

IWC/S15/ASW/8

Presentation on: A. Subsistence rights as part of Indigenous Peoples cultural human rights; B. Subsistence rights as part of the new development paradigm; and C. Some policy conclusions and recommendations

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INTERNATIONAL
WHALING COMMISSION

CHECK AGAINST DELIVERY**International Whaling Commission Expert Workshop on Aboriginal Subsistence Whaling**

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Speaking notes

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ITEM 3 GENERAL CONSIDERATION OF CULTURAL AND SUBSISTENCE ISSUES OUTSIDE THE IWC RELEVANT TO ASW DISCUSSIONS

3.2 Evolution of traditional societies in the modern world including the role of subsistence hunting in communities, nutritional considerations with respect to local vs 'outside' food, food security and socio- economic factors including the role of cash

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Presentation objectives

- A. Subsistence rights as part of Indigenous Peoples cultural human rights
- B. Subsistence rights as part of the new development paradigm
- C. Some policy conclusions and recommendations

Introduction

The late Ingmar Egede, a leading figure in the struggle of the Indigenous Peoples of Greenland for self-determination, was invited by us at the UN (the Office of the High Commissioner for Human Rights where I worked then) in 1995 for the commemoration at UN Headquarters of the International Day of the World's Indigenous Peoples, on the 9th of August. We had decided to devote the theme of the Day to the right to education. Ingmar Egede was a major figure in education as well, having established the first school by Greenlanders for Greenlanders, and later a University School to train teachers in Greenland, and playing a continuing role in developing higher education in his country. Therefore we thought he was very well placed to participate on a panel on Indigenous Peoples' right to education.

Ingmar started by describing in detail when and how a boy in Greenland learns about whaling. He spoke of the contribution of the whole family and community in this process, where women and men, as well as girls, played a role. This education would start from the intricate ways of preparing the clothing that a person would wear (a combination of bird skin and seal skin intricately sewn together, as well as other

layers) the weight of the clothing as well as its waterproof quality being of crucial importance. Then he spoke of the way a person learns to navigate a kayak and what skill he has to develop so that he knows what to do in case he tumbles over—as a few minutes in the icy cold water would be enough to kill.....

As the person responsible for the conference, I was waiting to hear when Ingmar would finish this part of his narration which I considered introductory, and start speaking about “real education”, education at school, at the university etc. Instead, Ingmar devoted his entire 45 minutes to speak of the education of a young boy/a young man in the art of whaling, what extraordinary traditional knowledge this implies, what this means for the community, what this means for his culture and for his education and self-determination as a young indigenous person¹.

Culture is always in flux, it is not static, not frozen in time. Indigenous Peoples' cultures are not static either and are developing in various directions, sometimes imposed by external factors/actors, such as economic circumstances, climate change and other environmental factors, state and intergovernmental policies; sometimes changing more as a matter of choice, for example as a result of interchanges with other cultures, including economic ones.

A. International normative framework on Indigenous Peoples' subsistence activities:

>Subsistence activities are *part of Indigenous Peoples' Intangible cultural heritage*
UN Declaration on the Rights of Indigenous Peoples (UNDRIP) Art. 31:

- "Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions They also have the right to maintain, control, protect and develop their intellectual property [rights] over such cultural heritage, traditional knowledge, and traditional cultural expressions."

>UNDRIP articles on *remedies for infringements of IP collective rights apply to subsistence activities:*

- **Articles 8, 10, 11, 12, 20, 27, 28, 32 and 40** identify remedies (“cures”) for infringements of indigenous peoples' collective rights
 - Forced assimilation
 - Forced removal from lands

¹ Elsa Stamatopoulou, “The Role of Research and Academia In Indigenous Peoples' Issues: Interculturality in the Making” in Unsettling Discourses: the Theory and Practice of Indigenous Studies, Proceedings of the 2013 International Seminar-Workshop on Indigenous Studies, Cordillera Studies Center, University of the Philippines-Baguio City, p. 249

- Revitalization of cultural traditions
- Repatriation of ceremonial objects
- Redress for lost means of subsistence
- Adjudication of land rights
- Redress for lost LTR
- Redress for projects that have affected IP LTR
- Remedies in situation where there is conflict between State and IP

All the above, except perhaps the one on ceremonial objects, may be linked to subsistence activities.

Cultural human rights of Indigenous Peoples: subsistence rights in context

Cultural rights are reflected in at least 17 of the 46 articles of the Declaration, which constitutes *the boldest recognition of cultural human rights in International Law to-date*.

Significantly, around 15 of the 46 articles deal with governance and participation in a democratic polity, in other words they are crucial process and substantive rights via which the culture and identity of indigenous peoples will have an impact in the public sphere, including in Indigenous Peoples' relations with the State.

One can find the cultural rights angle in each article of the Declaration: the right of indigenous peoples and individuals to be free from any kind of discrimination, in particular that based on indigenous origin or identity (art.2); the right to self-determination, by virtue of which indigenous peoples should freely determine their political status and freely pursue their economic, social and cultural development (art. 3); the right to maintain and strengthen their distinct cultural institutions, while retaining their rights to participate fully, if they so choose, in the cultural life of the state (art. 5); the collective right to live as distinct peoples (art. 7); the right not to be subjected to forced assimilation or destruction of their culture, including mechanisms of prevention and redress (art. 8); the right to belong to an indigenous community or nation in accordance with the traditions and customs of the community or nation concerned (art. 9); the right to practice and revitalize their cultural traditions and customs and to receive redress for cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent (art. 11); the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies, to maintain, protect and have access to their religious and cultural sites, to use and control their ceremonial objects and to have their human remains repatriated (art. 12); the right to revitalize and transmit to future generations their histories, languages, oral traditions, philosophies and to designate their own names for communities, places and persons; and the obligation of states to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings (art. 13); the right to establish and control their education systems and institutions providing education in their own language and in a manner appropriate to their cultural methods of learning and teaching; and the right to have access, when possible to an education in their own culture and provided in their own language (art. 14); the right to have the dignity and diversity of their cultures reflected in all forms of education and public information (art. 15); the right to establish their own media in their own languages and have equal access to all forms of non-indigenous media (art. 16); the right to their traditional medicines and to maintain their health

practices (art. 24); the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts; they also have the right to their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions (art. 31); the right to determine their own identity or membership in accordance with their customs and traditions (art. 33); the right to their distinctive customs, spirituality, traditions, procedures and practices and, in case they exist, juridical systems or customs in accordance with international human rights standards (art. 34); the right of indigenous peoples divided by borders to maintain and develop contacts, relations and cooperation across borders (art. 36).

Significantly, as has been stated repeatedly by international bodies, *the State must also respect special cultural rights of Indigenous Peoples related to the continuation of certain economic activities linked to the traditional use of land and natural resources, such as hunting and fishing*. The Declaration recognizes the right of Indigenous Peoples to self-determination and that by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development (Article 3). The recognition of the right to self-determination and the breadth of its application, as well as the recognition of the right to lands, territories and natural resources, constitute the main pillars of the Declaration that underpin most other rights recognized in the Declaration, including cultural rights. However, *the concept of recognizing the right of indigenous peoples to continue to pursue specific traditional economic activities linked to their cultures is not new and in fact predates the adoption of the Declaration*.

Work of the Human Rights Committee under the International Covenant on Civil and Political Rights

There is rich case law of the Human Rights Committee on this point under the Optional Protocol to the 1966 *International Covenant on Civil and Political Rights (ICCPR)* as well as the *General Comment adopted by the Committee on Article 27 of the Covenant dealing with minorities*². The case law of the Human Rights Committee has reflected the above-mentioned interpretation of Article 27 and has made pronouncements regarding (a) use of land and resources in a way that will respect the culture of a minority or indigenous group, and (b) the requirement of consultation by the state with the minority group concerned by a decision that may affect its use of the land and resources.

In 1994, the Human Rights Committee further enriched the understanding of the cultural rights of minorities and Indigenous Peoples by adopting an important General Comment on Article 27 of the ICCPR. The Committee underlines that one aspect of the rights of individuals protected under that article to enjoy a particular culture may consist in a way of life which is closely associated with territory and use of its resources. This may particularly be true of members of indigenous communities constituting a minority. In the case of indigenous peoples

² Article 27 of ICCPR reads: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

such traditional activities may include fishing or hunting and the right to live in reserves protected by law. In examining states parties reports the Committee has been thorough in its monitoring of cultural rights of minorities, including cultural autonomy in terms of cultural institutions, as well as consultation regarding traditional means of livelihood.

Organization of American States jurisprudence

The famous Inter-American Court of Human Rights case of *Awas Tingni v Nicaragua*, is the first international court case that links the cultural rights of Indigenous Peoples with the right to continue to pursue certain traditional economic occupations linked to land and natural resources. In the groundbreaking 2001 decision the Inter-American Court of Human Rights recognized that the relation of indigenous peoples with their lands is the basis of their cultural and spiritual life as well as their economic survival. The Court declared that for indigenous peoples, their land base is indispensable for the preservation of their cultural heritage and its transmission to future generations.

Discrimination facing Indigenous Peoples pursuing subsistence activities

Indigenous Peoples have been bringing to the UN information about systemic discrimination and systematic violations of their cultural rights, including the non-recognition and even suppression of indigenous languages, the prohibition of access to their spiritual and religious sites, the economic exclusion they suffer because they are culturally distinct, the lack of access to traditional occupations for subsistence, such as hunting and fishing, the pillaging of their cultural heritage, both tangible and intangible, the patenting of their traditional knowledge without their free, prior and informed consent, and the marginalization and suffocation of their traditional systems of governance and law. Indigenous voices at the UN have clearly articulated that the suppression of identity and culture is a denial of human dignity that must be addressed within the human rights framework. Regarding subsistence hunting, we have heard allegations of suppression from different parts of the world, for instance that, while fishing is allowed in specific areas for recreational or commercial purposes, it is forbidden or made impossible through administrative hurdles for subsistence purposes of small Indigenous Peoples' communities.

B. Subsistence rights as part of the new development paradigm

[See UNPFII's work on development with culture and identity³; also UN-system wide UN Development Group Guidelines on Indigenous Peoples' Issues⁴, UNESCO, UNFPA⁵]

³ UN Doc. E/2010/43-E/C.19/2010/15, paras. 4-35,
http://www.un.org/esa/socdev/unpfii/documents/E_2010_43_EN.pdf

⁴ http://www.un.org/esa/socdev/unpfii/documents/UNDG_guidelines_EN.pdf

UNPFII's work on the Millennium Development Goals (MDGs) over the years, with intense participation of IPs, has given new insights including that:

- >the definition of extreme poverty (\$1-\$2 per day) does not apply to many IPs, living subsistence lives in non-cash economies
- >implementing the MDGs without taking into account IPs rights and needs may result in accelerated loss of lands and resources, displacement, impoverishment and marginalization of IPs
- >development with culture and identity is a major response for IPs survival and well-being

International policy framework for indigenous Peoples' well-being and development

- >Human rights-based approach to development (HRBA)
- >Ecosystem approach (sustainability)
- >Self-determined development
- >Development with culture and identity

Cultural implications of subsistence hunting: linked to IPs economic, social and cultural development ; the link between culture and subsistence is beyond cash

- >Bringing community together and preserving and developing indigenous spirituality and the principle of mutuality
- >Passing on traditional knowledge
- >Cultivating intergenerational links
- >Cultivating language
- >Sustaining culture

Health and subsistence hunting

- Removal of Indigenous Peoples from their traditional lands, territories and resources has a great impact on their health (also documented in the 2015 State of the World's Indigenous Peoples' report on Access to Health⁶)
- limitations may result in increased dependency on outside foods leading to economic insecurity and health problems, including obesity, diabetes, heart disease etc and
- at the level of culture, there will be loss of traditional knowledge, including on the ecosystem, as well as loss of certain aspects of spirituality, community links and language, cultural morale, identity, and mental as well as physical health
- traditional subsistence cultivations and hunting have regained importance today (and not only for Indigenous Peoples), in light of the world's financial, climate, food and energy crises

⁵ <http://portal.unesco.org/culture/en/files/37740/12208647795IASG-invite-ENG-low-res.pdf/IASG-invite-ENG-low-res.pdf>, <http://www.unfpa.org/culture>,

⁶ <http://www.un.org/esa/socdev/unpfii/documents/2015/sowip2volume-ac.pdf>

Food security is an indigenous issue

>International awareness of the issue

>IPs food security threatened by a variety of factors (continuing marginalization, discrimination, displacement, climate change, dependency on stressed ecosystems etc)

>The Food and Agriculture Organization (FAO) has worked on the issue of indigenous food systems for more than a decade in countries as diverse as Canada, Japan, Peru, India, Colombia, Thailand and the Federated States of Micronesia. This research has shown the strength and promise of local traditional food systems to improve health and well-being.

The human right to adequate food can be understood as a right to food security

The UN Declaration on the Rights of Indigenous Peoples and the International Labour Organization (ILO) Convention on Indigenous and Tribal Peoples' rights (ILO 169 of 1989) underpin Indigenous Peoples' special right to enjoy their specific cultures. This includes their right to enjoy their traditional food, as food traditions are at the core of indigenous identities, cultures and economies.

Climate change and traditional economies

The impacts and adaptation to climate change for traditional/country food consumers/producers is still being studied. It is reasonable to suggest that climate change "will increase temporal fluctuations in species distributions, populations abundance, morphology, behaviour and community structure" (Dickson 2003:3)

Climate change threatens aspects of traditional cultures and lifestyles. Global processes are having a large impact on those that have little choice. Adaptation is not necessarily supported by economic access to modern alternatives.

What does food security and climate change share in common? They are interdependent, ie as the climate changes so to will food security. If the climate warms or cools there will be impacts on the relative abundance and scarcity of some foodstuffs

Traditional/country food systems continue to be characterized by strong inter-relations between culture and land. Traditional food is intertwined and embedded within cultural practices --cultural practices nested within traditional/country food systems.

Spirituality, language, economy, are manifestations of what the land [*understood to include waters*] has to offer.

The degree of flexibility and adaptation within traditional food systems depends on the land and the people, on the types of changes and the reasons for them.⁷ The integration of traditional knowledge, cultural practices, with biological information about wildlife, vegetation, toxicology, and diet (food composition, nutrients, food availability) is particular to each community.

⁷ "Food Security of Northern Indigenous Peoples

in a Time of Uncertainty ", C.D. James Paci, C.Dickson, S.Nickels, L.Chan and C.Furga,

http://www.rha.is/static/files/NRF/OpenAssemblies/Yellowknife2004/3rd-nrf_plenary-4_pp_paci-et-al.pdf

The services supplied by traditional economies, the value of traditional/country foods go beyond food. “Traditional foods can also provide protection against many diseases, Environmental influences on the availability of and access to these important sources of food, present the risk of losing these beneficial factors as well” (Dickson 2003:3).

Health is recognized broadly as intertwining with nature and culture for well-being and is being articulated through physical, mental, spiritual and social elements, for both individuals and communities.

FAO points out that a holistic understanding of Indigenous Peoples’ food traditions reveals that they are linked to physical, emotional, social and mental health and well-being. This leads to consideration of the negative effects that lack of access to traditional food resources will have on cultural morale, identity, and mental as well as physical health.⁸

C. Conclusions and policy recommendations relevant to subsistence hunting

[Several of these are inspired by the 2013 report of FAO on Indigenous Peoples’ food systems & well-being]

>Policies to counteract the immense health challenges facing Indigenous Peoples’ communities should be developed with Indigenous Peoples’ communities and governments. Properly implemented policies can ensure access to highly nutritious traditional indigenous local foods and reduce incentives for purchasing poor-quality market foods. Policies can also give impetus to the protection and conservation of traditional food ecosystems by enforcing joint management of these resources between governments and indigenous leaders.

>There is need for policies that include the genuine participation of Indigenous Peoples in the management of their traditional community food resources and the importation of healthy market foods into communities, and that provide training in how to use these appropriately.

>A key principle when designing policy is recognizing the need for Indigenous Peoples to have access to their own foods. This recognition can be demonstrated by considering subsistence harvesting permissions.

>Throughout the annual discussions held with FAO’s case study partners⁹, it became clear that the wealth of knowledge on ecosystem resources that could be used for food security,

⁸ FAO’s Indigenous Peoples’ food systems & well-being report,

<http://www.fao.org/docrep/018/i3144e/i3144e00.htm>, 2013; FAO prepared this report as a contribution to the UN World Conference on Indigenous Peoples (2014), <http://www.fao.org/docrep/018/i3144e/I3144e16.pdf>

⁹ Over ten years of communications and meetings for preparing FAO’s study, FAO’s research program created methods for documenting the resources used in food systems (Kuhnlein et al., 2006) and presented documentation of 12 case studies of food system resources (FAO, 2009a). Community leaders and academic partners have reported findings related to the program’s objectives in more than 200 published works; more than 270 presentations at local, national and international conferences and UN events and side-events; more than 120 public media reports and audiovisual documents.

livelihoods and health is a major part of indigenous identity and that the use of these resources is important for self-determination and cultural morale. There is an obvious need to harness these resources for the betterment of the people directly involved, which underscores the necessity for developing and applying effective policies at all levels to ensure the conservation and sustainability of local food systems.

>Inter-sectoral collaboration within governments is required. The unique issues that Indigenous Peoples experience need to be discussed and acted on in many other settings, locally and nationally as well as internationally. Planning and practical activities should be undertaken by state and federal ministries working in agriculture, health (especially maternal and child health), education, culture (including national history and museums), environment and natural resources, as well as by universities and research institutes, the church(es), local and national media, commerce/trade and economic interests.

>National governments need to reflect on colonization's far-reaching impacts at the local level, and on how to reverse unhealthy food purchasing behaviors and restore access to healthy local foods. This often requires substantial cultural education, including cultural knowledge about traditional food resources, that gives credence to the traditional knowledge of elders, particularly for the benefit of youth. At the same time, knowledge of health qualities and the preparation of foods available in commercial markets is also needed¹⁰.

Finally:

- Self-determined development, (as mentioned in my presentation under item 3.1), understood within a human rights framework, implies the right of Indigenous Peoples to choose themselves their mode of development, for example, whether they will only stay with traditional economic activities, pursue a mix of traditional and mainstream economic activities, or only turn to mainstream economic activities. This should be the choice of the Indigenous Peoples.
- There is value in scaling up research on subsistence whale hunting in indigenous peoples' communities. An initiative could be launched by the IWC.
- The IWC could consider joining the 40-some intergovernmental entities of the Inter-Agency Support Group on Indigenous Issues in order to share experiences and good practices with others at the UNPFII and at other levels.

¹⁰ One activity that promotes this comes from the case study with Inuit people in Pangnirtung, Baffin Island, Canada (Chapter 9 – Egeland et al.2013), where recorded stories about traditional food harvests and use were presented on DVDs in classrooms and the media.