was related to how they could contribute to a compliance mechanism that would be created. The same kind of concern was reflected under the theme of capacity-building: Were IPLCs needs and priorities for capacity-building going to be taken into account? Would capacity building initiatives be culturally appropriate to accommodate different worldviews? Would IPLC bottom up initiatives for capacity-building be supported and funded? Moreover, with regards to awareness-raising, would there be a space to raise awareness on IPLC specific issues concerning the Protocol?

The main issue discussed in this event was the meaning and implications of compliance in the Protocol. About half of the total time of the event was dedicated to the discussion of the subject matter (17 of the 32 official hours in Plenary, according to my field notes). In special, countries from the African Group highlighted the lack of clarity of the juridical status of the protocol and put into question the meaning of compliance. With no consensus achieved in many points, a huge part of the text was left in “brackets”: Bracketed portions of recommendations mean different options for the same issue that were not agreed upon by countries. These “brackets” continued to be negotiated throughout the subsequent meetings.

5.1.1 Episode 1 - “The (ir)relevant stakeholders”

Every preparatory and negotiation meeting starts off with opening statements.

Opening statements address priorities of the participants and are always read in the first Plenary session. They are usually written collectively, reflecting the perspective of a group that accords their participation with the co-chairs of the meeting and the CBD Secretariat staff. It used to be that only States (organized under regional coalitions) were allowed to read opening statements. However, it became common practice in the CBD meetings that IPLCs are allowed to make a short intervention after all Parties made their declarations. In informal conversations with CBD staff, they said that this is the common practice for the “relevant stakeholders” in meetings. That is why, depending on the issues discussed in a meeting some NGOs are also allowed to do their opening statement as well. This particular meeting where this episode unravels inaugurated the implementation phase of the Nagoya Protocol, an instrument that directly affects indigenous peoples, especially in what concerns the implications of ABS for traditional knowledge. In this sense, for this meeting, the IPLCs were labeled as “relevant stakeholders”.

In this meeting, I was shadowing one member of the International Indigenous Forum on Biodiversity (IIFB) and was able to witness the mobilization around the construction of the opening statement of these alleged “relevant stakeholders” group and the subsequent frustrated attempt to read it in plenary. A group of three Spanish-speaking representatives of the IIFB was in charge of preparing the opening statement. After lengthy discussions, they wanted to seek approval of the other English-speaking IIFB members. “We always have the opening statement ready in the day before, which is only discussed in the morning, already translated to the different languages so people can make contributions” (Interview 1). For some meetings, the IIFB has funding to hire translation services, which was not the case for that meeting. Translation services are

essential for the group because IPLC representatives come from all over the world and language can, and does sometimes, become a barrier for their participation in the meeting. Minutes prior to the beginning of the first plenary session, they asked for my help and I made an unofficial translation of the opening statement from Spanish to English. After that, the group finally reached consensus and moved to the plenary room where the session had started.

Being there...

"There is a clear division between the members of the IIFB: English and Spanish speakers on each side of the table. The women are talking with each other to decide about the opening statement. There is no interaction between the two groups. When people from one group or the other arrives they only acknowledge their respective group. There are 4 Spanish-speakers and 5 English-speakers. The statement is in Spanish and XXX asks me to translate it to English as I read it! I can't deny it! It is so hard to do, I'm sweating. I think everything went fine, everybody seems happy. I'm glad I could help in some way." (Field notes June 6th, 2011)

One of the group members printed a copy of the statement and distributed it in the interpretation booths located above the plenary room. The group asked for permission to read the statement to the Co-chair of meeting many times through the electronic system that controls the microphones in the room. However, they had not previously accorded with the staff working at the meeting that it would read a statement. Seeing that they were not in the list of speakers, one of the group members started waving their "ILC" plaque, that assign their seats in plenary. Another one took the printed version of the text in hands and showed it to a Secretariat staff. Even after those moves, the co-chair closed the point of the agenda and moved on to the next item. The frustration with the situation was

highlighted by one of the members of the group: “We have always had the possibility of reading an opening statement on Nagoya Protocol meetings, but this time we didn’t do what we usually do (...) you go and you talk to your co-chair – ‘Hey, we want to make an opening statement of one page’” (Interview 1).

That same day the group approached a Secretariat staff to understand what went wrong and she blamed the electronic system, which allegedly didn’t work as it should. During the first day, the group kept complaining that they tried to intervene in other opportunities but were also denied. The microphone just went silent on them.

In the morning of the second day, I witnessed when the group approached the co-chair of the meeting to complain about that situation. From the tone of the conversation, they seemed to know each other for years. The co-chair was also from a Spanish-speaking country. Once again, he accounted for the problem as an electronic issue saying that it didn’t clearly identified who they were, only where they were sitting. One of the representatives said jokingly: “I even stood up and shook the ILC plaque far from the back, but I know you saw me”. At this moment, he blamed his glasses- “My prescription is expired already (Sic)”. This conversation granted them the promise of more participation and they were actually allowed to speak every time they asked afterwards (a total of 9 times, as it is registered in the final report of the event).

The opening statement, which ended up not being distributed because the microphone went silent, served as the basis for the closing statement. The core content of the opening statement asked for more effective participation of indigenous peoples and women in the implementation of the Protocol: “It is our concern that the Parties take into

account our full and effective participation in all the implementation processes of the protocol.” (Opening Statement- IIFB). Reflecting on their participation on this event, one of the representatives of the group pointed out: “The participation was not ‘full’ nor ‘effective’ and when we were able to intervene, many things did not appear in the text... the strategy now is to guarantee the Indigenous Peoples’ participation in the forthcoming expert meetings” (Interview 7).

Since all the members of IPLC group were familiar with the content of the opening statement, there was time to ask for the contributions and make amendments. They all agreed that their participation during the whole event was neglected, which brings to question whether they are actually “relevant stakeholders” after all. So even if the emphasis of the opening statement was already in asking for participation, in the closing statement the point was even more stressed: “We call to attention that some of the final documents of this meeting do not reflect the proposals presented by the IIFB, that were supported by some Parties. (...) We would like to remind the co-chair that the IIFB is an assessor organ of the CBD (...) and therefore we hope that our participation improves in the next meetings” (Closing statement – IIFB).

Concerning the statements that were actually read in Plenary, more than half (5 of the 9) focused on procedural issues in trying to assure the participation of indigenous peoples in the discussions, emphasizing their presence in expert meetings. the other 3 times the group provided substantive amendments to the text on the inclusion of information about customary laws and traditional knowledge in the implementation of the protocol, which was finally granted in the final recommendations of the meeting.

Interestingly, only once the group referred to the text about compliance, the major battle within the event. Once again, the statement asked for the participation of indigenous peoples in a future expert meeting. This implies that the dynamics within preparatory meetings produces negative effects on the ability of the group to exert direct influence in the text under discussion. However, they shaped the text in its procedural aspects, guaranteeing their presence in other more favorable settings, such as expert meetings.

Furthermore, the fact that the opening and closing statement are quite similar is very revealing. On the one hand, what they wanted to say in the beginning of the week did not change throughout the week. In fact, the events that took place during the week gave them more evidence to corroborate their argument that their participation in this forum is very limited. On the other hand, it points to the fact that their main proposals usually lie beyond the actual text under negotiation. Their major concern is with their inclusion in every instance of the Protocol implementation. Therefore, to mark their position, sometimes they don't propose substantive amendments to every point on the draft recommendations but they do signal their willingness to be considered as relevant stakeholders to the ABS issue. In this sense, opening and closing speeches, which are usually broader in scope, are ideal occasions from which to deliver messages about such procedural issues.

5.1.2 Analysis of participation of actors in this meeting

In this meeting, IPLCs were given the status of observers. In addition, they were

labeled under the category of relevant stakeholders and were the only group to receive financial support from the CBD to enable their participation in the meeting through a voluntary fund. In interview with an expert in the field, he affirmed: “the acknowledgement of their relevance to the Convention on Biological Diversity in general and to the Nagoya Protocol in particular derives from the understanding that this group can be of extreme relevance for implementation” (Interview 5). In this sense, even though their official status is “observers”, the group enjoys a certain prestige and their interventions are more valued than other groups under the same category.

In total, there were 14 IPLCs registered in the meeting from different regions of the world, even though almost half of them came from Canada (country that hosts the CBD Secretariat and also this particular meeting). A total of 9 of the 14 IPLC representatives were granted funding from the CBD voluntary fund to participate in the meeting, even if only 6 came to participate. Latin American representatives were in a total of 4. It calls to attention the diversity of communities and peoples represented, which is also an indicator of the diversity of languages spoken by these representatives. All of them are members of some sort of organizational form that plays a role in implementation of the Convention. For instance, Andes Chinchasuyo and Red de Mujeres Indigenas sobre Biodiversidad organize capacity-building workshops for communities about issues related to the CBD and the Nagoya Protocol. Another frequent participant organization is, Tebtebba an international centre for policy research and education on indigenous rights. Similarly, INBRAPI is a community organization specialized in advocacy work and capacity-building for intellectual property rights of traditional knowledge in the CBD and the World Intellectual Property Organization (WIPO). Finally, a frequent participant is the

representative from the Tulalip Tribes, which specializes in advocacy work for indigenous rights, both nationally (in the United States of America) and internationally in forums such as the CBD and the WIPO.

Table 15: Profile of IPLCs participating at ICNP1

Country of Origin	People/Community	Gender	Source of Funding
Brazil	Kaingang	Woman	CBD
Canada	Metis	Woman	CBD
Canada	Cree	Man	unknown
Canada	Maritime Aboriginal People Council (2)	Men	unknown
Canada	Mohawk (2)	Women	unknown
Ecuador	Kichwa	Woman	CBD
Nepal	Sherpa	Man	CBD
Panama	Kuna	Woman	CBD
Peru	Kichwa	Man	unknown
Phillipines	unknown	Woman	CBD
United States of America	Tulalip	Man	unknown
Zimbabwe	Chibememe community	Man	CBD

The IPLC group was the second most represented stakeholder group, with 4% of the total of participants (table 15). Since the meeting had few agenda items and no parallel working groups or contact groups, it seemed that the group was able to follow the discussions. They intervened in all agenda items at least once, which is an indicator that they were able to organize and carry out work to represent their interests in plenary. The venue offered a space reserved to IPLC representatives to hold their coordination meetings. It is interesting to acknowledge that it was not a room per se, as other Parties' and Business' representatives enjoyed. It was a set of plastic tables placed in the lobby of the last floor of the building with an improvised room divider separating them from the table destined to NGOs. There was no privacy whatsoever, as other participants of the

meeting would circulate around and listen to everything that was being discussed by IPLCs. The location had an exclusive printer that was used by the representatives to print the statements that were going to be read in plenary. Printed copies of the statements were handed to the interpreters, to the Secretariat and were also used to lobby Parties. Each representative brought their own laptop and internet was free in the venue. With that, all of them worked simultaneously in the texts.

Table 16: Actor representation at ICNP1

Group	N. Representatives	Percentage
IPLC	14	4,0%
Business	4	1,1%
NGO	12	3,4%
Youth	0	0,0%
Education/University	22	6,3%
UN and specialized agencies	9	2,6%
Observers	4	1,1%
IGOs	4	1,1%
Government (Parties +Non-Parties +Local government)	281	80,3%
TOTAL	350	100,0%

Source: Based on the list of participants provided by the CBD Secretariat

The first stakeholder group most represented was “Education”. Among the frequent participants from Education in these meetings were the Centre for International Sustainable Development Law³⁶, a Canadian institute hosted at McGill University that is recognized for publishing research papers on the legal issues involving the Nagoya

³⁶ Available at: <http://www.cisdl.org/> Accessed on: 25/01/2016

Protocol and ABS. Moreover, the Fridtjof Nansen Institute (FNI)³⁷, a Norwegian independent foundation engaged in research on international environmental, energy and resource management politics and law.

The third stakeholder group most represented in this meeting was non-governmental organizations (NGOs). Amongst the NGOs present at this meeting were Berne Declaration, Third World Network, Ecoropa and Natural Justice. Berne Declaration³⁸ is an international NGO based in Europe that advocates trade policy that respects human rights, informing the public of alleged biopiracy cases. Third World Network³⁹ is also an international network of organization based in Malaysia involved in issues relating to development, developing countries and North-South affairs. It has published some many research papers about access and benefit-sharing and the Nagoya Protocol and also a book in 2010 titled “The Road to an anti-biopiracy agreement”, with a collection of papers describing the controversies in the negotiations that led to the Nagoya Protocol. Some of the papers contained in this publication were co-authored by the European Network for Ecological Reflection and Action (Ecoropa)⁴⁰, also an international NGO that specializes in advising European environmental policies and legislation. Finally, Natural Justice⁴¹ an NGO based in South Africa but with operations all around the world that since 2007 advocates conservation and sustainable use of biodiversity through the self-determination of indigenous peoples and local communities.

³⁷ Available at: <http://www.fni.no/> Accessed on: 25/01/2016

³⁸ Available at: <https://www.bernedclaration.ch/> Accessed on 25/01/2016

³⁹ Available at: <http://www.twn.my/> Accesses on: 25/01/2016

⁴⁰ Available at: <http://www.ecoropa.info/about> Accessed on: 25/01/2016

⁴¹ Available at: <http://naturaljustice.org/> Accessed on: 25/01/2016

Finally, the business stakeholders present at this meeting were the International Chamber of Commerce (ICC) and Biotechnology Industry Organization (BIO). The ICC is an advocacy network very much involved in the negotiations phase of the Nagoya Protocol (Orsini, 2013). Following the ICC website⁴², this organization is “dedicated to business self-regulation and has developed a large array of voluntary rules, guidelines and codes to facilitate business and to spread best practice”. Similarly, BIO, the largest biotechnology trade association worldwide, has participated in the negotiation phase of the Protocol and has produced in 2013 guidelines for members engaging in bioprospecting⁴³.

The rules of procedure were that observers are allowed to speak after all State interventions. This rule, which is common practice in UN meetings, also establishes that for a statement of an observer to be considered it has to be supported by at least one Party. The outcome of applying this rule is that the negotiations take place among member states and there is little room left for the contributions of stakeholders. Interestingly, the IPLCs group was the only stakeholder group to read statements during plenary sessions.

Interestingly, in this event, the IPLC representatives did not dispose of translation equipment for their coordination meetings. The consequence was that the process of consensus building among the members group was sometimes undermined due to linguistic barriers as not all the members of the group spoke the same language. My own

⁴² Available at: <http://www.iccwbo.org/about-icc/policy-commissions/> Accessed on: 25/01/2016

⁴³ Available at: <http://www.bio.org/articles/guidelines-bio-members-engaging-bioprospecting> Accessed on: 25/01/2016

participation as an unofficial translator for the group, as presented in episode 1, compensated a little for this effect. I became a resource myself as a translator as illustrated in episode 1, when the group utilized my capacity of English-Spanish translation in the tasks of building consensus within the group and lobbying Parties.

Picture 1: IPLC representatives in plenary with their computers and materials



Source: Earth Negotiations Bulletin, Highlights for Tuesday, 7 June 2011.

Available at: <http://www.iisd.ca/biodiv/icnp1/7june.html>

Every morning, the group held coordination meetings to delineate the strategies to be taken during the day. An internal procedure from the IIFB network mandates that in each formal meeting a designated group be responsible for reading statements on behalf of the IIFB and this was the turn of the LAC region (Interview 2). Some disagreements within the network came up that affected the organizational capacity of the IIFB. Some representatives did not agree with the lobbying activity and declined to collaborate in these efforts throughout the meeting, without understanding that with no support from Parties their amendments to the text would not stick to the final version.

Being there...

I see XXX trying to talk other representatives into lobbying Parties for specific points in the agenda. They answer back that is not their role to convince Parties of anything. They want to say what they have to say and they shall get the support of anyone willing to support them. (Field Notes, June 6 2011)

XXX is talking about the DOC INF/6 with the English-speaking representative but she has difficulty to express herself in English. She explains that the annex has some proposals elaborated by ILCs in the workshop of the weekend and she suggests that they look at the points and choose the ones they agree with and try to lobby parties. They answer very fast and she does not understand. She asks for my help and I translate to her that they believe this document is irrelevant because the meeting will discuss another document. After this misunderstanding, XXX shows concern about the coordination of the group. (Field Notes, June 7 2011)

This is how they described their participation in the event:

The meeting was attended only by seven indigenous representatives along with six indigenous representatives from Canada (four brothers and two sisters). Latin America tried to organize the work of the IIFB. Due to the small number of participants and with the vote of confidence of the representatives of Asia, Pacific and Africa, the three sisters of Latin America decided to work on the review of documents and preparing texts to be presented at the various meetings. Every morning we presented texts to other indigenous representatives to gather their comments and suggestions for inclusion in the texts. We worked within a framework of respect and consideration and in close consultation. Our brothers of Canada were very kind and collaborative. In the case of Latin America, the three sisters were attentive to the process at this first meeting, we lobbied various parties to ensure support for the proposals and we were ready to present our texts either in Spanish or English. We had to read one of our texts in English due to the lack of translation. document produced by Red de Mujeres en Biodiversidad, 11 June 2011, Entitled: "Participacion de los Pueblos Indígenas y Comunidades Locales em la Primera Reunion del Comité Intergubernamental sobre el Protocolo de Nagoya sobre ABS". Translated from Spanish by the author)

For most of the texts the group was able to read in plenary, the delegates of Guatemala and Philippines were the first to support the statements. Not as frequently, delegates from South Africa and Brazil would also support the statements. I witnessed situations where IPLC representatives would go to government delegates and explain the points they were asking for some amendment prior to the plenary sessions. These interactions created opportunities for the IPLC group to have their proposals included in the final recommendations produced in the meeting. The group would use informal opportunities such as receptions, side events and even occasions in which they were selling some artisanal products to approach delegates.

Being there...

“XXX organized to bring today some products produced in their communities to sell to the participants of the meeting... earrings, rings, scarfs, CDs, paintings. They don’t do this very openly (apparently is not a practice particularly encouraged by the UN, but nobody says anything). Some things are very beautiful, even though a little on the expensive side. I buy a pair of earrings myself. I see many delegates, especially women coming to see what is there and they buy like crazy. The IPLC representatives take the opportunity to talk about the issues of the meeting, in a very friendly and informal way. Afterwards I ask them why do they sell this stuff and they are very frank: ‘we need the money, this is our benefit-sharing’”. (Field notes, June 7, 2011)

Another frequent ally in this meeting was an NGO called Natural Justice. The NGO monitored from a distance the inclusion of texts favorable to the indigenous cause in the final recommendation. For instance, in the document about information-sharing, the IPLC group had requested an amendment that was supported by South Africa and Guatemala the day before but was not appearing in the final version of the text. A

representative from the NGO pointed that to the IPLC group, which hadn't notice the mistake. Moreover, a representative from this NGO participated in the IPLC-organized side-event as a speaker, providing examples of the supportive role they play in many communities around the world in the realm of community protocol building.

Being there...

"When I arrive in the plenary room the afternoon, there is place for me saved right next to the ILC reserved spots. XXX is writing me an e-mail, she needs my help for a translation. "Come on come on, we have work to do. We have to finish this translation and print it before they start this agenda point this afternoon to lobby with Parties and send it to the interpretation booth", she says. I feel part of the team and I feel the adrenaline of working in this meeting. I have to remind myself all the time what I'm actually doing here!" (Field Note June 8th 2011).

"During lunch time I go to the GEF side event presenting opportunities for funding for projects on ABS. XXX wants to ask a question about funding ILC projects and she asks me to make simultaneous interpretation. Afterwards, she confessed that she already knew the answer to the question but she wanted to ask it anyway so that the government representative of her home country would hear it and be embarrassed by the answer." (Field Note June 9th 2011)

5.2 Expert Meeting

The expert meeting described here is one of the four that was held within the period under analysis and it was convened to discuss the possibility of creating a multilateral mechanism to supplement the bilateral nature of the protocol. Article 10 of the Nagoya Protocol refers to the need and modalities of a Global Multilateral Benefit-Sharing approach in cases where the Nagoya Protocol would not be applicable. This is

the decision that convened the expert meeting at the 11th Conference of Parties (COP 11) in 2012:

Further requests the Executive Secretary, subject to the availability of funds, to convene a meeting of a regionally balanced expert group, including representatives from indigenous and local communities, to: (i) review the synthesis referred to in paragraph 3 above, taking into account the views provided; (ii) identify potential areas of common understanding with respect to [Article 10](#); and (iii) identify areas that could be further examined. The expert group shall submit the outcomes of its work for consideration by the third meeting of the Intergovernmental Committee, following the holding of the expert group meeting. Based on the conclusions of the work of the expert group, the third meeting of the Intergovernmental Committee should consider the need for an additional study, including on non-market-based approaches. (Decision XI/1 Section B paragraph 4, highlights added).

Prior to the expert group meeting, an online-forum took place on this subject matter.⁴⁴ The online discussions had a total of 142 participants and the forum was made publicly available. The idea was that active participants on the online discussions would later be nominated for the expert meeting to be held in Montreal on the basis of their contributions, but also following regional and gender balance. Discussions were guided by questions contained in the annex of the decision. The Secretariat elaborated a synthesis document of the 350 interventions, which became an information document for a subsequent preparatory meeting, the third Intergovernmental Committee on the Nagoya Protocol (ICNP3).

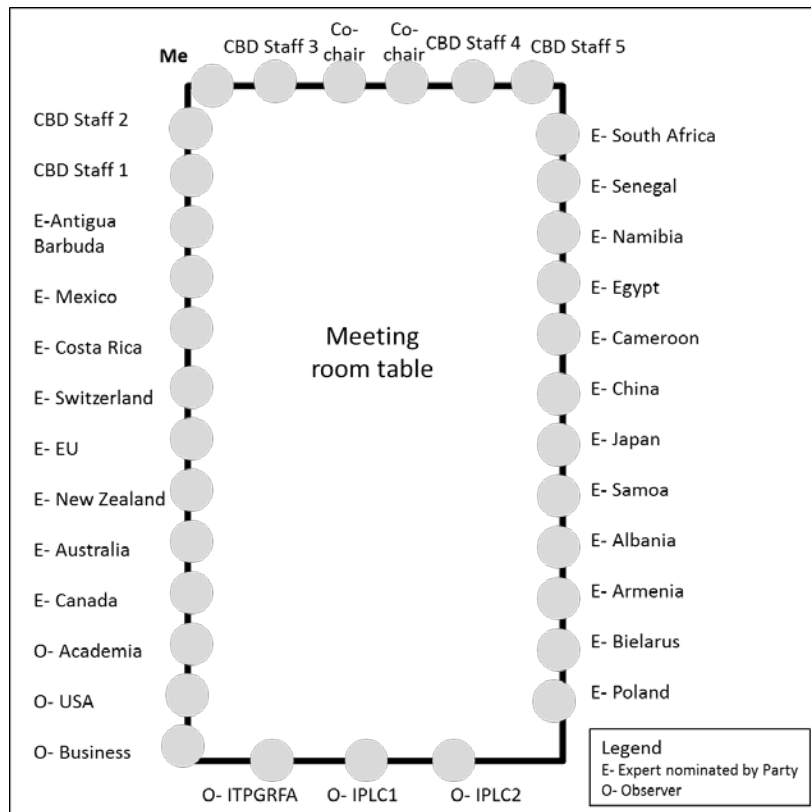
For the expert group meeting, 24 experts (nominated by Parties) and 8 observers (not nominated by Parties), 2 of which indigenous peoples and local communities (IPLCs) were selected. The participants from developing countries and the IPLCs

⁴⁴ A notification was sent to Parties, relevant organizations and ILCs in February for nomination of experts. However, the participation was open to participants who didn't receive the notification as well. In my case I registered as an observer from academia.

received financial support from the European Union, who financed the meeting. A total of 22 experts and 6 observers came to the meeting.

The event took place in a meeting room at the Convention on Biological Diversity (CBD) headquarters. Figure 12 shows the disposition of the participants in the meeting room, which is pre-defined by the CBD Secretariat staff. The meeting room had a long, rectangular-shaped table with microphones attached. The CBD staff members were seating in the front of the table close to a projector. To service the meeting, there were 6 CBD staff members including myself (I was an intern of the division at the time). Two co-chairs were elected for the meeting. The experts nominated by Parties were clustered in regions. In the back of the room there were the observers. I was seating together with CBD staff, as my role in the meeting was to take notes on the interventions so we would be able to produce the expert meeting outcome report. Participants were asked to raise their hand to request for the floor and would be called in the order of the request, with no distinction between experts and observers. Certainly experts intervened more than observers as a whole, but observers were very active depending on the point under discussion.

Figure 12: Participants of Expert meeting on Global Mechanism



Source: Elaborated by the author

The 3-day meeting was scheduled to have 6 sessions (3 in the morning and 3 in the afternoon) with a lunch break and occasional coffee breaks. An additional evening session was arranged in the second day due to the lack of progress in the text. The meeting was completely held in English with no interpretation or translation of documents. Some participants were definitely uneasy with the language, including one of

the co-chairs of the meeting (a Spanish-speaking delegate). The most active participants in the meeting were those who mastered English. From the IPLC participants, one was a representative from a tribe in the USA so he was a native English speaker. The other was a Spanish-speaker and he spoke only once during the whole duration of the meeting.

During the meeting, many points were made in terms of the history of the negotiation of the article. The creation of a supplementary mechanism that would cover the blind spots the Nagoya Protocol (transboundary situations, and situations where prior and informed consent cannot be granted or obtained) was referred to as an essential part of a “package deal” to dissolve a deadlock in Nagoya.

Form the content of discussions in the meeting, the Nagoya Protocol was portrayed by “provider” countries experts as a redistribution tool, a mechanism to restore social justice and redress historical debts. The multilateral system, in particular, could be a supplementary tool to mobilize resources for conservation and sustainable use. For “user” countries experts, it could be a way of creating an enabling environment for business, preventing lawsuits and resistance from local communities and international NGOs. However, the creation of a multilateral system could also be an obstacle to research and development because it generates new regulatory barriers. Throughout the meeting, these participants argued that the need for such a supplementary mechanism is still to emerge from the experiences of implementation, which up to this point are very scarce.

The main interest for IPLCs in these discussions is the possibility of finding redress in situations where traditional knowledge is already being used without prior informed consent. Understanding that there is no way of giving “prior consent” retroactively,

IPLCs observers agreed that there should be a mechanism to encourage the sharing of benefits in favor of biodiversity conservation even on those cases.

5.2.1 Episode 2 – “The anonymous experts”

In the first session of the meeting, which took place in the first morning of the first day, the participants analyzed the synthesis report of the online discussions. The Secretariat staff proposed that the online discussions could signal initial points of convergence and divergence that would help experts to fulfill their mandate in this expert group meeting, which was to find “potential areas of common understanding” and “areas for further examination”.

As participants went about the document, some of the nominated experts raised the point that the synthesis report distinguished between representatives of Parties, NGOs, business and IPLCs. They requested to have participants unidentified in the document produced by the Secretariat, justifying that the opinions given on the online discussions were given on the basis of their expertise and that it would be incorrect to assume what had been discussed there was a consolidated position in a country. Some nominated experts from Africa strongly opposed this argument, justifying that their positions in the online discussions were previously articulated. In the end, the nominated experts agreed to leave the generic label “participants” in the synthesis report as long as the Secretariat would maintain available the raw sources of the online discussion, where the speakers were identified.

Another point raised about this document was that any arguments raised in the online discussions should be considered “opinions”, not “facts or truths”. In particular, the expert nominated by the EU made the point that this should be stated very clearly in the synthesis report because “no information is undisputed”.

The final report of the expert meeting recorded this discussion as follows: “It was noted that the synthesis of the online discussions should refer to interventions made by ‘participants’. Furthermore, it was emphasized that the views contained in the synthesis document were expressions of opinions.” (Para. 16, page 3, UNEP/CBD/ICNP/3/5). Following the same approach for the interventions during the expert meeting, the Secretariat in the final report did not distinguish the experts in terms of sectors or countries.

The result of these discussions was that all participants in the meeting became “anonymous experts”. This dynamic benefited IPLCs in at least one point that I was able to observe. At a given moment, nominated experts arrived to the conclusion that to have a proper discussion of modalities of operation of such a global mechanism, Parties should submit some scenarios instead of having the Secretariat drafting possible scenarios. This exercise of hearing Parties would help in focusing any further discussion on this issue. In this moment, an intervention of the IPLC representative opened the scope of actors submitting such information. The argumentation turned around the idea that stakeholders of the protocol, including IPLCs, could put on the table interesting ideas for implementation of such a mechanism. I describe this small episode from my field notes in the box below.

Being there...

“ When the issue of submitting scenarios for the modalities comes up, XXX (IPLC observer) raises his hand and is given the floor immediately, even if there is an expert waiting in the line. He suggests that the most fruitful way of going about the exercise would be involving stakeholders, so everybody should be able to submit scenarios. He argues that the holders of traditional knowledge have a lot to contribute in this sense. One nominated expert argued that including stakeholders at this moment where there is almost no implementation would make things more confusing. A discussion follows after that, but in the end the room seems to agree that collecting scenarios could be a good way forward to make discussions more concrete.” (Field Notes 19/09/2014)

The final report of the meeting recorded the episode as follows: “The experts also suggested that it would be useful if Parties and others could be invited to provide possible scenarios on modalities for a GMBSM as well as information regarding the implications of these scenarios.” (Para. 26, page 5, UNEP/CBD/ICNP/3/5). Even though IPLCs were not particularly mentioned in the paragraph, it is noteworthy that a possibility of non-state actors submitting scenarios was accepted and moved forward as a recommendation to Parties.

Furthermore, the episode also highlights the openness of this type of meeting. The IPLC observer not only was allowed to give his opinion on the subject matter, but also his intervention was not tagged as being from an observer. The report does not identify the origin of the recommendations as to appear more “neutral”, not revealing the evolving positions of countries in the subject matter. With this dynamic in place, the result was the

inclusion of recommendations coming from “anonymous experts”, even if IPLCs and other stakeholders not nominated by countries were not supposed to be experts in this meeting, only observers. As a result, the proposals made during the meeting got diluted in the final report and readers no longer can distinguish who emitted them, nominated experts or observers.

Why is it important for IPLCs being anonymous experts? The anonymity works in favor of IPLCs and other observers in the sense that their expertise gets included in the report becoming something legitimate for Parties to use as information when taking decisions on negotiation meetings. Indeed, the lack of identification makes the proposals more easily recognized by Parties in a negotiation. As the text gets forwarded in the lifecycle of a decision, it becomes easier for IPLCs to lobby on the previously infused proposals when the recommendation was emitted by an “expert” rather than by an interest group.

5.2.2 Analysis of the participation of actors in this meeting

In this event, IPLCs also participated as “observers”, since they were not experts nominated by Parties but they were selected by the Secretariat based on their contributions in the online discussions that took place prior to the expert meeting. However, as showed in the episode about the “anonymous expert described above, the opinions and proposals of participants in this meeting were not discriminated as coming from observer or expert.

In terms of representation, there were 2 IPLC representatives in a total of 28 participants (Table 17). One of the IPLCs representatives was the policy advisor for the Tulalip Tribes, located in the United State of America. This representative participated in other 2 expert meetings of the period under study. The other was the coordinator of an indigenous council from Mexico and he participated in one additional. One point that merits attention is that the meeting, as well as the online discussions, was conducted in English. Only one of the 2 representatives was comfortable with the language and the other seemed to have difficulties in following the discussions, since he contributed only once during the whole 3-day meeting. In an interview with one of the representatives participating in the meeting, he revealed that there is no coordination of the International Indigenous Forum on Biodiversity (IIFB) for this sort of meeting:

“There actually is very little coordination on that and I think it is the structural problems, how to make it happen. For example, in order to meaningfully participate on an expert session you have to know the issues, but you also have to read all of the session documents. And then having read the session documents, you have to formulate an opinion, and if you’re going to coordinate that, that means you have to have people in each region reading those documents and formulating an opinion. Our problem is that that just doesn’t happen and it’s probably not going to happen in any near time.” (Interview 50, IPLC Representative)

Both representatives were funded to come to the meeting while other observers, such as the participants from Academia and Business, were not eligible for funding. IPLCs were the only group clearly specified in the decision text that convened this expert group meeting. This particular text, entitled them not only to be invited to the meeting, but also to get the financial resources necessary to be present. In informal conversations with the CBD staff, I asked when this practice of funding IPLCs to expert meetings came

about, and nobody seemed to remember very well. What they knew was that usually they provided funding for at least two participants in every expert meeting, at least in the context of the Nagoya Protocol negotiations.

Table 17: IPLCs participating at Expert Meeting

Country of Origin	People/Community	Gender	Source of Funding
Mexico	Otomi	Man	CBD
United States of America	Tulalip Tribe	Man	CBD

The other two representatives were stakeholders. One representing Education was a member of the Swiss Academy of Sciences and professor at the Sustainability Research Program of the University of Basel. The other representing Business was the assistant at the patent counsel of the Eli Lilly and Company, a pharmaceutical company that has been blamed of practicing biopiracy in the case of the patenting of rosy periwinkle for its anti-cancer properties (Wynberg et al., 2009).

Table 18: Actor representation at Expert Meeting

Group	N. Representatives	Percentage
IPLC	2	7,1%
Business	1	3,6%
Education/University	1	3,6%
UN and specialized agencies	1	3,6%
Observer (Non-Party)	1	3,6%
Government appointed experts	22	78,6%
TOTAL	28	100,0%

Source: Based on the list of participants provided by the CBD Secretariat

Regarding the rules of procedure in this event, it was a mix between deliberation and negotiation. There was no actual limit or order to expressing views for government appointed experts and other participants, except in the case where consensus had to be reached. However, even though the intervention process was much more unstructured than in other meetings, it is interesting to note that all the so-called “experts” of the meeting are exactly the same delegates that negotiate the Protocol in the other events. As a consequence, not only they carry over the history of the negotiation of the text but they are also aware of the political implications of whatever is discussed in this meeting. Therefore, as much as this meeting was supposed to be a deliberation process between experts in a field to find a broad range of alternatives, in practice, it is an extension of the battlefield where negotiators have mandates from their countries.

5.3 Negotiation Meeting

The Nagoya Protocol reached the required number of ratifications (a total of 50) for its entry into force on 12 October 2014. The first meeting of the Parties to the Protocol (COP-MOP 1) was held in October 2014, concurrently with the second week of the twelfth meeting of the Conference of Parties (COP) for the Convention on Biological Diversity (CBD).

The meeting was held in Pyeongchang, Republic of Korea. The county is located approximately 180 km east of Seoul, the city capital. Pyeongchang will host the 2018 Winter Olympics and, allegedly, this event, which was expected to receive around 20.000 participants following the estimation of the host organizers, was supposed to be a training

experiment for the Olympics. The area is known for its touristic potential due to its mountains, natural landscapes and Buddhist temples. However, much of the infrastructure, including roads, public transportation alternatives and hotels, is still under construction. During the opening ceremony of the meeting, some local NGOs denounced the disregard of the local government for environmental standards in performing this construction work (picture 2).

Picture 2: Protesters at COP12



Source: Earth Negotiations Bulletin – Highlights for Monday October 6 2014

Available at: <http://www.iisd.ca/biodiv/cop12/6oct.html>

According to the official list of participants issued by the CBD Secretariat, the 2 week-event received around 3047 registered participants. This number does not account for CBD staff and local staff involved in the organization of the event. This was the first time that the CBD COP was held in a meeting concurrently with one of its instruments.

The main highlight of the event was the entry into force of the Nagoya Protocol. This has been emphasized in the Earth Negotiations Bulletin⁴⁵:

Undoubtedly, the Nagoya Protocol was star of the show in Pyeongchang, as delegates celebrated the Protocol's entry into force on 12 October, with 54 ratifying countries. Entry into force also marked the achievement of the first part of Aichi Target 16, and the Protocol's first COP/MOP took steps towards operationalization by establishing its compliance committee, agreeing on how indigenous and local communities (ILCs) will participate, and setting up its Access and Benefit Sharing Clearing-house. (Earth Negotiations Bulletin, vol.9 n. 645, page 31).

Since this was the first time two large meetings were held concurrently, uncertainties remained on how the logistics of the meeting would flow. The Secretariat had a restrained number of rooms, staff members and translation hours available and only 10 days to finalize all the negotiations.

For COP-MOP1, there were a total of 9 substantive items that were taken up only at the second week of the meeting. Two working groups worked simultaneously on the agenda items so that they could be forwarded for adoption in Plenary Sessions. Initially, each working group was supposed to hold one morning and one afternoon session with 6 hours of simultaneous interpretation in 6 UN languages. In practice, these hours were extended to evening sessions that would go on almost until midnight.

The working groups were hosted in tents with no heating, outside the conference center. With temperatures around 15°C during the day and 10°C in the evening, many delegates and other representatives got sick or preferred to leave the negotiations earlier. Another consequence of the cold weather, allied with a low attendance rate in this

⁴⁵ Summary Of The Twelfth Meeting Of The Conference Of The Parties To The Convention On Biological Diversity And The First Meeting Of The Parties To The Nagoya Protocol On Access And Benefit-Sharing: 6-17 October 2014. *International Institute for Sustainable Development (Vol 9 No. 645)*

meeting⁴⁶, was that many side events and other parallel events held in external tents were mostly empty. Trying to mitigate the cold, the host organizers distributed in the first week small blankets for each participant. In many pictures of the event, participants appear using these blankets as scarves, coats and hats (picture 3). Almost at the end of the event, in the 8th day of the meeting, just after the “high level segment” where high rank officials from different countries made appearances and presentations, electric heaters were placed inside the tents and the temperatures became bearable for the participants.

Picture 3: Cold conditions during the COP-MOP1 meeting



Source: Earth Negotiations Bulletin Highlights for Friday 10 October 2014

Available at: <http://www.iisd.ca/biodiv/cop12/10oct.html>

In this meeting, following practice widely adopted in the UN system, smaller negotiation groups were established in trying to solve more controversial issues, the so-called “Contact groups” and “Friends of the Chair”. For COP-MOP1, there was one Contact group on compliance (described in more detail in Episode 3) and one Friends of the Chair on resource mobilization. These negotiation groups happened throughout the day and evening (usually in between working group sessions), according to the

⁴⁶ At least compared with the host organizers’ expectations (20.000 participants) and the attendance at the previous COP (with 5,852 registered participants)

availability of smaller rooms in the conference center of the venue and no interpretation was offered. As per common practice, the information about these smaller negotiation meetings was announced by Chairs at working groups and it also appeared on screens at the conference center and on the website of the event, but always on short notice. Eventually some changes in time and location would happen and would not be properly advertised.

In informal conversations with indigenous peoples and local communities (IPLC) representatives in the corridors of the meeting, I asked them what the major issue was for them in this meeting. All seemed to agree that their major fight was the modification in the terminology of “indigenous and local communities” to “indigenous peoples and local communities” in the context of the CBD COP. This has been a request of the group for many years⁴⁷ and it has to do with the recognition of their status and identity in the context of the United Nations: they did not want to be labeled as “indigenous communities”, because they are “indigenous peoples”. One of the most cited descriptions of the concept of “indigenous” was outlined in the Jose R. Martinez Cobos Study on the Problem of Discrimination against Indigenous Populations⁴⁸:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”

⁴⁷ In every meeting during the Nagoya Protocol implementation phase (starting in 2011), the IIFB has requested to include the word peoples when referencing to indigenous and local communities in documents.

⁴⁸ UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1-4. The conclusions and recommendations of the study, in Addendum 4, are also available as a United Nations sales publication (U.N. Sales No. E.86.XIV.3).

Interestingly, the definition of the term ‘indigenous peoples’ is not a consensus but it is significant because it recognizes their collective rights, including to self-determination⁴⁹. According to a NGO partner to the International Indigenous Forum on Biodiversity (IIFB)⁵⁰, the UN General Assembly adopted the term since 2007 and the CBD was one of the only bodies to not adopt the term:

Affirmation of the status of indigenous peoples as peoples, not just communities, is important in order to fully respect their identities and protect their human rights. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the UN General Assembly in 2007, recognizes this and thus uses the term ‘indigenous peoples’. In fact, the COP of the CBD is the only decision-making body of an international convention to still use the term ‘indigenous and local communities’. All other relevant and peer processes, including the Conferences to the Parties to the other Rio Conventions, have adopted the correct terminology of ‘indigenous peoples and local communities’ in their relevant decisions. For instance, Parties to the Ramsar Convention updated its terminology last summer, and ‘indigenous peoples and local communities’ was also used in the Rio+20 outcome document. (FPP E-Newsletter: December 2012, Page 11)

Accordingly, the greatest mobilization of the IPLCs during COP12 was directed to this issue, which is reflected in the number of activities and texts produced. They participated actively in the Friends of the Chair established to negotiate the impasse on the change or not of the terminology, organized a press conference on the issue and distributed a press statement with the main arguments favoring the modification of the terminology. The discussions around this issue were lengthy, but in the end the group was successful in pushing the change in terminology.

⁴⁹ The United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) states: Article 3- Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. Article 4- Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

⁵⁰ Available at: <http://www.forestpeoples.org/sites/fpp/files/publication/2012/12/e-newsletter-december-2012-colour-english.pdf> Accessed on February 1st 2016

Regarding the meeting COP-MOP1 for the Nagoya Protocol, which is the focus of analysis here, the major concern for IPLCs was with the creation of a compliance mechanism. Some IPLC representatives participated actively in the contact group established to discuss the creation of a compliance mechanism, which is at the center of the episode described next.

5.3.1 Episode 3 – “The informal consultants”

The issue of compliance procedures and mechanisms to address non-compliance has been the most controversial throughout the implementation phase of the Nagoya Protocol, which was reflected in the lengthy discussions during previous preparatory meetings. The recommendation arriving to COP-MOP1 from ICNP3 had a total of 100 “brackets” (i.e. 100 points of divergence between Parties). For that reason, a contact group was established already on the first day of the meeting but only met for the first time on Thursday of the first week (the fourth day of the meeting). In the corridors, some delegates showed skepticism as to the possibility of “cleaning the text” or “taking away the brackets” (i.e. solving the disagreements) during this meeting. In the corridors the talk was that the negotiations would be postponed once again and discussions would continue at COP-MOP2.

The contact group convened 8 times, in a total of approximately 30 hours of negotiations. The room where the group met was within the convention center and it accommodated around 60 to 80 people. There was a table in the center with access to

microphones for 30 people. A projector in the back of the room would project the text under negotiation and modifications would be made “live”. The room was usually packed full (picture 4).

Only government delegates would sit at the central table, except for at least one IPLC representative. There would always be one IPLC representative present and others would seat close to him. No other observer sat at the table during the meetings. Other stakeholders would observe the meeting from the chairs at the lateral parts of the room. The IPLC representatives would intervene usually when asked or in issues related to IPLCs’ participation in the compliance mechanism being created. They acted throughout the meeting as “informal consultants”, in the sense that they were called to give advice on relevant points despite the fact that they were officially only observers.

Picture 4: Contact group on compliance at COP-MOP1



Source: Earth Negotiations Bulletin Highlights of Thursday Oct 9 2014
Available at: <http://www.iisd.ca/biodiv/cop12/9oct.html>

Most delegates showed flexibility in terms of the participation of IPLCs in the committee that was being created. However, the ways in which this participation would take place were still obscure. After a first round of views from Parties, the co-chair of the contact group asked the IPLC representative to participate in the discussion about how IPLCs should be nominated to the committee. The IPLC representative expressed his contentment in seeing that Parties support participation and they were of the view that IPLCs should be able to nominate themselves the participant for the committee. After this intervention, Parties continued to discuss the status IPLCs could hold (as member, non-voting member or observer). The IPLC representative suggested they could start as one observer per region in the committee and then, with time, the status could be changed to non-voting members. This suggestion of changing status did not get any traction, but all Parties seemed to agree that they could not be members since they are not Parties to the Protocol and decisions taken are not legally binding to them.

The discussions over the modalities of IPLC participation in the committee continued throughout the week. In the sixth session of the contact group, the delegates decided to finally “clean the text” to reflect their decision, which is summarized in the Earth Negotiations Bulletin⁵¹:

Many delegates welcomed the agreement that the committee’s composition will include two permanent spots for ILC observers, who are self-nominated, and that issues brought to the committee can be decided by a majority vote. The COP/MOP also agreed that compliance procedures might be triggered by parties against other parties, by parties seeking assistance with compliance, and by the COP/MOP. ILCs may submit information

⁵¹ Summary Of The Twelfth Meeting Of The Conference Of The Parties To The Convention On Biological Diversity And The First Meeting Of The Parties To The Nagoya Protocol On Access And Benefit-Sharing: 6-17 October 2014. *International Institute for Sustainable Development (Vol 9 No. 645)*

for consideration by the compliance committee through the CBD Secretariat. (Earth Negotiations Bulletin, vol.9 n. 645, page 31).

In the end, IPLC representatives became “informal consultants” in the committee that was created as well: they were able to get two seats as self-nominated permanent observers, plus one alternate in case one of the observers is no longer willing or available to perform his duties. In practice, this means that they have guaranteed funding to be present for the whole duration of the compliance committee meetings and can provide their advice at any point discussed. Importantly, this status does not allow them to vote. However, they are the only observers nominated for this committee a priori, meaning that no other stakeholder group enjoys the privilege of trying to influence the committee from within.

It is important to note that the inclusion of stakeholders in general and of IPLC in particular in this type of compliance committee is very novel. Looking at other cases of multilateral environmental agreements⁵², usually compliance committees are composed by Parties to the instrument, something that is confirmed in informal conversations with delegates and CBD staff. Even if hearings and discussions on particular cases may be open to the public, such as is the case of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, it is very unusual to have permanent observers seating on such

⁵² The main inspirations to the creation of the Nagoya Protocol approach to compliance were the compliance procedures and mechanisms developed under the Cartagena Protocol on Biosafety, the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), the Montreal Protocol on Substances that Deplete the Ozone Layer and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Presentations about these instruments were made in the expert group meeting about compliance.

committees. The implications of this invitation are still unknown because the committee has not yet been implemented.

5.3.2 Analysis of the participation of actors in this meeting

In terms of the status of IPLCs in this event⁵³, the coalition they form, the IIFB, was an observer organization. This implied that, during formal plenary sessions and working groups, they were allowed to speak after countries finished discussions on a certain point of the agenda. However, to be taken into consideration, any statement had to be supported by at least one country. Additionally, to be integrated in the final decision, no other country could object the statement. IPLC representatives intervened 16 times in plenary⁵⁴, in different agenda items. Most statements made suggestions of substantive amendments to draft decisions and proposed alternatives that would include IPLC views.

In terms of the IPLC participants, there were 42 representatives from 26 countries registered in the meeting⁵⁵ (table 19). A total of 14 were funded by the CBD Voluntary fund for participation of IPLCs⁵⁶. Other representatives were funded through their own sources, a voluntary fund managed by the IIFB or through grants received from other

⁵³ At COP5, in 2000, decision V/16 recognized the IIFB as an advisory body to the Convention for issues related to the implementation of article 8j on traditional knowledge and related provisions.

⁵⁴ In two occasions the statements were co-produced with NGO allies.

⁵⁵ It is important to acknowledge that the list of participants made available by the CBD Secretariat contains all the registered participants to the meetings of COP12 and COP-MOP1 for the Nagoya Protocol, not discriminating which delegate was present at which meeting.

⁵⁶ In fact, 18 IPLCs were selected to receive funds, but only 14 ended up getting registered in the meeting.

organizations. Even if it was not possible to identify the peoples and community where all participants belong to (since this information is not requested by the CBD in registration form), it is possible to see the highly diverse background of the participants (at least 20 different traditions).

Table 19: IPLC Participants at COP-MOP1

Country of Origin	People/Community	Gender	Source of Funding
Australia	Kuku Yalanji	Woman	CBD
Bangladesh	unknown	Man	unknown
Brazil	Cerrado community	Woman	unknown
Costa Rica	unknown	Man	unknown
Ecuador	Kichwa	Woman	CBD
Ecuador	Kichwa	Man	CBD
Guatemala	Maya	Man	unknown
India	Naga	Man	CBD
Iran	Shahsavan	Man	CBD
Kenya	Ogiek	Man	unknown
Kenya	Maasai	Woman	CBD
Morocco	Amazigh	Man	unknown
Namibia	Nama traditional healers	Man	unknown
Nepal	Sherpa	Man	CBD

Nepal	Sherpa (3)	Man	unknown
Nepal	unknown	Man	unknown
Nepal	Adivasi Janajati	Woman	unknown
New Zealand	Ngati Hine	Woman	unknown
Norway	Saami	Man	unknown
Palau	unknown	Man	unknown
Panama	Kuna	Woman	CBD
Papua New Guinea	unknown	Woman	unknown
Peru	Kichwa	Man	unknown
Phillipines	unknown	Woman	CBD
Phillipines	unknown (4)	Woman	unknown
Russia	Selkup	Woman	unknown
Russia	unknown	Man	unknown
Russia	unknown	Woman	CBD
Russia	unknown	Woman	unknown
Sri Lanka	unknown	Man	CBD
Thailand	unknown	man	CBD
Uganda	Batwa	Woman	unknown
United States of America	Tulalip (2)	Man	unknown
Venezuela	Amazon river peoples	Man	CBD
Zimbabwe	Chibememe community	Man	CBD

In terms of representation (table 20), the IPLCs made up 1.4% of the total number of participants, only the 4th group among stakeholders. It is interesting to notice that about a third of the participants in the meeting were non-state actors, as it can be shown in table 20. No other non-state actor group received direct funding from the CBD to enable their participation in the meeting.

Table 20: Actor representation at COP-MOP1

Group	N. Representatives	Percentage
IPLC	42	1,4%
Business	122	4,0%
NGO	428	14,0%

Youth	38	1,2%
Education	73	2,4%
Other observers	72	2,4%
UN and specialized agencies	176	5,8%
Government (Parties +Non-Parties + IGOs + Local government)	2099	68,8%
TOTAL	3050	100,0%

Source: Compiled from the List of Participants issued by the CBD Secretariat, 17 October 2014

The largest stakeholder group represented at the meeting was the NGOs. Transnational NGOs such as Conservation International, The Nature Conservancy and WWF International were present with delegations. The NGOs more closely following the Nagoya Protocol discussions and topics were Forest Peoples Programme (FPP), Global Forest Coalition (GFC), ECUROPA and Natural Justice. The FPP⁵⁷ supports the rights of indigenous forest peoples to defend their lands and livelihoods. They frequently send representatives to the CBD meetings and usually are very close to the indigenous peoples forum, often participating in their morning coordination meetings. The Global Forest Coalition is a coalition of NGOs and indigenous people organizations also dealing with forest issues and indigenous peoples rights. ECUROPA, the European-based NGO which was also present at the first meeting of the series. In this meeting they were responsible for editing the NGO newsletter named ECO that was widely distributed in the corridors of the meeting and featured some IIFB articles. Natural Justice was once again there, with their experience on the work of helping communities to build their community protocols. None of these NGOs actively intervened in plenary during COP-MOP1, but most of them

⁵⁷ Available at: <http://www.forestpeoples.org/background/about-forest-peoples-programme> Accessed on: 26/01/16

organized or co-organized at least one side-event and also distributed materials in the corridors of the meeting.

The second and third stakeholder groups were Business and Education. The Business group was mainly composed by delegations of local and regional associations such as the Korean Council for Biological Diversity (KCBD). The Education group was composed by individual researchers from universities all around the world, as well as representatives from institutes such as the Centre for International Sustainable Development Law and the Fridtjof Nansen Institute. None of these organizations made declarations in plenary, but some of them organized side-events and distributed materials in the corridors of the meetings.

In some conversations with IIFB members in the corridors, the cold conditions and remoteness of the venue were deemed to affect the participation of IPLC. They pointed out that these conditions affected everyone in the meeting but had stronger effects on participants that could not afford accommodations close to the venue. In fact, buses were made available with different routes to the hotels but these would only run until 9pm (picture 5). Particularly when there were late night sessions, both within the working groups and the smaller negotiation groups, there were no cheap alternatives to leave the venue. Those that decided to stay had to incur in extra expenditure to find alternative transportation. Factoring in the cold conditions, some of them preferred to leave early and not stay until the end of discussions. Many of the representatives by the middle of the second week were sick, which further influenced their capacity to intervene in the discussions.

Picture 5: Logistics at COP-MOP1



Source: Indigenous Portal. Image under the title: “Every evening entertainment - trying to get into the bus”.
Photo credit. Polina Shulbaeva.

Available at:
<https://www.facebook.com/indigenous.portal/photos/a.977346588948320.1073741826.566056336744016/982041611812151/?type=3&theater>

Finally, related to the rules of procedures of the forum, two different practices coexisted. As usual, in plenary sessions, the negotiation mode of interaction prevailed, where Parties clearly tried to bargain to have their positions win over others. In the smaller groups of discussion, as was the case in the contact group of compliance, Parties seemed more flexible in finding a solution. In the second case, compared to the first case, the IPLC representatives seemed to have more space for exposing their concerns and proposing alternatives.

The CBD Secretariat provided practical support such as a meeting room, printer and internet access for IPLCs during the event. The meeting room exclusive to IPLCs was located in a Working Group tent, with no heating. There, the IIFB promoted a daily coordination meeting prior to the plenary sessions. Most of the meeting rooms made available to stakeholders were in similar conditions (including NGOs and business),

while regional government meeting rooms were located within the conference center building. The Secretariat has also provided funding for the participation of 18 IPLC representatives, which included the airfare and a daily subsistence allowance (DSA). Counting on their own financial resources based on voluntary financial contributions coming from donors, the IIFB was able to fund the participation of more IPLC participants and to hire 2 interpreters⁵⁸ (Picture 6).

Picture 6: Interpreters and equipment for IIFB coordinating sessions



⁵⁸ Some years ago, with the money from the voluntary fund, the IIFB bought equipment with headphones and microphones to facilitate simultaneous interpretation English-Spanish in meetings.

Source: Indigenous Portal. Under the title: "IPBES IGO Briefing with IIFB"

Photo Credit- Polina Shulbaeva. 14 Oct 2014

Available at:

<https://www.facebook.com/indigenous.portal/photos/a.977346588948320.1073741826.566056336744016/982039875145658/?type=3&theater>

During the event, IPLCs have also got help from friends to get access to translation services. For instance, in the press conference organized by the IIFB, the interpretation of the event from Spanish to English was done informally, by a friend from a NGO. Moreover, in two occasions I served myself as an interpreter on side events organized by IPLC organizations. Apparently, performing voluntary translation is not unusual for Secretariat staff, as I describe in the box below.

Being there

"On Sep 10 2014, the IPLC from Pacari contacts me by e-mail. She asks me to serve as an interpreter during her presentation at a side event where her organization will launch their community protocol. I hesitated for a while, because this time around I was a staff member with my expenses paid by the Secretariat to go to the meeting. I didn't know whether this type of intervention was seen as problematic in the eyes of the Secretariat. So, I decided to consult with 2 staff members and they say they have done this many times as a courtesy... "You do it only when they ask you to, and only if you are comfortable with that." I decide to agree, as I was planning to observe the side-event anyway. I only alert her that I will do it informally because I don't have the necessary skills to do something professional. She seemed happy and relieved - they were thinking about canceling the event because they wouldn't have money to pay for professional interpretation." (Field notes, 10 September 2014)

In addition, to implement and publicize local projects IPLC representatives also need material resources. The money collected through the voluntary fund has a specific destination, being usually used to pay meeting-related expenses and to fund representatives to come to the meeting. In the box below, I describe how an IPLC organization was able to gather resources to host a side event that publicized their local work.

Being there

“After the side event, XXX comes to me to discuss her idea of creating a local community forum, such as the one created by the IIFB. They are only 3 representatives from local communities in the CBD and they are welcomed at the IIFB, but are not indigenous peoples. The resources that the IIFB has from their voluntary funds where Parties to the CBD contribute, which are mainly directed to interpretation and participation fees, are managed by them and for them. To come to this meeting, to publish and translate the community protocol and to launch it in this side event (which implied costs with the location and catering), her organization had to find external funding. They were able to gather money from a call for proposals from a German foundation supporting local initiatives for the environmental conservation.” (Field notes, 6 October 2014)

Every morning, the IIFB held a meeting to coordinate the actions of the different members of the network, prioritizing the points of the agenda that were deemed more significant to their cause. In these meetings, they defined the activities, delegated to smaller groups the task of drafting texts for interventions and also invited allies to provide briefings on issues considered relevant. Picture 6 illustrates one such occasion, where a representative of an IGO provided a briefing about the collaborative possibilities of a new scientific platform with traditional knowledge.

Moreover, IPLC representatives were able to organize or co-organize 6 side events (table 21)⁵⁹ and 3 press conferences to raise awareness on the issues considered of relevance to them. All side-event rooms were equipped with an LCD projector and a computer/laptop; other services such as interpreters, catering and any additional equipment were of the responsibility (cost and logistics) of the organizer of the side-event⁶⁰. Requests for side-events were made using the on-line system available on the Secretariat's web site and were approved subject to availability of rooms. The attendance in such side events was varied, both in number and type of actors. The ones organized jointly with other actors seemed to have more attendance.

Table 21: Awareness-raising of IPLCs through side events during COP

Organization	Region	Title of event	Actors
Articulação Pacari - Plantas Medicinais do Cerrado	Latin America	Experience In The Construction Of The Raizeiras Community Protocol On The Traditional Use Of The Biodiversity In Brazilian And The Right To Free, Prior And Informed Consultation	IPLC, invited speaker NGO
Red de Mujeres Indigenas Sobre Biodiversidad De America Latina Y El Caribe (RMIB)	Latin America	El Rol De La Mujer Indigena En El Sistema De Gobernanza Para El Uso Consuetudinarios De Los Recursos De La Biodiversidad	IPLC, invited speaker NGO and IGO

⁵⁹ I was able to attend 3 of the 6 side events, but for other 2 events, pictures are available at http://www.iccaconsortium.org/?page_id=1924

⁶⁰ Available at: <http://www.cbd.int/doc/meetings/cop/cop-12/other/cop-12-info-note-en.pdf>

Kalpavriksh, ICCA Consortium, Global Diversity Foundation, And Tao Foundation	Asia	Biodiversity, Well-Being And The Post-2015 Agenda	IPLC co-organized NGO
ICCA Consortium And Kalpavriksh	Asia	Iccas And Aichi: The Contribution Of Indigenous Peoples And Local Communities To Meeting The Aichi Targets	IPLC co-organized NGO
Red de Mujeres Indigenas Sobre Biodiversidad De America Latina Y El Caribe (RMIB)	Latin America	Protocolo De Nagoya, Pueblos Indigenas Y Conocimiento Tradicional Asociado A Recursos Geneticos	IPLC
'Swedbio At Stockholm Resilience Centre, International Institute For Environment And Development; Quechua-Aymara Association For Sustainable Livelihoods Andes	Europe/ Latin America	Developing Biocultural Innovations For Resilience: Linking Biological And Cultural Diversity In Agricultural Systems	IPLC co-organized Academia and NGO

Source: CBD website

From the six events organized by the IPLCs representative, I was able to closely observe three which I describe in more detail in the box below. Importantly, I served as unofficial interpreter in two of them under the request of the IPLC organizations.

Being there

"The first side event I attended today was from local communities of Brazil. It took place in a tent and there was food and drinks for the participants. Approximately 25 people came to the event, most of them delegates from Brazil. The event consisted of 2 power point presentations, one from the IPLC organization itself explaining the process of construction of a community protocol by a local community in Latin America, and the other by a local NGO specialized in social and environmental rights providing a context

of the importance of community protocols and inclusion of local communities in environmental decision-making in the local and international arenas. I served as an unofficial English interpreter; the organization had contacted me prior to the event to ask for that favor. In the Q&A session, contention built as government delegates participating in the event contested information given during the presentation.” (Field notes, 6 October 2014)

“For the second event hosted by IPLC organizations, there was vast choice of hot food and drinks for the participants, something fairly uncommon in most side events. There were approximately 25 people outside the room eating prior to the start of the event. When the event actually started there were only 8 people left (not counting the presenters), most of them from NGOs and other IIFB members. There was a professional simultaneous interpreter Spanish-English available provided by the IIFB. The event consisted of 3 presentations about the role of indigenous women in indigenous systems of governance for biodiversity conservation. The speakers were: the representative of the United Nations Permanent Forum on Indigenous Issues, a delegate for the government of Guatemala and a representative from the IIFB.” (Field notes, 7 October 2014)

“The same group of the side event for the second day is organizing this event about the Nagoya Protocol implementation on the last day of the meeting. This time they do not have budget for food and interpretation and the room was not confirmed until the last minute. As I’m seating down, they ask me to help with the translation (I can’t believe this has happened again). There were approximately 10 people seating around a circle, all of them IIFB members, except for an NGO representative.” (Field notes, 17 October 2014)”

Likewise, press conferences were for free and the equipment furnished by the Secretariat. Actors willing to organize press conferences were responsible for arranging for interpretation and for the printing of handouts, among other things as described in table 22. In this sense, organizing a side-event or a press conference does not require a lot in terms of material investment, but it requires capacity to plan and execute the different activities involved in doing so.

Table 22: Requirements for organizing a press conference

<p>What is expected from my organization to provide for the press conference? Organizers of the press conferences and media briefings are responsible for providing the following:</p> <ul style="list-style-type: none"> - Their own Master of Ceremonies/Chairperson - Interpretation staff (if required) - Shipment of copies of any publications/documents to be distributed - Special security considerations (i.e. for conference including VIPs) <p>What are the logistical details to think about for the day of the press conference?</p> <p>To help the Secretariat ensure the smooth and efficient conduct of the media events during the Conference, please also take note of these logistical details for the day of the conference:</p> <ul style="list-style-type: none"> - A programme of the conference with speaking times and choreography would be appreciated, as this will help the technicians with their jobs. - Organizers will need to have their own name plates, handouts and any collateral material with them at that time. The SCBD and the Host Government are not responsible for organizing any of these. There will be staff available to distribute handouts at the beginning of the conference.
--

Source: CBD Secretariat. Instructions for press conference requests

Available at: <http://www.cbd.int/cop/cop-12/media/media-press-conference-request.doc>

Table 23 presents the number of press conferences organized by actor at COP 12. These press conferences were transmitted live through the internet. Out of a total of 27⁶¹, 3 were organized or co-organized by IPLCs and had the following titles:

- Indigenous and Community Conservation and achievement of Aichi Targets;
- Launch of the ICCA Global Support Initiative (ICCA GSI);
- Use of the term “Indigenous Peoples and Local Communities” in decisions and secondary documents under the Convention: A historical perspective.

Table 23: Press Conferences by actor at COP

Actor	Number
IPLC	1
IPLC/SCBD/NGO	1
IPLC/Government/IGO	1

⁶¹ The actual number of press conferences in the whole event was 43, but this number included formal daily briefings (one in the morning and one in the afternoon) by the Secretariat to the journalists with the intention of summarizing the major events of the day. These daily briefings were excluded from this table to better reflect the number of press conferences that were held by participants. All press conference are available on the website of the event http://www.liveto.com/Cop12/vod_2/04.html

NGO	4
IGO	2
Government	6
SCBD	9
SCBD/IGO	2
SCBD/Government	1
Total	27

Source: Compiled from SCBD website COP 12 Press Briefs

Available at: <http://www.cbd.int/cop12/media/>

It is difficult to evaluate the actual impact of these press conferences. However, in an examination of the video recording of these press conferences, it is interesting to see that they served different purposes. The first two, which were co-partnered with other actors (the SCBD, NGO, government and IGO), were directed at presenting to the wide public the projects developed by IPLC organizations in partnership with different actors. The goal was to try to attract publicity but also to inform actors outside of the meeting about a project under actual implementation. In one of the cases, the IPLC organized arranged for one of the speakers to be the executive secretary of the CBD Secretariat, which generated more attention. In both cases, the IPLC representatives distributed a press release and a report with details on how the work done by IPLC is contributing to biodiversity conservation through concrete projects.

In the third press-conference, the issue under discussion was the impasse at the negotiations for the change in terminology from Indigenous and Local Communities to Indigenous Peoples and Local Communities. IPLCs were in favor of the change basing their claim on the recognition of “Indigenous Peoples” as distinctive groups in the United

Nations Declaration for the Rights of Indigenous Peoples. The press conference was centered at giving arguments to justify the change and to denounce the position of some countries (picture 7). Apparently there were not media representatives in the room because during the time for Q&A, they raised no questions to the speakers. A printed press statement that contained similar claims was also distributed in the corridors.

Picture 7: IIFB Press Conference - "Indigenous Peoples and Local Communities"



Source: Indigenous Portal. Under the title: IIFB Press Conference - "Indigenous Peoples and Local Communities": A Historical Perspective.

13 Oct 2014. (Photo credit- Polina Shulbaeva)

Available at:

<https://www.facebook.com/media/set/?set=a.977346588948320.1073741826.566056336744016&type=1>

In addition to the side-events and press-conferences organized by IPLC organizations, IPLC representatives were invited to intervene as speakers in other organizations' events⁶². Picture 8 illustrates an IIFB member speaking on a side event

⁶² A total of 9 events organized by NGOs, IGOs and country delegations were centered on themes of interest to IPLCs, including the role of indigenous peoples in conservation, the importance of traditional knowledge for biodiversity, the emergence of community protocols, among others. In some of them, IPLC representatives were asked to participate as panelists.

promoted by the Global Environmental Facility, the organization responsible for financing the programs of work under the CBD.

Picture 8: IIFB representative speaking in side event of international organization



Source: Indigenous Portal. GEF Side Event at COP12. Photo Credit- Polina Shulbaeva. 14 Oct 2014.

Available at:

<https://www.facebook.com/indigenous.portal/photos/a.977346588948320.1073741826.566056336744016/982038988479080/?type=3&theater>

IPLCs were also invited to write articles for a newsletter called ECO, which is produced by a civil society coalition, the CBD Alliance⁶³. The newsletter is distributed daily in printed version to all the participants of the meeting and is also available on the internet. In their website⁶⁴, the CBD Alliance organizers encourage submission of articles by member organizations providing contents relevant to the ongoing negotiations: “They should be related to agenda items, or at least to general points of interest. If you

⁶³ In the 11 issues of the ECO newsletter distributed during this meeting, a total of 4 articles were under the authorship of IPLC representatives: biodiversity and sustainable development (one version in English and another in Spanish), the benefits of ICCAs and the integral reproduction of the IIFB opening statement.

⁶⁴ Available at: <http://www.cbdalliance.org/en/index.php/en/our-work/upcoming-meetings/general-information-for-cop-and-cop-mop/cbd-alliance-activities>

send in an article early, we can have a better chance to publish it in the most opportune way. Even if you are not in the possibility to travel to the COP, consider writing an ECO article as a real good lobbying strategy.”

5.4 Comparing different types of meetings

Regarding the rules for access in meetings, it is interesting to note that indigenous peoples and local communities (IPLC) representatives officially held the “observer” status in all of them. This status implies that these actors would only observe the negotiations between Parties. Nevertheless, depending on the type of meeting, I observed that actors performed different positions that reflected the ways they were included or not in the discussions.

In episode 1 about the mobilization in a preparatory meeting, the observer rule held true most of the time because the discussions were taking place mainly in plenary sessions, very formal and structured spaces. Plenary sessions usually follow a script where the central actors (i.e. Parties) negotiate with each other the shaping of an agreement. Simultaneous interpretation is mandatory, except in cases where negotiations go overtime and interpreters refuse to continue work late hours – something that is not uncommon – and then English becomes the language in use. Moreover, not all the documents are translated to all languages for budgetary reasons (for instance, notifications and information documents are usually only in English) and English is the working language in the corridors and most of the side-events in preparatory and negotiation meetings. IPLC representatives are allowed to express their views on the

issues being discussed in plenary, but only after all Parties have spoken. To be considered, however, they have to be supported by at least one Party. This usually means that Parties have usually reached an agreement before IPLCs were given the opportunity to speak. This also means that a lot of effort has to be put in working behind the scenes to guarantee the support for a statement from a Party or to influence the statement of a Party in a way that favors the indigenous cause. In episode 1, I show how the group of actors had to strive for more room in plenary, asking informally and formally to central actors to be considered as “relevant stakeholders” to the protocol. After some insistence in trying to get support of governments, they were allowed to speak several times and some of their interventions were taken into account for the outcomes of the meeting. Interestingly, other stakeholders such as business and NGO representatives did not intervene in plenary in that meeting.

However a different dynamic took place in deliberative meetings, smaller negotiation spaces where their participation as observers is more flexible. In the case of expert meetings, observers acted somehow as experts nominated by Parties. Not only did they intervene fluidly throughout the meeting (i.e. speaking many times and not waiting to speak after nominated experts), but they also ended up becoming “anonymous experts”, since their interventions became anonymous in the final report. One important aspect is that, allegedly, participants are intervening under their individual capacity “as experts”. However, Parties frequently nominate the very same delegates who are the negotiators in the other meetings to be experts. Even if expert meetings are supposed to be about putting diverse options on the table, the so-called “experts” nominated by Parties have a clear agenda in these meetings. Nevertheless, it is important to

acknowledge that the Secretariat, in formulating the expert report, is careful in introducing all the interventions made. Importantly, these meetings have no simultaneous interpretation. This is an important challenge that indigenous representatives face, as most of them do not master English and this affects greatly their ability to participate. In episode 2 I showed that one of the IPLCs participants present seemed uneasy with the language and intervened only once during the whole meeting.

Likewise, in the episode about the contact group discussions over compliance mechanisms within the negotiation meeting, they unofficially adopted a different position than observers, acting more like “informal consultants”. Episode 3 illustrated how their views on points that directly affected the group were taken on board, specifically where Parties have no clear sense where to go. The final decision making was still in the hands of the Parties, but the IPLC representatives had room to provide advice and raise concerns in this more flexible space. Importantly, interactions between Parties and non-state actors are less structured, there is not much time for the full elaboration of statements and for the consolidation of positions. This dynamic requires a negotiator well-informed about the topic under debate, knowledgeable about the general views of IPLCs on the issue and skillful to be able to construct and present arguments fast enough to follow the discussions. Once again, mastery of English language is a requirement, since these smaller meetings have no simultaneous interpretation.

Their representation in meetings is strictly linked to the availability of funds to finance their participation. The CBD Secretariat is responsible for selecting applications for funding, which is usually limited. In all cases, the group of actors self-nominated to

participate in the meetings. For the expert meeting on compliance (episode 2), actors were chosen on the basis of their contributions to online discussions prior to the meeting. However, in all the other meetings (i.e. expert, preparatory and negotiation meetings) IPLC representatives are selected based on an application form, which among other things, asks applicants to provide a statement indicating how they would benefit from participation in the meeting and how they plan to utilize the experience in their work. It is interesting to note that the number of participants varies from meeting to meeting (mainly depending on the amount of money available) but it is always regionally balanced. In informal conversations with the CBD staff who selects the applications, they argue that they try to strike a balance between experience with the CBD and negotiations and the relevance of the local work done by the applicant. For that reason, it is not unusual that the same people are granted the funds to participate in the meetings over and over again. Another important aspect is the normative pressure of mastering English or at least one of the six UN languages to be selected to participate in these meetings.⁶⁵ In every meeting of the implementation phase of the Nagoya Protocol, which includes the meetings described in this chapter, at least one IPLC representative was granted funds to participate. Moreover, the International Indigenous Forum on Biodiversity (IIFB) co-administered the voluntary fund, hiring interpreters for the IIFB activities in the negotiation meeting. These funds were not available in the preparatory meeting, but translation and interpretation services were provided by allies free of charge. In this

⁶⁵ In the application form for funding, the following note appears: "Please note that the official languages of the United Nations (simultaneous interpretation) are Arabic, Chinese, English, French, Russian and Spanish. Whereas it is not mandatory, it is advisable that the applicant understands and speaks one of these languages"

sense, the effects of the shortage of material resources were mitigated by building ties with allies.

The episodes clearly showed that participation in the meetings goes much beyond being present. To fully engage with the discussions in the arena, actors have somehow to create the capacity of speaking a language that for most IPLC representatives is foreign. Of course, all participants in these meetings who are not native English-speakers are in disadvantage. However, for IPLCs there is a bigger gap, considering that most of them speak indigenous languages and sometimes have a limited knowledge even of the “official” language in their countries of origin. In addition, it is not uncommon that their indigenous language and culture are oral, posing a bigger obstacle in the sense of having to habituate with the written word. This challenge is even more accentuated in smaller meetings, like in expert group and contact group meetings, where speaking English fluently becomes a currency. As a result, looking at the list of representatives present in these smaller meetings, one can realize that they are usually the same people and that they are the ones with the ability to speak in English. Moreover, linguistic capacities are essential not only to amend texts within the meetings: they increase the chances of participants to articulate collaborations with other actors and take advantage of opportunities going beyond the actual meeting. In fact, while collecting data in these meetings, in some occasions IPLC representatives would call me in to accompany to meetings with potential donors and partners. I would translate to English their proposals and requests. In one occasion I participated in an informal corridor meeting with the Executive Secretary of the International Treaty on Plant Genetic Resources for Food and Agriculture (another global agreement for access and benefit-sharing under the Food and

Agriculture Organization - FAO), where local communities were seeking for funding opportunities through small grants. In another occasion, I joined a lunch meeting with the head of the United Nations University where an IPLC representative was trying to create a program for capacity building on traditional knowledge. It is difficult to follow-up on the effectiveness of these encounters, but for sure the initial contact would have been impossible without these informal translation services.

Finally, the IIFB also performed an important role in promoting indigenous peoples' coordination. In preparatory and negotiation meetings, this network gathered daily in coordination meetings to articulate positions, to organize activities, to monitor negotiations and to get relevant information. Particularly in the negotiation meeting I observed, coordination was important to leverage the participation of the IPLC representatives in the sense that they consolidated their message to be able to speak as "one voice". In the preparatory meeting described, this coordination was hindered by linguistic barriers but also by a strong cleavage in the views of the way the forum should operate. Some IIFB members opposed the use of lobbying strategies and disagreed with the rules of procedure of the meeting, taking a more confrontational stance. For the expert meeting described above and also for the other expert meetings in the series, the IIFB was not directly implicated in the articulation of a position of the network members. Table 24 summarizes the comparison of the positions in different types of meetings.

Table 24: Comparing positions in different types of meetings

Relevant Stakeholder	Anonymous Expert	Informal Consultant
<ul style="list-style-type: none"> - Ability to speak in plenary sessions dependent on lobbying of central actors; - Funding provided by SCBD; - Coordination role of IIFB 	<ul style="list-style-type: none"> - Ability to speak in deliberative meetings dependent on expertise and mastery of English; - Funding provided by SCBD; - No coordination role of IIFB 	<ul style="list-style-type: none"> - Ability to speak in deliberative meetings dependent on invitation of central actors who seek advice and mastery of English; - Funding provided by SCBD; - Coordination role of IIFB

CHAPTER 6. How do marginalized actors work to be more included in the institution building process?

In this chapter I build a model to explain how marginalized actors work to be more included in the creation of a new global regulation. Using grounded theory techniques, I let emerge from the data a key mechanism that I later label as “resourcing work”, inspired by previous literature on resourcing. I first present a general overview of the resourcing concept. Then, I describe the three different types of resourcing that emerged from the data. Finally, I present a grounded model of inclusion via resourcing work.

6.1 The emergence of resourcing work

Following a traditional grounded theory approach, I contrasted these findings with previous theory. Previous literature has proposed that non-state actor participation and inclusion is reliant on the capacity of these actors of mobilizing resources (Djelic and Sahlin-Anderson, 2006; Betsill & Corell, 2008; Hardy and Maguire, 2010). However, resources are taken for granted in most accounts: actors are either resourceful or not⁶⁶. In this iterative process of going back and forth from literature to data, I also came to realize the importance of resources for this group of marginalized actors trying to be included in the process of creating this institution. The empirical data signaled that the group of

⁶⁶ The traditional view on resources in the strategy literature (i.e. Resource-dependence theory, resource-based view, dynamic capabilities) refers to resources as specific kinds of assets or qualities that organizations own or control (Pfeffer and Salancik 1978; Pfeffer 1982, Wernerfelt 1984; Barney 1991; 2001; Teece, Pisano, and Shuen 1997; Eisenhardt and Martin 2000). All subscribe to a logic of possession when thinking about resources: you either have resources or not, and those who do so are powerful (Thompson, 1967).

actors under study, most of the time, lacked the resources needed to engage in the process. For instance, they had to find financial means to attend meetings. Once present in meetings, they had to search for ways to be able to be engaged with the discussions. Moreover, they struggled to speak in plenary and in other spaces to have their views reflected on decisions and their projects implemented locally. Hence, they had to do a constant work of creating the resources needed to participate in the meetings they attended.

As resources became a key theme in my findings, I searched for more literature on the creation of resources in practice. The resourcing lens, as already presented in the literature review chapter, enables us “to view resources in context, as mutable sources of energy rather than as stable things that are independent of context, and to analyze the reciprocal relationship between actions and resources as they change” (Feldman 2004, p. 295). Importantly, the resourcing view does not ascribe power to a group or individual as an enduring property of that entity, which also helps in conceiving that marginalized actors do exploit opportunities for overcoming their disadvantaged position in the phenomenon under examination here. I argue that marginalized actors in this setting make constant use of resourcing as they “turn something from a potential resource into a resource in use” (Feldman & Quick, 2009, p. 143).

In this vein, I develop the concept of resourcing work, which I define here as *the recursive process through which interactions and relationships enable the creation of resources and affect the actors’ positions in different negotiation spaces where institutions are created*. In the following sub-chapters, I present the three different

types of resourcing work that emerged from the data: organizational, discursive and material resources⁶⁷. Table 25 shows the emergent findings from the inductive coding. Appendix 3 contains additional supporting evidence, keyed to Table 25, showing representative first-order quotation underlying the second-order themes.

Table 25: Data structure and definitions

First Order	Second Order	Aggregate Dimension
A. Building diplomatic capacities B. Planning strategically for meetings	1. Coordinating activities: <i>combining the efforts of different network-members to be able to intervene in the meeting.</i>	ORGANIZATIONAL RESOURCING: <i>work of facilitating connections between actors and coordinating their activities to enable participation in creating the institution.</i>
C. Getting support of government delegates D. Establishing close relationship with NGOs and the Secretariat	2. Enrolling allies: <i>sustaining a supportive network that connects sympathizing actors to a cause.</i>	
E. Emphasizing role as central actors in policy implementation F. Establishing the need for expertise in policy formulation	3. Justifying the need for actors' participation in the arena: <i>claiming a role for the marginalized actors in the process of creating an institution.</i>	
G. Cross-leveraging rights and good practices H. Advising in the backstage	4. Interweaving favorable texts in different negotiation spaces: <i>producing and distributing texts in different spaces for intervention aiming at influencing negotiation outcomes.</i>	
I. Fundraising to attend meetings J. Seeking resources for local work	5. Fundraising for participation : <i>raising funds to enable representation in meetings and to implement local projects.</i>	DISCURSIVE RESOURCING: <i>work of shaping interpretations and justifying practices in accordance with the experience, knowledge and values of a group of actors engaged in creating the institution</i>
K. Asking for voluntary translations from allies L. Requesting technical information free of charge	6. Gathering technical and linguistic support: <i>mobilizing voluntary services to overcome technical and linguistic deficiencies</i>	
		MATERIAL RESOURCING: <i>work of getting at valuable financial, technical and linguistic resources that increase opportunity to influence the process of creating the institution</i>

⁶⁷ Previous literature has already pointed to these three dimensions of resources as key to participation in intergovernmental negotiations (Orsini, 2013). The novelty in this proposal is that instead of looking at these resources as stable and given entities, in this research I use the resourcing lens to try to understand how they are created in practice, through the interactions and relationships actors establish in the field and as negotiations for the creation of an institution evolve.

6.1.1 Organizational Resourcing Work

Organizational resourcing refers to the *work of facilitating connections between actors and coordinating their activities to enable participation in creating the institution.* Organizational resourcing is important to bring together the capacities of the different actors in trying to increase the access, efficiency, visibility, credibility or legitimacy of a certain organization. This work is achieved through the activities of coordinating actions, and enrolling allies.

In our case, much of the organizational resourcing is performed through the International Indigenous Forum on Biodiversity (IIFB), the ad-hoc advocacy network constituted by the IPLC organizations and other supporting members. The activism of indigenous peoples and local communities in the CBD processes started in the second Conference of Parties (COP), but it has been more articulated since the third COP, where the IIFB was established (Orsini, 2014). The need for a sort of organizational structure to support participation of indigenous peoples at the CBD was perceived in 1996, as it is described by one of the founders of the network:

“COP3 in Argentina that’s when the indigenous peoples realized if we just participate without any formal organization to help us to be organized it will be impossible because we needed an organization that could be able to help bring out more visibility for indigenous peoples. (...) We invited the indigenous peoples who were attending the CBD convention and we said we should get together to make a forum, preparing a structure in a way to be able to capacitate ourselves and coordinate our efforts. With this, we can also advise the Secretariat of the Convention and we can also have a channel where information can come to us.” (Interview 51, IPLC representative and IIFB founding member)

In 1997, the government of Spain supported a Workshop held in Madrid on Traditional Knowledge where the IIFB developed in detail their organizational structure. Inspired by the model adopted by another advocacy network, the International Alliance

of Indigenous and Tribal Peoples of the Tropical Forest, the IIFB is organized at the regional level with 7 regional coordinators selected by their regions. For every COP, the regional coordinators of the hosting region and the respective organizations from there have to fundraise to enable IPLC attendance. They also take care of the logistics, making sure they have meeting rooms available in the venue, affordable hotels, transportation and facilitated processing of their visas. One of the founding members of the IIFB tells how they arrived at this organizational structure:

“The Spanish government held a meeting in Madrid for all indigenous peoples. At that time we defined the proper structure to operate – who are the leaders? Because we have to get people who are committed and want to get into issues of biodiversity. Luckily enough at the same time, there were already some organizations that have been formed earlier. Like the International Alliance of Indigenous and Tribal Peoples of the Tropical Forest. It had a similar setting, but it was focused only on forest issues. So we had a former member of this alliance present and she proposed their structure. We were able to share our views and decided on our structure.” (Interview 51, IPLC representative and IIFB founding member)

During COP5⁶⁸, 2000, the IIFB was recognized as an advisory body to the Convention, which in practice puts them in the category of observers. Since the CBD is an international treaty that binds member states, only Parties to the instruments are allowed to vote and to make decisions. Under the rules of procedures of the UN, the observers are allowed to speak after countries finish discussions on a certain point of the

⁶⁸ During COP5 the Parties recognised the importance of the Forum in Decision V/16 in the following paragraphs:

“Recognizing the role that the International Indigenous Forum on Biodiversity has played since the third meeting of the Conference of the Parties in addressing the Conference of Parties on the implementation of Article 8(j) and related provisions”

“Invites Parties and Governments to support the participation of the International Indigenous Forum on Biodiversity, as well as relevant organizations representing indigenous and local communities, in advising the Conference of Parties on the implementation of Article 8(j) and related provisions.”

agenda. However, to be taken into consideration, any statement has to be supported by at least one country. Additionally, to be integrated in the final decision, no other country must object to the statement. If the statement is not supported or is objected to, it does not appear in the official transcripts of the discussions and is not considered as an option in negotiations. This dynamic imposed by the rules of procedure of the forum requires the allocation of lobbying activities among the members of the network. Moreover, in assembling the efforts of the network members participating in the meetings, the IIFB expects to have a stronger position in negotiation meetings: *“Speaking in the COP with only one voice is important, we bring our voice together so we meet before the meetings at least 2 days and we discuss the issues of the different continents, consolidate them and present them to the COP.” (Interview 51, IPLC representative)*

Another milestone was the establishment at COP7⁶⁹ (2004) of a voluntary fund⁷⁰ to ensure the participation of a delegation of indigenous peoples in all the major events of the CBD. They are the sole stakeholder group to enjoy an exclusive voluntary fund to finance their attendance in meetings. This Fund remains the only United Nations fund specifically for indigenous and local community participation in meetings related to the Convention. The different indigenous peoples organizations (IPOs) send nominations to the secretariat of the Convention, and a committee formed by seven members of the IIFB from the seven geo-cultural regions recognized by the United Nations Permanent Forum

⁶⁹ In decision VII/16 G, paragraph 10, on Participatory mechanism for indigenous and local communities, the Conference of the Parties decided “to establish a voluntary funding mechanism under the Convention to facilitate the participation of indigenous and local communities, giving special priority to those from developing countries and countries with economies in transition and small island developing States in meetings under the Convention, including meetings of the indigenous and local community liaison group and relevant meetings of ad hoc technical expert groups”.

⁷⁰ Available at: <https://www.cbd.int/traditional/fund.shtml> Accessed on: 05/02/2016.

on Indigenous Issues is then responsible for selecting representatives that receive financial assistance to attend the meeting. Selection is made on the basis of expertise, gender balance and equitable geographic distribution. The funds, however, are limited. This has three implications. The first is that, depending on the meeting, delegations are usually small, which hinders their representation. Second, the forum has little time to articulate positions prior to the events, affecting its capacity to engage effectively in the discussions. Third, the difficulty of translation is also a major barrier in the communication between the members of the forum. Due to financial constraints, the forum has restricted translation services that are limited to Spanish and English and available at only some of the meetings.

Furthermore, since 2006, indigenous delegates are allowed to participate in expert groups as observers. Governments nominate participants on the basis of their expertise in these meetings. Differently, representatives of local and indigenous communities are invited by the Secretariat based on the recommendations of the IIFB: *"The IIFB has a well-established structure, which allows us to nominate experts in different expert and advisory groups."* (Interview 10, IPLC Representative and IIFB Regional Coordinator).

In what follows, I specify the different activities involved in organizational resourcing work.

6.2.1 Coordinating Activities

The work of coordinating activities is related to *combining the efforts of different network members to be able to intervene in the meetings*. Since the IIFB network is a loose alliance of IPLC organizations, NGOs and government officials favorable to IPLC positions, there is need for coordination of efforts and assignment of tasks. In doing so, the IIFB builds diplomatic capacity of actors engaged in the institution-building process. A recurrent theme on the IIFB statements is the need for capacity building of IPLCs. They usually ask for the participation of IPLC at capacity building programs administered by the CBD and they also create their own programs. A representative quote of this type of work appears at an opening statement of the IIFB in one preparatory meeting of the Nagoya Protocol:

"There is need for donors to consider funding activities on awareness creation and capacity building for the ratification process and an effective implementation of the Nagoya Protocol. This must incorporate diverse and strategic forms of communication. This should be a continuation of a process the CBD secretariat had started after Nagoya. We need this capacity building to reach out further to indigenous peoples and Local communities. This capacity building is one way to share experiences and exchange views between Government Officials stakeholders, Indigenous peoples and local communities. This is a better way to help enhance and build linkages and collaboration for Countries to achieve successful implementation of the Protocol." (Opening Statement IIFB, ICNP2)

The work of supporting the capacities of actors to be able to participate in negotiations is done through formal workshops that are co-organized with the CBD secretariat, but diplomatic skills are also learned in attending meetings. IPLCs try to learn watching others and taking advantage of the information provided through the IIFB within the meetings. In many occasions in my participant observations of the meetings I have witnessed IPLC representatives attempting to learn “on the job” how to negotiate

and to intervene in the meetings. This is how an IPLC representative describes this learning process:

"At the time I joined the network, basically it was a self-education process. I followed the advice of another indigenous sister who said 'nobody is going to take the time to teach you, watch and learn from others. You have to read all the documents that the CBD uploads, understand everything, bring it highlighted, write your positioning and that of your organization'. Of course I tried to do that but the volume of documents is huge and besides, some of them are only in English which makes this even more challenging." (Interview 6, IPLC Representative)

To be able to speak in plenary sessions, which are very formal spaces, IPLCs adapted themselves to some tacit rules dictated by international diplomacy. For instance, in my participant observations I saw how they were careful in restricting the number of words and pages. When asked about this practice, one IPLC representative revealed that they have learned that they have to stick to the essence because long statements get cut short due to time constraints in plenary. They have also started to adopt more diplomatic language, in trying to move their proposals forward:

"You need to make sure that the people who are there know how diplomacy works.... that's quite a skill, because, as you well know, it's not that you can't be aggressive and you can't press your issues aggressively, but there are also rules and protocols for how that occurs, and it's not really a good place for activism. Because, again, for indigenous peoples to move forward they are merely observers and at the end of the day they have to get consensus among the parties" (Interview 50, IPLC representative)

The adoption of diplomatic and technical language in these spaces evolved through time, as their role in the field seemed to have changed. For an academic, who is a longtime observer of the CBD process, this is something that evolved through time. In the beginning of the CBD negotiations, IPLCs adopted a more confrontational posture. As they started to become relevant stakeholders for the provisions of the CBD and the Nagoya Protocol, they started to act more like insiders in the field:

"As IPLC became recognized as 'relevant stakeholders' in the negotiations, this gave them more space, more voice... You see that the texts read in plenary are not as contentious as in the beginning of negotiations... Before they were all about breaking the protocol. But now they already compliment the chairs, 'thank for your patience', and this sort of diplomatic jargon. They adopted in a way similar practices as other delegates. " (Interview 5, Academic representative)

One key element that representatives learn when engaging with the IIFB to participate in meetings is the sensitivity to know what gets in and what not in the decisions made by governments:

"In whatever alternative formulation of the text you come up with, you're going to have to make sure that the parties feel like you've solved some problems for them and that they've actually got something out of the solution. If you're there just to berate them and tell them what bad people they are, or bad governments they are, that doesn't move you forward." (Interview 50, IPLC Representative)

Interestingly, the linguistic imposition in this field has led to a particular situation. In most expert meetings of the Nagoya Protocol the IPLC representative nominated by the IIFB was a person that is not indigenous himself. Being a native English speaker, despite the fact that he is "white" has granted him the opportunity to be involved in many key negotiations for IPLCs. I have witnessed him speaking in many occasions, always making clear that he is not an indigenous person but he works respectfully under the premise that indigenous peoples should have the ability to determine their own futures. To do so, he understands the need for indigenous peoples to form their own experts.

"I'm in a very weird position at this point in that I was promoted in this process (...) Over the years, it's just I've been working with it so long now and I have such a deep familiarity with it, and also these little issues like having a good command of English, has meant that I've kind of risen through the ranks. When I started in the 90s there were still a lot of white consultants around, and there actually are still a lot. I mean, the tribe I work for has quite a few non-Indian employees. But there was kind of an understanding that this really is something for indigenous peoples themselves to handle. And as I've always said, we have to work ourselves out of a job, and it actually is a little odd that tribes employ people like me. We know why they do it, but unfortunately even though it's solving some immediate problems it's not necessarily building their capacity." (Interview

50, IPLC Representative).

In this sense, a point that merits attention is the formation of the next generation of experts in the biodiversity field. Most of the IPLC representatives attending these meetings are in their 50s and 60s. They have been following these issues for the last 20 years or so. Traveling to different places around the world and attending exhaustive meetings that can go on until late hours requires a lot of energy. In this context, some of the veteran IIFB participants have started to help in the formation of young indigenous experts. They always emphasize the need for them to study English and to get formal education. Having a university degree, preferably in Law, provides them with an intercultural quality in that they can navigate in both worlds. In the quotation below, a young indigenous lawyer tells how her mother, an indigenous activist convinced her to study Law in order to work in favor of their communities:

“My mom made me study Law and get a Masters degree in Environmental Law. I wasn’t sure I wanted that for myself. But she knows how hard it is to deal with white people if you don’t speak their language... and by that I mean if you don’t know how to read their contracts. This has made things easier for me around here, even though I have to improve my English... you know? I have to study more, but I don’t have much time since I travel a lot and have a small kid waiting for me at home. At least I was able to learn Spanish by myself”. (Interview 2, IPLC representative)

In the negotiation meeting that happened in Korea, I met a couple of IPLC representatives on their 20s who were brought by senior representatives. They did not read any statements in plenary, but were in charge of monitoring negotiations and reporting back in coordination meetings. When asked about their impressions of this new experience, they answered that they were surprised on how this field is highly bureaucratic and slow to answer the pressing needs of communities. They seemed uneasy with the rules of procedures and even mentioned to me that they had to find alternative ways, such as social media, to achieve faster results in protecting indigenous rights.

To achieve coordinated work, the IIFB also promotes spaces for strategic planning. At COPs, they usually have funds available to hold a 2-day meeting prior to the beginning of the negotiations. In these meetings, they develop positions (prioritizing the issues and setting an agenda of activities for the week) and decide on roles (who is writing text, who is shopping text, who is speaking in plenary and who is attending side events of partners). Moreover, the IIFB organizes daily briefing meetings in preparatory and negotiation meetings. In many occasions, the IIFB invites NGO, CBD Secretariat staff and government representatives to provide mini-lectures and to promote debates on issues relevant to them in their daily coordination meetings. In addition, the IIFB maintains an e-mail group list where the different representatives share their statements and exchange on doubts and concerns.

In many occasions, indigenous representatives express their willingness of arriving at meetings with a consensus, understanding that “negotiating as a block” (Teran, 2009) or “speaking with only one voice” is important to make a deeper impact:

“We have to speak with only one voice because otherwise States get confused and don’t take us seriously. We learned through the years that they only respect our point of view if they perceive that it is something well thought and discussed amongst ourselves. Otherwise they will dismiss it... it gets lost in the noise of the meeting” (Interview 4, IPLC Representative).

Furthermore, also part of the work of coordinating actions, IIFB members monitor negotiations. They are supposed to report back on daily wins from each session they attended, especially when sessions run in parallel.

“Every morning, for 1.5 hours before the meetings of the Conference, indigenous peoples report back to each other on the issues negotiated highlighting those governments who support indigenous peoples and those who do not support. We also lay out the work plan for the day.” (IIFB Website, October 12 2012, Description of picture taken at meeting)

6.2.2 Enrolling allies

The work of enrolling allies refers to *sustaining a supportive network that connects sympathizing actors to their cause*. This work is fundamental for them to be able to intervene in the meeting and to try to be more effective. At least three key actors are enrolled by IPLCs: government delegates, NGOs and the Secretariat.

Particularly in the case of government delegates, IPLCs put a lot of effort in developing a good working relationship. As explained earlier, in this setting they have to be supported by Parties so that their proposals get included in decisions. As consequence, it is common practice to target countries “friendly” to indigenous causes. In the quotation below, an IPLC representative tells the importance of building a “history” with the government delegates:

“It becomes easier to talk to them when you have worked for a long time and you know... ‘Come on, you were the ones who proposed this... why taking it back now?’ You know? It is like in the issue of terminology of indigenous peoples, we really held Norway accountable saying ‘You supported us on this already, please go talk to European Union and France to change their minds’” (Interview 6, IPLC representative)

An essential activity is to “sell texts” to these key actors prior to the session in trying to gather their support. In big meetings, this is done more systematically; some IPLCs are “specialized” in going to the corridors and doing that work.

“The strategy we adopt in events like this is to discuss documents so we have written proposals ready. Why? Because then champions go to regional groups and present the proposals asking for support... This time around since we didn’t coordinate what each one will say, so this may confuse states (sic).” (Interview 1, IPLC Representative)

IPLCs also use informal situations, such as receptions and side events to do so. In the episode narrated below from my field notes I describe how a group of indigenous women, as they sell handcrafts to delegates, also take the opportunity to sell their texts.

"They brought today some products produced in their communities to sell to the participants of the meeting... earrings, rings, scarfs, CDs, paintings. They don't do this very openly (apparently is not a practice particularly encouraged by the UN, but nobody says anything). Some things are very beautiful, even though a little on the expensive side. I buy a pair of earrings myself. I see many delegates, especially women coming to see what is there and they buy like crazy. The IPLC representatives take the opportunity to talk about the issues of the meeting, in a very friendly and informal way. Afterwards I ask them why do they sell this stuff and they are very frank: 'we need the money, but we also use the opportunity to sell our texts'". (Field notes, June 7, 2011)

In some cases, countries also send indigenous delegates as government representatives. In the first meeting I was able to observe, I met an indigenous delegate acting as a government representative from Mexico. Interestingly he participated both in the coordination meetings of the IIFB and the regional group for Latin American governments, making the work of transporting information from one side to the other.

"XXX was telling her that the governments were going to hold an informal conversation on the issue of compliance. He is a government delegate from Mexico and he also takes part in the "Red Interdisciplinaria de Investigadores de los Pueblos Indios de Mexico" . He explained to me that this network connects indigenous peoples who seek formal education, like masters and PhD degrees, and makes available resources for those who want to take government positions. He tells me: 'we have to find ways to teach white people to conserve nature and this is a way we can do it from the inside'. " (Field Notes on preparatory meeting ICNP1, June 3, 2011)

In informal conversations with some IPLC representatives I asked them the role of NGOs in the negotiations. Apparently, it used to be that there were tensions with some NGOs that, in trying to "help" the indigenous cause, imposed Western views and ways. I observed once a situation that a statement was read by an NGO member in the name of the IIFB without the previous consent of the group. This created a very uncomfortable

situation with many indigenous representatives showing discontent, even if the actual content of the text was in line with what had been discussed. Through the years, however, it seems that the relationship has evolved to be more respectful and balanced.

“They (NGOs) started cooperating a little better and then we started kind of having a little more coordination so that their recommendations were not bumping against ours and we had a little more consistency, and they would often make a point of coming on the mic after we had spoken, because they usually came after us in the order, and then supporting our position.” (Interview 50, IPLC Representative)

In the previous chapter where I describe in detail some episodes of the mobilization of IPLCs in meetings, I bring evidence of the intervention of the NGO Natural Justice. The NGO acted as watchdog, monitoring a text proposed by the IIFB that had been supported by a State but was not appearing in the final recommendation. I was able to observe when the NGO member indicated to the IIFB representatives that there was an error in the document, suggesting them to go talk to the Secretariat and to read a statement in plenary asking for the revision of the document. They followed the advice and the document was corrected.

Another NGO that is frequently present in the IIFB coordination meetings is the Forest Peoples Programme (FPP). The FPP participates actively in the discussions, providing information to the IIFB on the issues under discussion in the meetings and also helping in drafting texts to be read in plenary. In their website, they post reports summarizing the results of meetings for IPLCs and they also disseminate the statements produced by the IIFB in the meetings. In their newsletter reporting on COP11, that is how the FPP describes their participation in the meeting:

“Forest Peoples Programme is attending COP11 to support a delegation of indigenous and local leaders and local support organisations from Bangladesh, Cameroon, Guyana,

Panama, Suriname and Thailand, together with the International Indigenous Forum on Biodiversity (IIFB). Please visit the special CBD COP11 page on the FPP website for the latest updates direct from India, including background information, statements, interviews, presentations and opinions from indigenous peoples attending the meeting.” (FPP Website⁷¹, Indigenous Advocates at COP11 in India, 15 October 2012)

Another important NGO that acts in a supporting role for IPLCs is ECOROPA. The NGO, which mainly acts in the European Union knows the situation there and is capable to police them on issues that are incompatible to the reality in European countries. They work mostly behind the scenes:

“When the meeting is adjourned she will converse with the European Union and try to move them on their positions. She’s also good during a meeting if she sees something coming down, she’ll pass messages and make suggestions to the delegates. So that’s pretty critical because she has a very good political sense and she sometimes sees angles that all of us may miss, so that makes gives her a very valuable role.” (Interview 49, IPLC Representative)

The CBD Secretariat has also an important role in supporting the IPLC representatives. Within its structure, there is a specific program of work dedicated exclusively to indigenous issues and traditional knowledge. In this CBD unit, the 3 staff members are themselves indigenous peoples from different parts of the world. Interestingly, one of them had been member of the IIFB and is considered a contact point within the CBD (Teran, 2014).

“We work very closely with the Secretariat. They will always come and brief us what are the procedures of the meetings. Then we go back and plan amongst ourselves. They also come to our meetings and we consult them and sometimes they even help us to speak to some governments.” (Interview 51, IPLC Representative)

⁷¹ Available at: <http://www.forestpeoples.org/topics/convention-biological-diversity-cbd/news/2012/10/indigenous-advocates-convention-biological-d> Accessed on: 06/02/2016

6.1.2 Discursive Resourcing Work

Discursive resourcing refers to the *work of shaping interpretations and justifying practices*⁷² in accordance with the experience, knowledge and values of a group of actors engaged in the creation of the institution. In our case, discursive activities are at the center of the institution building process, since much of what actors do is to write and re-write the specifics of a regulation. Since the rules of procedures of this field prevent the focal actors in our study from having a direct impact in the institution building process, they have to work their way around to have their proposals heard. Importantly, these actors often hold somewhat unconventional worldviews and practices on the issue discussed, which makes it an extremely delicate work attaching their experience, knowledge and values into the institution.

The work of discursive resourcing is then directed at the procedural and substantive dimensions of the institution. On the one hand, marginalized actors must work to be included in the process of creating the institution, which means being allowed to participate and intervene in different types of meetings and negotiation spaces. On the other hand they must also work to make a difference substantively in the outcome of negotiations. In this sense, discursive resourcing work is composed by the activities

⁷² This definition is inspired by Maguire's (2009, p. 10) definition of discursive activity: "discursive activity occurs during institution building as actors draw on different discourses in their texts to try to fix understandings, shape interpretations, and justify practices in ways that are commensurate with their interests." I introduce the notions of experience, knowledge and values, going beyond only an interest-based view of discursive activity.

directed at justifying the need for actors' participation and influencing in different negotiation spaces in the institution building process.

7.3.1 Justifying the need for actors' participation in the arena

The work of justifying the need for actors' participation refers to the activities directed at *claiming a role for the marginalized actors in the process of creating the institution*. In emphasizing the role of indigenous peoples and local communities (IPLC) in local implementation and establishing the need for their expertise in policy formulation, IPLCs try to justify the need for their participation.

Firstly, IPLCs emphasize their role as central actors in implementation of the Protocol. In the example below, the interviewee describes how the lack of awareness and understanding of communities on the issues dealt with by the protocol can actually prevent Parties to demand for benefit-sharing:

"The issues of Nagoya are actually felt at the ground level, is only that it sounds big, it sounds complicated at the national level and at the international level. Because for example we have researchers who come into the villages... they research, they even live with the families, they go back and end their PhDs and all and they simply do not recognize the communities at all. They even take specimens and the communities explain exactly about medicinal plants. I remember one time going to these villages, and there is a lady who stayed with a student for 1 year, she did not know the name of that student because they nickname the student and gave him an African name. He went away and never contacted them again (...). These are genetic resources that are taken away, and nobody really follows up on what is happening. So this is now when you can go there and tell them, you know... this is what is supposed to be done A,B,C,D.(Interview 8, IPLC representative)

Secondly, in justifying the need for actors' participation, IPLC representatives try to establish the need for their expertise in the discussions for policy formulation. The

recognition of IPLCs as experts in this field is emphasized by one of the coordinators of the International Indigenous Forum on Biodiversity (IIFB): *“One of our major achievements as network is that in our trajectory within the CBD we became recognized as a focal point in indigenous issues, especially in its intersection with gender issues”* (Public Declaration, 4 IPLC Representative).

Two examples can be presented to illustrate this work. One is related to their inclusion in the Compliance committee for the Nagoya Protocol. After 4 years of negotiations in 3 preparatory meetings and one expert meeting, the IPLC group was able to include two permanent representatives as observers.

“Their major concern was that this is supposed to be a technical body to review technical compliance issues and primarily to insist in a non-litigative way, non-combative way, to try to bring parties into compliance. And we put forward arguments that having indigenous peoples there was totally consistent with that and that they really needed the expertise, certainly in the indigenous situations because they needed people there who had some familiarity and ability to deal sensitively with these issues. (Interview 50, IPLC Representative)

Another example is on the discussions for the creation of a global multilateral benefit-sharing mechanism that would run in parallel with the bilateral system promoted by the Nagoya Protocol. The debate circles around the actual need for such a mechanism and in an expert meeting about the issue, experts came up with the idea that thinking about how this system might operate could give important insights. In the passage below, taken from my participant observation in the meeting, arguments are made in terms of carving out a space for IPLC submissions, again basing these submissions in terms of their expertise.

“When the issue of submitting scenarios for the modalities comes up, XX (IPLC observer/expert) raises his hand and is given the floor immediately, even if there is an expert waiting in the line. He suggests that the most fruitful way of going about the

exercise would be involving stakeholders, so everybody should be able to submit scenarios. He argues that the holders of traditional knowledge have a lot to contribute in this sense. One nominated expert argues that including stakeholders at this moment where there is almost no implementation would make things more confusing. A discussion follows after that, but, in the end, the room seems to agree that collecting scenarios could be a good way forward to make discussions more concrete.” (Field Notes 19/09/2015)

7.3.2. Interweaving favorable texts in different negotiation spaces

The activities directed at interweaving favorable texts in different negotiation spaces are related to *producing and distributing texts in different spaces for intervention aiming at influencing negotiation outcomes*. They do so by cross-leveraging rights from other favorable arenas and also by advising in the backstage of meetings.

More specifically in producing these texts, marginalized actors try to cross-leverage rights and good practices from other arenas in that they import right gains from one arena into another. They do this in recognizing opportunities for IPLCs in other discussions. In an illustration of this work, the submission made by IPLC organizations to the Expert Meeting on the ABS Clearing House tried to cross-leverage the rights obtained in another international process, the UNDRIP:

“A Global ABS Clearing-House would provide clarity in regard to acceptable international standards on ABS and advance the aspirations and rights of Indigenous Peoples, articulated in international conventions, protocols, statements, and declarations, notably UNDRIP. From this understanding and these best practices, the Global ABS Clearing-House should guide the activities of the Competent National Authorities, with the effective participation of Indigenous Peoples, on the design and implementation of their National ABS Focal Points and National ABS Clearing-Houses.” (Submission by IPLC Organizations to the Expert Meeting on Modalities of the ABS Clearing-House, March 2011, Document UNEP/CBD/ABS/EM-CH/1/3)

Another essential point in interweaving favorable text is the understanding that the different spaces in meetings, formal and informal, are established under different

rules and norms. While plenary settings are highly hierarchical and technocratic, some spaces are more open to their participation, for instance contact groups and expert meetings.

Contact groups, which are smaller sessions that try to resolve specific issues and to propose text to plenary under a more acceptable formulation to opposing states, are a little more informal even if states are still under negotiations. At the same time, the discussions are fast and whoever is participating in these sessions has to know deeply the materials to be able to intervene effectively. In the quote reproduced below, the IPLC representative who was the main negotiator over compliance discussions describes the importance of advising in informal negotiation groups.

“Contact groups are the closest to the decision, and it’s in the contact groups that you’re making your arguments over the actual language and decision itself. And as we saw with the contact group on compliance, there are a lot of ideas that have been fed into that through previous meetings and so on, like the expert meeting and the ICNP. This helped us to have options on the table, even though the real-time discussion in-session that really won the day for us... When we went into that week we didn’t have a lot of confidence that our positions would go forward... but we have two pretty big wins and I think talking to the delegates outside the meeting room to assure them of our good-faith was a big part of it.” (Interview 50, IPLC Representative)

Another different type of dynamic is established in expert meetings, since all the opinions are gathered under the same “expert label”, it is easier to put different options on the table and there is more likelihood that the views expressed by IPLCs get included in the basis document for preparatory and negotiation meetings. I observed this dynamic playing out at an expert meeting about the creation of a global multilateral mechanism to complement the Nagoya Protocol, as described in my field notes.

“IPLCs participated as “observers”, since they were not nominated by Parties (which are labeled as “experts”) but were selected by the Secretariat based on their contributions in the online discussions that took place prior to the expert meeting. However, it is important to note that the opinions and proposals of participants in this

meeting were not discriminated as coming from observer or expert. In this sense, the proposals got diluted in the final report and the readers cannot distinguish who emitted them." (Field Notes September 10 2013)

Another remark is that IPLCs always ask to be included in expert meetings. They are always the only group, apart from States, clearly specified in the decision text that convenes expert groups. Usually the decisions contain reference to providing them with the financial resources necessary to be there. In informal conversations with the CBD staff, I asked when this practice of funding IPLCs to expert meeting came about, and nobody seemed to remember very well. What they knew was that usually they provided funding for at least two participants in every expert meeting, at least in the context of the Nagoya Protocol negotiations. However, the work is not over in getting a seat at the table and some options added in the text of the final report of the expert meeting. Another work starts in making sure that these options are chosen over the others. A new cycle of lobbying parties starts.

"The strategy is to guarantee IPLC participation at the next expert meeting... we have to look at the text and re-insert some of the missed points with concrete proposals so that these proposals are discussed again at the next ICNP. Once the points are in report of the expert meeting, it gets easier to lobby parties. They see those points as real options" (Interview 4, IPLC Representative)

6.1.3 Material Resourcing Work

Material resourcing refers to the work of getting at valuable financial, technical and linguistic resources that increase opportunity to influence the process of creating the institution. The availability of material resources has a huge influence on the capacity of actors to be included in the process, as it is described by one observer at one preparatory

meetings where there were not many indigenous peoples and local communities (IPLC) present:

“Lack of funding and visa issues, though, have apparently affected community participation in the Delhi meeting. “I didn’t hear any indigenous voices in the compliance discussions,” an observer noticed, expressing hope that the CBD will retain its good record of inclusiveness and participation.” (ENB, ICNP2 Highlights: Thursday, 5 July 2012, Vol 9 No. 578, page 2)”

Despite the fact that IPLCs are the sole stakeholder group to receive funding for attending CBD meetings through a voluntary fund established in 2004 in that this fund is the only of its kind in the UN system, IPLCs spend a lot of their time during and in between meetings trying to fundraise. I described previously how the IIFB organizes regional coordinators to fundraise with governments and other organizations to finance their participation in COPs, which includes costs of travel and translations. However, the funding is limited and some IPLCs have to find other means to come to meetings. In addition, IPLCs need material resources to implement their local projects and showcase them in meetings. To do so, they rely very much on relationships to move forward.

“You see... those who don’t have money must rely on friendships, on sincere contributions. Without money it is very hard to implement our projects. We need money to print copies of our community protocol. We need money to translate it to English. We would also need money to bring in specialists to give us some tips on our work. What we do is that we find a way to come here and meet people here that can help us.” (Interview 45, IPLC representative).

Material resourcing is constituted by the activities of fundraising for participation and also of seeking gathering financial and linguistic resources.

7.4.1 Fundraising for participation

The work of fundraising for participation is related to the activities directed at *raising funds to enable representation in meetings and to implement local projects.* To

participate in meetings, IPLCs have to find the means to have their expenses covered. In the CBD there is a voluntary fund where countries donate money to finance the participation of IPLCs in meetings. It is common practice of the IIFB to lobby Parties to make donations to the fund. This is how the coordinator of the IIFB describes the work of fundraising for participation in COPs:

“Regional coordinators within the coordinating committee (of the IIFB) never stop working, during COP and also at the time we’re planning for COP. During every COP we must select which region will host the COP, which means for example, if the COP is in Asia we select an organization and the regional coordinators from there to fund raise for participation and translation services, make sure we have meeting rooms, to find affordable hotels, to discuss with governments to facilitate our visas, and all this logistics...” (Interview 51, IPLC Representative)

The actors actively seek resources for local work by using the meetings as platforms to find sponsors, partners and call for projects for implementation of local projects. This process could entail re-labelling the projects to what is the terminology in use but also to adopt methodologies diffused in the global realm. Both quotations below refer to the same project undertaken by an IPLC organization creating a community protocol. The global discussions were informative to the work they were doing in the field and, after little adaptations in the concepts they were using, they were able to get at significant material resources that allowed for the project implementation.

“So we started realizing that everything we did to protect and socialize traditional knowledge it was already in a way a community protocol. We didn't write the project as such, but it is also a community protocol. So we started studying this concept and we looked at what other communities were doing in other countries. In December we're planning a capacity building program about community protocols”. (Interview 45, IPLC Representative)

“I met this lady from an NGO at COP and they were supported by a German Foundation. She said “the work you do is really good. I can present you to the people at the Foundation”. So that is what she did. I met the person working for the Foundation and she asked to write a project. We did it and they gave us money” (Interview 44, IPLC Representative)

7.4.2 Gathering technical and linguistic support

The activity of gathering technical and linguistic support involves *mobilizing voluntary services to overcome technical and linguistic deficiencies*. Without translation, it is very difficult for IPLCs to interact amongst themselves and with other actors in the field. Linguistic issues are a recurrent theme in my observations and in the interviews conducted. Many IPLCs talk about the importance of mastering English as one key skill that opens opportunities to participate in spaces where there is no translation available, such as expert meetings, contact groups and some side events. Apart from knowing the documents and how to negotiate, representatives have also to have a good command of English. In the episode described below, I tell how I was asked to be a voluntary interpreter at an IPLC side event. This has actually happened with me more than once throughout my data collection. As I came to learn, this type of courtesy is usual business for the CBD staff and also for other allies, such as NGOs and academics who sympathize with the indigenous cause.

“On Sep 10 2014, the IPLC from XXX contacts me by e-mail. She asks me to serve as an interpreter during her presentation at a side event where her organization will launch their community protocol. I hesitated for a while, because I didn’t know whether this type of intervention was seen as problematic in the eyes of the Secretariat. I decided to consult with 2 staff members and they say they have done this many times as a courtesy... “You do it only when they ask you to, and only if you are comfortable with that.” I decide to agree, as I was planning to observe the event anyway. I only alert her that I will do it informally because I don’t have the necessary skills to do something professional. She seemed happy and relieved – they were thinking about canceling the event because they wouldn’t have money to pay for a professional interpretation.” (Field notes, 10 September 2014).

Another way friends are mobilized is to requesting for technical information free of charge. In the example below, an IPLC representative is eager to meet a friend from an international NGO in a COP meeting who has been providing friendly advice to their local initiative. She wants to show him the results of their process for building a community protocol on the ground, in an effort to connect their local work with the Nagoya Protocol which recognizes these initiatives.

“I’m really happy that I’ll be able to meet XXX (NGO representative) in the side event... I want to show him what we’re doing and ask for suggestions; maybe we’ll be able to improve something. We always count on friendly support...” (Interview 44, IPLC Representative)

6.2 Integrating the results chapters

In this sub-chapter, I integrate what we learned from the case of the Nagoya Protocol about what marginalized actors do to gain inclusion in institution building. The goal is to provide a grounded model of the inclusion of marginalized actors in institution-building.

6.2.1 Understanding interactions between different spaces, positions and resourcing work

To better understand the interactions between different negotiation spaces (i.e. types of meetings) and resourcing work, I further explore the positions that actors adopt. As stated in chapter five, different types of meetings produce different dynamics of inclusion and exclusion of actors, which in exchange enable them to occupy one position

or another in the creation of the institution. Observation of participants in different negotiation spaces each with their specific rules and understandings allowed me to build narratives that describe and illustrate three positions occupied by the actors under study: relevant stakeholder, anonymous expert and informal consultant. I describe how even though the group's status is always formally that of observer, through resourcing work, they are able to do more than just "observe". These findings are complemented by the evidence presented in chapter four, showing that in the various issues pertaining to the discussions of the Nagoya Protocol, actors participated differently and were included differently.

Firstly, I explore the resourcing work of "relevant stakeholders". Over the years, the group has achieved the prestige of being labeled as relevant stakeholders under the Convention on Biological Diversity (CBD). For this reason they enjoy some privileges, despite continuing formally as observers. For instance, in preparatory and negotiation meetings, they are allowed to intervene very frequently in plenary sessions, including reading of opening and closing statements after those of the States, sometimes even when no other stakeholder does so. Theoretically, any observer may intervene at any point of the agenda in a plenary session, "time permitting". In practice, though, there is a pre-established list of the organizations who will be given "translation time" in addressing the plenary. Many times, I have witnessed NGOs having their microphone shut off, but not as many in the case of indigenous peoples and local communities (IPLC). The group also enjoys an exclusive fund that covers the expenses of IPLC representatives to attend some meetings.

To be able to act as “relevant stakeholders” in the plenary spaces of preparatory and negotiation meetings, the actors performed all three types of resourcing work: organizational, discursive and material. However, an emphasis placed on works involving coordinating actions, enrolling allies and justifying the need for actors' participation in the arena. The dynamics within plenary spaces are usually very hermetic and this negotiation space is seen as a place for Parties, not necessarily stakeholders (be they relevant or not). Accordingly, the ability of the group to exert direct influence in the text under discussion is usually minimal in these spaces. However, the resourcing work they perform shapes the text in its procedural aspects, guaranteeing their participation in the process by emphasizing their role as central actors in implementation of the protocol. In this respect, relevant stakeholders do try to produce, for the most part, resourcing work that leads to more participation.

Secondly, I examined the resourcing work of “anonymous experts”. Unlike in plenary sessions, in which States formally negotiate and observers have almost no opportunity to intervene, expert group meetings produce more deliberative dynamics. Experts, appointed by governments or not, have the chance to put different options on the table with more open discussion of the advantages and disadvantages of these options. Options appear in the final report, irrespective of agreement from all the participants in the meeting. Moreover, the report is formatted in a way to appear neutral so that no option is tagged to any specific expert from a country or an observer. For this reason in the narrative presented at chapter 5 I have labeled this position “anonymous expert”.

To be able to act as “anonymous experts” in expert group meetings, actors performed mostly the discursive type of resourcing work. In these types of meetings, they

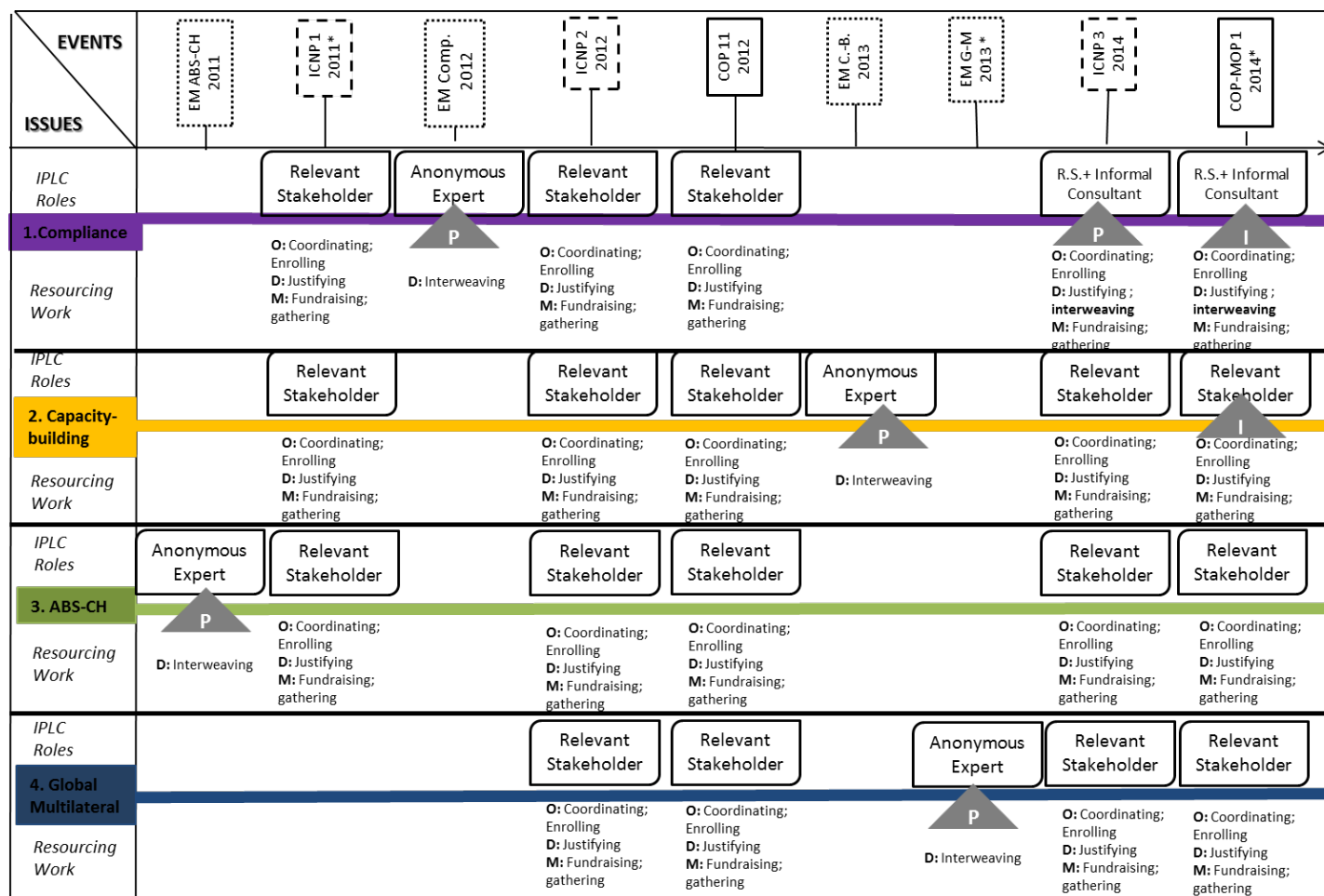
attempt to plant the seeds for favorable texts that can later be interwoven into decisions. They do this by establishing the need for expertise in policy formulation and by providing advice aligned with indigenous views on the subject matter. Interestingly, in the data collected, there were almost no examples of organizational resourcing work in place because experts were appointed according to their individual capacities. Moreover, there was no coordination among indigenous peoples because the International Indigenous Forum on Biodiversity (IIFB) as an entity was not present in these meetings, even if some of its members were usually invited to participate. However, there was evidence that IPLCs recruited the Secretariat as an ally, more particularly in cases where there was no formal request from Parties to have the members of the IPLC present as observers in expert meetings. It became common practice through the years to have at least two IPLC representatives participating, with their expenses paid by the Secretariat. Remarkably, they are the only observers to have enjoyed that concession.

Finally, I detail the resourcing work of “informal consultants”. For more controversial issues, smaller negotiation groups were created: the so-called contact groups. Contact groups were convened by a smaller number of countries directly invested in shaping a particular issue. Usually they had opposing views, but were willing to find common ground, so they are open to alternatives. Government delegates remain the main negotiators on the table. However, when specific issues that particularly affect one or other stakeholder come up, they invite “informal consultants” to provide advice. The final decision remains on the hands of Party negotiators, but it is common practice that the input of observers be considered carefully.

To be able to act as “informal consultants” in contact groups, actors performed both organizational and discursive work. Discursive work is centered on provision of advice sought by governments. Once again, the actors viewed these occasions as opportunities to plant the seeds of favorable texts. Importantly, a lot of work was done in between contact group sessions to gather the support of governments in that they helped actors to promote one option over others during the negotiations. These actions were coordinated among the different members of the indigenous network, some being responsible for monitoring negotiations and others for lobbying parties. Therefore, not only discursive work played out in the contact group but also the organizational resourcing work of enrolling allies and coordinating actions.

I show how this dynamic played out in the different issues presented in chapter 4 in figure 13. For each issue (“compliance”, “capacity-building”, “ABS-CH” and “global multilateral”), the line above indicates the roles played according to the negotiation spaces in meetings, while the line below highlights the predominant types of resourcing works performed – “O” for organizational, “D” for discursive and “M” for material. The triangles indicate the points of increased participation (P) or inclusion (I).

Figure 13: Interaction between different positions and resourcing work



On the issue of compliance, actors adopted roles of “relevant stakeholders” in the first preparatory meeting of the series⁷³. They were not involved directly in the discussions that were fairly controversial throughout the meeting but they did ask to participate in the subsequent expert meeting by justifying the need for their participation and they were successful. At the expert meeting, actors performed mostly discursive work, in trying to weave favorable options into the meeting report. In the subsequent meetings, actors tried to keep those options alive through coordinating actions, enrolling allies and justifying their participation. Material resourcing was done in parallel as a basic requirement for participation. In the final two meetings of the series, one preparatory and one negotiation, contact groups were convened to try to accelerate the decision-making process. With the establishment of contact groups, actors participated as informal consultants and with that they added another important resourcing work: interweaving favorable texts. At that point of the discussions, when decisions were about to be made, this proved to be very effective since the level of achievement in terms of substantive inclusion in this particular issue was high: indigenous peoples representatives were included in the committee created to monitor compliance – something that has always been exclusive to the dominant actors (i.e. Member states who are parties of the instrument in a multilateral environmental agreement).

On the issue of capacity-building, a similar dynamic played out. Actors performed the work of coordinating, enrolling, justifying, fundraising and gathering to continue as relevant stakeholders on the issue. They had their presence guaranteed at the expert meeting that was convened in 2013 to refine the content of a strategic framework for

⁷³ Refer to episode 1, in chapter 5 for a more detailed description of the meeting.

capacity building, which signaled increased participation. They were successful, as anonymous experts, to include their views and priorities in this meeting by interweaving text that favored their inclusion. Indigenous peoples were not successful in securing funds for capacity building initiatives conducted by them for them. However, the dominant actors decided to include indigenous peoples in the informal advisory committee (IAC) responsible for monitoring the implementation of the strategic framework, creating another opportunity to shape the way capacity-building may be implemented in practice.

On the issue of the international clearing-house mechanism for sharing information about ABS, actors were not as successful. The expert meeting happened prior to the first preparatory meeting and representatives acting as anonymous experts asked for the inclusion of an indigenous peoples' focal point that would bridge indigenous peoples to the platform, in an attempt to facilitate community participation in the global discussions. This option appeared in the expert meeting report but it was dropped in the first preparatory meeting. In this meeting, an IAC was established to discuss the technical and political peculiarities of the system with the participation of negotiators appointed by governments and no participation of stakeholders. In the subsequent meetings, as relevant stakeholders, they insisted that Parties take on some sort of facilitator role to promote the inclusion of indigenous information on the platform. Despite their efforts to coordinate actions, and enrolling allies, and justifying the need for their participation, they were not successful. Their requests came mainly in the form of statements read in plenary sessions trying to justify their participation. No contact group was established throughout the meeting series. It is likely that this is why their level of achievement in terms of inclusion on this issue was low, because Parties solved all the specific issues inside the informal

committee that was established without indigenous participation and they would arrive to the preparatory and negotiation meetings already with a consensus.

Finally, on the issue of the global multilateral approach to access and benefit-sharing (ABS), Parties were not able to decide whether there was a need for the establishment of this approach. Once again, throughout the preparatory and negotiation meetings, indigenous peoples tried to justify their participation in the discussions of this parallel system, supported through the works of coordinating actions, enrolling allies, fundraising and gathering linguistic and technical support. There is no record of their participation in the contact group convened at the second meeting of the Intergovernmental Committee of the Nagoya Protocol (ICNP2) to discuss this topic. They participated in the expert meeting discussing this issue, which I observed. In the expert report there was no consensus in terms of the need for such an approach, but the indigenous representative was able to interweave a favorable text asking for the inclusion of indigenous peoples' submissions of possible scenarios in implementation as anonymous experts. In the final two meetings of the series, the actors in the position of relevant stakeholders were able to maintain the option of submitting scenarios, even though this was later opened up to all stakeholders. The future of this issue is uncertain, since it is not possible to predict whether Parties will decide to move forward with this approach. In such an uncertain context, it is difficult to establish whether their efforts will translate into greater inclusion for indigenous peoples or not.

In what follows, I translate these findings into a generic model of resourcing work.

6.2.2 A grounded model of inclusion via resourcing work

As depicted in figure 14, there is a constant interplay between the “negotiation spaces”, “positions” and “resourcing work” as events evolve over time. The “negotiation spaces” are constituted by plenary and the backstage (i.e. expert meetings and contact groups). These spaces are affected by the rules and understandings in different types of events and the spaces they generate. Different “positions” are enabled by these different negotiation spaces, which influence the sets of actions actors may perform. Actors may act as “relevant stakeholders”, “anonymous experts” and “informal consultants” according to the spaces they are interacting with and each position enables specific types of “resourcing work”.

In the interactional realm, the arrows linking these two dimensions indicate the duality of the structuring process. They represent “resourcing work”, which incorporates both the institutional constraints of negotiation spaces and the actors’ shaping of the institution through the different positions they occupy. When effective, resourcing work may lead to incremental changes in positions and also the rules and understandings of the field, in a recursive process. As a result of these changes, actors may achieve increased participation (being included in the process of discussion) or inclusion (actually shaping the regulation).

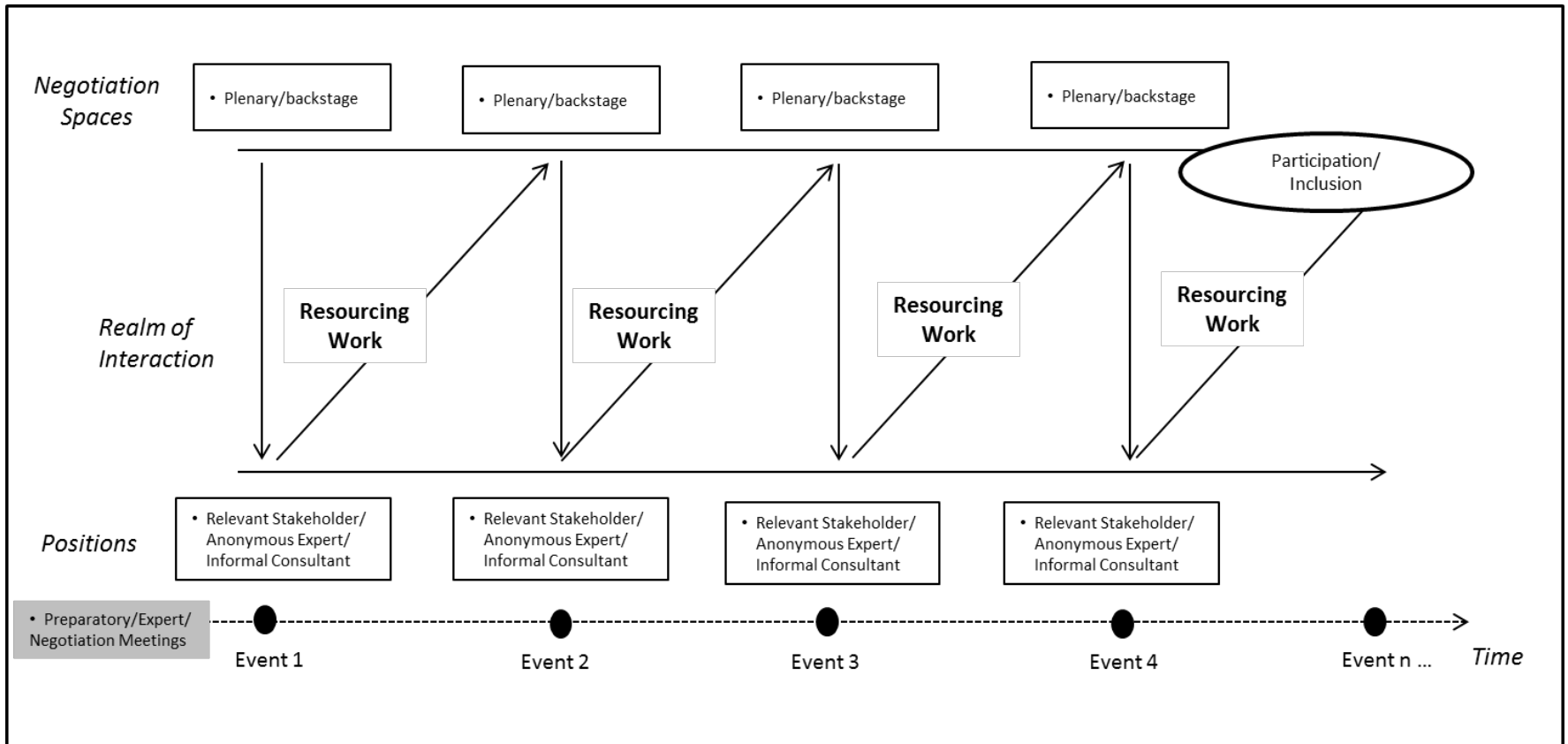


Figure 14 A grounded model of inclusion via resourcing work

As previously mentioned, resourcing work is composed of three different types of resourcing: organizational, discursive and material. Organizational resourcing work refers to the work of facilitating connections between actors and coordinating their activities to enable participation in the process of creating the institution. Discursive resourcing refers to the work of shaping interpretations and justifying practices in accordance with the experience, knowledge and values of a group of actors engaged in creating the institution. Finally, material resourcing work refers to getting at valuable financial, technical and linguistic resources that increase opportunities to influence the process of creating the institution.

Simply put, in this setting actors turn potential resources into resources-in-use through these three types of resourcing work that are activated according to the positions they occupy. The position of “relevant stakeholder” is vital for the actors in looking for more avenues of participation, as they continually try to justify their participation in the arena. To do so, they engage in organizational, discursive and material resourcing. In this position, they perform many of their interventions in plenary sessions, reading formal statements that justify the importance of their inclusion in policy formulation and implementation. This activity requires the support of Parties, the central players in the field. For this reason, marginalized actors invest in organizational resourcing work to get the support of these players and other supportive actors that become allies in the process, such as NGOs and the Secretariat. Supportive to organizational resourcing is material resourcing work, which guarantees funding to enable marginalized actors to attend each meeting in the series. Material resourcing also includes mobilization of friends and allies to obtain voluntary translation services and free technical information.

Once they secure their participation in the process of creating the institution, marginalized actors have more opportunities to produce inclusion in the regulation itself. In particular, in the backstage, actors may occupy the positions of “anonymous experts” and “informal consultants”, who actually have a chance at shaping the text of the institution being created. In the position of “anonymous expert”, the emphasis is on the discursive work, more particularly, on the work of interweaving favorable texts in expert reports that will later serve as resources for actors to do the work of enrolling allies in negotiation meetings. In the case of “informal consultants”, there is also an element of organizational resourcing work, because there is a need for these actors to enroll allies who will invite them to participate in these spaces. Once in the backstage meetings, actors provide advice with the goal of again interweaving favorable texts into the discussion to produce inclusion in the decisions of the protocol. The difference here is that in contact groups marginalized actors are closer to the decision-making process than in expert group meetings. While discussions in expert meetings are more open-ended, contact groups are composed only by the Parties that have opposing views on the issue under discussion so the outcomes of these meetings are usually accepted as the consensus in plenary.

We can illustrate in more detail how this model plays out in practice with the example of the issue of compliance (figure 15), previously detailed in chapters 4 and 5 (episode 3). Organizational, discursive and material resourcing work guaranteed the presence of indigenous representatives in the expert meeting. Once in this deliberative meeting, indigenous representatives became anonymous experts and interweaved favorable texts into the expert report, a discursive resourcing work. Then the goal became

that of guaranteeing participation in contact groups established to solve this controversial decision. To do so, marginalized actors again performed organizational, discursive and material work. In seeking participation, they justified the need for their presence in discussions using the argument that they are central actors for implementation of the protocol and that they have expertise in policy formulation concerning indigenous issues. They had to guarantee that they had actors who were qualified to participate in the process and also had to gather the support of allies, who would allow their attendance in the contact group. Moreover, they had to secure funds to enable the attendance of indigenous representatives. In the third preparatory meeting, they worked to maintain some of the favorable options by acting as “informal consultants” in the backstage of the meeting - the contact group. Finally, in the negotiation meeting, since they were already engaged as “informal consultants” in the previous meeting, Parties called them back again to hear their advice on the contentious points concerning the inclusion or exclusion of indigenous representatives in the compliance mechanism that was under construction. The previously inserted favorable texts in expert meetings, the relationships established by the network with supporting governments, the diplomatic skills built throughout the negotiations, and the advice provided in the deliberative meetings served as resources that the indigenous representatives could mobilize to influence the decisions taken in a deliberative space and thus carve out a space for themselves in the compliance committee.

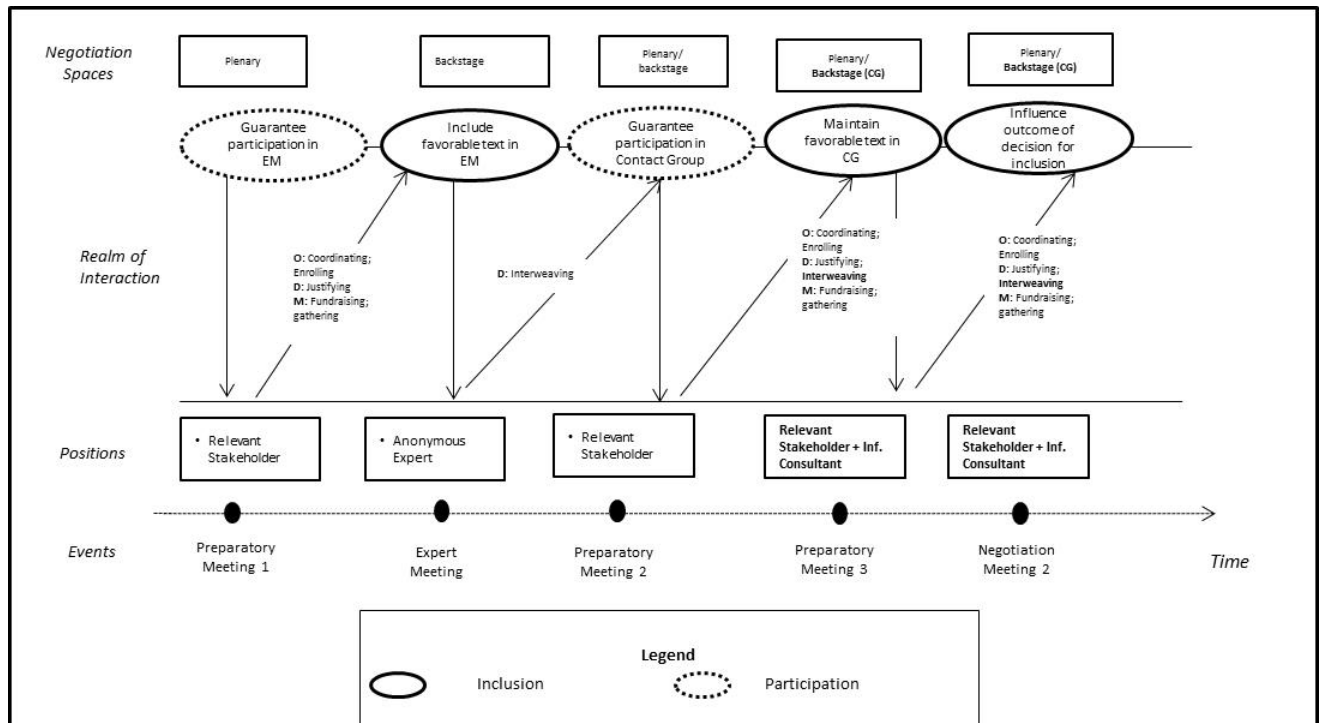


Figure 15 Illustration of the grounded model

This illustration exemplifies that through time, the cycles of resourcing work affect actors' opportunities to perform different roles as they create new resources in seeking out more avenues of participation in negotiation spaces and inclusion in the institution under construction. On this particular issue of compliance, which turned out to be the most controversial and important throughout the series of meetings under study, the result was an innovation in terms of inclusiveness of the actors affected by global rule making.

SECTION III - DISCUSSION AND CONCLUSIONS

This section presents the discussion and conclusions of this dissertation. Chapter 7 starts with a general summary of the main findings presented in section two. In the following sub-chapters I elaborate on the implications of these findings for theory. In chapter 8, I present the limitations and directions for future research followed by the practical implications of this dissertation. Finally, I lay out some concluding remarks.

CHAPTER 7. Discussion

This chapter presents the discussion of the results of this research. First, I summarize the findings of each chapter of results. Then, I propose the implications for theory, giving particular attention to the literatures on transnational governance, creating institutions and resourcing that inspired the focus and design of this research.

7.1 Summary of Findings

Global environmental regulations affect the lives of communities all around the world. Despite calls for more participation on the part of civil society for input in the making of these regulations, the reality is that the most vulnerable and under-resourced actors are usually the most likely to be excluded from the process. In studying the

creation of a new global regulation for the environment, the goal of this research was to shed light on the efforts of marginalized actors trying to include themselves in the process of creating global regulations that so significantly affects their lives. In making the case for their marginalization in this regulatory process, we must acknowledge some important constraints imposed by the both the institutional rules and understandings in the field as well as the access to resources by these actors, all factors which strongly affects their capacity to perform institutional work and influence the institutional creation process. The first and foremost rule that affects all non-state actors equally is that they have no voting rights and no formal mechanisms for shaping the agenda, which is the domain of states.

In the case of marginalized non-state actors, in particular indigenous peoples, to this major constraint are added other challenges to their participation and inclusion. The most important is the normative pressure of mastering English. Despite the fact that the UN works under six official languages, English is the working language in the corridors. Actors in these settings use the corridors as important spaces to engage in conversation, distribute written materials and organize side events. These activities are done for informational and lobbying purposes and English is the prevalent language. In addition, it is not uncommon for English to be the language in use in plenary sessions that go overtime or in documents developed by the Secretariat. In the case of backstage (i.e. contact groups and expert meetings), budgetary limitations impede the translations to other languages.

Indigenous peoples come from many parts of the world and their mother tongues are seldom any of the UN-official languages. As a consequence, the representatives more actively engaged in different spaces of the meetings are the ones with the ability to speak English, because this affects their capacity to influence texts and to articulate collaborations with other actors. This dynamic excludes for the most part, at least in some spaces, the majority of the indigenous representatives. For this reason, not many IPLC representatives are in a capacity to actively participate in these types of meetings and, consequently, the same two or three representatives are always invited to participate in exclusive spaces.

Moreover, the diverse cultural norms and legal understandings held by indigenous peoples constitute another challenge they must overcome in order to engage in the discussions. To begin with, they are peoples of oral traditions. Under customary law, what is accorded by word to them is to be respected. However, the multiplicity of documents discussed and the obscure acronyms and legal terminology adopted in these settings generate feelings of frustration and incompetence. To be able to articulate their views in proposals that are acceptable for discussion in the field, they have to build diplomatic skills in addition to an understanding of how the Western legal system works. For instance, the Western legal system favors the notion of individual rights over knowledge, in large contrast to the more collective view held by indigenous peoples in relation to their knowledge systems. Accordingly, indigenous peoples have been struggling in different global and local arenas to get the recognition for forms of legal pluralism or customary/community control in opposition to private or government control

in order to establish community rights over natural resources and traditional knowledge (Delgado, 2016).

Another challenge faced is limited material resources and the relation of dependence that indigenous groups hold with their national governments. Even if the group is the sole stakeholder group to enjoy a voluntary fund that provides the material resources to pay for their attendance and sometimes translation services, they are still disadvantaged compared to other stakeholders, such as business actors and global NGOs. Other stakeholders, in comparison to indigenous peoples, have easier access to funds and experts for the elaboration of materials and the organization of side events that may influence directly or indirectly the decisions taken by states. In addition, depending on the national dynamics, business actors (e.g. multinationals) may have easier dialogues with governments in that the economic interests advanced by them can easily become priorities in a neoliberal agenda. In most countries, indigenous peoples constitute minorities in their societies and, due to their colonial heritage, they often establish tense relationships with national and local governments. This legacy of dispossession and struggle leaves most indigenous peoples with little or no leverage in the local scene, which may affect also the relationships established in the global arena as well.

In the chapters of results, the detailed examination of the different events enacting a transnational regulation through different analytical techniques pointed to different ways that actors mobilized for participation and inclusion, despite all the disadvantages listed above. In chapter 4, I described what the actors under study were trying to accomplish and their achievements. I did this by examining how the negotiations on specific issues evolved through time. The four most salient issues in the implementation

phase of the Nagoya Protocol were: creating mechanisms for compliance with the provisions of the Protocol; planning capacity-building efforts for the actors involved in ABS; designing a clearing-house platform for information-sharing; and debating the need for and modalities of a global multilateral approach for cases not addressed by the Nagoya Protocol. All of these issues were salient because they motivated challenging negotiations, something that is demonstrated by the need for creating additional spaces for further deliberation in parallel with the plenary sessions where the actual decisions are negotiated (e.g. contact groups, expert group meetings, and other inter-sessional activities, such as submission of views or requests for in-depth studies).

In general terms, marginalized actors sought for increased participation and inclusion on these issues by trying to change the positions, understandings and rules that govern the discussions in different types of meetings. These actors worked to make the dominant actors accept their legitimate participation in the negotiation process by struggling for the opportunity to submit views in plenary but also to be part of the backstage (i.e. expert group meetings and contact groups). For instance, for every decision that convened an expert meeting, these actors requested to be allowed to take part. In most cases their requests to participate did not explicitly appear in the decision, but the Secretariat invited indigenous representatives with paid expenses, something that had become “common practice” although actors in the field don’t remember exactly why and how it started. The result was the participation of at least two representatives in each of the four expert meetings that took place during this period. Most of the time, they were also informally invited to participate in contact groups, more particularly in the discussions over compliance. Their participation in these different meetings signaled an

important change in understanding of what is considered appropriate behavior in the field, in the sense that, at least informally, dominant actors came to value their input and presence.

The group of actors under study also fought for more inclusion, by trying to influence the actual contents of decisions to shape more opportunities for co-production of policies. This was reflected in different ways for the different issues. On the issue of compliance - the most challenging of all - inclusion materialized as, among other things, in getting representation on the compliance committee, something novel in global agreements of this nature. In capacity-building, IPLCs were able to include their views on needs and priorities as a key area of implementation for the Protocol. In the clearing-house, the actors made frustrated attempts to create a “bridging” role between the platform and IPLC actors.

It is interesting to note that IPLCs were the most successful at being included in the most challenging issue of all: compliance. In their struggle to establish representation in the compliance mechanism, IPLCs were very active in the expert meetings and also in the contact groups established throughout preparatory and negotiation meetings. They were able to achieve a critical change in an understanding of dominant players that compliance committees should be constituted only by representatives of states in bringing favorable arguments to the table in the contact groups. This change in understanding led to the creation of a new rule that formally regulates the composition of the compliance committee. While it is true that according to the rule they continue to be observers with no voting rights, these actors opened a legal precedent which guaranteed them a seat at the table for as long as the mechanism operates. In the same vein, they were the sole

stakeholder group included in the informal advisory committee for capacity-building, once again ensuring a channel through which they could co-produce with the other representatives the guidelines and policies for building capacity in ABS. Therefore, in these two instances they were successful in guaranteeing more inclusion through a change in an understanding held by dominant actors that led to a change in rules of access.

In contrast, on the issue of the clearing-house for information-sharing, despite being successful in participating in the expert meeting report, their requests did not follow through in the subsequent meetings. An important element in this specific issue is that Parties had established an informal advisory committee that did not include stakeholders, which followed a common understanding held by dominant actors that these sorts of committees should be composed by state representatives. Ultimately, all the recommendations made by this committee were taken without further negotiations in plenary, which left indigenous representatives with little leverage in shaping the regulation.

From this process mapping of the different issues and the respective achievements in terms of changes in participation and inclusion, it is possible to infer that in the backstage, in contrast to plenary sessions, dominant actors are more welcoming of alternative views and for that reason are more likely to allow changes in rules and understandings. Expert meetings and contact groups are very accepting of information and ideas coming from observers. However, it seems that contact groups are somehow more effective vehicles to promote change in rules and understandings on controversial

issues when compared to expert meetings. On the compliance issue, the recommendations of experts seemed to be too far away from the final decision since many rounds of deliberation took place in contact groups. In this sense, even if the belief held by IPLCs that being present in expert meetings is an important way for them to seed possible changes in rules and understandings, the evidence seemed to suggest that in challenging issues, this might not be the only adoptable strategy. In addition, the evidence showed the importance of being included in committees for marginalized actors with regard to the opportunity to participate in the co-production of rules. In particular, the clearing-house case of non-success for inclusion in the committee exemplifies how these smaller groups play an important role in designing the policies that will be adopted in plenary because they arrive at a consensus that is difficult to break later.

In chapter 5, I explore even more deeply the dynamics of inclusion and exclusion through extensive participant observation within the different types of meetings: expert, preparatory, and negotiation. In trying to get a better grasp of what these actors actually do in the different spaces of negotiation, I analyzed the rules and understandings of the different spaces in relation to the positions they occupy. As a result of this analysis, I identified three different positions that actors may occupy according to the rules and understandings governing the negotiation spaces: “relevant stakeholders”, “anonymous experts” and “informal consultants”.

IPLC representatives were officially “observers” in all the meetings, meaning that they have no voting rights and their participation is limited, since the regulation under discussion is legally binding to states. In trying to exert some influence in preparatory and

negotiation meetings, much of the effort went into convincing Parties to support their interventions or to speak in their favor. Therefore, throughout the period under analysis they did not achieve a radical change in position, to the extent that they did not become “dominant actors” in this setting, at least in the sense of having regulatory power. Interestingly, I show that even the smallest changes in positions in different types of meetings brought incremental increases in advantage in subsequent meetings.

In Episode 1 on the mobilization in a preparatory meeting, I showed that the group of actors had to struggle to be able to speak in plenary, asking central actors informally and formally for the right to do so. Even if this was implicitly an acquired observer right, the group of actors under study had to appeal to “their central part in implementation” – claiming their role as “relevant stakeholders” in the Nagoya Protocol to exercise it. Occupying a position of “relevant stakeholders” the actors gained the privilege of being present in the next expert group meetings and sometimes in contact groups, resourcing their capacity of getting access to exclusive spaces. In Episode 2, I showed how the observers in expert meetings acted as experts nominated by Parties. Their interventions were similar to those of the actual experts since the space provided a dynamic where alternatives were accepted. Interestingly, the interventions were not labeled in the final report, turning all the participants at the meeting – experts and observers alike - into “anonymous experts”. Once again, this is evidence of a change in position, where actors were able to resource their capacity to give input on controversial issues. Finally, in Episode 3 on the contact group discussions over compliance mechanisms within the negotiation meeting, their official status was once again that of observers, but they had again a change in position as “informal consultants”. States would ask for their opinion

on particular points under discussion, mainly in those points where states were unsure of which path to take concerning indigenous issues. I show that it took time for actors to win the trust of states and to be granted the position of informal consultants, which ultimately granted them with the capacity to co-produce policy on particular issues. Episodes 2 and 3 showed that, in discussions that raised issues that directly affected the group, their views were valued.

In chapter 6, I build on these findings to create a model to explain how marginalized actors work for greater inclusion in the creation of a new global regulation. Informed by grounded theory analysis, in an iterative process from data to literature, a key mechanism emerged: resourcing work, defined here as *the recursive process through which interactions and relationships enable the creation of resources and affect the actors' positions in different negotiation spaces where institutions are created*.

Resourcing work is composed of three different types of resourcing: Organizational, Discursive and Material. Organizational resourcing refers to the work of facilitating connections between actors and coordinating their activities to enable participation in the institution-building process. Discursive resourcing refers to the work of shaping interpretations and justifying practices in accordance with the experience, knowledge and values of a group of actors engaged in institution building. Finally, material resourcing refers to the work of getting at valuable financial, technical and linguistic resources that increase opportunities to influence the institution-building process.

In identifying the interactions between the different types of resourcing work and negotiation spaces created in the institution building process, I further explore the positions occupied by the actors in the different meetings of the events series. To be able to act as “relevant stakeholders” in the plenary spaces of preparatory and negotiation meetings, the actors perform all three types of resourcing work: organizational, discursive and material. For instance, as relevant stakeholders, discursive resourcing takes place in plenary sessions, reading formal statements that justify their importance in policy implementation and formulation. In order to get the support of the central players in the field (i.e. governments), and other supportive actors (i.e. NGOs and the Secretariat), they also invest in organizational resourcing. Importantly, they also do material resourcing to guarantee funds for representatives to attend the different meetings in the series, and for producing voluntary translations and free technical information.

In contrast, to act as “anonymous experts” in expert group meetings, actors perform mostly the discursive type of resourcing work. Their aim in these types of meeting is to plant the seeds for favorable texts in the expert reports that later on can be interwoven into decisions. The pieces of text inserted in these negotiation spaces become resources for actors to do the work of enrolling allies in negotiation meetings. Normally in these negotiation spaces, there is no need to put in place organizational and material resourcing because experts are chosen on their individual capacity and alternatives put at the table in the meeting appear in the report, irrespective of whether they came from experts appointed by governments or from observers.

Similarly, to occupy the position of “informal consultants” in contact groups, actors do discursive resourcing to engrain favorable texts in the recommendations. In

addition, there is also an element of organizational resourcing, because there is a need for these actors to enroll allies that will invite them to participate in these spaces. Importantly, contact groups are closer to the decision than expert group meetings because the outcomes of these meetings are usually accepted as the consensus in plenary.

These findings nurtured the construction of a grounded model for inclusion via resourcing work. I show that there is a continuous interplay among “negotiation spaces”, “positions” and “resourcing work” as events evolve over time. The negotiation spaces are formally and informally governed by rules and understandings that define the appropriate conduct and the resources available for actors in plenary and the backstage (i.e. expert meetings and contact groups). Different positions (i.e. “relevant stakeholders”, “anonymous experts” and “informal consultants”) are enabled by these different rules and understandings and influence the sets of actions actors may perform according to the spaces they are interacting with. In the interactional realm, there is resourcing work, which incorporates both the rules and understandings held in the different negotiation spaces and the actor’s shaping of the institution through the different positions they occupy in different spaces. These cycles of resourcing may lead to increased participation (having their input taken in the process of discussion) and inclusion (co-production of the regulation).

Through time, the cycles of resourcing work affect actors’ opportunities to perform different roles as they create new resources while trying to modify the rules and understandings in negotiation spaces and to influence the content of decisions that shape regulation making. Through a number of examples I show how these actors with limited resources are largely dependent on relationships and interactions to perform the different

types of resourcing work. With regard to the compliance issue, I show how these actors mobilized resourcing in the different meetings to achieve more inclusion in the compliance mechanism of the protocol. The position of “relevant stakeholder” was essential for reaching access to exclusive spaces. Once included in the process of creating the mechanism, actors had more opportunities to produce substantive changes in the rules and to promote their inclusion. The previously inserted favorable texts in expert meetings, the relationships the network established with supporting governments, the diplomatic skills built throughout the negotiations, and the advice provided in the backstage served as resources enabling the indigenous representatives to influence the decisions taken and to carve out a place for themselves in the compliance committee. My argument is that, in practicing multiple cycles of resourcing in different meetings, the access of indigenous representatives to the field may change with the learning process that goes along with it, potentially increasing their participation and inclusion in the creation of new global regulations.

7.2 Implications to the transnational governance literature

In what follows, I show how this study contributes to the literature in transnational governance. While extant literature has focused mainly on the rise of private regulations as a form of active participation of actors other than states in transnational governance (Djelic and Quack, 2006; Djelic, 2011; Brunsson Jacobson, 2002 ; Scherer and Palazzo, 2011; Vogel, 2009), this research examines the practices and mechanisms leading to greater inclusion of these actors in spaces dominated by governments. Even if the UN

sustains a broad discourse on the importance of participation inclusion of civil society in global governance, it holds true that the institutional processes maintained in intergovernmental negotiations do not necessarily promote inclusiveness in practice (Banerjee, 2012). The exclusion of many interested actors, in particular those most affected by the decisions taken in these arenas (Nanz & Steffek, 2004), is a reality that some activists have been trying to change (Betsil & Corell, 2008; Orsini 2013). In this research, I refine this line of inquiry by highlighting the importance of creating resources and the differences entailed in getting more participation and inclusion for non-state actors (NSA) in intergovernmental negotiations.

Firstly, this study sheds light on a specific group of understudied actors in transnational governance, the extremely vulnerable and under-resourced non-state actors. Previous research has emphasized the importance of the possession of resources by actors in influencing intergovernmental negotiations (Betsill and Corell, 2008; Levy & Scully, 2007; Orsini, 2013). The emergent findings in chapter 6 extend this knowledge by showing how such resources are created in practice and how they interact through the mechanism of resourcing. In chapter 6, I describe a number of examples where organizational, discursive and material forms of resourcing work recursively, interacting to bring about changes in positions, rules and understandings that promote increased participation and inclusion. In the successful case of their inclusion in the compliance committee, the fund that guaranteed the attendance by representatives of the group (i.e. material resourcing), combined with the network of trustful ties that, along with the diplomatic skills, developed over the years throughout the negotiations (i.e. organizational resourcing), allowed for participation in the backstage of meetings. This

created the opportunity for texts to be skillfully inserted into discussions (i.e. discursive resourcing). Thus, this interaction of resources created in situated interactions enabled indigenous representatives to change positions and rules and understanding, influencing in the shaping of the regulation from the backstage. In this sense, the concept of resourcing work is a key mechanism that unveils the practices necessary for increased participation and inclusion of marginalized actors into intergovernmental negotiations.

Secondly, this study highlighted the important distinction between participation and inclusion in practice in this regulation making process. It is important to note that the transnational regulation under study has produced different negotiation spaces where extremely vulnerable actors sought for more participation and inclusion. While the rules of procedure in plenary sessions continued to be very formal for observers following the UN aegis, the understandings of the actors in this particular biodiversity field allowed for more flexible participation by observers. The CBD is known for being a forum that welcomes diversity, more particularly in the backstage (e.g. expert group meetings and contact groups). In addition, the CBD is the only UN convention that holds a fund to guarantee a minimal representation of indigenous peoples at its meetings. In particular, in the context of the Nagoya Protocol, indigenous peoples have had representatives in all preparatory and negotiation meetings and have been frequently invited to expert group meetings. The findings show that the creation of institutional mechanisms and programs that promote communities' attendance is indeed effective for increasing participation. Similarly, the increased flexibility in some negotiation spaces (e.g. contact groups) can be seen as a tool that promotes inclusion. In this vein, this research corroborates the importance of the configurations of rules and understandings in different negotiation

spaces (Hardy and Maguire, 2010), as they create or close opportunities for input from actors other than states. However, I extend this idea by showing in chapter 6 that, in practice, actors had to be very strategic in spotting the instances where the insertion of their views were more favorable and in developing the skills to later interweave those views into decisions taken by states in more constraining environments. Therefore, the contribution of this research is to provide a more complete view of the effects of agency in getting participation and inclusion in transnational governance.

Finally, this case exemplifies an important practice that interconnects global and local political arenas in a more equitable way, going beyond the traditional understanding of the “boomerang effect” (Keck and Sikkink, 1999) in transnational governance. The extremely vulnerable actors and their allies were invested in promoting instances for self-determination of communities around the world. In understanding the diversity that indigenous peoples around the world bring in terms of customs and worldviews, this practice aims at creating spaces for more autonomy embedded in the regulation. The idea is that, once these provisions are included, then each community can decide on its own and through its own processes what it prefers to do in its case. For instance, the representatives strongly emphasized the importance of promoting capacity-building programs conducted by and for communities, even though they were not particularly successful on that point. Another point of insertion of a self-determination frame was in relation to the discussions on compliance, in which the actors asked for a direct channel to the compliance committee for indigenous peoples to denounce non-compliance with the protocol. The goal was to avoid having to go through national states. They were partially successful, since the decision requires that they submit first their claim through

the Secretariat, which will technically evaluate whether the claim contains all the information needed for an assessment of the compliance committee. Importantly, despite the fact that the network has very permeable boundaries, allowing for a broad and diverse constellation of actors to join, actors maintain a coherent collective action frame which establishes the respect for indigenous peoples' self-determination. The findings show that the contribution of communities in transnational governance can be that of increasing the pluralism of alternatives for regulation formulation at the global level while promoting the respect and inclusion of local practices of organizing in implementation.

7.3 Implications to the literature on institutional work

The findings of this thesis provide new insights into institutional creation (Lawrence and Sudabby, 2006; Lawrence et al. 2013). Firstly, this thesis maps out new directions in inquiry on practices of marginalized actors in institution-building processes. Most studies in this body of literature have examined discursive practices, leaving aside other important aspects of practice (Zilber, 2011). With the relational ontology and methodological approach implemented in this study, I privileged the analysis of micro-practices affecting inclusion of marginalized actors. This study has relied heavily on longitudinal and observational data in different negotiation spaces, to be able to look beyond discursive aspects or the impact of resourceful actors in the making of a new global regulation. My goal was to understand the practice of actors who have had to

struggle to produce even incremental impacts on the creation of institutions (Marti & Fernandez, 2013). The approach adopted allowed a focus on the work itself and the lived experiences of these actors in creating the resources that enabled them to engage in institutional work, embracing a “positive lens” in exploring the practices that make field boundaries more inclusive (Nilsson, 2015; Zietsma and Lawrence, 2010). For instance, I showed in chapter 6 that the network created by and for indigenous peoples in this field played a vital role in promoting organizational and material forms of resourcing work, providing support to participation and inclusion of these actors, something that has been defined as an indirect form of institutional work (Bertels et al. 2014). Indeed, the network has developed a coordinating role bridging actors to act on their behalf in distributing information or resources between them (Bertels, et al. 2014) and enabling the group to speak with a single voice in plenary. I also show that not only do the actors under study participate in these events to create and produce texts for the purpose of changing a global institution, but they also utilize these meetings as hubs to connect to other organizations and to resource their local causes. In chapter 6, under the mechanism of “material resourcing work”, I find that actors use these meetings to “seek resources for local work”. Marginal actors in this field become skilful translators of local concerns as instantiations of global issues, through contextualization in the global (Gond and Boxenbaum, 2013). In the examples provided in chapter 6, I show how the actors may relabel their local implementation projects in order to match global debates and terminologies, resourcing in the global realm to bolster their local agendas. Hence, in contributing to a better understanding of what actors with limited resources do to resist exclusion under constraining situations (Marti & Fernandez, 2013) this work provides an

answer to the call for more emancipatory studies under the institutional work tradition (Lawrence et al. 2011; Nilsson, 2015).

Second, I elaborate the mechanism of resourcing work as an antecedent to institutional work, providing a new type of work that refines this literature. Despite privileging a view of “agentic” actors over deterministic institutions, institutional work has been criticized for not elucidating a better understanding of how actors become the agents that engage with institution-building activities (Hwang & Colyvas, 2011). I propose resourcing work as a key mechanism for agency, based on the idea that to be able to perform institutional work actors must create and use resources that affect their inclusion in diverse negotiation spaces. In my research, I show how this process is inherently recursive and unpredictable. As the process of building the regulation evolved, the actors worked to create organizational, discursive and material resources that enabled changes in positions, rules and understandings that increased their participation in less constraining spaces (i.e. backstage) and produced inclusion in the institution being created. Once in these more favorable spaces, actors worked to create discursive resources (i.e. alternative texts based on their views, embedded within the recommendations to central actors) that could be used later in the negotiation meetings. These texts appeared as legitimate options to the dominant players (i.e. states) in other spaces where the decisions were actually taken. This new mechanism helps to further understanding of how actors, in situated interactions, are able to produce the resources for their inclusion in institutional work.

Finally, this study sheds light on the interplay between different types of spaces in meetings and their respective rules, understandings and positions over time, refining the

literature on institutional work in suggesting the entanglement of practices and context (i.e. space and time) in the process of creating a new global regulation. In this study, space is a fundamental element in that it affects the rules and understandings under which the different actors operate in FCEs. Previous research has highlighted how different discursive spaces are created in UN Conferences, even though they focus mainly on the dynamics taking place in plenary sessions and side-events (Hardy and Maguire, 2010; Banerjee, 2012; Schussler et al. 2014). This work extends this literature by producing further insights on what happens in the backstage of meetings. The observational data I utilized illuminates the distinct dynamics that varied contexts impose on actors and how they enable the performance of different roles and the occupation of certain positions. In more formal stages, like those entailed in plenary sessions, non-state actors (NSA) cannot be more than stakeholders. However, in more informal spaces, actors can and do change positions to become experts and consultants, bringing them closer to the center of decision making. The findings demonstrate that those actors who are not at the forefront in formal spaces (i.e. plenary sessions) are not necessarily completely excluded, as much of what happens in an FCE happens offstage. With this, I argue that examination of informal spaces, or what I have been calling the “backstage of meetings”, is fundamental to obtaining a better picture of the dynamics of inclusion and exclusion in FCEs and for that reason future studies in FCEs should not overlook the backstage of meetings.

Notably, the resourcing lens has helped to reach a better understanding of how participation and inclusion play out in institutional work with cumulative experience. Previous work has showed the importance of studying multiple events in an event series as they interact in producing or preventing institutional change (Schussler, et al., 2014).

In this research, we corroborate the importance of analyzing an event series with a focus on how actors seed potential resources in one meeting and exploit them in a subsequent one, changing their practices along the way. Recommendations are transformed into decisions in this context through a particular path⁷⁴. I found that actors worked through time in achieving greater participation, as they performed resourcing work in one meeting to guarantee their presence in subsequent meetings while acquiring more abilities to be more effective. I showed that in the beginning of the event series, actors worked more strongly in trying to justify the need for their participation in the arena. As time passed and they were able to participate in different meetings and negotiation spaces in different positions, their struggle turned to that of promoting changes in the rules and understanding in the field, promoting a different form of discursive resourcing work that is much more sophisticated. Therefore, these actors did not start the process by creating and disseminating text to substantively influence the texts of decisions, something that has been at the center of analysis in previous studies (Hardy & Maguire, 2010; Maguire & Hardy, 2009; Zilber, 2011; Schusler et al. 2014). Rather, this ability was acquired with time, after multiple resourcing work cycles. In building diplomatic skills through the years, actors were able to engage more actively in institution building even if they understood that they were still currently incapable of having dramatic influence over the institutions that directly affect their ways of life. In this sense, this study realizes a better grasp of the effects of cumulative experience in the process of institutional creation on the practices of actors by showing the interplay between the different forms of resourcing work at different moments of the process.

⁷⁴ I describe in detail the life cycle of decisions in the “research setting” sub-chapter.

7.4 Implications to the literature on resourcing

By shifting the analytic focus from resources as reified entities, to resourcing as a dynamic social practice, new insights into the microprocesses involved in achieving inclusion in a transnational field were produced. In applying the resourcing lens to this phenomenon, I also contribute to the resourcing literature. First, this work tackles one neglected issue in the resourcing literature, which speaks to the resourcing process when there are clear power differentials of actors in a given context. The case under analysis here brought with it the complexity of a field where power is exerted mainly by a group of dominant actors (i.e. states), while other actors (i.e. NSAs) work, nonetheless, for the opportunity to influence somehow the process of creating a transnational regulation. In particular, I address previous research that highlighted how actors in a disadvantaged position must learn how to read the dominant actors' schemas to navigate the context and thus be able to shape the issues in their favor (Howard-Grenville, 2007). Here I demonstrate that, given their disadvantaged position in the field, the group of actors had also to develop a sense of the field's rules and understandings over time, counting also on the help of allies along the way. Aligning this knowledge with what they plan and intend, and also with what they produce over time, actors are able to activate cycles of resourcing that lead to unpredictable results over time. I show that their temporary and incremental changes in position (e.g. from stakeholders to experts and consultants) gave them more opportunities to resource themselves and to accomplish their goals of changing the rules and understanding in the field and becoming more included. For instance, in the case of

the compliance issue, resourcing increased the capacity of actors to gain access to exclusive spaces, then to give input on controversial issues to finally develop the capacity to co-produce policies. The decision of including indigenous representatives in the committee opens opportunities for the creation of more resources for indigenous peoples in the future, diminishing power differentials in relation to state actors and other more resourceful non-state actors (NSAs). Once having taken part in the compliance committee meetings, they will have more resources available to promote further inclusion of indigenous views in the resolution of compliance issues. Moreover, indigenous peoples in other transnational arenas might cross-leverage this model as a right gain, resourcing through the importation of best practices that promote their inclusion and augment their power in negotiations.

Second, I find that the spaces where actors interact affect how they use and create resources. The resourcing lens recognizes that this is an effort achieved in situated interactions (Feldman, 2004; Howard-Grenville, 2007), but so far no study has focused on the role of different spaces in resourcing. This research demonstrates that the spaces where these ‘situated interactions’ take place indeed matter because different spaces pose different rules and understandings that enable and constrain actors’ practices. In highly constrained spaces (i.e. plenary sessions), the dominant actors (i.e. states) strongly control the performance of the other actors (i.e. NSAs) by limiting their opportunities to speak and to shape the discussion. In this context, I showed how the marginalized actors searched for ways to guarantee their participation in more deliberative spaces, where alternative views are more welcome. The resourcing effort in constraining spaces was aimed at acquiring deliberative spaces, being exclusive spaces in which participation is

achieved under an invitation from dominant actors. In these more favorable spaces, actors worked to create discursive resources by inserting texts expressing their views as alternatives in recommendations. These texts then became resources for the marginalized actors in negotiation meetings, because they appeared as legitimate options for the dominant actors working on the regulation making process. With this, I show that the rules and understandings governing the different types of spaces affect the way actors practice resourcing.

Finally, three different types of resourcing emerged from the findings: organizational, discursive and material resources. This research refines the resourcing literature, in proposing a typology that helps to further understand how different practices are involved in creating the varied resources needed for inclusive governance. The organizational dimension of resourcing focuses on how organizational structures may play a role in facilitating connections between actors and coordinating their activities to enable participation and inclusion in regulation-making. This part of the approach is especially useful for understanding how marginalized actors may intensify their capacities through coordination. The discursive dimension highlights the work involved in shaping interpretations and justifying practices of actors willing to be engaged in regulation making. To do so, actors built on opportunities provided by less constraining spaces where they had more room to expose their views and demands in trying to shape decision-making indirectly. Finally, the material dimension sheds light on the constant effort needed for acquiring financial, technical and linguistic resources, as these actors seek to increase their opportunities for participation. With all types of resourcing, actors relied strongly on their connections and friendships. However, each type of resourcing

was directed at different but complementary objectives and required different abilities from actors. In this sense, this typology points to the value of looking at the different practices connected to different types of resources and their recursive effect on each other.

CHAPTER 8. Concluding Remarks

This chapter presents the conclusions of this research. First, I describe the limitations of this research and suggest some directions for future research. Then, I outline some recommendations for practice derived from this research. Finally, I present the concluding remarks.

8.1 Limitations and directions for future research

As with any study, there are limitations built into the research design; these provide guidance as to possible directions for future research. First is the potential for generalizability of the findings from this study. The goal of this research was to provide a richly contextualized account of the phenomenon that would allow for the findings of this study to be transferrable. In fact, given the similarity of the setting to other intergovernmental negotiations my findings should certainly be expected to apply in other forums, such as the discussions under the Climate Change convention (Banerjee, 2012). The mechanisms highlighted in this dissertation are likely to apply in other arenas of discussion as well, in particular those that produce different negotiation spaces in which dominant and marginalized actors interact in creating regulatory institutions (Hardy and Maguire, 2010; Helfen and Sydow, 2013). Examples could vary. Inter-organizational processes of negotiation such as those involved in multi-stakeholder initiatives for

building certification programs (Slager et al. 2013). Similarly, resourcing work could also appear at the organizational level in negotiation processes that would lead, for instance, to new internal policy (Daudigeos, 2013; Labelle and Rouleau, 2016). Even though the actual outcomes and results are unpredictable, if marginalized actors would perform resourcing work in other settings, then I would expect processes in these fields to look similar to those studied herein. However, it is important, to acknowledge that the CBD is recognized as being a flexible and welcoming arena, as compared to other allegedly more hermetic negotiation forums such as the World Trade Organization and the World Intellectual Property Organization, which are dominated by states with a strong bias toward business interests (Talberg, et al. 2014). Interestingly, many representatives interviewed for this research participate in both arenas and identify some synergies between them. An interesting path of further research would lie in studying these more “constraining” processes to get a better sense of the potential role of community input in transnational governance at large.

Likewise, despite the weight and importance I gave to participant observation in my findings - something that has been strongly valued and called for in previous work (Zilber, 2011; Hardy and Maguire, 2010) - challenges of access limited the events in the series I was able to observe. Firstly, some of them were limited to appointed observers – in particular the expert meetings. I had the opportunity to observe one of the four meetings because I was working at the time in the CBD Secretariat, otherwise my participation was denied in the other meetings despite my request. Secondly, other meetings took place in different parts of the world (namely in India and South Korea), impeding my participation for budgetary reasons. I also had the opportunity to observe

one meeting in South Korea because I was working once again in the CBD Secretariat and my expenses were paid by them. Finally, it was not possible for me as an individual researcher to track all the parallel events happening within the same meeting. It was a conscious choice to follow closely one specific actor in order to grasp richer information. In the perspective of practice on which this research was based, this approach is acceptable and even desirable. I believed that a study designed to privilege participant observation throughout the whole process might show additional key features for understanding the dynamic of inclusion and exclusion.

Participant observation can be to some extent invasive. It is undeniable that with my close interaction with the actors engaged in the process, I interfered in the courses of action of some activities. The approach I took for dealing with this during fieldwork was to keep a reflexive journal detailing my own participation. This helped me to be more sensitive to situations where I felt my presence was unwelcome or unnecessary. For instance, in the multiple occasions where I became unofficial translator to overcome their lack of linguistic competencies, I never offered the service in the first place. The exchange between information and translation services happened naturally, as actors made use of some of my skills to facilitate their communication with others. One of my main ethical concerns was to produce no harm to the group and I believe that my presence was of some benefit to them throughout the years. Interestingly, this function became part of the data as I became aware that the practice of asking allies for help on translation is recurrent with other actors in the field. In trying to overcome any bias produced by this close interaction I made an effort to triangulate data with interviews and documents.

Another limitation of this study is that it was not possible to continuously track an organization throughout the entire period under study, as their participation in meetings is dependent on many variables that are beyond the researcher's control. With this limitation, it remained difficult to obtain supporting evidence for the argument that the actors engaged in the process learned specific skills or strategies as the negotiations of the regulation evolved. Certainly, the use of interviews was fundamental to try to grasp their views on how they interacted in the field in different moments in time. However, it is difficult to distinguish the acquisition of new tools, strategies or understandings from retroactive sense making. Further studies could tackle this issue of changes in learning to make a bolder argument in terms of the importance of cumulative practical experience for these communities in increasing their capacity to achieve inclusion.

Finally, this study has focused mainly on the creation process of a regulation from the perspective of the global forum. It is widely understood, however, that it is on the implementation of these global rules at the national and local levels that actual inclusion or exclusion of the governance of natural resources really takes place. Most notably, it is important to consider that these communities do not participate in these meetings isolated from their local political dynamics. In this sense, future research on the connections between mobilization in the local arenas of policy-making would extend the knowledge on the inclusion and exclusion processes in transnational governance and the potential role of communities. Further, a complementary study could help to understand the factors that impede representatives' attendance at meetings. This would allow for a much better understanding of the linkages between inclusion and exclusion dynamics from the perspectives of those that are completely isolated from the process.

8.2 Practical Implications

In this chapter I undertake an effort to provide a synthesis of the study's overall findings in terms of its practical implications. From a policy perspective, this study contributes to the analysis of the processes that open up opportunities for increased inclusion of actors affected by the outcomes of policy-making. In the context of the Nagoya Protocol, the use of traditional knowledge of indigenous peoples for the advancement of Western science and medicine through patents without their consent and with no shared benefits is a violation of indigenous rights (Banerjee, 2000). Accordingly, participation in this context is a social right and it is a meaningful expression of human agency by these groups (Cornwall, 2008). In bringing to light the mechanisms that enhance the inclusion of highly affected actors in institution building processes, the knowledge produced by this project may be useful to the actors themselves and also to policy-makers, in what concerns the design and implementation of more inclusive practices in this context.

Firstly, this study corroborates the importance of the development of new community experts in the field. The creation of loose and flexible organizational structures to support and facilitate participation in meetings is critical. There is no doubt that actors that attend the meetings with a certain frequency not only increase their knowledge about the discussions under the forum but also further refine their skills as negotiators. However, it is argued here that this participation may be converted into more inclusion in the actual process of creating the regulation when actors' learning is reinforced through practices of sharing and retaining knowledge. The example brought by

the International Indigenous Forum on Biodiversity (IIFB) shows how such a structure produces opportunities for information-sharing in caucus meetings and also feeds a repository of statements. This network is essential for increasing the efficiency of representatives' participation by being able, among other things, to coordinate activities of network members, to monitor negotiations and to get access to material, technical and linguistic resources. In addition, the network performs advocacy work for inclusion of indigenous peoples in capacity-building programs developed by the Convention on Biological Diversity (CBD) and partners. Nevertheless, more work could be done in the sense of creating systematic cycles of learning, where in every meeting the actors disseminate their individual strategies to, for example, achieve support from a specific Party or to gain access to some important material resource. The argument is that, by consolidating and sharing the lessons learned, actors enrich and expand their experience, being more prepared to face challenges in subsequent meetings.

Secondly, communities should put effort into learning the rules and understandings of the different spaces of negotiation because such knowledge strongly affects the capacity of actors to participate. It is known that plenary sessions in intergovernmental negotiations, where the decisions are taken by Parties, create hermetic dynamics for actors other than states. Since communities hold the status of observers, their participation is limited, as they do not have the right to vote or to set the agenda and must have the support of the state to have their demands considered. Nevertheless, other spaces with more deliberative characteristics such as expert group meetings and contact groups present observers with more opportunities to intervene. Importantly, to get access to these spaces, observers must be perceived by the key actors in the field (i.e. Parties and

the CBD Secretariat) as valuable contributors. This further reinforces the importance of investing time and effort in the development of experts. To be included in expert meetings, which are settings very accepting of information and ideas coming from observers, actors must have demonstrated expertise in order to receive an invitation. Similarly, in contact groups, which are smaller negotiation spaces in which Parties try to find a solution to some challenging issue, observers are only welcomed if States find is useful to consult with them for specific advice. Nevertheless, evidence seems to point in the direction that with more controversial issues, participation in expert meetings is not as effective as in contact groups for exerting some type of influence in the decision outcomes.

Thirdly, policy-makers willing to include the voices of extremely vulnerable actors should be aware of the subtle mechanisms operating in the field that silently exclude many from participation. Even though some fields, as the one studied here, are known for their flexibility, they also present challenges because, as many meetings and documents are not translated, negotiations are fast paced and conducted in highly technical jargon, leaving aside all of those without a good command of English or knowledgeable about the material under discussion. Despite great efforts of the CBD to guarantee funding for a minimal representation of actors at meetings, these barriers are important to acknowledge because they exclude many otherwise capable and relevant representatives, thus producing an effect of restricting participation to just a few actors. In this sense, it is vital that policy-makers continue supporting material resourcing for these actors while also providing better conditions for the development of other capacities necessary for effective inclusion.

8.3 Concluding Remarks

As a whole, this dissertation provides a broad and contextualized view of the creation of a transnational regulation and sheds lights on the interplay between purposive work and institutional dynamics on the inclusion and exclusion of actors willing to participate in the process. Examining the mobilization of indigenous peoples in the making of a new global regulation for biodiversity has provided a window into processes through which marginalized actors perform resourcing work for their inclusion within new regulatory institutions. Taking a longitudinal, process-oriented and ethnographic approach, I revealed the micro-practices involved in striving for inclusion in regulation-making. In table 26 I present the summary of the main contributions of this research.

Table 26 Summary of the main contributions of this research

Literature	Contributions of this research
1. Transnational Governance	<ul style="list-style-type: none">✓ Refining understanding of the practices leading to increased inclusion of extremely vulnerable actors in instances dominated by states;✓ Exploring the distinction between participation and inclusion in practice;✓ Acknowledging the role of local communities in promoting pluralism within the global realm through self-determination claims.
2. Creating institutions	<ul style="list-style-type: none">✓ Shedding light on lived experience of marginalized actors, answering call for emancipatory studies;✓ Providing better understanding of the antecedents to institutional work, proposing a new type of institutional work;✓ Recognizing the role of informal spaces, in including backstage spaces and how the series of events affect the practices of actors.
3. Resourcing	<ul style="list-style-type: none">✓ Revealing the effects of power differentials in resourcing;✓ Acknowledging the role of different spaces in resourcing;✓ Providing a typology of resourcing.

How did the marginalized actors achieve increased inclusion in the creation-process of a new global institution? The answer, briefly, is that the actors relied on

relationships and interactions to create key resources to overcome deficiencies in terms of organizational and diplomatic capacity, discursive and technical skills and material and linguistic needs. This research contributes to transnational governance literature in that it refines the practices leading to further non-state actor (NSA) inclusion in instances dominated by states. While most research on transnational governance has focused on resourceful actors, I have pushed our understanding of the practices of actors other than states that are usually excluded from the process in intergovernmental negotiations further by highlighting their practices using a “resourcing” lens. Moreover, I show that the opportunities created for NSA participation in intergovernmental negotiations do not automatically lead to inclusion, as actors have a strategic role in perceiving and making use of these opportunities. In making sense of the strategies for participation and inclusion of an underprivileged group, I also highlight that they have an important role to play in transnational governance in that they bring alternative views based on local practices and understandings, promoting pluralism in policy formulation and implementation.

This research also contributes to the literature on creation of institutions. Through the intensive ethnographic immersion undertaken in the fieldwork, I was able to provide a glimpse of the lived experience of marginalized and under-resourced actors in the context of transnational governance. I illustrated how these actors worked to make the boundaries of a field more inclusive. The emergence of “resourcing work” as an essential antecedent of institutional work, points to an inevitable mechanism that marginalized actors use to create the resources needed to produce participation and inclusion through situated interactions. This research also contributes by highlighting the role of the backstage in the

critical meetings where transnational institutions are created. The backstage opens room for more deliberative discussions, where dominant actors are more accepting of alternative views. In addition, practical experience is essential for marginalized actors to acquire more abilities to be more effective in institutional work, by changing rules and understandings and occupying different positions in the field.

Furthermore, I demonstrate the creation in practice of resources by marginalized actors, showing the recursive interactions between different types of resourcing and their outcomes as they affect inclusion. The resourcing lens was a key to discovering the importance of relationships and situated interactions as these actors tried to influence the transnational regulation under construction. This research contributes to this literature by emphasizing the importance of resourcing to overcome power differentials. It also acknowledges the influence of different spaces in how they either enable or constrain actors to perform specific types of resourcing: material, organizational or discursive. Indeed, gaining access to material resources was essential for at least enabling physical attendance at the meetings, even though the mere access to the meetings did not translate into participation and inclusion. Coordinating actions and recruiting allies, as forms of organizational resourcing, were extremely important for guaranteeing participation in the backstage of meetings, where dominant actors are more open to alternatives. With their access granted to these exclusive negotiation spaces, actors were able to perform discursive resourcing and insert favorable texts that would be explored in subsequent meetings.

In conclusion, resourcing work as a mechanism is also applicable to others settings, to explain what actors who are excluded from institutional creation do to try to

achieve increased participation and inclusion. This research provides an interesting framework for understanding what actors engaged in these processes actually do, and may thus lay the foundation for developing an approach to the mobilization of communities in these new regulatory institutions. In sum, this study is relevant for understanding transnational governance in its current form and for providing directions to communities on how they can become more engaged in these processes that so markedly affect their lives.

REFERENCES

- Abbott, K. W., & Snidal, D. (2000). Hard and soft law in international governance. *International organization*, 54(03), 421-456.
- Aguilar, G. (2001). Access to genetic resources and protection of traditional knowledge in the territories of indigenous peoples. *Environmental Science & Policy*, 4(4), 241-256.
- Ahrne, G., Brunsson, N., & Hallström, K. T. (2007). Organizing organizations. *Organization*, 14(5), 619-624.
- Anand, N., & Jones, B. C. (2008). Tournament rituals, category dynamics, and field configuration: the case of the Booker Prize. *Journal of Management Studies*, 45(6), 1036-1060.
- Anand, N., & Watson, M. R. (2004). Tournament rituals in the evolution of fields: The case of the Grammy Awards. *Academy of Management journal*, 47(1), 59-80.
- Banerjee, S. B. (2003). Who sustains whose development? Sustainable development and the reinvention of nature. *Organization Studies*, 24(1), 143-180.
- Banerjee, S. B. (2011). Voices of the Governed: towards a theory of the translocal. *Organization*, 18(3), 323-344.
- Banerjee, S. B. (2012). A Climate for Change? Critical Reflections on the Durban United Nations Climate Change Conference. *Organization Studies*, 33(12), 1761-1786.
- Barin Cruz, L. , Delgado, N. A., Leca, B., & Gond, J.-P. (2015). Institutional resilience in extreme operating environments: The role of institutional work. *Business & Society*, 1-47.
- Barnett, M. N., & Duvall, R. (2005). *Power in global governance* (Vol. 98). Cambridge Univ Pr.

- Barney, J. (1991). Firm resources and sustained competitive advantage. *Journal of management*, 17(1), 99-120.
- Bartley, T. (2007). Institutional Emergence in an Era of Globalization: The Rise of Transnational Private Regulation of Labor and Environmental Conditions1. *American Journal of Sociology*, 113(2), 297–351.
- Battilana, J., Leca, B., & Boxenbaum, E. (2009). How Actors Change Institutions: Towards a Theory of Institutional Entrepreneurship. *The Academy of Management Annals*, 3(1), 65–107.
- Bavikatte, K., & Robinson, D. F. (2011). Towards a People's History of the Law: Biocultural Jurisprudence and the Nagoya Protocol on Access and Benefit Sharing',. *Law, Environment and Development Journal* (, 7(1), 35.
- Betsill, M. M., & Corell, E. (2008). Introduction to NGO diplomacy. *NGO Diplomacy: The Influence of Nongovernmental Organizations in International Environmental Negotiations*, 1–18.
- Bertels, S., Hoffman, A. J., & DeJordy, R. (2014). The varied work of challenger movements: Identifying challenger roles in the US environmental movement. *Organization Studies*, 35(8), 1171–1210.
- Bexell, M., Tallberg, J., & Uhlin, A. (2010). Democracy in global governance: The promises and pitfalls of transnational actors. *Global Governance: A Review of Multilateralism and International Organizations*, 16(1), 81-101.
- Biermann, F., & Pattberg, P. (2012). Global environmental governance revisited. *Global Environmental Governance Reconsidered*, MIT Press. Pp. 1–23.
- Bled, A. J. (2009). Business to the rescue: private sector actors and global environmental regimes' legitimacy. *International Environmental Agreements: Politics, Law and Economics*, 9(2), 153–171.
- Bled, A. J. (2010). Technological Choices in International Environmental Negotiations: An Actor—Network Analysis. *Business & Society*, 49(4), 570–590.
- Borraz, Patricia (2000). Indigenous participation on Biological Diversity Process. Available at: http://trade.ec.europa.eu/doclib/docs/2005/april/tradoc_122182.pdf
Retrieved on: 02/02/2016
- Bourdieu, P. (1990). *The logic of practice*. Stanford Univ Pr.
- Brunsson, N., & Jacobsson, B. (2002). *A world of standards*. Oxford: Oxford University Press.
- Brunsson, N., Rasche, A., & Seidl, D. (2012). The Dynamics of Standardization: Three Perspectives on Standards in Organization Studies. *Organization Studies*, 33(5-6), 613–632.
- Bubela, T., & Gold, E. R. (2012). *Genetic resources and traditional knowledge: case studies and conflicting interests*. Edward Elgar Publishing.
- Cashore, B. W. (2004). *Governing through markets: Forest certification and the emergence of non-state authority*. Yale University Press.

- Charmaz, K. (2006). *Constructing grounded theory: A practical guide through qualitative analysis*. Pine Forge Press.
- Cho, C. H., Laine, M., Roberts, R. W., & Rodrigue, M. (2016). The Frontstage and Backstage of Corporate Sustainability Reporting: Evidence from the Arctic National Wildlife Refuge Bill. *Journal of Business Ethics*, online first.
- Clegg, S. (2010). The state, power, and agency: Missing in action in institutional theory? *Journal of Management Inquiry*, 19(1), 4–13.
- Cornwall, A. (2008). Unpacking “Participation”: models, meanings and practices. *Community Development Journal*, 43(3), 269–283.
- Creed, W. D., DeJordy, R., & Lok, J. (2010). Being the change: Resolving institutional contradiction through identity work. *Academy of Management Journal*, 53(6), 1336–1364.
- Currie, G., Lockett, A., Finn, R., Martin, G., & Waring, J. (2012). Institutional work to maintain professional power: recreating the model of medical professionalism. *Organization Studies*, 33(7), 937–962.
- Czarniawska-Joerges, B. (2007). *Shadowing: and other techniques for doing fieldwork in modern societies*. Copenhagen Business School Press DK.
- Dacin, M. T., Munir, K., & Tracey, P. (2010). Formal dining at Cambridge colleges: Linking ritual performance and institutional maintenance. *Academy of Management Journal*, 53(6), 1393–1418.
- Dahl, J. (2012). *The indigenous space and marginalized peoples in the United Nations*. Palgrave Macmillan.
- Daudigeos, T. (2013). In Their Profession’s Service: How Staff Professionals Exert Influence in Their Organization: How Staff Professionals Exert Influence in Organization. *Journal of Management Studies*, 50(5), 722–749.
- Delacour, H., & Leca, B. (2011). The Decline and Fall of the Paris Salon: a Study of the Deinstitutionalization Process of a Field Configuring Event in the Cultural Activities. *M@n@gement*, 14(1), 436–466.
- Delgado, N. A., & Barin Cruz, L. (2014). Multi-event ethnography: doing research in pluralistic settings. *Journal of Organizational Ethnography*, 3(1), 43–58.
- Delgado, N. A. (2016). Community protocols as tools for resisting exclusion in global environmental governance. *Revista de Administração de Empresas*, 56(4), 395–410.
- den Hond, F., Boersma, F. K., Heres, L., Kroes, E. H., & van Oirschot, E. (2012). Giddens à la Carte? Appraising empirical applications of Structuration Theory in management and organization studies. *Journal of Political Power*, 5(2), 239–264.
- DiMaggio, P. J. (1988). Interest and agency in institutional theory. In *Institutional*

- patterns and organizations* (pp. 3–21). Cambridge: Ballinger.
- DiMaggio, P. J., & Powell, W. W. (1983). The iron cage revisited: Institutional isomorphism and collective rationality in organizational fields. *American Sociological Review*, 147–160.
- DiMaggio, P. J., & Powell, W. W. (1991). *The new institutionalism in organizational analysis*. University of Chicago Press Chicago.
- Djelic, M. L., & Quack, S. (2010). *Transnational communities: Shaping global economic governance*. Cambridge Univ Pr.
- Djelic, M. L., & Sahlin-Andersson, K. (2006). Introduction: A world of governance: The rise of transnational regulation. In *Transnational governance: Institutional dynamics of regulation*. Cambridge Univ Pr.
- Djelic, M.-L. (2011). From the Rule of Law to the Law of Rules. *International Studies of Management and Organization*, 41(1), 35–61.
- Drori, G. S., & Meyer, J. W. (2006). Scientization: making a world safe for organizing. In *Transnational governance. Institutional dynamics of regulation*. Cambridge: Cambridge University Press.
- Dryzek, J. S., & Niemeyer, S. (2008). Discursive representation. *American political science review*, 102(04), 481–493.
- Empson, L., Cleaver, I., & Allen, J. (2013). Managing partners and management professionals: institutional work dyads in professional partnerships. *Journal of Management Studies*, 50(5), 808–844.
- Escobar, A. (2008). *Territories of difference: place, movements, life, redes*. Duke University Press.
- Feldman, M. S. (2004). Resources in emerging structures and processes of change. *Organization Science*, 295–309.
- Feldman, M. S., & Quick, K. S. (2009). Generating resources and energizing frameworks through inclusive public management. *International Public Management Journal*, 12(2), 137–171.
- Feldman, M. S., Worline, M., Cameron, K. S., & Spreitzer, G. M. (2011). Resources, resourcing, and ampliative cycles in organizations. *Oxford Handbook of Positive Organizational Scholarship*, 629–641.
- Feldman, M., & Worline, M. (2015). The Practicality of Practice Theory. *Academy of Management Learning & Education*, amle-2014.
- Fligstein, N. (2001). Social skill and the theory of fields. *Sociological Theory*, 19(2), 105–125.
- Fung, A., & Wright, E. O. (2001). Deepening democracy: innovations in empowered participatory governance. *Politics and Society*, 29(1), 5–42.
- Garud, R., Jain, S., & Kumaraswamy, A. (2002). Institutional entrepreneurship in the

- sponsorship of common technological standards: The case of Sun Microsystems and Java. *Academy of Management Journal*, 45(1), 196–214.
- Garud, R., & Karnře, P. (2003). Bricolage versus breakthrough: distributed and embedded agency in technology entrepreneurship. *Research Policy*, 32(2), 277–300.
- Garud, R. (2008). Conferences as venues for the configuration of emerging organizational fields: The case of cochlear implants. *Journal of Management Studies*, 45(6), 1061–1088.
- Gawer, A., & Phillips, N. (2013). Institutional Work as Logics Shift: The Case of Intel's Transformation to Platform Leader. *Organization Studies*, 34(8), 1035–1071.
- Gehman, J., Treviño, L. K., & Garud, R. (2013). Values work: A process study of the emergence and performance of organizational values practices. *Academy of Management Journal*, 56(1), 84–112.
- Gemmill, Barbara, and Abimbala Bamidele-Izu. (2002). The Role of NGOs and Civil Society in Global Environmental Governance. *Global Environmental Governance: Options and Opportunities*: 77–101.
- Giddens, A. (1976). *New rules of sociological method*. New York: Basic Books.
- Giddens, A. (1984). *The constitution of society: Outline of the theory of structuration*. Univ of California Press.
- Gibassier, D. (2016). From écobilan to LCA: The elite's institutional work in the creation of an environmental management accounting tool. *Critical Perspectives on Accounting*.
- Goffman, E. 1959. *The presentation of self in everyday life*. New York: Doubleday
- Gond, J.-P., & Boxenbaum, E. (2013). The glocalization of responsible investment: Contextualization work in France and Quebec. *Journal of Business Ethics*, 115(4), 707–721.
- Green, J. F. (2010). Private authority on the rise: a century of delegation in multilateral environmental agreements. In: Jonsson, C. Tallberg, J. *Transnational actors in global governance* (pp. 155–176). Palgrave Macmillan UK.
- Greenwood, R. (2008). Focusing the asteroid belt of organizations. *Journal of Management Inquiry*, 17(3), 152–156.
- Greenwood, R., Suddaby, R., & Hinings, C. R. (2002). Theorizing change: The role of professional associations in the transformation of institutionalized fields. *Academy of Management Journal*, 58–80.
- Greiber, T., & Moreno, S. P. (Eds.). (2012). *An explanatory guide to the Nagoya Protocol on access and benefit-sharing* (Vol. 83). IUCN.
- Guba, E. G., & Lincoln, Y. S. (1985). *Naturalistic inquiry* (Vol. 75). Newbury Park, CA: Sage Publications, Incorporated.

- Hardy, C., & Maguire, S. (2010). Discourse, field-configuring events, and change in organizations and institutional fields: Narratives of DDT and the Stockholm convention. *The Academy of Management Journal*, 53(6), 1365–1392.
- Hardy, C., Phillips, N., & Clegg, S. (2001). Reflexivity in Organization and Management Theory: A Study of the Production of the Research Subject'. *Human Relations*, 54(5), 531–560.
- Helfen, M. (2015). Institutionalizing precariousness? The politics of boundary work in legalizing agency work in Germany, 1949–2004. *Organization Studies*, 36(10), 1387–1422.
- Helfen, M., & Sydow, J. (2013). Negotiating as Institutional Work: The Case of Labour Standards and International Framework Agreements. *Organization Studies*, 34(8), 1073–1098.
- Hensmans, M. (2003). Social movement organizations: A metaphor for strategic actors in institutional fields. *Organization Studies*, 24(3), 355–381.
- Hoffman, A. J. (1999). Institutional evolution and change: Environmentalism and the US chemical industry. *Academy of Management Journal*, 351–371.
- Howard-Grenville, J. A. (2007). Developing Issue-Selling Effectiveness over Time: Issue Selling as Resourcing. *Organization Science*, 18(4), 560–577.
- Howard-Grenville, J., Golden-Biddle, K., Irwin, J., & Mao, J. (2011). Liminality as cultural process for cultural change. *Organization Science*, 22(2), 522–539.
- Hülse, R., & Kerwer, D. (2007). Global Standards in Action: Insights from Anti-Money Laundering Regulation. *Organization*, 14(5), 625–642.
- Hwang, H., & Colyvas, J. A. (2011). Problematizing Actors and Institutions in Institutional Work. *Journal of Management Inquiry*, 20(1), 62–66.
- IIFB. (2014). *International Indigenous Forum on Biodiversity Portal*. Retrieved May 16, 2014, from <http://iifb.indigenouportal.com/>
- Iyall Smith, K. E. (2007). A review of the study of the political status of indigenous peoples in the global context. *Sociology Compass*, 1(2), 756–774.
- Kaghan, W., & Lounsbury, M. (2011). Institutions and Work. *Journal of Management Inquiry*, 20(1), 73–81.
- Kahler, M. (Ed.). (2015). *Networked politics: agency, power, and governance*. Cornell University Press.
- Keck, M. E., & Sikkink, K. (1998). *Activists beyond borders: Advocacy networks in international politics*. Cambridge Univ Press.
- Keohane, R. O., & Nye, J. S. (1977). *Power and interdependence: World politics in transition* (2nd ed., pp. 27–29). Boston: Little, Brown.
- Khan, F. R., Munir, K. A., & Willmott, H. (2007). A dark side of institutional entrepreneurship: Soccer balls, child labour and postcolonial impoverishment. *Organization Studies*, 28(7), 1055–1077.

- Kraatz, M. S. (2011). Two Cheers for Institutional Work. *Journal of Management Inquiry*, 20(1), 59–61.
- Kraemer, R., Whiteman, G., & Banerjee, B. (2013). Conflict and astroturfing in Niyamgiri: The importance of national advocacy networks in anti-corporate social movements. *Organization Studies*, 34(5-6), 823-852.
- Labelle, V., & Rouleau, L. (2016). The institutional work of hospital risk managers: democratizing and professionalizing risk management. *Journal of Risk Research*, 1–23.
- Laird, S. A., & Wynberg, R. (2008). Access and benefit-sharing in practice: trends in partnerships across sectors. In *Technical series* (Vol. 38). Secretariat of the Convention on Biological Diversity.
- Lampel, J., & Meyer, A. D. (2008). Guest Editors Introduction: Field-Configuring Events as Structuring Mechanisms: How Conferences, Ceremonies, and Trade Shows Constitute New Technologies, Industries, and Markets. *Journal of Management Studies*, 45(6), 1025–1035.
- Langley, A. (1999). Strategies for theorizing from process data. *Academy of Management Review*, 691–710.
- Langley, A. (2007). Process thinking in strategic organization. *Strategic Organization*, 5(3), 271.
- Lawrence, T. B., Leca, B., & Zilber, T. B. (2013). Institutional work: Current research, new directions and overlooked issues. *Organization Studies*, 34(8), 1023–1033.
- Lawrence, T. B., & Suddaby, R. (2006). Institutions and Institutional work. In *The handbook of organization studies*. London: Sage.
- Lawrence, T. B., Suddaby, R., & Leca, B. (2009). *Institutional Work: Actors and Agency in Institutional Studies of Organizations*. Cambridge University Press.
- Lawrence, T., Suddaby, R., & Leca, B. (2011). Institutional work: Refocusing institutional studies of organization. *Journal of Management Inquiry*, 20(1), 52–58.
- Leblebici, H., Salancik, G. R., Copay, A., & King, T. (1991). Institutional change and the transformation of interorganizational fields: An organizational history of the US radio broadcasting industry. *Administrative Science Quarterly*, 333–363.
- Lefsrud, L. M., & Meyer, R. E. (2012). Science or Science Fiction? Professionals' Discursive Construction of Climate Change. *Organization Studies*, 33(11), 1477–1506.
- Levy, D. L., & Egan, D. (2003). A Neo-Gramscian Approach to Corporate Political Strategy: Conflict and Accommodation in the Climate Change Negotiations*. *Journal of Management Studies*, 40(4), 803–829.
- Levy, D. L., & Newell, P. J. (2005). *The business of global environmental governance*. The MIT Press.

- Levy, D., & Scully, M. (2007). The institutional entrepreneur as modern prince: The strategic face of power in contested fields. *Organization Studies*, 28(7), 971–991.
- Levy, D. L. (2008). Political contestation in global production networks. *Academy of Management Review*, 33, 943–963.
- Lindroth, M., & Sinevaara-Niskanen, H. (2013). At the Crossroads of Autonomy and Essentialism: Indigenous Peoples in International Environmental Politics. *International Political Sociology*, 7(3), 275–293.
- Lounsbury, M. (2007). A tale of two cities: Competing logics and practice variation in the professionalizing of mutual funds. *The Academy of Management Journal*, 50(2), 289–307.
- Maguire, S., & Hardy, C. (2009). Discourse and deinstitutionalization: The decline of DDT. *The Academy of Management Journal*, 52(1), 148–178.
- Maguire, S., Hardy, C., & Lawrence, T. B. (2004). Institutional entrepreneurship in emerging fields: HIV/AIDS treatment advocacy in Canada. *The Academy of Management Journal*, 657–679.
- Martí, I., & Fernández, P. (2013). The institutional work of oppression and resistance: Learning from the Holocaust. *Organization Studies*, 34(8), 1195–1223.
- Martí, I., & Mair, J. (2009). Bringing change into the lives of the poor: Entrepreneurship outside traditional boundaries. *Institutional Work: Actors and Agency in Institutional Studies of Organizations*, 92–119.
- McAdam, D., & Scott, W. R. (2005). Organizations and movements. *Social Movements and Organization Theory*, 4–40.
- McInerney, P. B. (2008). Showdown at Kykuit: Field-configuring events as loci for conventionalizing accounts. *Journal of Management Studies*, 45(6), 1089–1116.
- McNichol, J. (2006). Transnational NGO certification programs as new regulatory forms: Lessons from the forestry sector. In M. Djelic and K. Sahlin-Andersson, *Transnational Governance-Institutional Dynamics of Regulation*. Cambridge University Press.
- Meyer, J. W. (2010). World society, institutional theories, and the actor. *Annual Review of Sociology*, 36, 1–20.
- Meyer, J. W., Boli, J., Thomas, G. M., & Ramirez, F. O. (1997). World society and the nation-state. *American Journal of Sociology*, 103(1), 144–181.
- Meyer, J. W., & Rowan, B. (1977). Institutionalized organizations: Formal structure as myth and ceremony. *American Journal of Sociology*, 340–363.
- Miettinen, R., Samra-Fredericks, D., & Yanow, D. (2009). Re-turn to practice: An introductory essay. *Organization Studies*, 30(12), 1309–1327.
- Miles, M. B., & Huberman, A. M. (1994). *Qualitative data analysis: An expanded sourcebook*. Sage Publications, Incorporated.
- Mintzberg, H. (1979). An emerging strategy of “direct” research. *Administrative Science*

- Quarterly*, 24(4), 582–589.
- Morgera, E., & Tsoumani, E. (2010). The evolution of benefit sharing: Linking biodiversity and community livelihoods. *Review of European Community & International Environmental Law*, 19(2), 150–173.
- Nanz, P., & Steffek, J. (2004). Global governance, participation and the public sphere. *Government and Opposition*, 39(2), 314–335.
- Näsström, S. (2010). Democracy counts: problems of equality in transnational democracy. In: Jonsson, C. and Tallber, J. *Transnational Actors in Global Governance* (pp. 197–217). Palgrave Macmillan UK.
- NGLS, U. N.-G. L. S. (2007). *Intergovernmental negotiations and decision making at the United Nations: the NGLS Guide for NGOs* (2nd ed.). Geneva: United Nations Non-Governmental Liaison Service. Retrieved from http://www.un-ngls.org/site/IMG/pdf/DMUN_Book_PAO_WEB.pdf
- Niezen, R. (2003). *The origins of indigenism: Human rights and the politics of identity*. Univ of California Press.
- Nilsson, W. (2015). Positive institutional work: Exploring institutional work through the lens of positive organizational scholarship. *Academy of Management Review*, 40(3), 370–398.
- Oliver, C. (1992). The antecedents of deinstitutionalization. *Organization Studies*, 13(4), 563–588.
- Oliver, A. L., & Montgomery, K. (2008). Using field-configuring events for sense-making: a cognitive network approach. *Journal of Management Studies*, 45(6), 1147–1167.
- Ostrom, E. (2010). Beyond markets and states: polycentric governance of complex economic systems. *Transnational Corporations Review*, 2(2), 1–12.
- Orsini, A. (2013). The role of non-state actors in the Nagoya Protocol negotiations. In: Oberthur, S. Rosendal, G. K. (eds.) *Global Governance of Genetic Resources: Access and Benefit-Sharing after the Nagoya Protocol*, Abingdon: Routledge, 60–78.
- Ostergard Jr, R. L., Tubin, M., & Altman, J. (2001). Stealing from the past: globalisation, strategic formation and the use of indigenous intellectual property in the biotechnology industry. *Third World Quarterly*, 22(4), 643–656.
- Overdevest, C., & Zeitlin, J. (2012). Assembling an experimentalist regime: Transnational governance interactions in the forest sector. *Regulation & Governance*, 8(1), 22–48.
- Patton, M. Q. (2001). *Qualitative research & evaluation methods*. Thousand Oaks, CA: Sage Publications, Incorporated.
- Perkmann, M., & Spicer, A. (2008). How are management fashions institutionalized? The role of institutional work. *Human Relations*, 61(6), 811–844. doi:10.1177/0018726708092406

- Pfeffer, J., & Salancik, G. (1978). *The external control of organizations: A resource dependence perspective*. New York: Harper & Row.
- Pozzebon, M. (2004). The influence of a structurationist view on strategic management research. *Journal of Management Studies*, 41(2), 247-272.
- Quack, S. (2007). Legal Professionals and Transnational Law-Making: A Case of Distributed Agency. *Organization*, 14(5), 643–666.
- Quack, S. (2010). Law, expertise and legitimacy in transnational economic governance: an introduction. *Socio-Economic Review*, mwp029.
- Quick, Kathryn S., and Martha S. Feldman 2011 Distinguishing Participation and Inclusion. *Journal of Planning Education and Research* 31(3): 272–290.
- Rasche, A., & Gilbert, D. U. (2012). Institutionalizing global governance: the role of the United Nations Global Compact. *Business Ethics: A European Review*, 21(1), 100–114.
- Raustiala, K. (1997). States, NGOs, and international environmental institutions. *International Studies Quarterly*, 41(4), 719-740.
- Raviola, E., & Norbäck, M. (2013). Bringing technology and meaning into institutional work: Making news at an Italian business newspaper. *Organization Studies*, 34(8), 1171–1194.
- Reid, W. V., Laird, S. A., Meyer, C. A., Gámez, R., Sittenfeld, A., Janzen, D. H., ... Juma, C. (1993). *Biodiversity prospecting: using genetic resources for sustainable development*. World Resources Institute.
- Riaz, S., Buchanan, S., & Bapuji, H. (2011). Institutional work amidst the financial crisis: emerging positions of elite actors. *Organization*, 18(2), 187–214.
- Robinson, D. F. (2010). *Confronting biopiracy: challenges, cases and international debates*. Earthscan.
- Rodrigues, M. G. (2011). Rethinking the impact of transnational advocacy networks. *New Global Studies*, 5(2).
- Roehrs, P. (2007). NGOs' Perspectives on Piracy and Protection. Centre for Applied Studies in International Negotiations.
- Rojas, F. (2010). Power through Institutional Work: Acquiring Academic Authority in the 1968 Third World Strike. *The Academy of Management Journal (AMJ)*, 53(6), 1263–1280.
- Sabel, C. F., & Zeitlin, J. (2012). Experimentalist governance. *The Oxford handbook of governance*
- Sandholtz, K. W. (2012). Making Standards Stick: A Theory of Coupled vs. Decoupled Compliance. *Organization Studies*, 33(5-6), 655–679.
- Schatzki, T. R., Knorr-Cetina, K., & Von Savigny, E. (2001). *The practice turn in contemporary theory*. Psychology Press.
- Scherer, A. G., & Palazzo, G. (2011). The new political role of business in a globalized

- world: A review of a new perspective on CSR and its implications for the firm, governance, and democracy. *Journal of Management Studies*, 48(4), 899–931.
- Schreyägg, G., & Häpfl, H. 2004. Theatre and organization: Editorial introduction. *Organization Studies*, 25(5): 691-704.
- Schüßler, E., Rüling, C., & Wittneben, B. (2014). On melting summits: The limitations of field-configuring events as catalysts of change in transnational climate policy. *Academy of Management Journal*.
- Scott, J. C. (1985). *Weapons of the weak: Everyday forms of peasant resistance*. Yale university Press.
- Scott, J. C. (1990). *Domination and the arts of resistance: Hidden transcripts*. Yale university press.
- Scott, W. R. (2001). *Institutions and organizations: Ideas and interests*. Sage Publications, Inc.
- Seidl, D. (2007). Standard Setting and Following in Corporate Governance: An Observation-Theoretical Study of the Effectiveness of Governance Codes. *Organization*, 14(5), 705–727.
- Seidl, D., & Whittington, R. (2014). Enlarging the strategy-as-practice research agenda: Towards taller and flatter ontologies. *Organization Studies*, 35: 1407.
- Sell, S. K., & Prakash, A. (2004). Using ideas strategically: The contest between business and NGO networks in intellectual property rights. *International Studies Quarterly*, 48(1), 143–175.
- Sewell Jr, W. H. (1992). A theory of structure: Duality, agency, and transformation. *American Journal of Sociology*, 1–29.
- Slager, R., Gond, J.-P., & Moon, J. (2012). Standardization as Institutional Work: The Regulatory Power of a Responsible Investment Standard. *Organization Studies*, 33(5-6), 763–790.
- Smets, M., & Jarzabkowski, P. (2013). Reconstructing institutional complexity in practice: A relational model of institutional work and complexity. *Human Relations*, 66(10), 1279–1309.
- Sonenshein, S. (2014). How organizations foster the creative use of resources. *Academy of Management Journal*, 57(3), 814-848.
- Steffek, J. (2010). Explaining patterns of transnational participation: The role of policy fields. In: Jonsson, C. and Tallberg, J. (eds). *Transnational Actors in Global Governance* (pp. 67-87). Palgrave Macmillan UK.
- Stone, D. (2008). Global public policy, transnational policy communities, and their networks. *Policy Studies Journal*, 36(1), 19–38.
- Strauss, A., & Corbin, J. M. (1997). *Grounded theory in practice*. Sage.
- Suddaby, R., Cooper, D. J., & Greenwood, R. (2007). Transnational regulation of professional services: Governance dynamics of field level organizational change.

- Accounting, Organizations and Society*, 32(4), 333–362.
- Suddaby, R., & Greenwood, R. (2005). Rhetorical strategies of legitimacy. *Administrative Science Quarterly*, 50(1), 35.
- Suddaby, R., & Viale, T. (2011). Professionals and field-level change: Institutional work and the professional project. *Current Sociology*, 59(4), 423–442.
- Tallberg, J., Sommerer, T., Squatrito, T., & Jönsson, C. (2014). Explaining the transnational design of international organizations. *International Organization*, 68(04), 741–774.
- Tallberg, J. (2010). Transnational access to international institutions: Three approaches. In: Jonsson, C. and Tallberg, J. (eds). *Transnational Actors in Global Governance* (pp. 45–66). Palgrave Macmillan UK.
- Tarrow, S. (2005). *The new transnational activism*. Cambridge University Press.
- Tello-Rozas, S., Pozzebon, M., & Mailhot, C. (2015). Uncovering Micro-Practices and Pathways of Engagement That Scale Up Social-Driven Collaborations: A Practice View of Power. *Journal of Management Studies*, 52(8), 1064–1096.
- Thompson, J. D. (1967). *Organizations in action: Social science bases of administrative theory*. Transaction Pub.
- Turcotte, M. F., Reinecke, J., & den Hond, F. (2014). Explaining variation in the multiplicity of private social and environmental regulation: a multi-case integration across the coffee, forestry and textile sectors. *Business and Politics*, 16(1), 151–189.
- United Nations, D. of E. (2009). *State of the World's Indigenous Peoples*. United Nations Publications.
- Vabulas, F. A. (2013). Consultative and observer status of NGOs in intergovernmental organizations. In: Reinalda, B. (ed.) *Routledge Handbook of International Organization*, 189.
- Van Bockhaven, W., Matthyssens, P., & Vandenbempt, K. (2015). Empowering the underdog: Soft power in the development of collective institutional entrepreneurship in business markets. *Industrial Marketing Management*, 48, 174–186.
- Vieira, A. C. A., & Quack, S. (2016). Trajectories of transnational mobilization for indigenous rights in Brazil. *Revista de Administração de Empresas*, 56(4), 380–394.
- Vogel, D. (2008). Private global business regulation. *Annu. Rev. Polit. Sci.*, 11, 261–282.
- Vogel, D. J. (2009). Taming Globalization? Civil Regulation and Corporate Capitalism. *Business and Government*.
- Waldron, T. L., Fisher, G., & Navis, C. (2015). Institutional entrepreneurs' social mobility in organizational fields. *Journal of Business Venturing*, 30(1), 131–149.
- Wallbott, L. (2014). Indigenous peoples in UN REDD+ negotiations: “importing power”

- and lobbying for rights through discursive interplay management. *Ecology and Society*, 19(1), 21.
- Weiss, T. G. (2000). Governance, good governance and global governance: conceptual and actual challenges. *Third World Quarterly*, 21(5), 795–814.
- Williamson, O. E. (1975). Markets and hierarchies. *New York*, 26-30.
- Whiteman, G. (2009). All my relations: Understanding perceptions of justice and conflict between companies and Indigenous peoples. *Organization Studies*, 30(1), 101–120.
- Whittington, R. (2006). Completing the practice turn in strategy research. *Organization studies*, 27(5), 613-634.
- Whittington, R. (2010). Giddens, structuration theory and Strategy as Practice. In Damon Golsorkhi, Linda Rouleau, David Seidl, & Eero Vaara (Eds.), *Cambridge handbook of strategy as practice* (109–126). Cambridge: Cambridge University Press.
- Wittneben, B. B., Okereke, C., Banerjee, S. B., & Levy, D. L. (2012). Climate Change and the Emergence of New Organizational Landscapes. *Organization Studies*, 33(11), 1431–1450.
- Wynberg, R. (2004). Rhetoric, Realism and Benefit-Sharing. *The Journal of World Intellectual Property*, 7(6), 851–876.
- Wynberg, R. (2010). Hot air over Hoodia. *Seedling*, October, 22–24.
- Wynberg, R., Schroeder, D., & Chennells, R. (2009). *Indigenous peoples, consent and benefit sharing: lessons from the San-Hoodia case*. Springer.
- Yin, R. K. (2008). *Case study research: Design and methods* (Vol. 5). SAGE Publications, Incorporated.
- Zietsma, C., & Lawrence, T. B. (2010). Institutional work in the transformation of an organizational field: The interplay of boundary work and practice work. *Administrative Science Quarterly*, 55(2), 189–221.
- Zilber, T. B. (2011). Institutional multiplicity in practice: A tale of two high-tech conferences in Israel. *Organization Science*, 22(6), 1539–1559.

Appendix 1 – Semi-structured interview guide

1. What is your professional background/trajectory?
2. What is your personal perspective on the relevance of biodiversity?
3. How have you become interested in the Access and benefit-sharing (ABS) discussions?
4. What is your current involvement with the Nagoya Protocol? In what role(s)/organization(s)?
5. How did stakeholders come to participate more actively at CBD negotiations?
6. How do you organize to bring your voices in the negotiations?
7. What kinds of activities do you perform within the context of intergovernmental negotiations?
8. What kinds of resources and skills are needed to be fully engaged in the process?
9. How did your group contribute to shaping the Nagoya Protocol? (issues raised; successes; failures)
10. How do you organize locally? (staff; partners; funding)
11. What is the history of this term “community protocols” in the negotiations of NP? How different regions view it? How can they contribute to the engagement of communities?
12. What are the main opportunities/challenges in establishing connections between civil society and Business organizations?
13. What are the main lessons learned/challenges in implementing ABS locally?
14. How does the adoption of the CBD and, in particular, the Nagoya Protocol affect the way you organize? Do you foresee a change with the entry into force of the Nagoya Protocol?

Appendix 2 – Consent Form

CONSENT FORM FOR AN INTERVIEW

We are requesting an interview with you for a research study. This study is part of my doctoral dissertation project, under the provisory title: *“Including Indigenous Peoples in the Nagoya Protocol Creation”*. As part of this project, interviews with a number of representatives from different stakeholder groups are being conducted. The interview will be conducted by me, Natalia Aguilar Delgado, PhD Candidate at McGill University and should be about 30 to 60 minutes in duration.

Your participation in this research project is completely voluntary. You may refuse to answer any of the questions. In addition, please note that you may ask to end the interview at any time, which would prohibit the researcher from using the information gathered. You may also withdraw from the study at any point in time.

This interview may be recorded electronically with your permission. Rest assured that all the information gathered will be treated with strict confidentiality. Both the medium containing the recording and the transcription will be kept in a safe place. The information will be coded and stored on password-protected computer. In addition, no personal information that could reveal your identity will be disclosed during the dissemination of the research results, previewed in academic conferences and publications. No identifiable data will be kept after the study is finished and disseminated.

A summary description of this research project is provided at the end of this document. Thank you very much in advance for your participation. It is much appreciated. Please do not hesitate to contact us if you would like more information about the study.*

Natalia Aguilar Delgado

Ph. D. Candidate in Strategy and Organizations
Desautels Faculty of Management
McGill University
514-941 0199
natalia.aguilardelgado@mail.mcgill.ca

Paola Perez-Aleman

Associate Professor
Desautels Faculty of Management
McGill University
514-398 4041
paola.perez-aleman@mcgill.ca

I agree to participate in this research project as described above. ____ Yes ____ No

I agree to have this interview recorded. ____ Yes ____ No

Participant's signature: _____

Complete name _____ Date (dd/mm/yyyy): _____

Researcher's signature: _____

Natalia Aguilar Delgado Date (dd/mm/yyyy): _____

*If you have any questions or concerns regarding your rights or welfare as a participant in this research study, please contact the McGill Ethics Officer at 514-398-6831 or lynda.mcneil@mcgill.ca

Appendix 3 - Dimensions, Themes, Categories and Quotations

Dimensions, Themes and Categories	Representative Quotations
Organizational Resourcing Work	
<i>1. Coordinating Activities</i>	
A. Building diplomatic capacities	<p>A1. "They come from different countries, they don't even speak the same language. However, they have a committe to write texts, another for lobbying. They learned these tricks on international diplomacy coming to meetings and sharing in the forum". (Interview 49, CBD Secretariat staff member)</p> <p>A2. "I personally made the decision of training myself because of my commitment to our Peoples and the complexity of the points under discussion. I gained experience in these matters by reading documents, books, participating in several parallel events, talking to several people, daring to lobby with states at the right time (with no previous experience). Everything I learned along the way, I shared with new indigenous participants in order to guide them to have an effective presence in meetings. Thanks to my self-training I could raise my own awareness and support RMIB-LAC later on in different workshops. I like to teach with simplicity and respect, lending my experience on biodiversity and the CBD process with the hope that knowledge will multiply, help raise indigenous self-esteem and encourage the defense of our rights in relation to biodiversity" (Teran, 2014)</p>
B. Planning strategically for meetings	<p>B1. "Due to the small number of participants and counting the trust vote from the representatives of Asia Pacific and Africa, the three sisters from Latin America decided to work on the review of the documents and in the elaboration of the texts to be presented in the different meetings. Every morning we read these texts to the other indigenous representatives to collect their comments and suggestions in order to include them in the texts." (Report produced by Red de Mujeres en Biodiversidad – June 2011).</p> <p>B2. "Speaking in the COP with only one voice is central, we bring our voice together so we meet before the meetings at least 2 days before the meeting and we discuss the issues of the different continents, consolidate them and present them to the COP." (Interview 51, IPLC Representative)</p>
<i>2. Enrolling Allies</i>	
C. Getting support of government delegates	<p>C1. "With the many meetings that happen in between COPs we kind of are able to secure a good working relationship with the governments because we go there to ask and give advice. These are the same people with whom we fundraise, so we know them for a long time." (Interview 51, IPLC Representative)</p> <p>C2. "I ask XXX why she keep talking to the same delegates over the coffe break. Approaching indigenous government delegates from Ecuador, Bolivia, Guatemala and Panama always give them satisfactory results. For this reason, they work on mutual respect and trust, understanding the critical points for their peoples together, sometimes co-writing texts." (Field Notes, October 2014)</p>

D. Establishing close relationship with NGOs and the Secretariat D1."In the document about information-sharing, the IPLC group had requested a modification that was supported by South Africa and Guatemala the day before but was not appearing the final version of the text. The representative from the NGO came running and pointed that to the IPLC group, which hadn't notice the mistake. " (Field Notes, June 8th 2011)

D2."Everyone spoke in English, but really in scientific jargon... We couldn't understand anything. We went to the bathroom with my sister from the Philippines and I said 'well, we're here with a mandate, a responsibility, so let's try to speak otherwise they won't let us speak anything'. That is how it went, we asked for the support of JS (*secretariat staff) and he said 'let's open the floor to the indigenous representatives because they travel with a mandate'. That is how we were able to speak in that meeting. (Interview 6, IPLC Representative)

Discursive Resourcing Work

4. Justifying need for actors' participation in the arena

E. Establishing the need for expertise in policy formulation E1."We put forward arguments that having indigenous peoples there was totally consistent with that and that they really needed the expertise, certainly in the indigenous situations because they needed people there who had some familiarity and ability to deal sensitively with the issues." (Interview 50, IPLC Representative)

E2. "I believe that our participation at the CBD brings a new vision. They may talk about us but we are the ones that really know what happens on the ground. We don't people to talk on our behalf, so we felt for a long time relegated. Ok, we have a lot to learn and study, but we also have a role to play in finding solutions together." (Interview 17, IPLC representative)

F. Emphasizing role as central actors in policy implementation F1. "Why biological diversity? It is not only about trees, forests; the diversity is specific to this theme, but also of people who live there and our ancestors living in harmony. This harmony has been disturbed and in this trajectory we also lost part of our identity." (Interview 17, IPLC Representative)

F2. "The political will of states is required to create a legal framework that provides security to all stakeholders involved in the ABS and should be created in conjunction with Indigenous Peoples to be a just recognition of our ancestral responsibility in the care and conservation of biodiversity, since we are the owners of genetic resources and associated TK." (Teran, 2014)

4. Interweaving favorable texts in different negotiation spaces

G. Cross-leveraging rights and good practices G1."I participate in both the CBD and the WIPO discussions (...) I think there are advantages, you know the negotiators in both arenas and many times they are the same people. It is easy to make the argument that there is a need for consistency between one process and the other because there are interfaces, synergies and they must mutually inform each other." (Interview 5, IPLC Representative)

G2."As recently as September 22-23, 2014, in a statement accompanying its adoption of the Outcomes Document of the World Conference on Indigenous Peoples, Canada has said, "Canada is committed to promoting and protecting the rights of Indigenous Peoples at home and abroad. Canada will also continue to contribute to international efforts to improve the lives of Indigenous peoples throughout the world." This is why today we are puzzled and concerned that Canada is working to tightly control and potentially limit references to Indigenous Peoples within future decisions of the CBD. " (Press Statement prepared by the IIFB at COP 12)

H. Advising in the backstage H1. "In contact groups we need a person who knows the material and knows the references and knows how to go back and firm up arguments with previous decisions and so on, on the fly and very quickly." (Interview 34, IPLC Representative)

H2. "Our views on this capacity-building issue were made clear at the document INF-6, the results of an expert meeting. The first step was to make parties take this doc into consideration, however this was still vauue because parties didn't go into the details of the proposals. So we decided to reiterate the point with Parties and to reinforce that we wanted more capacity-building for IPLCs. We've the help from a academic representative and then we lobbied the proposal with parties." (Interview 3, IPLC Representative)

Material Resourcing Work

5. *Fundraising for participation*

I. Fundraising to attend meetings

I1. "We try to make sure that the IIFB is organized and the voluntary fund at the CBD helps us to do that. You know it is not only about getting people to the meeting. We always need an interpreter.... Sometimes you would shop at the meeting without an interpreter, and getting interpreter takes fundraising with states so they put money in the fund. It's all about working at all levels to get full participation." (Interview 18, IPLC Representative)

I2. "To come to this meeting, to publish and translate the community protocol and to launch it in this side event (which implied costs with the location and catering), her organization had to find external funding. They were able to gather money from a call for proposals from a German foundation supporting local initiatives for the environmental conservation and they also had some savings from a prize the organization won under a competition promoted by UNDP in 2012 (the Equatorial initiative)." (Field Notes, COP-MOP1 October 2014)

J. Seeking resources for local work

J1. "AA is a master in using whatever trendy language needed to mobilize resources and people... Each 5 years his initiative is labeled differently, so it gets recycled every now and then. But I wouldn't buy an used car from him (sic)" (Interview 27, CBD Staff)

J2. "We have to make the work we do visible. In fact, many Indigenous peoples come to these meetings only to advertise their work in side events, they don't really care about the discussions in plenary, after all they see this as a struggle between states." (Interview 2, IPLC representative)

6. *Gathering technical and linguistic support*

K. Asking for voluntary translations from allies

K1. "There is a clear division between English and Spanish speakers. The women are talking with each other to decide about the opening statement. There is no interaction between the two groups. When people from one group or the other arrives they only compliment their relative group. There are 4 Spanish-speakers and 5 English-speakers. The statement is in Spanish and XXX asks me to translate it to English as I read it! I can't deny it! It is so hard to do, I'm sweating. I think everything went fine, everybody seems happy. I'm glad I could help in some way." (Field notes June 6th, 2011)

K2. "Several meetings on ABS were held at night, without translation assistance, but the LAC group participated and followed the discussions through interpretation from English to Spanish done by the Intercultural Working Group of Fundación Almaciga." (Teran, 2014)

L. Requesting technical
information free of charge

L1. "I am travelling to Peru in few days. I will be in the jungle training Indigenous Peoples from that area: Quechua, Yaneshá and Ashaninka. They are facing a big ABS problem, the communities need urgent capacity building on human rights, CBD, Bonn Guides, Akekon Guides and the Nagoya Protocol. I will be over there for 1 week and I am travelling with a team of 3 Indigenous teachers. I will be also teaching in June at the University of New Mexico a group of 50 young Indigenous women leaders from Mexico. From my experience I see how happy Indigenous participants become after receiving printed materials during workshops. Therefore at this time I would like to ask you kindly to send me the following materials in Spanish." (Field Notes, 2014 - Excerpt of an email from IPLC representative to Secretariat)

L2. "She also tells me she has concerns about the issues of monitoring and checkpoints. The other day in Alejandro Lago's presentation, he mentioned that np does not have obligation for monitoring compliance in issues of tk. She says she is thinking about calling him to give a presentation to them about the implications of this. He has always been kind to them, so she knows he will be open to help them with this." (Field Notes at COP-MOP1, October 11, 2014)
