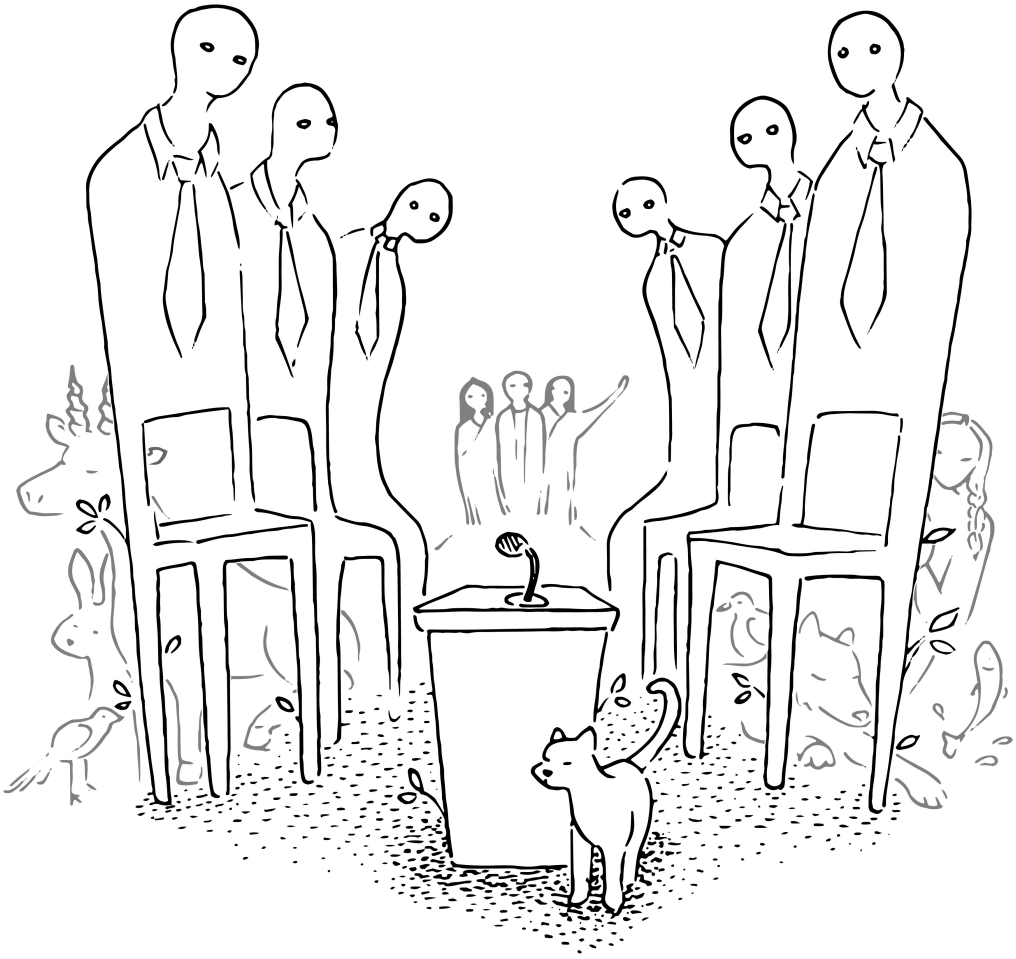
"Sometimes Reality Enters the Room"

Spatial In/Justice and the In/Visibilisation of Local Actors within International Biodiversity Negotiations



Mika Schroder

Submitted in pursuance of Doctorate of Philosophy
University of Strathclyde Centre for Environmental Law and Governance
Funded by the Scottish Graduate School for Arts and Humanities
and the Arts and Humanities Research Council
Supervised by Dr. Saskia Vermeylen and Professor Elisa Morgera

This PhD is dedicated to the memory of Ghanimat Azhdari

She was a proud member of the Qashqai tribe and a fierce, passionate and powerful activist and leader. A force to be reckoned with. She was warm, funny, sharp, dedicated and worked passionately for local community conservation at home and abroad. Her passing remains a huge loss to the movements that she was part of, as well as to her family, friends and those whose presence she always brightened. I hold them in my heart as I continue to celebrate her life and mourn her death.

/ /

*The illustration on the front-page is a commissioned piece by **Mia Ohki**, an illustrative artist from St. Albert, Alberta, currently working in Vancouver, BC. She strives to create relatable portrayals of the feminine, social, and cultural influences in her life. Subject matter frequently centers around Mia's background, and as a Metis-Japanese-Canadian artist, she attempts to show the viewer a unique mixed cultural perspective. Interactions with nature and the personification of nature are also subjects she has enjoyed exploring throughout her practice. More information and fine art prints can be found on her website, www.miaohki.com*

The illustration represents Mia's interpretation of my work. For it she received a copy of my prelude and abstract, along with some photographs from my work at the negotiations. Here follows her description: Starting at the top, you see 'corporate' suits and expressionless faces peering down at the scene below. As we move down, we see that the suits are simply chairs, part and parcel of the surroundings. They look down at the podium, where the natural ground and earth are beginning to creep up the chair legs. A white cat is making its way calmly around the podium. The cat and leaves are in black to represent the idea that reality has potential for becoming more tangible, yet the animals and peoples in the background are light grey to show their exclusion from the main proceedings. One of them is waving to symbolize in/visibilisation - they are there, but excluded and waving to try to get attention for their perspectives.

I hoped this would represent the idea that the individuals at the top are capitalist-leaning decision-makers, far removed from the reality that is present at a more accessible level. The cat and chairs have shadows, further speaking to the reality that they embody. The chair/corporate people can also be seen as somewhat surrealist, they represent the skewed perspective that those actors often have in these situations, while reality grows up around the legs of the chairs.

Acknowledgements

My journey through his PhD has not been one taken alone. This is true in more ways than one. To begin, over the years I have walked along the more/less well-trodden paths of activists, scholars, and practitioners before me, with some inspiring me to explore tracks hidden from view, or simply not yet there. To those constantly pushing the boundaries of law, politics, academia, and research, questioning the upper reaches of decision-making, thank you for the guidance and inspiration.

There have also been those without whose physical presence, words of support and encouragement, friendships, love and sense of adventure, this piece of work would likely never of seen the light of day.

To my supervisors, my deepest gratitude. To Elisa Morgera for setting me on this path, inviting me into this strange world of academic research, and for your encouragement along the way. To Saskia Vermeylen for your unwavering support and belief in me and this research. For giving me the creative freedom to find my own way, and your gentle guidance throughout. For always lending me your critical eye and offering reassurance when I faltered. You lead by example, and I can only hope that my future work holds the same integrity as yours.

The early developments of my research was greatly enriched by the *Uncanny Lore* workshop I attended in KwaZulu Natal in June 2018, run by Saskia Vermeylen and Dylan McGarry of the *Institute for Uncanny Justness*. Thank you for having me along, and to all the participants for your warm welcomes and thoughtful discussions during that week of listening, reflecting, walking, cooking, and storytelling.

To my colleagues at the CBD, whose names I will not mention so to not undermine your wish for anonymity in my research. To all you who gave me your time, welcomed me into your spaces and shared with me your work. For your tireless work over the decades, without which this world would be far worse off. For believing in this project and for wanting to contribute. I am so honoured and grateful for knowing you and calling you, my colleagues.

To my colleagues at SCELG and IISD ENB for time spent in camaraderie, in deep dialogue and provocative discussions. To Dungallan Studio and its crew, you wee speck of glass and granite on the shores of Oban, giving me respite in a time of need.

To my city dwellers, mountain scalers, ocean travellers, and gravel riders. Our time together, be it in concrete jungles, at sea, on rock or road has seen me through this and more, and so have the relationships and bonds that emerged. Anna, Gina, Tasha, Kirsty, Emma, Ellen, Barry, Patrick, Faraid, Roxy, Cam, Louis, Frej, Ludvig, Alex and Kyle. Thank you.

To Kai, my mountain goat, snoozy kitten, island puppy. For years I awaited your arrival, and how endlessly glad I am that I did. You are simply perfect.

To my kindred spirits, my best friends, the loves of my life. Tegen, Stella, Sofie, and Isla. No matter the distance your support, tenderness, and ways of being make me laugh, wonder and love ever more.

To my family. My mother Anna for… everything. My sisters Save and Tuva, for being my best friends in life, in spite of it all. To my father, Claes. I've carried you with me through these years, and I channelled the part of me that is you throughout. I wish more than anything that we could've celebrated this one together.

To Pachamamita, Mother Earth, Gaia, Nàdair. For your embrace and inspiration.

Abstract

This thesis aims to understand the meaning and manifestation of participation by local actors within international biodiversity law-making, and the barriers that have arisen as a result. International negotiations, and international law as a result, carry with them particular cultures of practice, certain aims (explicit or implicit) and are the embodiment of historical practices, narratives and discourses, all which impact on the way that we understand and relate to nature, ourselves, and others. International legal negotiations, just like any decision-making process, also hold within themselves power dynamics between peoples, knowledge-systems, worldviews, etc., which impact on the ability of peoples to act and contribute within its spaces. 'Public participation' is an incredibly broad practice, with limited critical and socio-legal research having been done so far in looking at how it takes place, how it is conceived, and whether it achieves the transformative potential it professes to offer. In this thesis, I have unearthed barriers, sometimes more/less obvious, manifesting in various ways within these spaces. Their manifestations are diverse, yet on the whole they have the effect of inhibiting a person's, or group's, ability, or sense of ability, to participate and contribute meaningfully to discussions, as well as impact on their comfort within a space and the way that they are received.

Within international environmental legal scholarship, there currently exists a gap in our understanding of the meaning and manifestation of *local actor* participation within international law-making processes. My research aims to fill this gap, by especially looking at the ways in which local actor's contributions are received and filtered into the elaboration of conservation law and policy, and the ways this influence biodiversity governance across scales.

When setting off to elaborating this project, I drew inspiration from scholars before me who have explored the possibilities of institutional ethnography of international law-making spaces and processes. I have identified and discuss commonalities between this and critical legal scholarship, the appreciation that any legal negotiating process is established, structured and managed in ways that goes beyond legal texts. This is especially true in the sense that the space within which they take place constitute political, social, as well as legal spaces. Therefore, my argument has been that for a deeper understanding to emerge of the role provided to local representatives within international law, this must be done in conjunction with understanding, from an emic perspective, the processes themselves – their spaces, actors, the sources and spatial manifestations of their dominant narratives and their in/formal rules of interactions and procedures.

My theoretical framework is grounded on Philippopoulos-Mihalopoulos' concept of spatial in/justice, which conceives of law and space as interconnected. Each provides the conditions for the other to emerge, giving us ways of understanding and relating of ourselves, our fellows in society (human and non-human, persons and non-persons), legal rules, a given place, and so on. By paying attention to the conditions of negotiations in terms of their spatio-legal organising, spatial in/justice has provided me with useful tools and lenses for unpacking the ways that participation takes place, and some of the barriers which have emerged from within international law, and its associated negotiating spaces.

Carrying out an institutional ethnography of the CBD negotiating spaces has provided me unique insights into the everyday functions, practices, and cultures making up biodiversity negotiations. This, I believe, has enabled me to gain a deeper understanding of the ways that the legal processes form, and are formed by their wider social, political and historical contexts, and what this means for the actors involved. My research has thus built upon an integration of desk-based research of CBD

provisions, participatory observations grounded in immersive ethnographic methods of attending CBD meetings and engaging with actors in collaborative relationships, along with an array of ongoing dialogues/interviews with participants, including representatives from the caucus groups representing "local" experiences of biodiversity loss.

My thesis has been organised as follows: The first two substantive chapters introduce my theoretical and methodological frameworks, including my ethical framework grounded in principles of respect, trust, reflexivity, and responsibility on behalf of myself as researcher vis-à-vis research partners and collaborators. The following chapter explores the "staging" of biodiversity negotiations and their participatory processes. I introduce critical participatory scholarship, alongside an overview of the institutional, governance and decision-making structures of the CBD negotiations. This chapter also provides some initial insights and reflections on the ways in which spatial injustice materialises by virtue of the spatio-temporal-legal conditions of these spaces. The next chapter explores the "casting" of actors, looking closer at terms such as "civil society", "stakeholders" "knowledge-holders" and "rights-holders". Here, the focus has been on exploring the various ways that such designations affect the positioning of actors within biodiversity discourse and decision-making spaces, and the potentials and pitfalls of each. The final substantive chapter interrogated the ontological (as a way of understanding the world) and epistemological (as a way of understanding, creating, and cherishing particular knowledges) conditions of the CBD negotiations, and the consequences this has for the participation of local actors within its processes, and the achievement of onto-epistemic pluralism/justice within biodiversity law and governance.

Ultimately, my study has unearthed a paradox of sorts, where participation under the CBD, albeit highly constrained according to spatial justice ideals, provides for the simultaneous in/visibilisation of local actors and their perspectives. In ways, the very presence of local actors, and their contribution to processes, poses a challenge to traditional approaches of international legal-thought and study grounded in Westphalian concepts of legal positivism and political-legal-cultural imperialism. Yet, the nature of participation itself is heavily limited, with there only being a very occasional emergence of "other" worldviews, and with them alternative ways of framing biodiversity conservation, environmental knowledge and relating to/with nature. Conclusively, my argument is that the spatio-legal ordering of international negotiations, with the ensuing material positioning, discursive and linguistic conditions which set the stage for its processes, have established instances of what Mihalopolous describes as oppressive atmospherics, suppressing the visibilisation of opposition and diversity. It is *only* under certain circumstances, that input by these actors and their role as *key contributors* within the process of international law-making, emerges as a transformative potential.

Glossary of contested terminology

Terminology matters. Language shapes the way we understand our worlds, people, spaces, time, and ourselves. It has influenced our relationships with our surrounding ecologies, and peoples geographically near and distant. Across the field of international law and politics, the sometimes thoughtless use of certain terminology has perpetuated harmful stereotypes, re-embedded tropes and the homogenisation of a diverse world where simplicity is preferred over complexity and nuance. I do not support their continued use, yet appreciate that I may lose my readership if I get too caught up in these battles on the pages where I share the stories and experiences of colleagues and make my arguments known. So here is a Glossary of the terminology I contest, along with an introductory paragraph as to why I struggle with their continued use. Throughout this thesis, they will be visually differentiated so to remind the reader of their contentious use. It is a subtle, yet necessary opposition to their existence and perpetuation within the spaces I live and work.

`Alternative` Although the idea of *alternatives*, so to speak, is no bad thing, and indeed their nourishment constitutes important endeavours within environmental governance, the use of the term does connote a single standard, *thing*, worldview or way-of-doing-things, against which the *alternative* is juxtaposed, and seen as offering a divergence from. In this sense, I problematise the ways that the term's use helps solidify, and reinforce, the supposed standard against which we compare everything else. When we use the term *alternative*, what is it diverging from? Can we not strive to hold space for a multiplicity of standards, idea, knowledges, worldviews, all at once? So, when using this term, I ask the reader to question the stubborn persistence of so-called established ways of practice, thinking and ways-of-doing.[1]

`Civil Society` As I write about in my Chapter 5 on the *Casting of Actors in Biodiversity Negotiations*, the term *civil society* has become a sort of catch-all phrase for non-state actors and groups engaging in public mobilisation. In this sense, its use often does a huge disservice to the diversity across grassroots movements who carry the burden of combatting inequality, marginalisation and violence on the front lines of global struggles. It also signifies a wider shift toward the depoliticisation, and reinforcement of managerial and technocratic logic within environmental protection, which undermines bottom-up governance structures and decision-making.[2] So when coming across the term, I'd like readers to ask *who* this term allegedly refers to, and how it can capture the complexity, nuance and diversity of perspectives and experiences which flows across those groups and collectives.

`Developed/Developing Countries` The issues surrounding these terms have been well-documented in critical scholarship for many decades.[3] Without going into too much detail, the crux of

[1] I have not found any critical literature of this word, with my reflections here being mine alone. Yet, they have been inspired by the idea of "othering", a term coined by Gayatri Chakravorty Spivak in 1985. See Spivak, 'The Rani of Sirmur: an essay in reading the archives' (1985) 24:3 *History and Theory*.

[2] See for instance Uma Kothari, 'Power, Knowledge and Social Control in Participatory Development' in Cooke and Kothari, *The New Tyranny* (Zed Books, 2001); Tanja Brühl, 'Representing the People? NGOs in International Negotiations' in Jens Steffek and Kristina Hahn (eds), *Evaluating Transnational NGOs Legitimacy, Accountability, Representation* (Palgrave Macmillan, 2010); Aziz Choudry and Dip Kapoor (eds), *NGOization: Complicity Contradictions and Prospects* (Zed Books, 2013). See also discussion Chapter 5 Section 5.3.

[3] See for instance Arturo Escobar, 'Imagining a post-development era? Critical thought, development and social movements' (1992) 32: *Third World and Post-Colonial Issues;* Balakrishnan Rajagopal, *International Law from Below: Development, Social movements, and Third World Resistance* (CUP, 2003); Bhupinder S. Chimni, *International Law and World Order* (CUP, 2004); Antony Anghie, *Imperialism, Sovereignty and the Making of*

the matter is the ways in which the categorisations, and distinctions between supposed *developed* and *developing* countries, feeds into narratives of backwardness, in terms of economics, culture, religion, and social organising. It projects an imagery of a singular "progressive" trajectory of world order in which the "modern" West is seen as the pinnacle of success, and what the "rest" should strive toward. Its use also often overlooks colonial histories which enabled the entrenchment of inequality and unequal distribution and flow of resources between countries and global actors, dis/privileging certain groups over others.[4]

`Global North/Global South` Although arguably preferable terminology compared to *developed* and *developing countries*, this distinction still feels too simplistic in its distinction between the worlds many countries, lumping these into two supposedly bounded groups. Which countries belong to which name is also elusive, and I wonder to what extent it is simply a new term which ultimately encapsulates, and reproduces the logic underpinning that mentioned above. Does the reference to the *Global North and South* bring to the fore, and address the problematic power dynamics and colonial histories often overlooked when referring to *developed/developing* countries? Does it help tackle the homogenisation and bringing together of incredibly diverse countries, cultures, peoples, languages, politics, and worldviews, under one single banner? I am simply not certain enough to feel comfortable using it without hesitation.[5]

`International development` Given my distrust in the distinction between *developed* and *developing countries*, my hesitancy for the term *international development* should come as no surprise. As I discuss in Chapter 2, the idea of *international development* has in many ways come to represent a continued form of coloniality and Western imperialism, in which the Western concept of *modernity* (see below) becomes the benchmark for excellency and the ideal against which other countries, cultures and peoples are compared.[6]

`Modernity` As discussed throughout this thesis, and primarily in Chapter 2, the idea of *modernity* is a key way through which coloniality remains embedded across society and within peoples' minds. Emerging as an idea associated with Western-Christian cosmology and later on the Enlightenment, the idea of *modernity* has underpinned, justified and supported Western imperialism and expansionism since the sixteenth century onwards. As a concept it entrenches an idea of economic, cultural, political, epistemological and ontological hierarchies and Western superiority, obscuring from view the continuation and omnipresence of coloniality in current global systems and institutions. Under the idea of *modernity*, societal progress is measured in accordance with particular dominant, economic and political visions and ideas of how society should look.[7] In Chapter 4 I introduce the concept of critical modernisms which argues that we should recognise a multiplicity of modernisms, and that in

---

International Law (CUP, 2005); Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press, 2007); Walter D. Mignolo and Catherine E. Walsh, *On Decoloniality: Concepts, Analytics, Praxis* (Duke University Press, 2018). See also discussion in Chapter 2 Section 2.2.

[4] Ibid.

[5] See for instance Re-design (Political Science) blog, 'The 'Global South' is a terrible term. Don't use it!' (11 November 2018) available at <http://re-design.dimiter.eu/?p=969> (accessed 29/04/2022); Sebastian Haug, 'What or where is the 'Global South'? A social science perspective' LSE blog (28 September 2021) available at <https://blogs.lse.ac.uk/impactofsocialsciences/2021/09/28/what-or-where-is-the-global-south-a-social-science-perspective/> (accessed 29/04/2022).; Teixeira da Silva, 'Rethinking the use of the term 'Global South' in academic publishing' (2021) 47 *European Science Editing*.

[6] See footnote 2 above.

[7] Ibid.

spite of popular discourse, *modernity* should not be seen as singular, not universal, nor as developed, or achieved in a linear fashion.[8]

`Participation` An underlying tension flowing throughout this thesis is my belief in the transformative potential of participatory processes in enabling procedural and substantive shifts in ways that international law is negotiated, while also being cautious of the risks associated with its thoughtless use. As a concept, *participation* is incredibly malleable, and unless treated with care its invocation risks reinforcing existing power imbalances and systemic onto-epistemological hierarchies, thus doing harm to individuals and collectives, and offering few benefits to final outcomes. Many have for instance documented how its inference gives legitimacy to processes which in fact do little to address the ways that barriers, marginalisation and discrimination persists within decision-making spaces.[9] This, along with other critiques of participatory discourse, flow throughout this thesis, and are introduced in greater detail in Chapter 4 in particular.

`[Natural] Resources` This term is largely associated with the commodification of nature, according to which we come to perceive, and understand our surrounding environments, not as a interconnected, bounded whole with intrinsic value, but rather as something made up of a collection of capital, assets, resources and services, at our human disposal and meant for our exploitation. It is an incredibly pervasive term, along with the idea of *biodiversity*, which within policy tends to be the primary ways that we associate and refer to what makes up our "natural" environments. Implicit in its use is an approach to human-nature relations grounded in utilitarian and transactional perspectives and values.[10] I discuss the use of the term in much greater detail in Chapter 6, where I reflect on what its use means for decision-making and the incorporation of diverse approaches for understanding and relating to our shared environments.

`Stakeholder` The term stakeholder has its origins within the world of finance and risk, and has become associated with quantitative measurements of outcomes in terms of gains and losses, lending itself well to an input/output logic which favours the engagement of actors who already hold powerful positions in terms of financial and political resources and means. It is also such a broad term, capable of incorporating "everyone", which as discussed in Chapter 5, does a disservice to the huge diversity of non-state actors engaged in discussions, not to mention the different ways that they see and experience the world. These aspects, coupled with an overarching financialised capitalist-market logic flowing throughout current biodiversity negotiations, give rise to a problematic dynamic, where the use of the term *stakeholder* risks reinforcing exclusion and unequal power dynamics in processes,

[8] See Chapter 4 Section 4.2.1.

[9] See for instance Brian Cooke and Uma Kothari (eds) *Participation: The New Tyranny* (Zed Books, 2001); Samuel Hickey and Giles Mohan, *Participation: From Tyranny to Transformation?* (Zed Books, 2004); Mike Kesby, 'Re-theorizing Empowerment-through-Participation as a Performance of Space: Beyond Tyranny to Transformation' (2005). See also discussion in Chapter 4 Section 4.2.1.

[10] See for instance Kathleen McAfee, 'Selling Nature to save It? Biodiversity and Green Developmentalism' (1999) 17 *Environment and Planning D: Society and Space;* Brett Matulis and Jessica Moyer, 'Beyond Inclusive Conservation: The Value of Pluralism, the Need for Agonism and the Case for Social Instrumentalism' (2017) 10:3 *Conservation Letters*; Megan C. Evans, 'Re-conceptualising the role(s) of science in biodiversity conservation' (2021) 48:3 *Environmental Conservation*, 151; Elena Louser and Carina Wyborn, 'Biodiversity narratives: stories of the evolving conservation landscape' (2020) *Environmental Conservation.* See also discussion in Chapter 6 Sections 6.3 and 6.4.

where *stakeholders'* engagement and input becomes synonymous with participation by sectoral, private, or already otherwise powerful actors.[11]

`Sustainable development` Just like the idea of *international development* sits uneasily with me, so does the idea of *sustainability* and *sustainable development*. In addition to the critiques mentioned above (with sustainable development still operating within the confines of *development* and *modernity* discourse), there is also the issue here that the term, although perhaps initially being progressive in its approach to addressing socio-economic-ecological ills in society, has today become a buzzword applied to anything and everything. It has essentially become a form of green washing, where actors have continued making minimal changes to their practices, all the while complementing themselves for contributing to the bigger, vague aim of *sustainable development*. As I discuss in Chapter 6, there is also a greater trend within *sustainable development* discourse towards the instrumentalization of science in service of capital, the commodification and marketisation of nature, the favouring of reductionist scientific methods and studies for the standardisation and simplification of complex ecosystems, and an underlying racialised differentiation between peoples and cultures.[12]

`Traditional knowledge` Indigenous representatives within the Convention on Biological Diversity have long tried to have the term *traditional knowledge* changed to Indigenous knowledge. There are many reasons for this, but the most important here is simply a matter of respecting, and appreciating the distinctiveness, and uniqueness of these knowledge systems as emerging, adapting, and altering within their own peoples lived experiences, and the changes of their environments. The idea of *traditional* knowledge has historical roots in colonial projections of Indigenous Peoples and cultures, which saw these as backwards, uncivilised, and their knowledge systems as static, fixed in time, filled with superstition and falsehoods. Within the CBD, there is a "chains of equivalence" of sorts, which suggests that only those embodying "traditional lifestyles" or holding *traditional knowledge* have a role to play within biodiversity conservation. This suggests a continuation of a logic akin to the "noble savage" stereotype, which links back to colonial descriptions of Indigenous Peoples and their cultures.[13] This, and a few more dangers linked to associating participation too closely with the use of *traditional knowledge* so to speak, is discussed more in Chapter 5 and 6.

---

[11] See for instance Aseem Prakash and Matthew Potoski, 'Racing to the Bottom? Trade, Environmental Governance, and ISO 14001' (2006) 50:2 *American Journal of Political Science;* Usha Natarajan and Kishan Khoday, 'Locating Nature: Making and Unmaking International Law' (2014) 27 *Leiden Journal of International Law*; Joshua M. Sharfstein, 'Banishing "Stakeholders"' (2016) 94:3 *The Milbank Quarterly;* Ashish Kothari, 'The 'net-zero' greenwash', Wall Street Journal, 13 July 2021 <https://wsimag.com/economy-and-politics/66356-the-net-zero-greenwash> (accessed 27/07/2021). See also discussion in Chapter 5 Section 5.4.2.1.

[12] See footnote 2 above.

[13] See for instance Arun Agrawal, 'Dismantling the Divide Between Indigenous and Scientific Knowledge' (1995) 26:3 *Development and Change*; Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books, 2nd edition, 2012); Elsa Reimerson, *Between Nature and Culture* (2013); Gurdial Singh Nijar, 'Traditional Knowledge Systems, International Law and National Challenges: Marginalization or Emancipation? (2013) 24:4 *European Journal of International Law*; Brendan Tobin, *Indigenous Peoples, Customary Laws and Human Rights: Why Living Law Matters* (Routledge, 2014); Linda Tuhiwai Smith, Te Kahautu Maxwell, Haupai Puke and Pou Temara, 'Indigenous Knowledge, Methodology and Mayhem: What is the Role of Methodology in Producing Indigenous Insights? A Discussion from Mātauranga Māori' (2016) 4:3 *Knowledge Cultures.* See also discussions in Chapter 3 Section 3.3.1, Chapter 5 Section 5.4.2.2. and Chapter 6 Section 6.4.1.

Table of Contents

Prelude: *constructed spaces*

On the third day of COP-14 in Sharm-el Sheikh, a canny, and perhaps welcome, disruption took place during one of the Working Groups, following some particularly lengthy and arduous back-and-forths between States in a seemingly never-ending, stand-still discussion. Somehow, a white cat had made its way through security and into the room, a speck amongst its grey towering walls. Participants stopped mid-sentence. There was some ruckus stirred up by the podium, with the cat drawing blood of at least two people attempting to "set it free". One delegate joked, wishing that they spoke the language of cats so we could hear their thoughts on the discussions. Far less diplomatically, I could just make out how someone on the podium, likely thinking that the mics were off, muttered under their breath that "indeed, it appears that sometimes reality enters the room".

International legal negotiations are strange spaces. They take place in ultra-modern buildings with towering walls and halls, shiny marbled floors, and iridescent light reflecting off all surfaces. Any plants are contained in pots (often including those outside), carefully manicured and positioned amongst coffee tables and couches where people huddle for quick-paced discussions on negotiation strategies. In Egypt, the Plenary and Working Group rooms had no windows, blocking any natural light from filtering in, with one swiftly losing track of time therein, amplifying a sense that it has itself become lost, disoriented, forfeited its usual pace in amongst the rituals of UN diplomacy and bureaucracy. In spite of the sweltering heat outside, indoors was *Baltic,* the air-conditioning at full blast, with people donning all layers they had thought to bring. A reliable source has since told me, with a glint in their eye, that this is often deliberate, so to encourage negotiators to "get on with it" and speed up process. The outside space of the compound was overlaid with artificial grass, and the rubbish bins were donned with recycling dividers, which upon further inspection proved to be merely for show as everything thrown into them would mingle in the same plastic filler. People were mandated to wear badges, colour-coordinated to reflect your "status" as Negotiator or Observer (researcher, NGO or Indigenous Peoples, etc.), which meant that when greeting new people, their gaze would be directed at your badge rather than meeting your eyes.

We see here how the processual-space constructs the parameters for our engagements with one-another. Objects are chosen and placed out carefully to reflect supposedly shared values of sustainability. Air was literally altered in the hopes that this may influence outcomes, contribute to the meetings' "success". The place itself, a conference centre, is a constant shape-shifter, with its physical appearance adjusted to meet the needs of its visitors. This is surely the epitome of constructed space, magnifying and compounding what is usually far more subtly across society, where laws and norms *shape* space and what takes place therein. Turning this around, we can also reflect on how space *makes* law. What does it mean, when even those leading a process for law-making, suggest that "reality" is not present within those walls? Does that mean that the outcomes themselves lack … a sense of reality? What would it even look like, for reality to *enter* such manicured, carefully constructed spaces? Could it be a cat drawing blood, a demonstration honouring the lives of environmental defenders whose murderers continue to go unpunished, a final agreement on behalf of states to reference the relevance of human rights in decision-making across sectors, or noting "deep concern" or merely "concern" for the threat that climate change poses to biodiversity? When the dust settles, the cat let out, once negotiators have again taken their seats, has reality remained, and our hope with it?

Chapter 1: Introduction

1.1 The Research at a glance

Why Biodiversity? Why Participation? The diversity of life within our shared world is deteriorating at a rapid pace, putting at risk the health, wellbeing and very existence of ourselves and our fellow humans, as well as the life and ecosystems that we are intricately connected to, in more ways than one. Our lives are shaped by the quality of the air, the cleanliness of waters and the health of soils which sustain our most basic needs. These elements shape our climates, in turn affecting the health of ecosystems and the safety of the places we live and frequent. We rely on nature for our medicines, foods, materials for building our homes, modes of transportation, electricity, heating, and so on. The relationships and connections we hold with our environments are fundamental to our senses of selves, and of the world. They form the very basis of our identities, our interconnectedness with the forces around us, shaping the condition and subjects of our teachings and education, providing the inspiration and settings of community practices such as cultural traditions and the foundations of our sense of belonging and wellbeing.[1] In a circular fashion, the places where we live in, and the ways we live – how we feed and nurture ourselves, spend any spare time we are fortunate enough to have – provide the signifiers for our identities and in turn shape the conditions for our lives. Whether you are a city-dweller or living rurally; these categories are largely grounded in the spatial conditions and health of our surrounding environments, and more often than not the extent to which you are *remote* to the lifelines that sustain you.[2]

Over the last few hundred years, the dominant worldviews[3] which have shaped the global economy and political order, have also created the conditions which have brought about the rapid deterioration of our worlds. They have also created an imbalance and global discrepancy in the ways that benefits and negative impacts stemming from use of our environments are experienced and distributed. Along with issues of distribution of `resources` post-extraction and use,[4] this has led to conflict over lands and seas, connected to questions of governance and power in decision-making, deepening ontological hegemonies and the inequalities

[1] Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), 'Summary for Policymakers of the IPBES Global Assessment Report on Biodiversity and Ecosystem Services' (IPBES, 2019), 10; Forest Peoples Programme, International Indigenous Forum on Biodiversity, Indigenous Women's Biodiversity Network, Centres of Distinction on Indigenous and Local Knowledge and Secretariat of the Convention on Biological Diversity (2020) *Local Biodiversity Outlooks 2: The contributions of indigenous peoples and local communities to the implementation of the Strategic Plan for Biodiversity 2011–2020 and to renewing nature and cultures. A complement to the fifth edition of Global Biodiversity Outlook,* 25. <https://lbo2.localbi-odiversityoutlooks.net> (accessed 14/04/2022).

[2] Magnus Davison, How to 'rethink remote' and put resources at the centre' (6 April 2022) *John O'Groats Journal and Caithness Courier* <https://www.johnogroat-journal.co.uk/news/magnus-davidson-how-to-rethink-remote-and-put-resources-a-271167/> (accessed 14/04/2022)

[3] Dominant in the sense of their effect on the world, not dominant in terms of number of people holding them.

[4] International Resource Panel, 'Global Resource Outlook 2019: Natural Resources for the future we want' (UNEP 2019), 65.

sustaining them. Historical narratives on the drivers of environmental harms, fuelled by these worldviews, have led to injustices pertaining to who is part of the problem, and who may provide the solutions.[5] These issues are also felt on the domestic and local level and experienced differently across identities and communities. Gender, race, class culture, and age, are some of the factors determining your experience and ability of affecting change.[6] Entire communities have been robbed of their lands and access to resources, and along with this the connections to their histories, cultures, local knowledges, languages, each other and themselves. Still today, communities are being displaced in favour of large-scale economic development projects, or conservation initiatives, while land- and environmental defenders are losing their lives when confronting powerful actors carrying our destructive business practices.[7]

The ways our societies are organised and relate to one another need to change. Such change needs to be profound, radical, *transformative*, capable in reshaping the ways we relate to our shared environment, how we formulate and understand the environmental and societal harms and benefits associated with them, and the ways decisions are made in this regard. As recognised by the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), this will require a diversification of worldviews and knowledges underpinning decision-making, which in turn brings forth a whole host of questions regarding how that may be done.[8] Historically, the marginalisation of diverse onto-epistemologies has brought with it socio-ecological harm to entire regions, environments, and human alike.[9] In this sense, what is at stake is more than just whether we can address and reverse current of biodiversity loss, and thus ensure the continued health of our planet and ourselves. There is also the question as to whether existing processes and structures recognise and respect the intrinsically valuable voices, rights, wellbeing and agencies of peoples across the globe, and their trust in public, private and other bodies contributing to the governance of our shared spaces and resources, including decisions taken on conservation.[10]

---

[5] See for instance Val Plumwood, *Feminism and the Mastery of Nature* (Routledge, 1993); Carolyn Merchant, *Science and Nature: Past, Present and Future* (Routledge, 2018); and Carolyn Merchant, *The Death of Nature: Women, Ecology and the Scientific Revolution* (Harper, 3rd edition, 2020).

[6] See generally Brendan Coolsaet (ed) *Environmental Justice: Key Issues* (Routledge, 2020); Diane-Michele Prindeville, 'The Role of Gender, Race/Ethnicity, and Class in Activists' Perceptions of Environmental Justice' in Rachel Stein (ed) *New Perspectives of Environmental justice: Gender, Sexuality and Activism* (Rutgers University Press, 2004); Iris Marion Young, *Justice and the Politics of Difference* (Princeton University Press, 1990).

[7] Since 2012, Global Witness campaign have tracked the killings of land and environmental defenders. See Global Witness Campaign website, *Environmental Defenders* <https://www.globalwitness.org/en/campaigns/environmental-activists/numbers-lethal-attacks-against-defenders-2012/> (accessed 14/04/2022).

[8] IPBES, 'Information on the Scoping for the methodological assessment regarding the diverse conceptualisation of multiple values of nature and its benefits, including biodiversity and ecosystem services', IPBES/6/INF/9, para 3. See also Ingrid Visseren-Hamakers et al., 'Transformative Governance of Biodiversity: Insights for Sustainable Development (2021) 53 *Current Opinion in Environmental Sustainability*.

[9] See footnote 5 and 6 above.

[10] Sharachchandra Lele, 'From wildlife-ism to ecosystem-service-ism to a broader environmentalism' (2020) 48:1 *Environmental Conservation.*

A common discourse for a way forward, which became popularised in the 1970s, is the idea of participation in decision-making. Tied up to the idea of democratic decision-making, it offered an attractive win-win narrative for how decisions taken could reflect the interest of affected groups, while also ensuring their buy-in to ensuring projects and activities. Ever since, scholars, practitioners and affected communities have been divided over whether this is actually the case. Some have grown wary of the approach, having experienced or witnessed first-hand the dangers associated with simplistic framings of solutions.[11] They point towards the embeddedness of unequal power relations between actors grounded in onto-epistemological hegemonies, an undermining of community agency, failures to grasp and recognise the significance of their experiences, perspectives and knowledges, and sometimes even cynical efforts for impairing community cohesion. Taken together, there is ample evidence of "participatory" practices leading to scenarios where nothing really changes; powerful actors arrive with decisions already made, ask for some input, with appearance of participation only lending democratic legitimacy to the outcome.[12] That said, others still believe in its transformative potential, arguing that if done "right" it can enable shifts in thinking within decision-making processes, and facilitate the empowerment of communities in otherwise top-down decision-making processes.[13]

Taken together, we can see the significance of gaining a better understanding of what participation actually means, and what it looks like within *international* biodiversity law. The "level" at which rules are being established is significant. International rules set the foundations for international, regional and national cooperation, policy-drafting, and support for efforts on the ground. Their discourses trickle down across scales, determining the relevance, and facilitate the recognition of diverse worldviews, actors and knowledges in decision-making and implementation.[14] They therefore carry significant consequence for us, impacting the ways our shared environments are managed and governed, and thus provide the conditions for our own lives. Taking the above as my point of departure, the rest of my introduction sets the scholarly scene for my enquiry towards understanding better the role, and manifestation of participation within international biodiversity law.

What about existing international rules? International legal instruments associated with environmental safeguarding have for decades recognised the importance of ensuring public participation within conservation endeavours. In spite of this, individuals and collectives continue experiencing displacement and marginalisation within local, domestic and international processes related to biodiversity "conservation" and resource "use." These experiences range from people being forcefully removed from their homelands, losing access to spaces, resources and ecologies crucial for their physical and spiritual wellbeing. It has

[11] See generally Cooke and Kothari, *The New Tyranny* (2001) and Hickey and Mohan, *Transformation* (2004). The literature on this is discussed in greater detail in Chapter 4 and 5.
[12] Ibid.
[13] This especially concerns discussions in Hickey and Mohan, *Transformation* (2004). See also Chapter 4 Section 4.2.1.
[14]

also meant discrimination as to what practices some may be permitted to do within certain areas, undermining livelihoods and cultural practices. It has led to a continued underappreciation or rejection of important in-depth, local knowledges and knowledge-systems within decision-making spaces, leaving groups without a say in the management and governance of areas where they live and work, and to which their very identity may be intricately connected.[15] And all this in spite of participatory processes allegedly being in place. It is therefore perhaps unsurprising that participation is viewed with scepticism by some researchers, practitioners and communities. As mentioned above, some argue that participation, when done "wrong" can even have a tyrannical effect, re-embedding already entrenched unequal power relations and dynamics between actors, knowledges, and discourses within and across decision-making spaces, lending democratic legitimacy to outcomes of undemocratic processes.[16]

This brings to the fore important questions as to the capability of public participation in upholding the values of transparency, inclusivity, accountability, and justice which supposedly underpin it.[17] More fundamentally, it calls for looking closer at the practices, cultures and discourse surrounding participation itself; how it materialises, whether it actually enables, or perhaps undermines, the empowerment, and reshuffling of dynamics of decision-making processes and outcomes. Barriers manifest across decision-making spaces, sometimes more/less obvious, taking on a multiplicity of forms, inhibiting peoples' ability, or sense of ability, to participate and contribute meaningfully to discussions. While there is extensive work across disciplines exploring these issues with regards to distinct projects "on the ground", a significant gap exists in our critical understanding of the meaning and manifestation of "public" participation within international law-making processes, especially within legal scholarship.[18]

Although there exists a significant amount of critical scholarship wary of participatory discourses,[19] emanating alongside the emergence of international development in the 1970's, this has not made its way into "mainstream" or traditional international environmental law discussions and teachings.[20] Nor has the important insights emanating from

[15] Forest Peoples Programme et al., *Global Biodiversity Outlook 2* (2020); Mark Dowie, *Conservation Refugees: The Hundred-Year Conflict Between Global Conservation and Native Peoples* (MIT Press, 2011).
[16] See footnote 11 above.
[17] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, Denmark, 25 June 1998), Preface.
[18] Granted, legal scholars have written about the idea of participation, yet often form a very doctrinal and positivistic perspectives. See for instance Jonas Ebbesson, 'The Notion of Public Participation in International Environmental Law' (1997) 8:1 *Yearbook of International Environmental Law*; Leslie Anne Duvic Paoli, 'The Status of the Right to Public Participation in International Environmental Law: An Analysis of the Jurisprudence' (2012) 83 *Yearbook of International Environmental Law;* Nikolas Sellheim, 'The Evolution of Local Involvement in International Conservation Law' (2018) 29:1 *Yearbook of International Environmental Law*.
[19] Ibid; Hickey and Mohan, *From Tyranny to Transformation?* (2004); Mohan and Hickey, 'Relocating Participation within a Radical Politics of Development: Critical Modernism and Citizenship' (2005) 36:2 *Development and Change.*
[20] See footnote 18 above.

environmental justice scholarship and the so-called spatial turn that has taken place across disciplines, including law.[21] These especially bring to the fore the importance of considering the very processes of law-making and implementation, as well as the ways that law shapes the everyday lives of people in unsuspecting and often forgotten ways, including the very shaping of space and processes within which important, society-altering discussions take place and decisions are made.[22]

This disconnect creates a significant blind spot within the subdiscipline of international law, and one which risks re-entrenching unequal power dynamics and marginalisation of certain groups in the elaboration of international biodiversity law, and in the implementation of projects and policies. It is particularly important to confront these issues and knowledge-gaps within the context of international law-making, given their significance in *setting,* and *settling* overarching "global" narratives and discourses on how states and other actors can best protect the environment. Decisions taken there trickle down and influence policies on the regional, domestic and local levels, influencing funding opportunities and institutional agendas, ultimately laying the groundwork for a society-wide approach to addressing the socio-environmental crises, such as biodiversity loss. They feed into creating benchmarks, or "roadmaps" for countries when elaborating and implementing policies, laws, and standards of practice, as well as encourage cross-sectoral activities and projects, addressing whether biodiversity and ecological concerns should filter into, and flow across other arenas of decision-making related to health, education, access to food, housing, energy and so on. They also inform and support the distribution of funding, training, and other resources across the public and private arenas of society.[23]

The spaces where international laws emerge, therefore, also send signals as to the appropriate balancing and prioritisation of certain perspectives, values and knowledges. This affects the positioning of actors within decision-making spaces across scales, as well as their ability of contributing to processes. These are particularly important considerations given the increasing recognition (or admittance) among countries negotiating at the Convention on

[21] My point here is not to undermine the important work done within legal geography, rather to suggest that it has been underestimated, and underappreciated across mainstream and dominant approaches and perspectives in legal research, education and practice. By way of example, it wasn't until taking classes *outside* of the law department during my LLM studies that I came across perspectives critical of participatory practices. Equally, I was *discouraged* by my supervisor when drafting my Masters dissertation to explore questions of justice because it was "messy business". For scholarship exploring these areas (which I wish I had been introduced to earlier in my own studies) , see for instance Andreas Philippopoulos-Mihalopoulos (ed), *Law and Ecology*: *New Environmental Foundations* (Routledge, 2011); Irus Braverman, Nicholas Blomley, David Delaney and Alexandre Kedar, *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press, 2014); Philippopoulos-Mihalopoulos and Victoria Brooks (eds), *Research Methods in Environmental* Law (Elgar, 2017); Jennifer Hendry, Melissa L. Tatum, Miriam Jorgensen and Deirdre Howard-Wagner, *Indigenous Justice: New Tools, Approaches and Spaces* (Palgrave, 2018).

[22] Ibid. See also footnote 5 above; Young, *Justice and the Politics of Difference (*1990); David Schlosberg, *Defining Environmental Justice: Theories, Movements and Nature* (OUP, 2007).

[23] See for instance David Delaney, *The Spatial, the Legal and the Pragmatics of World*-Making (Routledge 2010); Usha Natarajan and Kishan Khoday, 'Locating Nature: Making and unmaking international law' (2014) 27 *Leiden Journal of International Law*. See also footnote 25 below.

Biological Diversity (CBD), of the need for "transformative change" and reorganisation across technological, economic and social aspects of society.[24] Enabling such changes demands attention to ontological and epistemological groundings of societal organising and governance, and the ways this influences our relationships with our environments and each other, as well as the knowledges and perspectives deemed relevant and important for decision-making across scales.[25] Notably, because of the way that the outcomes of the CBD is framed (as in often inviting Parties and other groups to take certain action), in addition to its near-global reach in terms of membership, the impact of its practice and standard of `participation` and inclusion will go beyond its very own negotiating spaces. They will inform other participatory processes, by way of laying out specific guidelines, as well as indirectly signalling what may constitute appropriate forms of `participation` across other institutions and decision-making structures. It is this which underpins my decision to focus on the CBD specifically for this study.

In many ways, "traditional" and mainstream legal research and practice is still waking up to the significance of moving beyond purely doctrinal and positivist approaches to understanding law. Over the years, critical legal scholarship, as a broad field emerging from transdisciplinary perspectives, embracing theories and methods from the post-colonial, feminist, queer, and critical race literature (and others), across the political sciences, sociology, geography and anthropology, have done much to enrichen our understandings of law and legal processes as established, structured and managed in ways that go beyond legal texts.[26] Indeed, through these perspectives it becomes clear that international negotiations carry with them particular cultures of practice, goals and aims (explicit or implicit), and are the embodiment of historical events, narratives and discourses. Just like any decision-making space, they hold within them power dynamics between peoples, knowledge-systems, worldviews and so on, which contribute to shaping the participatory processes therein. The outcome of these processes – be it strict state obligations, voluntary guidelines or new mechanisms for implementation – are also embodiments and materialisation of these conditions, and have a significant impact on the ways that we come to understand and relate to ourselves, each other and our environments. These insights have important consequences for researchers and practitioners alike,

[24] IPBES, *Global Assessment Report Summary* (2019). See also CBD ongoing negotiations on the Post-2020 Global Biodiversity Framework (GBF), whose purpose, according to its first draft, is to "galvanize urgent and transformative action by Governments and all of society […]". CBD, 'First Draft of the Post-2020 Global Biodiversity Framework', Doc CBD/WG2020/3/3, *Note by the Co-Chairs.*

[25] This is for instance argued throughout the two edited collections by Philippopoulos-Mihalopoulos. See for instance Philippopoulos-Mihalopoulos (ed), *Law and Ecology* (2011); Philippopoulos-Mihalopoulos Brooks (eds), *Research Methods in Environmental* Law (2017).

[26] See for instance Nicholas Blomley, David Delaney and Richard T. Ford (eds) *The Legal Geographies Reader: Law, Power and Space* (Blackwell Publishing, 2001); Chimni, *International Law and World Order* (2004); Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005); Nicole Graham, *Lawscape: Property, Environment, Law* (Routledge, 2011); Andreas Philippopoulos-Mihalopoulos (ed), *Law and Ecology: New Environmental Foundations* (Routledge, 2011); Glen Coulthard, *Red Skin, White Masks* (Minnesota University Press, 2014); Margaret Davies, *Law Unlimited: Materialisms, Pluralism and Legal Theory* (Routledge 2017); Jennifer Hendry, Melissa L. Tatum, Miriam Jorgensen and Deirdre Howard-Wagner, *Indigenous Justice: New Tools, Approaches and Spaces* (Palgrave, 2018).

requiring us to consider and confront the un/intended consequences of legal drafting, and the ways that law materialises and expresses itself through space and time, as well as in the every-day interactions between peoples and collectives.

This research aims to address some of these cross-disciplinary and knowledge gaps, bringing together various strands and perspectives from legal geography, anthropology, decolonial studies, and critical participatory scholarship, in attempting to unearth the conditions for, and manifestation of, the `participation` by local actors[27] within international biodiversity law. My reasons for focusing on the CBD are manifold. Primarily, the decisions taken at the CBD have far-reaching effects across society, especially in terms of *settling* dominant discourses on socio-ecological harm and solutions. They have the potential of influencing decision-making across sectors, and shape the distribution of, and access to `resources` and land, as well as shape the understanding and protection (or lack thereof) of human rights, as well as other structures and activities important for ensuring socio-ecological wellbeing.[28] That the CBD is conceived as a *global* treaty[29] makes this even more pronounced, as does its wide scope of work. That its decisions adopted at its Conference of the Parties (COP)[30] are agreed by consensus means that its outcomes should be seen as ideally reflecting the perspectives of all Member States, giving its provisions significant legal and political clout from an international law and policy perspective.[31] In this regard, while its processes signify an important potential entry point for different ways of thinking and doing, to make it into biodiversity governance, it is also important to question what the very idea of the "global" does to such diversity. Indeed, when situating the negotiations within the wider context of their emergence and institutional setting, including established relations and cultures of practice therein, we are confronted with important questions as to the peculiarity of these spaces and their ability of providing us with the solutions that they are supposedly seeking.

Like I say above, the CBD has an exceptional wide scope of work, reflecting its aim to provide a comprehensive and global approach to biodiversity conservation. Its "framework" character means that it holds a unique role within international biodiversity law, seen in its attempts to fill gaps of pre-existing regulations, as well as identifying and elaborating guiding principles and strategies across governance structures.[32] Its list of cross-cutting issues is long and far-reaching, linking up and providing bridges between its thematic areas covering the major

[27] Here referring primarily to Indigenous Peoples, local communities, Women and Youth representatives, as well as grassroots organisers from small-scale farming and fishing communities.
[28] See for instance Alexandre Gillespie, *International Environmental Law, Policy and* Ethics (OUP, 2nd edition, 2014); Louis Kotzé, Louise Du Toit and Duncan French, 'Friend or Foe? International Environmental Law and its structural complicity in the Anthropocene's climate injustice' (2021) 28 Oñati Socio-Legal Series.
[29] This refers primarily to the CBD membership which, as of December 2020, include 196 Parties, making it one of the few MEAs with almost global reach in its membership. A notable country *not* on the Party list is the United States of America.
[30] The spaces process of negotiations and the adoption of legal texts is introduced and discussed in Chapter 4 Section 4.3.
[31] See for instance Alan Boyle and Christine Chinkin, *The Making of International Law* (OUP, 2007)
[32] Michael Bowman, Peter Davies and Catherine Redgwell, *Lyster's International Wildlife Law* (CUP, 2nd edition, 2010), 593-4.

biomes (e.g. dry and sub-humid lands, forests, inland waters, marine and coastal, mountain and agricultural biodiversity). Its cross-cutting issues, emerging as "agenda items" at negotiations, include protected areas, sustainable use, gender and biodiversity, health and biodiversity, capacity building, access to genetic resources and benefit-sharing, education and public awareness, and technical and scientific cooperation. In many ways this shows the relevance, and overlap of its work, with that of other multilateral environmental conventions (MEA's) as well as other international, regional and domestic processes, institutions and policy areas across finance, investment, health, education, infrastructure and so on.[33] These are no small ambitions, with the complexity of talks, and challenges met along the way being a testament to the complexity of discussions and the delicate balancing of priorities and interests held throughout. Here, only the most naïve would suggest that people within the process, along with their knowledges, perspectives, and interests, stand on an equal footing during discussions. In this way, the CBD plays an important role in *setting*, *settling*, and *reinforcing* particular discourses of societal ordering, and onto-epistemological hierarchies which influence decision-making, signalling who is important to include –and when – along the process of decision-making and implementation, as well as whose knowledge is important, and how it may be used. Ultimately, the decisions taken within its negotiating spaces reverberate across "scales" and have long-lasting effects far beyond the moment that the Chairs mark their adoption with the whack of a hammer.[34] For these reasons, a project looking at the spaces and processes facilitating the emergence of international biodiversity laws remain relevant beyond the confines of the particular meetings where they are adopted. In sharing stories and insights from the continuum of logics, actors and knowledges taking up space within the negotiations and contribution to the elaboration of international environmental laws, we can gain a better grasp of their shortcomings, and how these can be addressed in the future.

For these reasons, it is pertinent to take a closer look at the participatory processes of the CBD in particular, when thinking about inclusion within biodiversity law and governance more broadly. Here, I will look more closely at the ways that local actors are positioned within these spaces, how their contributions are received and filtered into the elaboration of conservation law and policy, and the ways this influences biodiversity governance across scales. I have particularly chosen to focus on the ways that the processes – spatially, temporally, onto-epistemologically – are shaped by the legal conditions and discourses underpinning them. This has included identifying barriers to `participation` within the CBD, how they manifest, and the ways in which they inhibit a persons' or collectives' ability, or sense of ability to participate and contribute to discussions, as well as how this impacts on their own experiences during negotiations.

[33] See CBD website <https://www.cbd.int/programmes/> (accessed 2/04/2022).
[34] See footnotes 23, 25 and 26 above.

1.2 Theoretical and Methodological Tracks and Paths

My theoretical framework has been grounded on Andreas Philippopoulos-Mihalopoulos' concept of spatial in/justice, which conceives of law and space as interconnected.[35] From this perspective, law and space each provide the conditions for the other to emerge and be experienced, giving us ways for understanding and relating to the world, ourselves, our fellows in society (human and non-human, persons and non-persons), legal rules, a given place and so on. By paying attention to the conditions of negotiations in terms of their spatio-legal organising, spatial in/justice has provided the tools and lenses for unpacking the ways that `participation` takes place, as well as unearthing some of the barriers that emerge from within international law and its associated negotiating spaces.

Throughout this project, my enquiries and activities have drawn inspiration from scholars who have explored the possibilities of institutional ethnography of international law-making.[36] A key benefit of such approaches are the emic perspectives and insights they grant us of these unique and peculiar spaces and processes, and the decisions emerging from within. This work has much in common with the critical legal scholarship mentioned above, with both illustrating the ways that law and legal negotiations are established, structured and managed in ways that go beyond legal texts, with this especially being true for negotiations as constituting political, social as well as legal spaces. It therefore feels particularly pertinent for my work, in setting out to gain a deeper understanding of the role provided to local representatives within international law, to do so through an empirical and experiential lens, as opposed to a purely textual or desk-based one. Applying a spatial in/justice theory within an ethnographic context also provided me with a unique perspective when entering into the relevant negotiating spaces, shaping the nature of my enquiry and the forms of observations, journaling and dialogues I had therein.

Carrying out an institutional ethnography of the CBD law-making spaces provided me unique insights into the everyday functions, practices and cultures making up biodiversity negotiations, and thus the elaboration of international laws. This enabled a deeper understanding to emerge of the ways that legal processes themselves form, and are formed by wider social, political and historical contexts, and what this means for the actors involved. My research built upon an integration of desk-based research of CBD provisions, participatory observations grounded in immersive ethnographic methods of attending CBD meetings, and engaging with actors in collaborative relationships, along with an array of ongoing dialogues/interviews

[35] Andreas Philippopoulos-Mihalopoulos, *Spatial Justice: Body, Lawscape, Atmosphere* (Routledge, 2015).
[36] See especially Annalise Riles, *The Network Inside Out* (University of Michigan Press, 2001); Ronald Niezen and Maria Sapignoli (eds) *Palaces of Hope: An Anthropology of Global Organizations* (CUP, 2017). Out with law, see also recent piece exploring various approaches to studying global environmental agreement-making. E.g., Hannah Hughes et al., 'Global Environmental Agreement-making: Upping the methodological and ethical stakes of studying negotiations' (2021) 10 *Earth Systems Governance*.

with participants, including representatives from the caucus groups representing "local" experiences of biodiversity loss.

I attended a total of six CBD negotiating-meetings; three as a PhD researcher, and three as a virtual writer/reporter for the Earth Negotiations Bulletin,[37] along with a handful of online webinars and update conferences following the outbreak of the COVID-19 pandemic. My attendance at the first three meetings[38] forms the cornerstone of my fieldwork data, giving me a deeply immersive experience and insight into the CBD negotiations and their spatio-temporal conditions. I gained first-hand experience of the unique processes, cultures, ways of life, and learnt through time to pick up on the nuances and difference between each of the spaces. I also had the opportunity to connect with people frequenting these halls, with their perspectives, insights and experiences having helped guide me through my fieldwork and ensuing analysis. I treated my attendance and reporting at the latter three meetings, not as part of my ethnography (see discussion below), but as part of my work nonetheless. These helped back-up, "triangulate" and confirm the habitual nature of certain practices and processes of the CBD. During my ethnography, I kept a number of journals,[39] with me bringing together and summarising these at the end of each day into digital notes.

From what amounts to a total of four weeks of doing ethnography at CBD negotiations (not countering the three latter meetings), I have 85 in-depth documents detailing my *observations, dialogues and interviews.* My *Observations* cover my collected notes (from across my diaries and journals) from negotiations, side events and caucus meetings which I was given permission to attend. I differentiated between *interviews* and *dialogues* in that the former refers to a deliberate, scheduled discussion between myself and one or more participant, whereas the latter happened spontaneously over a coffee, on transport to eh venue, in the corridors between negotiations.[40] I adopted a grounded approach for the development, analysis and presentation of my research findings.[41] This meant having my research questions, analysis and writing being guided by my experiences "in the field', as well as being responsive to the emerging patterns and phenomena which were not apparent before I began attending negotiations. My *observations, dialogues* and *interviews* thus helped inform the areas I chose to focus on for my analysis. The themes that emerged here were that of the power-sovereignty nexus, questions pertaining to knowledge and knowledge-hierarchies, power dynamics amongst non-state actors, and language/terminology. In several ways, these themes feature

[37] The Earth Negotiations Bulletin is the "flagship publication of the International Institute for Sustainable Development" described as a "balanced, timely and independent reporting service of the UN environment and development negotiations." I joined their team as a reporter/writer in June 2019.

[38] These meetings include the 14th Conference of the Parties in Sharm el-Sheikh (17-29th November 2018), the eleventh meeting of the Working Group on Article 8(j) in Montreal (20-22nd November 2019) and the twenty-third meeting of the Subsidiary Body on Scientific, Technical and Technological Advice in Montreal (25-29th November 2019). See Annex for more details.

[39] See Chapter 3 Section 3.2.3 under *Detangling Experiences: Observation, Dialogues and Interviews.*

[40] I discuss the difference between these, as well as my approach regarding consent, in Chapter 3 Section 3.2.2.

[41] See for instance Kathy Chamaz, 'Grounded theory methods in social justice research' in Norman Denzin and Yvonna Lincoln, *The SAGE Handbook on qualitative research* (Thousand Oaks, 2011).

throughout the thesis, with each substantive chapter honing in on those that felt most pertinent from a spatial in/justice perspective.

It is worth highlighting, that in the midst of doing this research, the COVID-19 pandemic spread across the world, which wreaked havoc on peoples lives and livelihoods. During its early days, the meetings of the CBD were continuously postponed, with online preparatory meetings taking place in the hopes that delegates and participants would be able to meet in person shortly thereafter. Two years later and the first in-person meeting has only just taken place, with mixed results.[42] Before COVID-19, I was set to attend more in-person meetings in order to collect more field observations and interviews. When these became continuously delayed, I had to make a decision in the face of ongoing uncertainty as to whether to begin treating the online meetings also as sites of my fieldwork. I ultimately decided against it. To begin, this would have opened up an entirely new discussion on the legal-spatio-temporal conditions of virtual meetings. Although incredibly important, there just wasn't enough space for that within this thesis. Second, following all virtual negotiations and events proved incredibly challenging and time-consuming, and I, along with my other colleagues frequenting these spaces, began to struggle keeping up with this alongside other tasks. I was also expecting myself to wrap up this project sooner, not expecting the years of the pandemic to effectively make up half of my entire PhD journey. I have still incorporated aspects of the virtual negotiations into my research data and analysis, with more details given on this in my methodology chapter (Chapter 3).

1.3 Questions, Structure and Overview

At the most basic level, the question underpinning this project has been what public `participation` *means*, and how it materialises, at international biodiversity negotiations. Over time, this has evolved into more fine-tuned enquiries, including: *What are the barriers to participation that groups experience within these spaces, and how do they emerge? How does international biodiversity law shape the positioning of actors in decision-making across governance scales? How does the onto-epistemological foundations upon which international environmental law is grounded – such as our understanding of nature and environmental knowledge – impact on the ability of CBD negotiations to interrogate and reimagine global conservation endeavours in ways that accommodate and embrace local perspectives and experiences?*

In going about answering these, my thesis has been organised as follows: The first two substantive chapters introduce my theoretical and methodological frameworks. For my theory chapter (Chapter 2), this has included providing some background into the critical approaches to international environmental law which has informed the premise of my research, looking warily upon the traditional narratives of environmentalism and conservation as continuations

[42] International Institute for Environment and Development, Earth Negotiations Bulletin (IISD ENB) Summary Report Geneva Biodiversity Conference (April 2022) Vol. 9 N.775, see *Analysis.*

of coloniality and imperialism, experienced through the unequal relations between states, individuals and collectives. I then introduce legal geography and spatial in/justice as the lens through which I have approached the idea of participation at the biodiversity negotiations. In my methodology chapter (Chapter 3) I introduce my methods of institutional ethnography, as well as my ethical framework grounded in principles of respect, trust, reflexivity, and responsibility on behalf of myself as researcher vis-à-vis research partners and collaborators.

Following on from this, the Chapter 4 explores the "staging" of biodiversity negotiations and their participatory processes. I introduce critical participatory scholarship from international development studies, bringing it into conversation with spatial in/justice and biodiversity law. I also provide an overview of the institutional, governance and decision-making structures of the CBD negotiations, followed by an exploration of its participatory processes from a spatial justice perspective, informed by my observations and dialogues with people frequenting these spaces. As a whole, the chapter provides some initial insights and reflections on the ways in which spatial injustice materialises by virtue of the spatio-temporal-legal conditions of these spaces, providing the backdrop for the remainder of the thesis.

Chapter 5 explores the "casting" of actors within the CBD participatory processes. I begin by looking closer at the history of the term civil society as a seemingly catch-all phrase for non-state actors and groups engaging in public mobilisation. Here I argue that the term, and its use, does a huge disservice to grassroots movements who carry the burden of combatting inequality, marginalisation and violence on the front lines of global struggles, signifying also a wider shift towards the depoliticisation, and settling of managerial and technocratic logic within environmental protection. I then turn to discussing the various discourses engaged with the question of why participation should take place. Each of these places different value and importance to certain contributions and outcomes, in a sense influencing the positioning of actors within negotiations, affecting how their contributions may be received. Drawing on this, I look closer at the terms stakeholder, *knowledge-holder* and *rights-holder*, with the focus being on exploring the various ways that such designations affect the positioning of actors within biodiversity discourse as a whole, including decision-making spaces, and the potentials and pitfalls of each. Here, it is worth noting that my discussion on *rights-holders* takes on a different form from the rest, largely reflecting the fact that it is only recently that Parties have agreed to engage with this explicitly. Here, I rather highlight an important area for future research, alongside a broader message for lawyers and practitioners alike to be more conscious of the significance of terminology when referring to various actors in decision-making spaces, especially in the context of participation and inclusion.

Chapter 6 interrogates the ontological (as a way of understanding the world) and epistemological (as a way of understanding, creating and cherishing particular knowledges) conditions of the CBD negotiations, the consequences this has for the participation of local actors within its processes, and the achievement of onto-epistemic pluralism and justice within biodiversity law and governance. I begin by introducing onto-epistemic in/justice, situating it

amongst the work on spatial in/justice. I also discuss previous work which has illustrated the onto-epistemic hegemonies that have sat at the heart of dominant projections of international relations and environmental law-making and practice, extending this analysis further into the CBD negotiations in light of my own observations and dialogues from within those spaces. A key insight here is that the relics of technocratic, imperialistic and market-based logics can be seen throughout international biodiversity law, including legal institutions and provisions, which greatly shape the conditions of who can engage in the process, and how. In this sense, the chapter brings to the fore tensions and incompatibilities within the CBD structure itself, and poses serious questions as to the adequacy of current measures and processes for prompting the shifts necessary for enabling *transformative change* as called for by the CBD parties themselves.

Ultimately, my study has unearthed a paradox, where `participation` under the CBD provides for the simultaneous in/visibilisation of local actors and their perspectives. In ways, the very presence of local actors, and their contribution to process, poses a challenge to traditional approaches of international legal-thought and study grounded in Westphalian concepts of legal positivism and political-legal-cultural imperialism. Yet, the nature of `participation` itself is heavily limited, with there only being a very occasional emergence of "other" worldviews, and with them `alternative` ways of framing biodiversity conservation, environmental knowledge and relating to/with nature. Conclusively, my argument is that the spatio-legal ordering of international negotiations, with the ensuing material positioning, discursive and linguistic conditions which set the stage for its processes, have established instances of what Philippopoulos-Mihalopolous describes as oppressive atmospherics, suppressing the visibilisation of opposition and diversity. It is *only* under certain circumstances, that input by these actors and their role as *key contributors* within the process of international law-making, emerges as a transformative potential. While one space in particular within the CBD, the Working Group on Article 8(j), provides the most promising space for such ideals, the fact that its future is uncertain, poses significant risks to the ability of parties to the CBD in achieving their own professed goals and aims, as well as for international biodiversity law in providing spatially just conditions across society, including in decision-making.

Part 1: *The Foundations for a Project: Roots and Land/Lawscapes*

Every piece of research needs a guiding light, a North star, or perhaps more simply put… roots. Roots to help ground us, guide us in exploring the nooks and crannies of vast landscapes, carry the nutrients and replenishing the energy sustaining that which drives your queries, interests and thoughts, willing them into the light and into this world. What makes roots such an apt metaphor here is the fact that they are "messy", just like research (especially doctoral research). It is a delightful, meaningful chaos, taking – not so much deliberate as explorative – twists and turns, branching off into the ether, expanding outwards, upwards, downwards, co-mingling with its fellows along the way.

Here, I use the analogy of roots for describing theory, methods and methodology, including, crucially, ethics. For me, perhaps because of my background in traditional doctrinal legal education, keeping these aspects distinct have proven difficult. Theory merged into methods, which granted merged naturally into methodology, then merging into ethics, which in turn merged into everything else, casting new light on issues I did not first realise were there. For simplicities sake, I have identified my overarching theoretical foundations as that of spatial in/justice, and my method as institutional ethnography. Somewhere there between we have multidisciplinary critical scholarship, legal geography and performativity. And then, flowing throughout it all – ethics, like morning mist, coating your mind and the landscape with wonder, reminding me to always think twice before choosing a way to go. This Part I of my thesis tries to guide you through the roots, foundations, groundwork, of my doctrinal research. It is divided into two chapters; the first on theory, the second on methods, methodology and ethics. My hope is that these two first substantive chapters give you the compass and key to help you in navigating, and understanding my work, its journey and the decisions taken along the way.

Chapter 2: Theory

Critical Thought, Spatial Injustice and Performativity

2.1 Introduction

This chapter sets out to offer you with an analysis of the scholarship and theories that have driven my work forward and guided my analysis throughout this thesis. Heeding Kirstie Dotson's' warnings about the dangers of *beginnings,* and the ways that these perpetuate ignorance, disrespect and harm against earlier knowers and their labours[1], I set out here not to offer an "origin story" of the scholarship below, but rather an overview of the connections between them which became apparent to me while reading, thinking and writing. I have decided to "begin" this chapter with where it all began for me, namely the critical decolonial legal scholarship which inspired me to frame my research question as I did. As it has turned out, this project, beyond its enquiry of looking at the `participation` of local actors within biodiversity legal negotiations, has also been a journey of unlearning, and re-learning what law, and legal research can look like. This itself required questioning the foundations, assumptions, and taken-for-granted-facts upon which my previous teachings relied upon. Following this, I will introduce you to the idea of *spatial in/justice*, grounded in a broader critical framework of environmental law, justice and critical legal geography. Here, I will also introduce you to the concepts which lie at the heart of *spatial in/justice*; the *lawscape*, *tilts*, *atmosphere*, *ruptures*, *withdrawals* and *epistemic shifts.* I end this chapter with introducing the idea of performativity, which at times throughout the thesis had guided me throughout my analysis, offering me inspiration, and new ways of looking at a given issue.

2.2 Unlearning and Problematising International Environmental Law: Diversity and Difference in the face of Colonial and Imperial Legacies

Critical scholars have long held that a multitude of cultural, political and economic hegemonies sit at the heart of international relations and rule-making.[2] Indeed, de-colonial scholar Walter Mignolo presents the idea of `modernity` as underpinning Western-Christian cosmology (ontology), and supporting the foundations of Western imperialism and expansionism since the sixteenth century, and in this sense, intricately connected to European colonialism and continued coloniality.[3] To Mignolo, what he names the *colonial matrix of power* – as the

[1] Kirstie Dotson, ''Thinking familiar with the interstitial': An introduction' (2014) 29:1 *Hypatia*, at 3.

[2] See for instance Cooke and Kothari (eds) *The New Tyranny* (2001); Vandana Shiva, *Protect or Plunder? Understanding Intellectual Property Rights* (Zed Books, 2001); Rajagopal, *International Law from Below(*2003); Chimni, *International Law and World Order* (2004); Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005); Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press, 2007); Gustavo Esteva and Madhu Prakash, *Grassroots Post-modernism: Remaking the Soil of Cultures* (Zed Books, 1998, 2014); Mignolo and Walsh, *On Decoloniality* (2018).

[3] Mignolo and Walsh, *On Decoloniality* (2018), 105-110. Coloniality here refers to more than just physical control over territories; it refers to the entrenchment of colonial logics into societies economic, cultural and social

ways in which coloniality remains embedded across society and within peoples' minds – stems from the enunciations, and narratives of modernity, which reinforce the hegemonies of political, scientific and cultural Western superiority, hiding from view the continuation, and omnipresence of coloniality.[4]

In this sense, the idea of modernity operates as a form of oppression, where societal "progress" is measured according to particular dominant cultural, economic and political visions, which in turn set the conditions for discussions and action, and relations between bodies within a given lawscape. As briefly suggested above, and discussed more in depth in Chapter 6, *atmospherics* emerge from onto-epistemological injustice, which in the case of modernity stems from an amalgamation of particular discourses which Mignolo and several others, identify as grounded in scientific and economic progress, political and cultural imperialism and globalisation. As an extension of these dominating international, as well as regional and domestic relations, and "cooperation" between States (for instance through projects under the label of international development[5] and public international law), these have also made their way into international environmental legal discussions and debates, and thus framed "global" efforts to tackle environmental crises such as climate change, biodiversity loss, desertification, and so on.

Indeed, one of the ideas, and concepts emerging from modernity, was the very idea of a unified public international law and legal system, brought into being by "civilised" states. This has itself played a fundamental role in framing, and giving rise to, very particular ways of conceiving of inter- and intra-state relations. Indeed, public international law, as traditionally taught at universities, relies upon a number of assumptions which, when looked at more closely, bring to the fore ontologies and epistemologies embedded within its walls, texts and practices, which have inevitably led to the exclusion of other ways of being and doing. It also tells us of the continuation of (hidden) historical events and contingencies which paved the way for its emergence, and its contemporary, homogenising and (top-down) form.

Take for instance international law's obsession, and centring of state sovereignty and the idea of the modern nation-state. As Nina Tzouvala has recently pointed out, building upon previous work by critical scholars, this is actually a rather recent form of social and geographic organising, having emerged three hundred years ago and only becoming the dominant form of international political organising in the 1960s and 1970s.[6] It was precisely the projection of

ordering, people's way of thinking, identifying, and relating to one another. Of course, like colonialism and coloniality, the discourses and practices that underpin it have emerged, changed and transformed over time, in response to shifts across the globe, on the international as well as local level.

[4] Ibid, 111-115. Indeed, Mignolo writes "... if modernity is a narrative (or better still, a set of narratives), coloniality is what the narratives hide or disguise, because it cannot be said explicitly."

[5] See discussion in Section 4.2.1 exploring linkages between international development, coloniality and the embeddedness of techno-scientific hegemonies which fuelled power imbalances within projects "on the ground.

[6] Nina Tzouvala, 'How to Run an Empire (Lawfully): Public International Law, International Economic Law' in Illan rua Wall, Freya Middleton, Sahar Shah and CLAW (eds) *Critical Legal Pocketbook* (Counterpress, 2021), 57. See also Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005); Laura Benton, 'Colonizing Hawai'i and Colonizing Elsewhere: Toward a History of US Imperial Law' (2004) 38:4 *Law and Society Review*;

the (Western) state as the only viable source of international – or indeed, any form of – legality, and indeed the only acceptable form of social organising, that encouraged, and in some instances forced, former colonial territories into establishing nation-states so to enjoy the rights and privileges afforded via this form of organising, underpinned by promises of `modernity`.[7] In the process, other forms of geographic, social and political organising were marginalised, in some instances violently and systematically repressed.[8] Fuelled by classist, sexist and racist discourse, carried through by certain scientific, economic, religious and ideological thinking, 'local' ways of being, including their socio-political-cultural-legal ways of organising were deemed inferior, with their laws and legal systems considered barbaric or unsophisticated, *uncivilised*.[9]

The way through – *forward* in accordance with the linear temporality of Westphalian logics[10] – or out of this *uncivilised* state, was through `modernity`, meaning economic growth, industrialisation, adopting democratic government under nation-state structures, and "rational" organising of society. This final aspect stems from the European "Enlightenment" in which secularism came to the fore, privileging scientific (and technological) methods of understanding the world, representing values of "objectivity" and "rationality" in conceiving society, and within it decision-making. This went hand in hand with the entrenchment of cartesian dualism across Western philosophy, where the mind/body dichotomy was extended to our relationship with the "natural" world; as separate from us, and mechanic in its existence.[11]

That this became the dominant way of associating and relating to nature within European society, and thus imposed across the colonies and beyond, had profound consequences. Not only did caring,[12] and showing respect to our surrounding ecologies become moot from an ethical and moral standpoint, it also led to a perceived division between nature and society, in which the actions of the latter on the former carries no consequences precisely because

---

Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1824-1933* (CUP, 2014); Nina Tzouvala, 'The Spectre of Eurocentrism in International Legal History' (2021) 2 *Yale Journal of Law and the Humanities*; Claire Vergerio, 'Beyond the Nation State' (27 May 2021) Boston Review <https://bostonreview.net/articles/beyond-the-nation-state/> (accessed 7/01/2022).

[7] Ibid.

[8] Ibid. Nina Tzouvala mentions already existing systems of international relations, such as the Sinocentric system that prevailed in East Asia before the Westphalian system was made to take its place. Similarly, were the Indigenous laws and structures in what was to become Australia, New Zealand, or Canada, and elsewhere in the world which today remains occupied territory.

[9] Ibid, 57; Nina Tzouvala, *Capitalism as Civilisation: A History of International Law* (CUP, 2020).

[10] See discussion on temporality within modernity logic in Chapter 4, Section 4.2.1.

[11] From this mechanistic understanding of the environment, an arrangement of parts, as dead matter, incapable of thought and individual agency and action. The mind, on the other hand, was attributed to humans, the white man, for their ability to rational thought and expression. See for instance Plumwood, *Feminism and the Mastery of Nature* (1993); Merchant, *Science and Nature* (2018); and Merchant, *The Death of Nature* (2020).

[12] The replacement of, or shift from relations of care and nourishment to that of commodification and extraction has been both drastic and significant in shaping not only our relations with the environment, but also in understanding the broader role of the state vis-à-vis environmental policy and socio-economics ordering of society. See for instance María Puig de la Bellacasa (ed), *Matters of Care: Speculative Ethics in More Than Human Worlds* (Minnesota University Press, 2017).

we are separate from it.[13] It also paved the way for the instrumentalization of the environment, solely existing for the purpose the serving of human needs,[14] opening up for the commodification, and market-based solutions discussed later on in this thesis. Dualism, in strengthening ideas of "objectivity" and "rationality", underpinned the shift towards the scientific methods being perceived as a superior form of knowledge for understanding, and thus controlling, the natural world, and indeed society more broadly.[15] Indeed, James Glover highlights that the belief that all questions, be it ecological or societal, can be reduced to calculation and rational deduction is a hallmark of modern scholarship and problem-solving.[16]

In relation to domestic legal systems, studies on the development of environmental law within the UK – which in many ways set early standards for common law systems across the world, and has significantly influenced international law structures and text – have shown how its emergence was, and continues to be, underpinned by an embodied dominance of instrumentalist thinking.[17] Like with dualism conceiving of humans and nature as distinct, the UK modern legal system began being conceived as an 'aggregate of discrete component parts' governed by individual reason, and for the purpose of supporting an industrial, capitalist growth-economy.[18] The idea of private property became a keystone legal concept, replacing ideas of the commons and dividing the space around us into distinct, separable sections of land, conceived of as `resources`. Peoples' relations to themselves and their surroundings became shaped by rights and duties, and the distribution of rights and entitlements was significantly skewed in favour of those capable of claiming more resources based on both political power as well as wealth.[19] Over centuries legal positivism came to play a larger role in organising society in ways so to strengthen financial concentration and economic growth, and emphasising the protection of individual liberties and rights,[20] as well as enabling the "civilised" nation state to establish itself as a sovereign power, capable of extending its geographic reach abroad.

In returning to international law, coloniality and environmental protection, Bikrum Gill highlights that dualism did not just underpin the emergence of an entirely new legal system and

---

[13] René Descartes, *Discourse de la method* (1637), 38.
[14] Daniel Matthews, 'Law in the Anthropocene: Climate Change, Environmental Activism & Law' in Illan rua Wall, Freya Middleton, Sahar Shah and CLAW (eds) *Critical Legal Pocketbook* (Counterpress, 2021), 66.
[15] Ibid.
[16] James Glover, 'Soul of the Wilderness: Can we Stop Trying to Control Nature?' (2000) 6:1 *International Journal of Wilderness,* 4. I would like to extend special thanks to Marie Petersmann for bringing this article to my attention.
[17] Sean Coyle and Karen Morrow, *The Philosophical Foundations of Environmental Law: Property, Rights and Nature'* (Hart Publishing, 2004), 7; Fritjof Capra and Ugo Mattei, *The Ecology of Law: Toward a Legal System in Tune with Nature and Community* (BK Publishers, 2015).
[18] Ibid (Capra and Mattei), 45-6.
[19] Ibid, 53-4.
[20] Ibid. This new focus on individual liberties and freedoms, coupled with the Lockean logic of associating land ownership with possession and dominion, productivity and economic rationality, led influential legal scholars at the time, such as Blackstone, to articulate a *legal science* that positioned private property rights as competing, rather than being aligned with the common good. See Coyle and Morrow, *The Philosophical Foundations of Environmental Law* (2004), 83. See also Matthews, *Law in the Anthropocene* (2021), 66.

the industrialisation across Europe, but also framed European colonialism across the globe. Here, the colonial-capitalist appropriation of the environment, and of territories and peoples, went hand-in-hand with the racialised distinction, dualism, between the Europeans as "the embodiment of human rational perfection", contra the Indigenous native who, due to their own insufficient separation from nature and "uncivilised" ways of living, "could not achieve without first submitting to European sovereign rule".[21] It was precisely the *othering* of local peoples, making them *less than*, European settlers, coupled with the equating of property and territorial sovereignty, with economic rationality of harnessing and maximising "nature's productive capacity", which justified dispossessing peoples from their lands, and forcing cultural and social assimilation.[22]

The idea that land "left wholly to nature" is waste, coined by liberal theorist John Locke,[23] during the seventeenth century, was hugely influential during colonisation and industrialisation. It paved the way for legal concepts such as *terra nullius* (land that is either empty or belonging to no-one, i.e. capable of being claimed) by assigning "natural right[s]" to property to those who carried out appropriate labour upon lands, in this case according to the industrial-capitalist ideology emerging in Europe at the time.[24] As stated above, this required discrediting and rejecting `alternative` associations, worldviews and ways of knowing and relating to land and nature, prompting cultural and social disenfranchisement and violence against Indigenous peoples in colonised and stolen spaces. These practices were driven by policies that sought to establish long-term governance across newly taken territories.[25] This required *turning* peoples into civilians, capable of being ruled. Underpinning this was the *constructive narrative* which associated these peoples, and their cultures as "barbaric", somehow being *less than* the colonisers*,* until they conform to the hegemony of the modern, "civilised" narratives.[26] In this regard, Rebecca Tsosie sees the history between Indigenous peoples and settler communities and colonialism as one of epistemic imperialism, channelled through the legal system; where epistemic values of efficiency, instrumentalism, and dominion over nature came to stand for what was "true", privileging science and technology as objective and therefore "value-free".[27] It is important for us to remember that, during this period, the scientific method was used extensively *in order to* justify the marginalisation, and violence

[21] Bikrum Gill, 'Beyond the premise of conquest: Indigenous and Black earth-worlds in the Anthropocene debates' (2021) 18:6 *Globalizations*, 918. See Yolanda Ariadne Collins and her colleagues also discuss this in light of contemporary conservation policies and practices. See Yolanda Ariadne Collins et al, 'Plotting the coloniality of conservation' (2021) 28 *Journal of Political Ecology*, 5; Prakash Kashwan et al, 'From Racialized Neocolonial Global Conservation to an Inclusive and Regenerative Conservation' (2021) 63:4 *Environment: Science and Policy for Sustainable Development.*

[22] See Chapter 5, Section 5.4.2.3.

[23] John Locke, *Second Treatise of Civil Government* (1690), Sec.42.

[24] See for instance Irene Watson, *Raw Law: Aboriginal Peoples, Colonialism and International Law* (Routledge, 2015), 5-6.

[25] Thom Kuehls, *Beyond Sovereign Territory* (Minnesota University Press, 1996).

[26] Ibid, 68-70.

[27] Rebecca Tsosie, 'Indigenous Peoples, Anthropology and the Legacy for Epistemic Injustice' in Ian James Kidd, José Medina and Gaile Pohlhause (eds) *The Routledge Handbook of Epistemic Injustice* (2017).

committed against Indigenous peoples, with studies in racial biology "proving" the inferiority of colonised peoples.[28]

In reflection of this, with regards to international environmental law and governance, scholars in Indigenous Climate Change Studies have argued that the consolidation of European sovereignty, enabled through Indigenous and native dispossession and the re-engineering of landscapes and ecosystems, carried out for the furtherance of settler colonial capitalist imperatives, disrupted and altered the ecological and social conditions that supported other cultures, and systems of health, economies, and political organising and self-determination. As a result, colonisation, and the spread of Westphalian onto-epistemes across the world, for instance through international law and international development, puts at risk the integrity of alternative ways of life. From an onto-epistemic, and spatial justice perspective, it also put forward, and overtime consolidated Westphalian legal structures, and European ideas of modernity, as not only favourable, but as *the only way forward.* In other words, as Heather Davis and Zoe Todd have argued, "the ecocidal logics that now govern our world are not inevitable or "human nature", but are the results of decisions that have their origins and reverberations in colonisation".[29]

A key consequence, for our purposes, of what is discussed above, is the changing associations between humans and the environment, in which European modernity, through industrialisation, frames nature as a collection of natural resources,[30] and our relationship to it being one of commodification, and exploitation. With human-nature relations framed this way, dualism translated into a form of environmental protection which saw nature best left alone, away from humans. For instance, *fortress conservation*, remains today as an older paradigm of conservation, representing an enduring legacy of colonial conservation efforts in the former British Empire, and later as expanded throughout the Americas through the establishment of national parks.[31] Coupled with racialised discrimination mentioned above, within the colonies this materialised in the further dispossession of land from native and poor peoples, yet now for the "benefit" nature.[32] Access to these places, "parks", was also granted only to those who could afford time and travel, as well as those deemed appropriate visitors.

---

[28] See discussion in Chapter 3 and Chapter 6.

[29] Heather Davis and Zoe Todd, 'On the Importance of a Date, or, Decolonizing the Anthropocene' (2017) 16:4 *ACME: An International Journal for Critical Geographies*, 763.

[30] Walter Mignolo, *The Darker Side of Western Modernity: Global Futures and Decolonial Options* (Duke University Press, 2011).

[31] William M Adams, 'Nature and the Colonial Mind' in William M Adams and Martin Mulligan, *Decolonising Nature: Strategies for Conservation in a Post-colonial Era* (Earthscan, 2003), 42; Dan Brockington, *Fortress Conservation: The Preservation of the Mkomazi Game Reserve* (James Currey, 2002).

[32] See for instance Robert Poirier and David Ostergren, 'Evicting People From Nature: Indigenous Land Rights and National Parks in Australia, Russia and the United States' (2002) 42:2 *Natural Resources Journal*; Dowie, *Conservation Refugees* (2011). Notably, this nature/society dichotomous discourse remains today, setting the scene for too many discussions on environmental regulation and governance. For instance, in the Finnish court case mentioned below in footnote 122, the prosecution framed the issue as one of ecological integrity ***versus*** Indigenous fishing rights, rather than imagining alternative structures where collective socio-cultural-ecological wellbeing could be upheld.

This traditional narrative of conservation being portrayed as a conflict between environmental concerns and the interests and rights of local peoples, persists today, and has led many to associate biodiversity protection and conservation with inequitable practices, prompting its field of work within environmental justice scholarship.[33] Notwithstanding the injustices emerging from fortress conservation approaches, more recent work has highlighted that these approaches to conservation have proven largely inefficient in addressing, or stemming the loss of biodiversity across the world. For one, it treats nature as bounded, capable of being fixed in time and space, rejecting the porous nature of our ecologies and that ultimately the very idea of borders is a human concept.[34] More directly, fortress conservation measures do not address the key drivers of biodiversity loss, which are ultimately connected to societal values and behaviours and global-scale activities including industrialisation and consumption driving changes in land- and seascapes, as well as exploitation,[35] all of which are supported and incentivised through legal and political structures. This has prompted many to question the disproportionate emphasis still placed upon protected area conservation within the CBD framework, and stands as a reminder that more needs to be done in order to both address biodiversity loss, as well as the injustices that has been committed in its name in the past.[36]

Since the 1970s, `participation` and the inclusion of local actors has been promoted as a solution for both these issues, as seen for instance in the Community Based Natural Resource Management (CBNRM) approach. Notwithstanding the argument that `participation` can lead to better outcomes (as discussed in Chapter 5), participatory conservation in particular has often been framed as a "win-win" solution, premised upon the idea of offering community economic incentives, or "buy in" for conservation stewardship for achieving ecological sustainability, while also ensuring equitable results and social wellbeing amongst local populations.[37] This has led to initiatives across the world, within international as well as local scales of decision-making, with mixed outcomes. Regardless, local actors have continued to experience displacement and continued marginalised within local, domestic and international processes related to biodiversity "conservation" and "use". Within international legal negotiations in particular, little work currently exists exploring the varying forms, extent and nature of the barriers to `participation` within these spaces, and how they may trickle "down" to work within domestic and local settings. To explore these phenomena, I have adopted an

[33] Ibid. See also footnote 31 above.
[34] See for instance Barnabas Dickson and Jon Hutton, *Endangered Species, Threatened* Convention (Routledge, 2000).
[35] According to the IPBES Global Assessment, the direct drivers to biodiversity loss have been changes in land and sea use, direct exploitation of organisms, climate change, pollution and invasive alien species. See IPBES, *Global Assessment Report Summary* (2019), 12.
[36] For instance, compared to other conservation approaches discussed therein, bar the more recent debate on *Nature Based Solutions* (discussed in Chapter 6), the establishment of protected areas gains significant attention at negotiations, and external communication efforts within the CBD. See for instance the most recent debate on the 30by30 goals under the post-2020 Global Biodiversity Framework.
[37] Jon Hutton et al 'Back to Barriers? Changing Narratives in Biodiversity Conservation' (2005) 2 *Forum for Development Studies,* 341; Woldfram Dressler at al., 'From Hope to Crisis and Back Again? A Critical History of the Global CBNRM Narrative' (2010) 37:1 *Environmental Conservation,* 5.

approach of spatial justice, grounded in a broader critical framework of environmental law, intersectional justice and critical legal geography, drawing on a fusion of doctrinal and ethnographic research methods. The remainder of this chapter will introduce these strands of the theoretical foundations of my research project.

2.3 `Participation` and Conservation in Constructed Spaces: the Production of Law and Space and the Desirability of Spatial Justice

For unpacking the practice of `participation` by local actors I have adopted an approach informed by the scholarship related to law's spatial turn. This invites for an interrogation and reimagining of the legal, from the perspective of critical legal geography and legal anthropology. A key aim here is to bring out the 'unacknowledged assumptions about space that works to stabilise the validity of seemingly obvious positions, identities' and the very meaning of 'law' itself.[38] This includes interrogating the supposed stability of its discourses, sources and processes, the embeddedness of power relations therein, and the homogenisation of its narratives which ultimately provide the conditions for the exclusion of `marginalised` groups and perspectives that do not satisfy the status quo.[39] Related to questions of justice, I will draw upon Philippopoulos-Mihalopoulos to distinguish between social and spatial in/justice[40] within these processes and spaces, hoping that the latter will highlight the challenges facing certain actors in their aims of challenging rules, discourses and structures in place, embedded within the epistemologies and ontologies upon which much environmental law is currently founded. The following section will aim to lay the groundwork for this approach.

2.3.1 Law's Spatial Turn

It is uncontroversial to claim that law is constituted of the socio-political reality within which it 'takes place' and is produced.[41] It both shapes and is shaped by its surroundings, be it social relations, relative identities, institutional structures (familial, economic, political) and borders (the nation state; private and public domains). As such, space and place (both in its physical and metaphysical constellations) is intricately connected to the legal, in a sense that each *shapes*, and gives meaning to an *understanding* of the other.[42] Law is the process of gaining

[38] Blomley, Delaney and Ford (eds) *The Legal Geographies Reader* (2001), xv.
[39] Ibid.
[40] Although Philippopoulos-Mihalopoulos writes abouts spatial justice, I have made the decision, like the editors of the *Routledge Handbook of Epistemic Injustice*, to write of spatial **in**justice, as this better captures the experiences of peoples and collectives, not to mention that according to Philippopoulos-Mihalopoulos himself, spatial justice itself is never actually achieved. See Section 2.3.3.
[41] Just in the sense that Edward Soja considers "social life [to be both] space forming and space contingent". In Edward Soja 'The Spatiality of Social Life: Towards a Transformative Retheorization" in Derek Gregory and John Urry (eds) *Social Relations and Spatial Structures* (Palgrave, 1985).
[42] For instance, law provides the concepts and tools for us to delineate spatial boundaries within and between public and private lands, with each segment of land thus embodying a materialisation of the law. Bodies become the embodiment of the relationships arising and provided for through the law related to selling and buying. Environmental law establishes the concept of 'acceptable' engagement with our spatial surroundings, be it a grassy or forested park, dangerous substances in our homes or cities, or the extractive and/or polluting activities by corporations.

access or being excluded; it is the reduction of our environments into `natural resources` and determining user-rights thereafter; it is in the designation of natural parks; in the movement of peoples around the globe; the process of identity formation and rejection (both in the sense of territorial boundaries but also through conscripted, societal definitions and understandings). As Philippopoulos-Mihalopoulos has aptly illustrated in his work on spatial in/justice, the law (and space) is the *lawscape*, embodied *within* everyone and everything: the interplay between law and space provides the negotiation of relations between bodies.[43] On the structures and relations implicated within the concept of space, Doreen Massey writes "[s]pace is by its very nature, full of power and symbolism, a complex web of interactions of domination and subordination, of solidarity and cooperation".[44] To Massey, space is a product of the interrelations of *embedded* practices.[45]

The parallels unearthed between socio-legal and socio-spatial inquiries, and their encounters with theories in feminist literature, queer theory, post-humanist theory, *post*colonial and critical legal scholars, contributed to the emergence of legal geography and the ensuing *spatial turn* in law.[46] It is, in many ways, a response to the traditional approaches to legal research grounded in law's supposed separateness, rationality and supposed neutrality, stemming from its portrayal as neutral, or "deaf" to material, physical, spatial and cultural influences.[47] The methods taught in law schools and favoured by legal practitioners is grounded in legal positivism, which largely focuses on law as a self-contained and self-sustained set of principles and values, deriving from legal texts and judicial decisions, drawn on by scholars and practitioners in seeking order, rationality and theoretical cohesion.[48] To challenge this, socio-legal researchers studying *law in context* have sought to "demystify the positivist mentality of neutrality in law" as well as other assumptions made about its statist and formalist foundations.[49] By treating law as an inherently societal phenomenon, complex in its forms and structures, and in the ways that it is created, used and interacts with other rules and normative structures in society (be it scalar, sectoral, institution, and so on), critical scholars in particular have illustrated the deeply political and value-laden nature of legal interpretation and practice.[50] Ultimately, what becomes clear is that any one hegemonic approach to studying and

[43] See generally Philippopoulos-Mihalopoulos, *Spatial Justice* (2015).
[44] Doreen Massey, 'Politics and Space/Time' (1992) 196 *New Left Review.* 66. Alongside Doreen Massey, the list of influential scholars who's contributed to the work leading to *laws spatial turn* include Yi-Fu Tuan, Jane Holder, Carolyn Harrison, David Harvey, Nicholas Blomley, William Taylor, Irus Braverman, Andreas Philippopoulos-Mihalopoulos and Alexandre Kedar.
[45] Ibid.
[46] Blomley, Delaney and Ford, *Legal Geographies Reader* (2001), xvii.
[47] Jane Holder and Carolyn Harrison, 'Introduction', in Jane Holder and Carolyn Harrison (eds) *Law and Geography: Current Legal Issues, Volume 5* (OUP, 2003), 3.
[48] Mike McConville and Wing Hong Chui, 'Introduction and Overview' in Mike McConville and Wing Hong Chui (eds) *Research Methods for Law* (Edinburgh University Press, 2007).
[49] Margaret Davies, *Delimiting the Law: Postmodernism and the Politics of Law* (Pluto Press, 1996), 2.
[50] Margaret Davies, *Asking the law question* (Routledge; Fourth edition 2017), 32-36.

conceiving of the law would be incomplete in telling us what the law *is,* or what it *does* – law, as any societal phenomenon or occurrence, can be perceived from a multitude of perspectives.[51]

The scholarship and debates found in legal consciousness have been particularly important for the ensuing *spatial turn* in law, arising as a response against the instrumental view of law which effectively perceives social change as deriving from legal reform, with law therefore being perceived as an ideal statement of society against which behaviours and actions should be compared.[52] From this critique grew a perception of law and society as mutually constitutive in that they are mutually co-defining; one cannot exist or have meaning without the other.[53] On the one hand, law constitutes and shapes society by laying down conditions for everyday existence, through urban planning regulations, designating public/private spaces, food, medicines, movement of goods and peoples, private/public/working lives. On the other hand, society constitutes law in the sense that 'formal' law, legal interpretation and change (at least as it is perceived in the UK) is often a response to social change or 'accepted' societal norms. As Davies explains, "social meanings are read into the law in the process of interpretation".[54] Another way society constitutes law, is through the ways in which the societal "repeated micro-interactions of daily life" set the standards and patterns of behaviour, with law then being constituted through its performance in everyday life, by politicians, individuals, in the way it impacts relations between peoples, and in its spatial configurations.[55]

From this perspective, legal consciousness paints a picture of law being local, contextual, pluralistic and dynamic, filled with conflict and contradiction, as opposed to conceiving it as fixed, unitary and consistent.[56] As with legal pluralism,[57] further explored below, legal consciousness acts to '"remove law from its institutional and formal legal setting, and show its

[51] See for instance Allison Graham, *Essence of Decision* (Brown and Company 1971); Margery Wolf, *A Thrice-Told Tale: Feminism, Postmodernism and Ethnographic Responsibility* (Stanford University Press 1992).
[52] Davies, *Asking the Law Question* (2017)*,* 429-30.
[53] For instance, David Engels in his work, has focused on the ways in which law and everyday life interacts so to define its actors, constructing perceptions of time and space, and shapes norms. See David Engel, "Law in the Domains of Everyday Life: The Construction of Community and Difference" in Austin Sarat and Thomas Kearns (eds), *Law in Everyday Life* (University of Michigan Press, 1993).
[54] Davies, *Asking the Law Question* (2017), 430.
[55] Ibid, 431. Marshall and Barclay refer to the mutual constitution of law and social life as a "push and pull of legal ideas": These *pushing* and *pulling* forces stem from the imposition of constraints and regulations, but also from the ways in which we enact law in every-day life through our actions, embodying it, performing it and generating changes through micro-alterations in how we understand it. See Anna-Maria Marshall and Scott Barclay, 'In Their Own Words: How Ordinary People Construct the Legal World' (2003) 28 *Law and Social Enquiry*, 617-8.
[56] Notably, Davies emphasises that legal consciousness is *not* about what individuals (or even collected groups) think and feel about the law, but rather it is about *embedded* social practices, and the ways that these lead to the reproduction of certain forms of legality and 'accepted' actions, for instance public perceptions of law as neutral and indiscriminate, and in more subtle ways its determination of opportunities for resistance and change. Davies, *Asking the Law Question* (2017), 435.
[57] Here legal pluralism refers to the perception that any given space is made up of multiple intersecting forms of law and normativity which influences peoples' lives. See section 2.3.2 below.

inseparability from social life".[58] These perceptions of law make it less determinate in the sense that it sees law as constantly emerging and changing. Several scholars, most grounded in the traditional western positivist school of thought, disagree with such approaches to legal theory, preferring instead an idea of law as capable of being pinned down to a definable and readily identifiable "thing".[59] However, as Davies explains, as illustrated by legal pluralism and legal consciousness studies, once law is recognised as social (and societal) in nature, it inevitably loses its determinate *thing*-like qualities for the simple reason that social life itself is endlessly dynamic.[60] Therefore, adopting a reductionist approach for the sake of ensuring that law remains 'bounded', separable and with definable borders would be disingenuous, with Davies arguing that the challenge in legal theory should instead be to accommodate, rather than reject, law as 'less separate' and 'less bounded'.[61]

What we see above is the groundwork for what is to become the *spatial turn*[62] in legal scholarship, in which socio-legal scholars began drawing on concepts and terminology from geography in exploring law's spatiality – focusing on questions like "where is law" as opposed to "what is law", and challenging the distinction between law and space. Famously, Austin Sarat expressed that "the law is all over".[63] Emerging from this scholarship is the perception of law and space as inseparable and co-constitutive, law/space is understood as produced and performed (socially, politically, spatially/legally); as plural; as ever unfolding (historical/temporal); as political and highly contested and as made up of human and non-human relations. Important in this regard is the understanding of space beyond its physical materiality, it is also the relationships between things, bodies, meanings and knowledges, found repeated and prescribed in law.[64] In line with Lefebvre's work exploring the production of space[65] critical human geographers accept that space is plural, that it is political and highly contested, and that it holds an inseparable temporal aspect: it is "always under construction", and "never finished, never closed", and part of a continuum of activity.[66]

In a seminal collection from 2001, Blomley, Delaney and Ford suggest that this shift towards exploring law's spatiality has proven significant in bringing forth new perspectives within legal research, contributing to a better understanding of law, legal practice and knowledge within

[58] Davies, *Asking the Law Question* (2017), 436.
[59] Ibid, 416-7 and 436. See also Simon Roberts, "Against Legal Pluralism: Some Reflections on the Contemporary Enlargement of the Legal Domain" (1998) *Journal of Legal Pluralism and Unofficial Law*.
[60] Ibid.
[61] Davies, *Law Unlimited* (2017).
[62] More broadly, John Urry has written on the "dissolution" experienced across the traditional social sciences following three key developments: "the linguistic turn, the temporal turn and the spatial turn". See John Urry, "Work, Production and Social Relations" (1990) 4 *Work, Employment and Society,* 271.
[63] Austin Sarat, ""...The Law is All Over": Power, Resistance, and the Legal Consciousness of the Welfare Poor" (1990) 2 *Yale Journal of Law and the Humanities*. See also Blomley, Delaney and Ford, *Legal Geographies Reader* (2001), xv.
[64] Henri Lefebvre, *The Production of Space* (Blackwell, 1991).
[65] Davies, *Asking the Law Question* (2017), 445.
[66] Doreen Massey, *For Space* (Sage, 2005), 9; Ibid, 442.

social and political life.[67] To begin with, conceiving "space" and "law" as mutually constitutive opens up new understandings of both concepts, giving rise to new questions, topics and methods of inquiry. For example, addressing and exploring law's spatiality – and thus its materiality – can bring new light, and socially-informed insight, to the eon-old question of *what law is* (commonly a debate dominated by traditional western jurisprudential scholars), helping to challenge embedded assumptions about centralised law-making spaces, nudging us towards literatures on legal pluralism and methods from legal anthropology and sociology.[68] Also, by conceiving the social (political, historical, cultural) in terms of the spatio-legal, we can gain new insights into the inquiry of social life and, more specifically, the drivers and consequences of social change.[69] For instance, rejecting myopic perspectives of law and space as distinct factors provides more holistic comprehensions of socio-material reality, [70] in turn providing for a deeper understanding of 'society' and societal notions such as identity and culture, including the ways that these implicate, and are implicated by, law and space.[71] Finally, and most importantly, taking seriously, and in exploring the connections between the themes of law as discourse, law as representational and law as power brings forth new questions on how space (and the conditions therein) is produced, maintained and transformed. In highlighting the way that space and law intermingle and co-produce the other through spatial and legal representations, metaphors and images, legal geography provides a framework for exploring the naturalisation of uneven power relations through un/seen meaning-making processes within a given space.[72]

This final point is significant, and my most important point of entry into the literature. Such perspectives bring into focus the dimensions of power and conditions for relations and `participation` within a given space, and are thus incredibly important for my research enquiry. Bodies carry the law with them everywhere; we embody it; we act upon it always, having it steer us in our daily decisions and expressions.[73] Our identities are prescribed by it – it gives particular and peculiar meaning to bodies and knowledges, awarding each a place/role within spaces, enabling the privileging of some while pushing others to the margins. These perspectives are particularly pertinent within the field of international law and law-making, as its mainstream, grounded in euro-western legal traditions, remain dominated by doctrinal studies failing to engage with questions of power, representation and discourse.[74] Also,

[67] Blomley, Delaney and Ford, *Legal Geographies Reader* (2001).
[68] See for instance also Franz Von Benda-Beckmann, Keebet Von Benda-Beckmann and Anne Griffiths (eds), *Spatialising Law: An Anthological Geography of Law in Society* (Routledge, 2009).
[69] Blomley, Delaney and Ford, *Legal Geographies Reader* (2001), Preface.
[70] Ibid, xvi-xvi.
[71] Ibid at xvii.
[72] Delaney, Ford ad Blomley put it aptly when stating that territorial structures, "boundaries *mean*: they signify, they differentiate, they unify the inside of the spaces that they mark". See ibid, xviii.
[73] See generally Austin Sarat and Thomas Kerns (eds) *Law in Everyday Life* (University of Michigan Press 1995).
[74] See for instance Richard Collier, 'The Law School, the Legal Academy and the "Global Knowledge Economy – Reflections on a Growing Debate: Introduction' (2005) 14:2 *Social & Legal Studies*, 261; Susan B. Boyd, 'Corporatism and Legal Education in Canada' 14:2 *Social & Legal Studies,* 287. For developments beyond the mainstream, see for instance Margaret Davies, *Law Unlimited* (Routledge, 2017). See also Section 2.3 below.

traditional approaches to legal research through doctrinal analysis do not provide the tools for adequately exploring the ways that legal scales interact within a given space.[75] Nor does it help in unearthing the relationship between actors within a given legal process, or the way that their reliance and contributions (shaped by their power) to particular narratives and discourses can reinforce the shaping of a very particular (hegemonic) worldview, and how this leads to the embeddedness of concepts and relations therein.

As taught at universities, international law is traditionally viewed as a more or less exclusive process, commonly conceived as an endeavour of global harmonization or uniformisation of laws involving States.[76] Notwithstanding the increase in the `participation` of civil society organisation and the representation of particular interest groups at the meetings of international legal institutions, particularly within certain multilateral environmental agreements, [77] the idea of local actors and `stakeholders` or *contributors* to the law-making process is an idea foreign to many of my colleagues within the traditional school of public international law, and a topic seldom covered in textbooks.[78] Not only does this provide an impoverished view of the dynamism of the international legal process and its actors, but the lack of research carried out in this area exploring the *spaces of negotiations*, including power dynamics and relations therein, also means that there is little understanding of the meaning and practice what `participation` actually looks like, even though it is a term regularly drawn on in international legal discourse. We know little of the potentials and pitfalls associated with its invocation within international governance structures, for instance about the extent to which it enables a challenge, or re-embedding of uneven power dynamics therein. In this regard, there is little awareness as to how it is conditioned, and whether and how these seemingly inclusive processes contribute to the establishing of norms that more adequately reflect the

[75] In the sense that traditional approaches can only explore these questions in the abstract through legal texts, burdened by prescribed categorisations founded in statist perceptions of law and sectoral-managerial terminology.

[76] See for instance Werner Menski, *Comparative Law in a Global Context* (CUP, 2006), 38-9; William Twining, *Globalisation and Legal Theory* (Butterworths 2000), at 61; Eve Darian-Smith, 'The crisis of legal education: embracing ethnographic approaches to law' (2016) 7:2 *Transnational Legal Theory*. Of course, even such a seemingly simple suggestions is made complicated when you consider issues of the concept of Statehood – the non-recognition of certain States (e.g., Palestine), lasting colonial relations (e.g., Puerto Rico, Falkland Islands, French Guiana) semi-autonomous bodies (e.g., Hong Kong), etc. Nevertheless, the state-centric discourse surrounding international law-making goes largely unchallenged.

[77] The UN Framework Convention on Climate Change (UNFCCC), Convention on International Trade in Endangered Species (CITES) and the CBD especially come to mind. Notably, within the social and political science literature concerning climate change, there is an emerging trend in studies exploring the role of civil society organisations at UNFCCC meetings. See for instance Linda Wallbot and Andrea Schapper, 'Negotiating By Own Standards? The Use and Validity of Human Rights Norms in UN Climate Negotiations' (2017) 17:2 *International Environmental Agreements: Politics, Law and Economics*, 209-288.

[78] My own personal observation is that discussions on the participation of local actors and stakeholders is often only awarded a paragraph within textbooks commonly used within public international law courses. And in discussion with fellow PhD students whose topics usually fall within the traditional public international law school, I often get perplexed facial expressions when explaining that I am exploring the role of local actors and stakeholders as *lawmakers* within these processes.

rich diversity of perspectives, knowledges and interests that we must draw on in order to address socio-environmental injustices occurring across the globe.

2.3.2 Law, Lawscapes and Legal Pluralism

For unpacking the materiality of `participation` at international biodiversity negotiations, I will be drawing upon the work of Andreas Philippopoulos-Mihalopoulos on his concept of the *lawscape* and spatial in/justice. The following subsection will lay out his concept of law and the lawscape, bridging this with the legal anthropological debate on legal pluralism, with my next section moving on to introduce *tilts*, atmosphere, *withdrawal*, *rupture*, and their role(s) in our ambitions towards spatial justice. I will then explain and illustrate why and how this concept will be used for addressing the enquiry at the heart of this research. My aim is to bring Philippopoulos-Mihalopoulos' work, and that of other legal geographers more explicitly into conversation with literature on legal pluralism by exploring spaces of law-making within unconventional settings. In my mind, the concept of spatial in/justice carries a transformative potential[79] in that it provides a new way of conceiving of, and addressing questions of power as embodied within spatial and normative legal settings, and provides targeted directions for future work that emphasises the need for epistemological and ontological diversity and differentiation within the international global regime[80] (as opposed to its current homogenizing agenda), further discussed in chapter five and six.

Philippopoulos-Mihalopoulos conceives the relationship between law and space as that of natural bedfellows, and their "linking" so natural that no "logical steps" is required to be taken; there is no distance to be bridged – law and space naturally emerge as *lawscape*. He explains it as follows: each operate as a means of better understanding the other, or at least aspects of the other. In focusing on the spatial we can visualise law's materiality,[81] such as the way it creates societal truths and perceptions through its narratives, the way it seeks to 'manage' power struggles within a given setting, and its role in facilitating processes of capital production and consumption in society more broadly.[82] When seen through a spatial lens, the

[79] The need for a transformation in how we perceive law, space, and the interconnections between law and power therein has been covered extensively in socio-legal literature, much of which has been introduced above. See especially Davies, *Law Unlimited* (2017). See also works by Peer C. Zumbansen, Benjamin Richardson, and Nicole Graham.

[80] Here, 'global' refers to the web of connections between 'scales' and across 'fields' of study (treating these as unbounded concepts), which, in my mind, does not hold a *de facto* distinct hierarchical order of laws, their manifestations and sources (this is not to say that those hierarchies do not exist, or rather aren't enforced, within a given space). In other words, I am conceiving the 'global regime' as an instance in which we visage the coming together of the multiplicity of layers that make up an international and enmeshed lawscape (see below on the activity-continuum of lawscapes).

[81] Davies discusses the renewed materialist theory which critiques, on the one hand the abstraction of law in legal theory, stemming from legal positivism and natural law, which effectively seeks to remove law from daily interactions (see above). On the other hand, Davies also highlights critiques, on a more fundamental level, of the dualism which underpins traditional western legal and jurisprudential thought, such as that pertaining to body/mind, nature/culture, object/subject. Davies proposes that in order for us to imagine, and embrace new conceptualisations of law that grasp the 'entanglement' of matter and meaning, we must refocus on ontological enquiry. See Davies, *Law Unlimited* (2017).

[82] Philippopoulos-Mihalopoulos, *Spatial Justice* (2015).

presence of law becomes clear: planning restrictions, environmental regulations, borders (be it territorial, geographic or ecological), private land rights, restricted access to areas, spatial planning, headscarves in schools and the cross-border flows of bodies.[83] At the same time, law provides us a way of understanding and conceiving space: law's *obsession* with naming, categorising, and organising, means that it grants itself the role of measuring space. It becomes our reference point for understanding our existence and surroundings. So, the relations there between is not a matter of creation, but rather providing the conditions for our understanding of the other.[84] Notably, geography scholar Doreen Massey envisages space as being the "contemporaneous existence of a plurality of trajectories", reminding us that any given space will hold a "simultaneity" of "intertwined, open-ended trajectories",[85] which illustrates the inherent plurality of perspectives, imaginaries and experiences which fill a space. Law heralding from traditional western positivist thought and practice seeks to solidify space by employing its tools in embedding certain episteme and ontologies within its discourses, prescribing a single vision of a space as truth, and as inevitable.

To Philippopoulos-Mihalopoulos, the lawscape emerges through the embodiment of "law as life of the bodies that bear the law in them".[86] This corresponds with scholars across the socio-legal and critical legal scholarship[87] who argue that beyond the *standard*, written, codified black-letter law, law also exists as "specifically situated". This refers to the embodiment of law within bodies and the ways it sets out determining the relationships there between. In this sense, the lawscape is produced and determined by the interrelationship between law and space in and between bodies. To put it into perspective for my own endeavours: within international negotiations law is created, but also lived and embodied within that space, between people. Philippopoulos-Mihalopoulos draws on Spinoza's *rules of living* to further broaden the scope of the law within the lawscape, drawing on literature related to the *normativity of the everyday*, including legal cultures and the production of norms not *strictly legal*, yet still perceived as contributing to the production of law, and forming part of determining relations within the lawscape.[88] Notably, Philippopoulos-Mihalopoulos here points out

[83] See for instance Nicholas Blomley, *Law, Space and the Geographies of Power* (Guilford Press, 1994).
[84] The question, as to which creates which, is of a circular nature in this regard. Law, at most, creates a narrative or adopts a discourse through which we learn to perceive, and relate to space. Space provides the means for the creation, and embodiment of the law, yet law itself does not flow from it. *Law is spatial through and through; the space is legal through and through*. See Mihalopoulos, *Spatial Justice* (2015), 15-6.
[85] Doreen Massey, *For Space* (Sage Publishing, 2005), 14 and 113.
[86] Philippopoulos-Mihalopoulos, *Spatial Justice* (2015), 67.
[87] See also Sally Falk Moore, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study' (1973) 7:4 *Law and Society Review*, 719-746; Sally Engle Merry, 'New Legal Realism and the Ethnography of Transnational Law' (2006) 31:4 *Law and Social Enquiry*, 975-995; Davies, *Unlimited Law* (2017); Nicole Graham, Margaret Davies and Lee Godden, 'Broadening Law's Context: materiality in socio-legal research' (2018) *Griffith Law Review*.
[88] See for instance Baruch Spinoza, *Treatise on the Emendation of the Intellect* (Originally published 1677; translated Dodo Press 2009); Sarat and Kearns (eds) *Law in Everyday Life* (1995); Vaugha Lowe, 'The Politics of Lawmaking: Are the Method and Character of Norm Creation Changing?' in Michael Byers (ed) *The Role of Law in International Politics* (Oxford University Press 2000); David Nelken (ed) *Using Legal Culture* (Wildly Simmonds & Hart Publishing 2012); Deleuze Gilles and Felix Guattari, *A Thousand Plateaus* (Bloomsburg, 2013).

that each lawscape is its own law and its own space – singularly, but also part of a greater lawscape continuum.[89]

This view can be further enriched by drawing on the work of legal anthropologists within the field of legal pluralism, which recognises that many people live under "plural legal constellations",[90] providing perspectives that would open up, and more adequately reflect the laws embodied within international negotiations and local governing bodies. This would mainly mean drawing on those scholars who engage more with the role that customary law and colonial legal history plays in contemporary legal scalar constellations, [91] including the growing study of legal fragmentation within the global sphere, [92] rather than the traditional exploration of relations between state and non-state laws. [93]

The most important contribution that this would bring is the move away from the traditional, positivistic concept of law as only that which emerges from the sovereign (be it monarch or State agencies).[94] While Philippopoulos-Mihalopoulos does engage with legal sources other than positive law,[95] he does not explicitly engage with the literature on legal pluralism, nor with works by legal anthropologists more broadly, despite there being a rather natural link to be drawn here. For instance, in the edited collection, *Mobile Peoples, Mobile Laws,* Franz and Keebet von Benda-Beckmann's and Anne Griffiths open up the debate for "decentring the state [to] allow for the possible existence of normative orders with quite distinct foundations of legitimation, beyond the state as well as within national borders".[96] This, alongside the work of other anthropologists whose work also explores relationships between decentralised normative orders and scales[97] provides an excellent frame for moving forward and understanding legal and spatial relations within international law-making. Furthermore, the book's case studies aim to show the "importance of looking at the chains of interaction connecting

[89] Philippopoulos-Mihalopoulos, *Spatial Justice* (2015), 7-9.
[90] Franz Von Benda-Beckmann et al, *Spatializing Law* (Ashgate, 2009), 4.
[91] See for instance Sally Engle Merry, 'Law and Colonialism' (1991) 25:4 *Law and Society Review,* 890-922. Sally Falk Moore provides an overview of the historical and ideological roots of these two approaches in a 1969 article. See Sally Falk Moore, 'Law and Anthropology' (1969) 6 *Biennial Review of Anthropology*. In a more recent paper, Franz von Benda Beckman offers an overview of the later and more recent developments of such research within the field of legal anthropology. See Franz von Benda Beckman, 'Riding or Killing the Centaur? Reflects on the Identities of Legal Anthropology' in Michael Freeman and David Napier (eds) *Law and Anthropology: Current Legal Issues Volume 12* (OUP 2009).
[92] See generally Gunther Teubner, *Constitutional Fragments: Societal Constitutionalism and Globalization* (Oxford University Press, 2014).
[93] John Griffiths, 'What is legal pluralism?' (1986) 24 *Journal of Legal Pluralism*; Brian Tamanaha, *Realistic Socio-Legal Theory: Pragmatism and a Social Theory of Law* (Oxford Clarendon Press 1997); Masaji Chiba, 'Other Phases of Legal Pluralism in the Contemporary World' (1998) 11:3 *Ratio Juris*; and Brian Tamanaha, *A Realistic Theory of Law* (CUP 2017).
[94]See for instance Twining, *Globalisation and Legal Theory* (2000), 232; Franz Von Benda-Beckmann et al (eds) *Mobile Peoples, Mobile Law* (2005); Menski, *Comparative Law (*2006), 82-4.
[95] In his work, Philippopoulos-Mihalopoulos distances himself from Spinoza's more conservative writings precisely because these assume the presence of a sovereign. Instead, what he is doing is 'trying to construct […] a law without a centralised sovereign but of a central emergence, at the same time, is not natural law since it is based on each body's incorporation and acting out of the law'.
[96] von Benda-Beckman et al, *Mobile Peoples Mobile Laws* (2005), Introduction.
[97] See footnote 91 above.

transnational, national and local actors in multi-sited arenas of negotiation along with the power relations that structure these interactions and are reproduced or changed by them". The authors refer to the "multi-spatial contextualisation of law" (i.e., chains of reaction) and the actors and their respective powers in forming or constraining local initiatives, while also recognising the potential space for local actors to "appropriate" and strategically transform foreign concepts to their own needs and interests,[98] as well as enabling new terminology to make it into legal texts. In discussing methods of research for studying multi-scalar legal phenomena, the von Benda-Beckmann's and Griffiths argue that an anthropological perspective not only helps illustrate that the study of transnational law and its influence on 'local legal constellations' cannot be understood without giving attention to the plural character of these situations, but also elucidates the "inequalities of power that give rise to hierarchies of privilege, control, marginalisation and exclusion" within given spaces.[99]

This resonates well with the themes introduced above within the literature on law and geography and law's spatial turn, making it clear that the thinking and methods found in legal anthropology will provide a helpful lens through which I can open up discussions on what actually constitutes *the legal* within a given space, addressing not only the diversity of normative frameworks, concepts and worldviews therein, as well as the extent to which they receive recognition beyond the written word. In response to the homogenizing narrative found within international law more generally, legal anthropology is particularly well suited to deal with the complexity that is encountered within these spaces, providing tools to dispel lasting beliefs and trends of treating various locales and groups as discrete, homogeneous, territorialised cultures.[100] In other words, I believe that legal anthropology and specifically the work of those authors who explore linkages between laws materiality and legal pluralism can contribute to a richer understanding of law within the lawscape. In turn, I also believe that law's spatial turn provides for a richer lens for legal anthropologists to explore the *phenomenon* of legal pluralism within a given space. Bridged, and when speaking of spatial in/justice, I believe that such methodology can provide tools for a reassessment of traditional legal epistemologies and open up the door for a renewed understanding of law's embodiment, both as deriving from a process in which in/visible power structures and hegemonic discourses exist and emerge, but also as a medium through which we understand our social and political reality and relations.

[98] Ibid. Alice Vadrot has carried out similar analysis in her study on CBD negotiations. See Alice Vadrot, *The Politics of Knowledge and Global Biodiversity* (Routledge, 2014) and Alice Vadrot 'Multilateralism as a 'site' of struggle over environmental knowledge: the North-South divide' (2020) *Critical Policy Studies*.
[99] Ibid.
[100] See for instance Anne Griffiths review of Susan Drummond's book *Mapping Marriage Law in Spanish Gitano*, particularly praising Drummond's critique of traditional classifications of *Gitano's* as a coherent *Communities* cultural/territorialised group of 'exotic foreigners', instead promoting an understanding of the local relations as a 'disordered social field of connected practices and beliefs that are produced out of social action'. See Anne Griffiths, 'Law, Space and Place: Reframing Comparative Law and Legal Anthropology' (2009) 34:2 *Law & Social Inquiry,* 500.

2.3.3 Spatial In/justice: Atmosphere, Rupture, Withdrawal and Shifts

Returning to the lawscape, the following section lays out the concept of spatial in/justice, introducing also the idea of *tilts*, *atmosphere*, *rupture* and *withdrawal*, which are all elements linked to the lawscape and part of the process from which spatial in/justice emerges.

Philippopoulos-Mihalopoulos conceives the lawscape as arriving from the way in which the *ontological tautology between law and space unfolds.*[101] This unfolding occurs as a movement, a shifting, between the law's and space's in/visibilisation. This is the essence of the lawscape and produces what Philippopoulos-Mihalopoulos calls *atmosphere*, which is underpinned by the times, and ways in which the lawscape *appears* more or less legal; more or less spatial. This process is one of (sometimes strategic) negotiation that rests on explicit or implicit desires. For instance, law becomes visible when bodies draw on it for disciplinary or enforcement purposes; space becomes visible when consumerism or leisure is put into focus/encouraged.[102] Applying this thinking to my own project, at CBD negotiations, law is made visible when observer groups draw on CBD provisions to argue or justify their presence and stance within a given debate, as prescribed for within the convention texts. It also becomes visible when participants refer to provisions in order steer discussion along a certain discourse, say by bringing in matters of human rights, the need for technology transfer or differentiated responsibility. What becomes invisible in those instances is the ways in which a given discourse may restrict the space of `participation` of others, including their own `alternative` discourses, ontologies and epistemologies not prescribed for within the text. Rules of procedure also take un/official forms, which will have implications on the way that actors can/not draw on these in pushing back against their peripheral treatment, or direct exclusion in debates. This illustrates the power of laws in these spaces, and the highly strategic nature of their elaboration and use in shaping spaces of `participation`.

Within the international legal discipline, how law *gives shape* to space has largely become invisible in the way that we talk, and envision these negotiations, and with that also an understanding of how the spatial, and the ordering of space (including relations between bodies) within these negotiations comes to shape the way that actors can/do participate and interact with each other, how some exert control over others, and contribute to the shaping of debates (problem/solutions) themselves. In several ways this is also true for the in/visibilisation of law and the legal within negotiations – the way that it prescribes identities and what this means for the bodies occupying it, the principles which underpin rules determining who gets to speak, about what they may say, and on what terms or how they relay information and knowledge, is all embedded within the law and a particular lawscape, yet remains hidden

[101] Ibid. This is similar to what was explored above regarding the push and pull of legal and spatial ideas and manifestations. There is a continuity of shifting and change occurring at any one time following changing relations and positioning between bodies drawing on a multitude of more/less ascertained normative rules and orders, with these themselves shifting in and out of sight.
[102] Philippopoulos-Mihalopoulos, *Spatial Justice* (2015), 74.

from sight and inquiry. By bringing attention to this process of in/visibilisation, my aim is to unearth its enabling conditions, as well as seek options for its reversal.

This brings me to perceptions of control and the idea of *atmosphere*. As suggested above, the in/visibilisation of law is implicated in the perpetuation of control over bodies and space. This illustrates a potential strategic nature of the lawscape: while the lawscape itself is without a pre-determined direction or moral value, and in this sense not a tool individually serving the elite,[103] it is the manifestation of relationships and (unequally negotiated) power and control, flowing from established norms and hierarchies.[104] In other words, the lawscape as an abstract concept is non-normative and non-preferential in nature, yet once it is conjured it will reflect the powers, identities, politics, norms and hierarchies of the conditions from within which it emerged. Therefore, the lawscape and its conditions can be conceived, and used as a tool, to be drawn on strategically by actors seeking (re)negotiation of degrees of in/visibility. Here, in/visibilisation can take several forms. First, in/visibilisation refers to the way that law and space *actually* becomes in/visible within processes, as in actions ceases to be traced back to these as motivators/causes. There is also the second, more direct way of how in/visibilisation is negotiated: for instance in the limiting of access to certain documents or meetings, but also the invisibilisation of certain groups, bodies and social movements, by their agendas, needs, interests, and sometimes very existence, being pushed to the margins (or back corners) at meetings.[105] It is in the process of in/visibilisation that an assessment of the spatial process becomes so important – depending on a groups positioning (for instance their ability to move and mobilise), bodies have the power to use the law and space to their advantage. Within the lawscape, bodies are granted a negotiating position, which has the potential of moving the process towards spatial justice (explored below).

Here we find the *atmosphere* of the lawscape. When something becomes invisible, and also a naturalised part of the lawscape, it becomes an *atmosphere*: 'there but not there, imperceptible yet all-determining'.[106] The atmosphere is legally determined in the sense that the law, and the bodies embodying it, provides space for certain types of actors, actions, and narratives to come forth while suppressing others. What makes the conditions of the lawscape *atmospheric* is the sense of invisibilisation of the law, and therefore an invisibilisation of the influence it extends upon bodies and space. It is when the state within the lawscape achieves an embeddedness of its conditions to the extent that it seizes to be challenged or needs to be reinforce; it is the *visual* – yet not actual – withdrawal of authority. *Atmospherics* means taking for granted the conditions of a given space, not questioning their authority,

[103] Philippopoulos-Mihalopoulos quotes Valverde's writing: 'governance techniques do not necessarily have a built-in or default politics.' See Mariana Valverde, 'Seeing Like a City: Dialectic of Modern and Premodern Ways of Seeing in Urban Governance' (2011) 45:2 *Law & Society Review*, 279.
[104] Philippopoulos-Mihalopoulos, *Spatial Justice* (2015), 75-6.
[105] One can unpack this further and also explore the practice of in/visibilising certain members within a group that do not "fit" into the dominant identity narrative. Such an exploration would further enrich the discussion of agency and power within the lawscape.
[106] Philippopoulos-Mihalopoulos, 'Atmospheres of law: Senses, affects, lawscapes' (2013) 7 *Emotions, Space and Society*, 36.

simply accepting them as "the way things are". *Atmospherics* can be enabling as much as they can be oppressive, simultaneously, depending on who you ask. Our experience of the lawscape is reflected in the conditions and positioning of bodies therein: one's experienced comfort may be another's discomfort; one's experienced freedom and liberties may be another's oppression.[107] Furthermore, the atmosphere is not always a comfortable lawscape in the sense that we may experience it in our daily lives, but also a space of open conflict – it can be a political rally, a protest against social injustice, it can be a prison or refugee camp or another lawscape encapsulating an air of political manipulation. They all hold in common an *atmospheric capture* of its bodies, the repression of conditions that seek change. Their difference lies in the way that the dissimulation affects the bodies in each space, be it suppression,[108] opposition,[109] or manipulation.[110] The point in highlighting the atmosphere is not to label it as good or bad; it does not carry in it moral judgement. The point is to highlight where it comes from and the consequences stemming from it, namely the embeddedness of conditions that acts to render any wilful resistance inert.[111]

Observing and experiencing the CBD negotiation processes from the perspective of the lawscape and *atmosphere* will help me focus on the way that law and space shift between in/visibility within its setting and guide me in sensing the *atmosphere* where it exists and/or when it arises. I can then unpack the elements of its emergence by letting my gaze rest upon the interaction between law and space; and I can explore the way that its existence conditions the relationships and actions between bodies, and how this in turn feeds back into the *making* of the law that the process facilitates.

---

[107] Actual lived experiences will of course be more nuanced than this, and while I do not adopt the antithetical perception of the relationship between freedom/oppression, I do think that it is important to keep in mind the gendered, racial, social, ideological (etc.) lenses through which the individual experiences the world, and a given space. It is comforting being in a room filled with those you consider kin, and structured in a way with which you are familiar, with a language you understand, as it reaffirms your place therein. It will be a very different experience for someone to whom those conditions do not exist. This illustrates the way in which those at ease within these spaces can manipulate its conditions to further embed their preferences within the lawscape, contributing to the emergence of the atmosphere. See Philippopoulos-Mihalopoulos, 'Law's Spatial Turn Geography, Justice and a Certain Fear of Space' (2010) 7:2 *Law, Culture and the Humanities,* 187-202.

[108] In a prison or refugee camp, law's *ubiquity* takes on a dominating physical form (walls, barriers, bars, yards, permitted/forbidden areas) which acts to divide 'us' from 'them', all the while normalising such material reality (atmosphere of oppression) in ways that appear beyond the law: "it is just the way it is". See Philippopoulos-Mihalopoulos, *Spatial Justice* (2015), 108.

[109] In a revolt, depending on the domestic context, the law may facilitate the particular organisation of the spatial and temporal *in opposition* to the injustices fought against. The way that such action still exists within the lawscape, means that the *atmosphere* remains stable, albeit brimming with tension and confrontation. See Ibid. Compare this with actions of civil disobedience (e.g., work by Martin Luther King) in which actions of opposition are committed precisely so to make the law visible and explicit. When committing an act of civil disobedience, you are committing a paradoxical act of withdrawal: you object to the law, breaking it, yet permitting yourself to come under its command. Ibid.

[110] For instance, clothes stores, car dealers, even most internet platforms are enablers of an atmosphere of capitalist manipulation – spaces and bodies are organised in ways, through algorithms, to manipulate and encourage our senses of desire for consumption. Ibid.

[111] Ibid, 109.

Now that you have been familiarised with the idea of *atmosphere*, I will move on to introduce you to *spatial justice*: this is essentially a rupture in the atmosphere. It has been made clear from above that the lawscape is made up of unequal power relations between bodies, meaning that some have increased opportunities to push forward their own presence, agendas and interests within a space, simultaneously forcing others to the margins – essentially, this is *spatial injustice*. Philippopoulos-Mihalopoulos refers to this as the lawscape being *tilted*, meaning that the relative (onto-epistemological) weight of bodies results in conflict and tensions, on an unequal footing.[112] When the tilting becomes embedded in the lawscape and part of the atmosphere we ignore/cease to see other possibilities, we forget that there always remains space (however small) for initiative, awakening, revolution, deceit, surprises. There is always place for such *withdrawals* within the lawscape, they just become harder in the atmosphere.

Withdrawal is the performative disagreement with the atmosphere.[113] Whether it amounts to a *rupture* of the *atmosphere* can be assessed by its ability to prompt a reorientation of the lawscape. What *ruptures* do is that they open up and make visible possibilities in the lawscape that were not immediately apprehensible before.[114] When *ruptures* occur in the lawscape, *spatial justice* has the potential to emerge and assert itself in the process of disrupting a tilted atmosphere and providing space for reassessment of legal and spatial (and thus bodily) emplacements in the lawscape; it provides a position of reorientation from within the lawscape by drawing upon things external to the atmosphere, laying bare the tilts and concepts underpinning it, destabilising its foundations and making space for difference. *Withdrawal* means leaving and re-emerging in the lawscape, only one now *ruptured* and reoriented in terms of a renewed consciousness of the conditions of conflict. *Spatial justice* can only begin to emerge if this reorientation of the lawscape occurs; with bodies now capable of calling out and challenging, on their own terms, the conditions of spatial emplacements, resources, privileges, temporalities.

---

[112] Philippopoulos-Mihalopoulos (2015), 192. For these observations we are particularly indebted to feminist scholars, especially post-humanist feminists, who have brought attention to the way in which the masculine and hetero-patriarchal imaginations either remain or are reproduced within seemingly unheirarhical surfaces and spaces. See for instance Astrida Neimanis 'Alongside the Right to Water, a Posthumanist Feminist Imaginary' (2014) 5:1 *Journal of Human Rights and the Environment*, 5-24.

[113] As way of example, Philippopoulos-Mihalopoulos recalls a scene from Vassiliki Katrivanou and Bushra Azzouz's documentary *Women of Cyprus* which explores the 1974 Cypriot partition (North/Turkish and South/Greek) from women's perspective. Withdrawal is captured in the moment a Greek Cypriot woman caresses the face of a young Turkish settler – a gesture which legitimises the settler and crosses a taboo line. *This was an embodied withdrawal from the atmospherics of geopolitical lines*. See Philippopoulos-Mihalopoulos, *Spatial Justice* (2015), 201. This reminds me of a powerful act of embodied withdrawal, committed by elderly women in Apaa District in Northern Uganda. The women, protesting a land grab for the establishment of a hunting reserve, undressed to bear their breasts, signifying a curse against those who were attempting to remove them from their lands. This withdrawal ruptured the atmospherics of political bureaucracy by bringing into the space traditional concepts and symbolism to reiterate local relations between people and to the land, including the symbolic power of women in land protests. See for instance Florence Ebila and Aili Mari Tripp, 'Naked Transgressions: Gendered Symbolism in Ugandan Land Protests' (2017) 5:1 *Politics, Groups and Identities*.

[114] Philippopoulos-Mihalopoulos, *Spatial Justice* (2015), 195.

The most attractive aspect of spatial justice as a concept for engaging with the interrelationship between law and space is that it brings emphasis particularly to the spatial and temporal *discontinuity* of justice, thus challenging the common narrative of solution–conclusion rooted in most descriptions and accounts of justice.[115] Spatial justice calls for a continuation of its process, it can never be achieved, nor is it aiming for achievement, it only *emerges* and *unfolds* through a series of ruptures and requires continual acts in order to remain.[116] This continuum of ruptures must go beyond simple changes to the law, or new interpretations: it is a denial of the law; calling into question its relevance, its legitimacy; targeting its atmospherics; proposing new epistemological and ontological foundations for moving forward; and crucially – a readjustment of the weight of bodies, knowledges, ideologies and worldviews. The "success" of *withdrawal*, a precondition for *spatial justice* to begin emerging, is measured in the degree of which a lawscape is reoriented and rebalanced.[117]

Spatial justice is the "movement of going against yet trough the lawscape in attempting to cross the line of law's normative geometry".[118] *Spatial justice comes in through and despite the law*,[119] by actors calling for new rules, perceptions, relationships and structures. It is not the end purpose but rather a stage, a necessary step for one to return to the lawscape now slightly transformed, perhaps less tilted, with more space for bodies to move and work. Within my own sites, this could take several forms: at the CBD COPs it could be a change in terminology; objecting to rules of procedure; a dismantling of harmful stereotypes; challenging the foundations of sovereignty and representation; prompting a debate on the meaning of fundamental concepts such as nature, conservation, culture, `traditional`, knowledge; opening up new (for this space) epistemological and ontological reflections on the relationship between human persons and nature; challenging and reassessing the role of law within that space. Within a given conservation site it could be challenging historical management and governance structures by shedding light on the legacy of colonialism and colonial practices and thinking; introducing and instilling new ways of knowing, relating to and being within a space, and relationships between bodies therein; bringing about new structures of decision-making; moving beyond embedded categorisation of landscapes and practices; reclaiming identity by reconstructing concepts of being and belonging from within;[120] breaching and

[115] This refers to the "impossibility" of spatial justice (see further below), and the inherent individuality of justice as understood through liberal thought. Philippopoulos-Mihalopoulos explains it as follows: "historical, personal, corporeal, ethnic, all of these claims wrapped up in a net of monadic positions, *where each position is necessarily occupied by one person, where each body can only stand where other bodies do not".* See Andrea Philippopoulos-Mihalopoulos, *Law's Spatial Turn* (2010), 198. The other ways in which spatial justice addresses critiques against the liberal foundations of social and environmental justice is explored below.

[116] Ibid, 200.

[117] Ibid.

[118] Ibid, 218. This idea of 'law's geometry' is, to me, analogues with the idea of the lawscape (it is a metaphysical imagery of the law): a perspective of law within an arena which encapsulate not only horizontal and vertical scales and relationships, but also a more metaphysical perspective of near and far, distances between bodies closer/further away from you and each other.

[119] Ibid.

[120] See for instance Kim Andersons book *A Recognition of Being: Reconstructing Native Womanhood* which draws on Kim's experience with Indigenous Women in Canada, and discusses the need for resistance of the

getting past homogenizing narratives of nature and culture, thus also changing the top-down assignment of roles accompanying such assumptions; challenging and establishing debate about the anthropocentric and liberal foundations upon which access to land and natural resources is determined and awarded.

The above list is non-exhaustive and only through my fieldwork and in speaking to actors can I gain an understanding of what they aim to achieve through these processes and within these spaces. And even there, the imagining of `alternatives` for *more* spatially just conditions requires a collective, dynamic exercise, which unfolds alongside negotiations. That said, because my project is the looking at the manifestation of `participation` at the CBD I will focus my analysis on *spatial injustice*, *tilts* and *atmospherics*, with my colleagues in the field being in a better position to consider *ruptures* and *withdrawals*. Philippopoulos-Mihalopoulos put it well in a talk given in 2011 where he suggests that one way we can use the concept of spatial justice is through the reclaiming of the concept of *direction.*[121] This is important as it brings into focus questions of temporality: the colonisation of a place and people continues after 'independence', decolonisation is an ongoing process;[122] injustice committed against a place and people continues after the winning of a court case or after the established of co-management regimes of native lands.[123] Justice is an ongoing process.

The important contribution of spatial justice here is twofold: First, as has already been made clear above, a surface is never flat: inequality exists in many other ways than mere numbers to a page, in a room, or around a negotiating table. Spatiality and temporality are important aspects in this regard. These tilts are illuminated in the lawscape. Second, spatial in/justice addresses the criticisms levelled against the ways in which Westphalian liberal understandings of justice, especially related to distributional fairness, found in global justice discourse and especially pertaining to environmental justice, have been brought under a 'universal' label.[124] Under the guise of universality, Westphalian approaches to justice have been inserted around the globe, hampering efforts to understand justice struggles from contextual and localised understandings and perspectives, leading to the homogenisation and misrecognition of community identity and aims.[125] For instance, this epistemic violence takes the form of

heteropatriarchy and the imposition of roles through the reclaiming of traditions and reconstruction of an empowering narrative in this important process of decolonization. See Kim Anderson, *A Recognition of Being* (Women's Press, 2nd edition, 2016).

[121] See 'Spatial Justice Workshop – Andreas Philippopoulos-Mihalopoulos', submitted by the University of Westminster on 12 April 2011 <https://www.youtube.com/watch?v=tYlfWqbYuVs&t=454s> (accessed 13/08/2018).

[122] Philippopoulos-Mihalopoulos specifically uses this example of colonisation. Ibid.

[123] See for instance the lack of implementation and enforcement of the ruling by the Inter-American Court of Human Rights on the *Saramaka People v Suriname* case. Another example can be found in Finland, where following a court judgement confirming the constitutional right of Sámi people to their traditional fishing, the Finnish government set out to legislate in a way to restrict that right. See for instance Juha Hiedanpää, Joni Saijets, Pekka Jounela, Mikko Jokinen, Simo Sarkki, 'Beliefs in Conflict: The Management of Teno Atlantic Salmon in the Sámi Homeland in Finland' (2020) 66 *Environmental Management*.

[124] Saskia Vermeylen, 'Special Issue: Environmental Justice and Epistemic Violence' (2019) 24:2 *Local Environment*, 89-93.

[125] See for instance Ramachandra Guha, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya* (Oxford University Press 1989); Paul Robbins, *Political Ecology: A Critical Introduction* (Wiley-Blackwell

difference becoming a matter of assimilation and describing struggles and protests within parameters defined and prescribed by Westphalian ideals stemming from mainstream socio-economic, political and cultural institutions and norms.[126] When viewed from a postcolonial perspective, environmental justice work adopting these lines of thinking, inadvertently reinforce the hegemonic forces of Westphalian discourse and practice, and are thus a continuation of coloniality.[127] Several critical scholars have argued that justice movements must address better and more directly the systemic roots of oppression stemming from not only colonial histories, but now also through new forms of coloniality and imperialism via ontological and epistemological hegemony, within which international environmental law is entangled.[128] Therefore, in order for justice movements to be transformative, the way that they go about imagining, discussing and carrying out their work must be done in ways that embrace plural and otherwise peripherally-positioned onto-epistemologies in ways that disrupt the embeddedness of Westphalian thought.[129]

Spatial justice tackles this from a spatial perspective – it calls specifically for diversity and difference to be brought into the lawscape by the shifting of bodies and priorities so that space is given to a multitude of voices, interests, perspectives and hopes. Only by these being brought into discussion in a way that challenges existing hegemonies can the process be conceived as moving towards what we consider justice, or *justness*. This is precisely why 'justice' cannot be achieved: one person's justice may be another's injustice; the incorporation of difference makes it impossible to cater to everyone's hopes. Spatial justice is rather reaching for a space which encapsulates these different perspectives (ruptures) and for less tilted deliberations within a more equal space. Only in accepting the impossibility of *achieving* spatial justice, can actors begin working towards it; embracing this temporal nature of the project completely shifts the focus and ambitions of its process, and emphasises the fact that any achievement is part of a continuing, ongoing *process.*

How we gauge or measure challenges or progress is through their material (spatial, temporal, legal, etc) manifestations: time awarded to actors at meetings, the use of certain terminology, the conditioning of `participation` in meetings or in the carrying out of cultural practices, the outcome of tensions and frictions between bodies and their respective interests. The next section will introduce my framework for analysis these material representations and manifestations of the lawscapes atmospherics and tilts, its ruptures and instances of spatial in/justice.

2004); Young, *Justice and the Politics of Difference* (2011); Adrian Martin, Shawn McGuire and Sian Sullivan, 'Global Environmental Justice and Biodiversity Conservation' (2013) 179:2 *The Geographical Journal*, 122-131.

[126] See for instance Kirsten Anker, 'Law in the Present Tense: Traditional and Cultural Continuity in *Members of the Yorta Aboriginal Community v Victoria* (2004) 28:1 *Melbourne Law Review*, 17.

[127] Vermeylen, *Environmental Justice and Epistemic Violence* (2019), 90. See also Escobar, *Encountering Development* (2007); Walter Mignolo, *Local Histories/Global Designs: Coloniality, Subaltern Knowledges and Border Thinking* (Princeton University Press, 2011).

[128] Ibid (Vermeylen).

[129] Ibid, 89-90. See also the works of Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Paradigm Publishers, 2014); Sousa Santos*, The End of Cognitive Empire: The Coming of Age of Epistemologies of the South* (Duke University Press, 2018).

2.4 Performing space and law: Exploring Un/seen Meaning in Law and Space

Spaces are meaningful: they signify, represent and refer.[130] Contrary to how space is usually conceived as static, dead, a mere setting or background, I have illustrated above that space is brimming with life and meaning, deeply intertwined with law in a continual process of determining relationship between bodies and rules that affect their decision-making, actions and movements. It is the manifestation and performance of the legal and the spatial that I am exploring in my project, which manifests itself discursively and materially in the lawscape as introduced in the previous section. Here, I adopt Delaney's understanding to *performativity*, which denotes the 'irreducible and practical fusion of the discursive and material'.[131] In this sense, performativity is not just about the construction of subjects in society, but rather how the material and discursive inscribes boundaries to relations between bodies and how these are reified[132] within the lawscape through atmosphere. In other words, performativity can be viewed as both producing, but also as the result of meaning-making and movement[133] within the lawscape, and is the focus of my analytical efforts. The remainder of this chapter aims to introduce you to performativity and how it has helped informed my research.

2.4.1 Performativity and Law

The theory of performativity explored in this thesis stems from the work by philosopher John Langshaw Austin on performance utterance, which developed an understanding of language as something beyond mere statements and propositions, instead conceiving of it as a tool through which people communicated meaning and intention, and thus collectively created social reality (giving social phenomena particular meaning).[134] Since then, Judith Butler, has further developed the theory of performativity within the discipline of gender studies, and has become widely influential beyond her own field of work. This is largely attributed to the fact that her focus on performance and performativity enable analysis to go beyond legal definitions and status, focusing rather on the political and social forces that construct and normalize legal or political discourse and practice.[135] Her earlier work focused on the production of women as subjects of feminism in society. Here, she explored how law, through

[130] David Delaney, *the Legal and the Pragmatics of World-Making: Nomospheric Investigations* (Routledge, 2010); Raka Shome, 'Space Matters: The Power and Practice of Space, Communication Theory' (2003) 13:1 *Communication Theory.*

[131] Delaney, *The Spatial* (2010), 14.

[132] Drawn from anthropologist Gregory Feldman's work. See G. Feldman, 'Development in Theory: Essential Crisis: A Performative Approach to Migrants, Minorities and the European Nation State' (2005) 78 *Anthropological Quarterly*.

[133] Much like the relationship between law and space, in people's embodiment of the law in their own daily practices, their performances of the law produces meaning just as much as the law itself produces meaning for the actors and the setting within which they perform.

[134] John Langshaw Austin, *How to do things with words* (Harvard University Press, 1962).

[135] See for instance Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge, 1990); Judith Butler, Ernesto Laclau and Slavoj Žižek, *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left* (Verso, 2000), 29.

juridical notions of power, *produces* its subjects.[136] Notably, her concept of law is not limited to centralised and codified state law, but includes for instance "heterosexual law" which is the bundling of juridical, disciplinary and normative forms of power into a "discursive performance as a way of being".[137] All people regularly perform gender that conform to societal norms; in turn, these embodiments reinforce those very gender *performatives*[138] and make the individual intelligible.[139] In many ways, the legal terminology that we draw upon in our daily lives shapes our understanding of society, and provides ways for us to express and give meaning to our (and others) experiences. In this sense, law and social norms are incorporated into oneself, with the consequence being that 'bodies are produced which signify *that* law on and through the body' (emphasis added).[140] Legal definitions dictate the forms and conditions of performance, yet one performs the law in their own way. Here, the power disparities between peoples concerns their abilities in have their own values, and visions of the world realised. In this sense, law plays a crucial role in the way that people are given meaning in society (or within a given space).[141]

For my purpose, the most important point of Butler's theory on performativity is that the subject only remains a subject provided that they are able to reiterate themselves as an identifiable, intelligible subject according to established (legal) definitions and norms.[142] If one performs outside the prescribed form of script, one is then outside the bounds of intelligibility and their performance or identity unheeded.[143] I believe that this phenomenon is largely what Philippopoulos-Mihalopoulos refers to when talking of the embodiment of law amongst the bodies within the lawscape. When entering a lawscape, our identities are prescribed by the laws therein, and our activities are conditioned thereafter. This is especially true in law-making processes where one's `participation` is prescribed for in legal texts, and strictly controlled by the assigning of particular identities (e.g., based on belonging to a particular group, holding particular knowledges, living in particular ways) and cultures of interaction. The way that that identity is prescribed, one must act accordingly in order to be allowed into a space (physically and metaphorically speaking).

---

[136] Butler, *Gender Trouble* (Routledge 1990), 134-5.

[137] Ibid, 25. See generally Stephen Young, 'Judith Butler: Performativity' on *Critical Legal Thinking < https://criticallegalthinking.com/2016/11/14/judith-butlers-performativity/>* (posted 14 November 2016) (accessed 14/09/2021).

[138] All utterances are performed, but not all utterances are performatives. *Performatives* are social constructions or socially constructed roles; they are utterances or performances that engender formative force upon the act and the actors themselves. See Judith Butler, 'Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory' (1988) *Theatre Journal;* Judith Butler, *Bodies and Matter* (Routledge, 1993), 232.

[139] Butler, *Gender Trouble* (1990), 25.

[140] Ibid, 134-5. A simple example here is the mere designation of gender at birth, with such a seemingly innocent announcement having profound impacts on the child's later experiences in society.

[141] Jan Broekman and Larry Catà Backer, *Signs in Law* (Springer 2015), 128-9. See also Chapter 4 Section 4.2.1 for discussion on power.

[142] To Butler, a main function of this is that the subject becomes governable.

[143] Butler, *Gender Trouble* (1990).

Notably, Butler in her later work focuses on conditions for continually challenging and disrupting artificial binaries (e.g. heteronormative discourses distinguishing between only male/female or girl/boy[144]), by using subversive performatives as sites of 'radical reoccupation and resignification' in ways that bring to light, and challenge established hegemony (be it cultural, racial, gendered, political).[145] The focus for such action should be the subverting of performatives that "make" and position those on the margins.[146] Butler's idea of continually challenging the forms and scripts that condition people's behaviour and positioning in society resonates with Philippopoulos-Mihalopoulos' concept of spatial justice and the withdrawal and rupture of the lawscape. The existence of subversive performatives is the invisibilisation of the law and/or norms that constricts the behaviour and relations between bodies within a given space, and contributes to the establishment of an oppressive atmosphere. The action of reciting the performative in a way that reveals the instability and unjustness of conditions constitutes the withdrawal from the lawscape, and the potential rupture which destabilises the spatial configurations therein and opens the space up for readjustment, rearticulation and/or re-inscription of performatives, or the emergence of new ones.

With regards to law, Butler reminds us that it is law and legality which makes the illegal, and the performative reclamations of *truer* identity possible.[147] By reciting performatives in a contradictory manner (i.e., acts that highlight yet simultaneously undermine their subversive use in society) can, in a very public way, destabilize pretences of stability and universality by highlighting spatial and temporal dimensions. Butler and Spivak for instance recall how undocumented people in Los Angeles gathered on the streets and sang the American national anthem in Spanish in 2006. In so doing, they reclaimed the public space and enacted multiple contradictions that ruptured common understandings of notions such as public/private, legal/illegal, self/other, and national/non-national.[148] This is not dissimilar from the idea of withdrawal in the lawscape, where the actor seeks to make unjust laws publicly visible by acting them out in a way that makes their unjustness visible.[149] Finally, that Butler also calls for a sustained, continual process of challenging these structures also resonates with the idea that spatial justice cannot be achieved, but can only emerge, and requires continual work in order for its conditions to remain within a given space.

---

[144] Ibid, xxviii, 7 and 10.

[145] Notably, Butler writes of three uses of *performativity*: (1) seeking to counter "certain kinds of positivism", for instance related to gender or the state; (2) countering a 'certain metaphysical presumption about culturally constructed categories and to draw [attention] to the diverse mechanisms of that construction'; and (3) articulating processes that produce ontological effects, or the invisible assumptions of what constitutes reality. See Judith Butler, 'Performative Agency' (2010) 3:2 *Journal of Cultural Economics,* 147.

[146] Judith Butler and Athena Athanasiou, *Dispossession: The Performative in the Political* (Polity Press, 2013); Judith Butler, *Notes Toward a Performative Theory of Assembly* (Harvard University Press, 2015).

[147] See footnote 109.

[148] Judith Butler and Gayatri Chakravorty Spivak, *Who sings the Nation-State? Language, Politics, Belonging* (Seagull Books, 2007), 62-3.

[149] See footnote 109.

In reflecting on how law conjures special meaning through our performances of it, Butler state's that:

> *I originally took my clue on how to read performativity of gender from Jacques Derrida's reading of Kafka's "Before the Law". There the one who waits for the law, sits before the door of the law, attributes a certain force to the law for which one waits. The anticipation of an authoritative disclosure of meaning is the means by which that authority is attributed and installed: the anticipation conjures its objects.*[150]

It is the act of waiting for permission, or believing in its potential for delivering inevitable justice, that lends authority to the 'illusionary gatekeepers' of law.[151] Therefore, in exploring material and discursive performatives within the spaces of participatory law-making within the field of biodiversity conservation, I can make better sense of the way in which certain norms and their associated concepts are given particular meaning within that given space, and how this contributes to the *atmospherics* therein, and relationships between actors.[152] The idea of performativity, while not constituting *the* main theoretical pillar of my analysis, is used at various times throughout my thesis, providing a lens for exploring the linkages between law, discourse and space, especially their materialisation when giving particular meaning and roles to actors (and their worldviews and knowledges). Coupled with spatial in/justice, it prompts me to go further in looking beyond the initial, apparent meaning – and doctrinal interpretation – of a given legal text. It has helped paved my research agenda in seeking to unearth the hidden meanings, values and assumptions taken for granted within the current dominant conservation paradigms, and how this may shape the processes themselves, including the very idea of local `participation` therein. Linking this also to the ethnography of international organisations discussed in the next chapter, studies have also shown how global institutions, while producing global policy, are also primary producers of knowledge.[153] In that role, they are also producers of meaning – by determining what counts as knowledge, they award particular forms of meaning and power to certain actors, relationships, goals, and more fundamentally, particular ontologies and epistemes.

---

[150] Butler, *Gender Trouble* (1990), xiv.

[151] See Jena A Zelezny, 'Judith Butler: Performativity and Dramaturgy' on *Performance Philosophy* <*http://performancephilosophy.ning.com/profiles/blogs/judith-butler-performativity-and-dramaturgy*> (posted 6 October 2014) (accessed 10/09/2018).

[152] Take for instance the inference of legal concepts such as property, jurisdiction, sovereignty. Self-determination, alongside social concepts such as identity, community, nature, freedom, in/justice: where do these position actors, and their ontologies and epistemologies vis-à-vis each other? See concept of 'braiding' in Delaney, *The Spatial* (2010), 23-24.

[153] See for instance Sally Engle Merry, 'Expertise and Quantification in Global Institutions' in Niezen and Sapignoli (eds) *Palaces of Hope* (2017); Christoph Brumann, 'The Best of the Best: Positioning, Measuring and Sensing Value in the UNESCO World Heritage Site' in *Palaces of Hope* (2017); Niezen 'The Anthropology *by* Organizations: Legal Knowledge and the UN's Ethnographical Imagination' in *Palaces of Hope* (2017).

2.5 Conclusion

This chapter has provided an initial glimpse at the theoretical debates and theories that have provided the backdrop for this thesis. It began with introducing the critical decolonial scholarship which challenges many of the assumptions underpinning international environmental law and governance, also bringing to light the uncomfortable history between law and colonial history, illustrating the ways that some logics and values remain embedded within legal provisions and institutions. The section also stressed the importance of paying attention to, and challenging, the dominant onto-epistemologies embedded within mainstream conservation paradigms, emerging from international biodiversity negotiations. This includes assessing the ways that these may present inherent challenges to meaningful `participation` of diverse actors at the negotiations themselves. As such, it laid the foundations of my study, identifying not only a gap in knowledge of this related to the CBD negotiations, but also underscored the importance of addressing it. Following this I introduced the concept of *spatial in/justice*, and its linkages to critical legal geography. For me, legal geography helps bring forth the everyday manifestation and materiality of law, bringing together legal, spatial and temporal perspectives in shining new light on how our understandings and experiences are shaped by this interaction, and the forces shaping and influencing them. I also drew new connections between spatial injustice and legal anthropological work on legal pluralism, setting the scene for my next chapter where I will introduce institutional ethnography. The concepts of *lawscape*, *tilts*, *atmosphere*, *ruptures*, *withdrawals* and *epistemic shifts*, were also introduced, providing some initial reflections and questions in order to illustrate how these may provide new important insights into the CBD negotiating spaces when analysing my research data. I ended the chapter with illustrating the significance of performativity, which has guided me in framing, and fine-tuning my research questions and analysis. As a whole, and as will be shown throughout the rest of this thesis, I believe that the novel theoretical framework that has taken shape has helped bring to light new insights into the meaning, practice, and materiality of local actor `participation` within international biodiversity law, including the very sources underpinning barriers experiences therein. The next chapter will go further in introducing my methods, methodology and ethical framework which helped me put the theory into practice.

Chapter 3: Methods and Methodology

Legal Institutional Ethnography, Spatialising Participation and Ethics

3.1 Introduction

This chapter builds on the last one by elaborating more on the methods and methodology adopted for collecting my data and carrying out my analysis. Following on from the previous chapter, my decision of carrying out an institutional ethnography has proved central in enabling me to challenge the traditional foundations upon which doctrinal research and conceptions of law are grounded. Adopting an emic perspective of these processes has greatly aided me in my quest for exploring and unearthing the forces currently shaping participation the CBD negotiations, and the barriers that have arisen. Likewise, my ethics has played a crucial role in the elaboration of my research project, and my actions throughout. The chapter will begin with providing the rationale for framing my research project as an ethnographic inquiry. I will introduce the earlier ground-breaking works on institutional ethnography, bringing these into conversation with spatial in/justice. I will also briefly introduce the relevance of performativity in my attempt to unearth ways that participation materializes at the CBD negotiations. Following this, I will offer an overview of my chosen methods and lawscapes within which my fieldwork has taken place. I will end with introducing my ethical framework, and an illustration of the ways that it has influenced my decisions and actions in relation to the research project.

3.2 Stakeholder Participation: A Multi-site Institutional Ethnography

It is clear that international legal processes are established, structured and managed in ways that go beyond legal texts. This is true in the sense that the space within which the CBD negotiations take place constitute a political and social as much as a legal space.[1] For a deeper understanding to emerge of the role awarded to local actors and stakeholders (one which better accounts for its full complexities) within and by international law, this must be done in conjunction with understanding, from an emic perspective, the processes themselves – their spaces, actors, the formal and informal rules of interactions and procedures. I believe that in adopting an ethnographic method of research, I can gain unique access to, and deeper understanding of the complex ways that legal processes form, and are formed by their wider social, political and historical (i.e., spatial) context, and what this means for the actors involved. This follows the shift in legal anthropological enquiry of "studying up"; that is, to study the *oppressors* rather than the *oppressed*, the culture of *power* rather than that of the

[1] Blomley, Denaley and Ford, *The Legal Geographies Reader* (Blackwells Publishers 2001), xv.

powerless. The point is that it is *here* from which the oppressive action derives, where power is distributed and conditions for manoeuvrability and action determined.[2]

In this regard, unpacking and exploring the idea and practice of local actor and `stakeholder participation` in international biodiversity law is especially interesting as it is by many viewed as the empowerment of historically marginalised voices. To others, if done thoroughly, it could also provide space for the disruption of narratives that have traditionally ignored the colonial and patriarchal practice of dispossessing particular groups from their lands and restricting access to important ecologies.[3] But this itself is a distinct narrative, and one which on the surface seems too simplistic, especially for its presumption that the law-making process comes down to logical and rational negotiation between equal parties.[4] On the contrary, through an emic perspective of these institutions, it becomes clear that the process leading to a decision is riddled with tension and friction, 'a tangle of desires, habits, hunches, and conditions of possibility'.[5] Here, it is the *conditions of possibility* that peaks my interest and drives my research. *What space do, and perhaps can, local actors occupy within the state-centric nature of international law-making?*[6] *Are local actors, in their engagement with these institutions, positioned in ways that make it possible for them to effectively navigate embedded hegemonic structures and resist homogenizing definitions that risk misrepresenting them, their communities, their interests and concerns? How do dominant ontologies and epistemologies materialise within the CBD negotiations, and how may this restrict new ways of conceiving conservation from emerging?*[7] Questions like these seek specifically to engage with a perception of international institutions as constructed spaces with historical, political and social baggage, and are best addressed through an emic perspective.

By drawing on the concept of spatial justice introduced in the previous chapter, I hope to contribute and build on the interdisciplinary work by international lawyers and anthropologists seeking a sustained dialogue between the two disciplines.[8] In 2016 Miia Halme-

---

[2] Laura Nader, 'Up the Anthropologist: Perspectives Gained From Studying Up', in Dell Hymes (ed) *Reinventing Anthropology* (Pantheon 1972), 289.

[3] In relation to the Nagoya Protocol, see for instance Kabir Bavikatte, Daniel Robinson and Maria Olivia, 'Biocultural Community Protocols: Dialogues on the Space Within' (2015) 1:2 *IK: Other Ways of Knowing,* 1-31.

[4] There are critiques pertaining to the ways in which participatory governance has been used as a tool, by dominant actors, to lend outward legitimacy to a process without ensuring genuine empowerment of actors traditionally left at the peripheries, permitting a 'business as usual' approach. This will be explored and discussed in Chapter 5.

[5] Colin Hoag, 'Assembling Partial Perspectives: Thoughts on the Anthropology of Bureaucracy' (2011) 34:1 *Political and Legal Anthropology Review,* 86.

[6] As highlighted by Niezen and Sapignoli in the introduction to their edited collection *Palaces of Hope*, the goals of international institutions is to critique and 'correct the wrongs' of states. Yet despite the establishment of new norms and an increased participation of NGOs and other actors, their decision-making remains stubbornly dominated by states. See Niezen and Sapignoli, *Palaces of Hope* (2017), 1.

[7] This latter question is particularly relevant precisely because a few CBD provisions refer to the need of respecting alternative worldviews concerning human relations with nature, and how we, including state institutions and private entities value it. See for instance CBD Decision VII/16 Article 8(j) and related provisions; VII/18 Incentives Measures (Article 11); and VII/19 Access and benefit-sharing as related to genetic resources (Article 15), Annex: Action Plan on Capacity-building.

[8] See for instance Riles, *The Network Inside Out* (2001), Preface.

Tuomisaari suggested that such a dialogue is yet to be established, arguing that the project of the anthropological enquiry into international law suffers from a lack of engagement between the disciplines because of the absence of concepts that strike at the heart of the relevant debates within all relevant disciplines.[9] Spatial justice may be capable of doing just this. As I explored in the previous chapter, spatial justice is particularly apt in that it situates itself within, yet also between both legal and anthropological debates, and tackles these from an overarching geographical perspective. It is engaged with unpacking the way power is formed, materialises and influences relationships between bodies within a given space, also referring back to the sources of these as stemming from legal and normative orders, but also as deriving from socio-political histories.[10]

From the perspective of spatial in/justice, the spaces of international negotiations constitute a meeting of people all embodying the laws, customs and visions of the group/s (be it national, cultural, or other) for which they have been sent to represent. [11] In this sense the meeting of people also becomes the meeting of normative orders, rules, onto-epistemologies and discourses, yet not on a levelled playing field, but rather on a tilted plane, [12] as some bodies, laws and discourses carry more weight than others. These tilts materialise in multiple ways, and emerge for a number of reasons, some more in/visible than others, and will include power hierarchies, the prioritisation of some forms of knowledge over others, and the prevalence of certain discourses and solutions-framings which position actors differently, and that carry stronger sway over others.[13]

Gaining insight into the ways that in/formal institutions and histories interact in producing space, would provide important insights into the conditions enabling participatory governance by local stakeholders, and introduce potential starting points for where more work is needed to ensure a more fair, equal and just process. For instance, to address the above-mentioned questions, the study of legal texts should be informed by the very process of their elaboration and practice, within their cultural and institutional contexts, in order to understand the meaning attributed to legal language, and the positioning of certain actors by virtue of prescribed identities and structures within the process more broadly. As has been highlighted in previous works, global institutions and their processes, through the use of sanitized and managerial language, have a remarkable capacity to conceal the way that power is

[9] According to Miia Halme-Tuomisaari, "the challenges lie not only merely in finding shared theoretical entry-points and methodologies –they also stem from the need to locate concepts that reflect the 'pulse' of relevant debates in all of the involved disciplines". Halme-Tuomisaari, 'Toward a Lasting Anthropology of International Law/Governance' (2016) 27:1 *The European Journal of International Law*, 236.

[10] Blomley, Denaley and Ford *Legal Geographies Reader* (2001); Delaney, *The Spatial* (2010); Von Benda-Beckmann, Von Benda-Beckmann and Griffiths (eds), *Spatialising Law* (Ashgate, 2009).

[11] This is true for state representatives, but also for individuals representing various interests and interest groups, including the environment, women, farmers, small-scale fisheries, indigenous groups, pharmaceutical companies, mining companies etc. Each will draw upon a varying array of international regulations, their associated concepts, definitions and discourses to argue their own stance at negotiations.

[12] See Chapter 2 Section 2.3.3.

[13] See Chapter 2 Section 2.2.

ab/used within their processes and related projects, [14] and obscure how very particular discourses and narratives influence their decision-making and the direction of their work.[15] Through observations and interviews with participants engaged in these processes, I hope to offer empirical insight into how the use of certain language and concepts, underpinned by particular bureaucratic cultures framings interactions within these spaces, ultimately shapes the negotiations themselves and the power relations therein,[16] with individual perspectives enriching my study by highlighting the particularities of "local" to "global" interactions. [17]

For unpacking this, spatial in/justice, with its concepts of *atmospherics*, *tilts*, and *withdrawals/ruptures* help me vocalise, and visualise the ways that `participation` takes place, as well as the barriers experienced along the way. In this regard, the concept of performativity has been particularly helpful in offering a lens for teasing out issues such as the positionality of actors at negotiations, discursively as well as spatio-temporally. This means going deeper into specific terminology, which when coupled with spatial in/justice, helps bring to light their spatio-temporal effects, and thus the shaping of participatory space at the negotiations.

3.2.1 Methods within the Lawscapes

For collecting the relevant data for my analysis, I drew on an array of ethnographic methods: participant-observation, interviews, dialogues, reading and analysing documents throughout the process of their elaboration and adoption. I sat in on lengthy in-person negotiations (sometimes going on well into the early-morning), attended side events, workshops and celebrations, spoken with and interviewed individuals and collectives across the "local" caucus groups, including academics, state delegations and reporters frequenting these spaces. The ensuing subsection will aim to provide you with a better understanding of the "nuts and bolts" of my experiences and strategies during the meetings, and how these then informed my analysis later on.

The Lawscapes

Throughout the PhD journey, I have attended six CBD negotiating-meetings, in a changing capacity.[18] I attended, for the sole purpose of my research, and in person, the Fourteenth Conference of the Parties to the Convention on Biological Diversity (CBD COP-14) in

[14] See for instance Mark Mazower, *No Enchanted Place: The End of Empire and the Ideological Origins of the United Nations* (Princeton University Press 2009), 11; Niezen and Sapignoli, *Palaces of Hope* (2017), 11.
[15] See for instance Noor Johnon and David Rojas, 'Contrasting Values of Forests and Ice in the Making of a Global Climate Agreement' in Niezen and Sapignoli, *Palaces of Hope* (2017).
[16] For instance, those instances where the definition and interpretation of certain concepts is unclear. See for instance Cristoph Brumann's chapter on the lack of an operational definition of 'outstanding universal language' within the UNESCO system. See Brumann, 'The Best of the Best: Positing, Measuring and Sensing Value in the UNESCO World Heritage Arena' in Niezen and Sapignoli *Palaces of Hope* (2017).
[17] The concept of 'particularities' is attributed to the use of this term by Ronald Neizen and Maria Sapignoli in exploring the bringing of 'locality' into universal, or global spaces (e.g., the distinct rights and identities upon which the concept of indigenous peoples is based, or the distinct concepts and identities which underpin the Forum of pastoralists and farmers in the International Fund for Agricultural Development (IFAD). See generally Neizen and Sapignoli, *Palaces of Hope* (2017).
[18] See Annex: Overview of Meetings, Observations, Dialogues and Interviews.

November 2018; and the Eleventh meeting of the Working Group on Article 8(j) (WG8J-11), and Twenty-third meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA-23), both of which took place in November 2019.[19] I also attended, as a reporter for the Earth Negotiations Bulletin, and virtually due to COVID-19, three inter-sessional meetings,[20] their preparatory meetings, as well as several online webinar and update conferences following the outbreak of the pandemic.[21] Essentially, the meetings that I attended and reported on during the pandemic became stand-in primary CBD negotiating processes, to ensure the continuation of discussions and "keeping up momentum" ahead of the 15th Conference of the Parties (COP15), where parties were set to adopt the Post-2020 Global Biodiversity Framework, which is under enormous pressure to constitute a sort of "Paris agreement" of the CBD. As I was originally set to attend more in-person meetings before the outbreak of the pandemic, with these later being cancelled, it felt important to continue following the processes regardless throughout the period of my PhD research, in order to remain updated on the progress of discussions, the work of my colleagues, as well as gain an understanding of how things were unfolding in response to the pandemic.

My attendance at the first three meetings forms the cornerstone of my `fieldwork` data, with these giving me a deeply immersive experience and insight into the CBD negotiations and their spatio-temporal conditions; their unique processes, cultures, ways of life, not to mention provided me with opportunities to connect with people who frequent their halls. Sitting at home, behind a screen, even when immersed within the text-based negotiations, and supporting some of the work of my colleagues within the caucuses, simply did not provide that same insight, and I am therefore treating this latter groups of meetings as supplementary to my original data collection in November 2018 and 2019. Equally, because of the nature of the ENB reporting work, where workdays were high-paced and incredibly busy – just like my days doing ethnographic work[22] – my activities took on a different format, and my note-making doing the same, with me deciding early on that I would not treat the meetings I attended as an ENB reporter as part of my ethnographic work. This largely means that I, in my analysis, drew on my experiences, and different-styled-notes from reporting to "back up", triangulate[23]

[19] I will go into more detail on the governance, role and processes of these meetings in Chapter 4.

[20] This includes the virtual sessions of SBSSTA-24, SBI-3 and the Third Meeting of the Open-ended Working Group on the Post-2020 Global Biodiversity Framework (OEWG-2020).

[21] The ways that the CBD negotiations (and participation therein) took on a virtual format once COVID-19 reached pandemic status, deserves a separate research project, and I am unfortunately unable to go into much depth of the challenges that arose across these meetings. For a flavour of the issues that have arisen please see our *Analysis* in the IISD ENB Summary Report SBSSTA-24 (June 2021) Vol.9 N.756 <https://enb.iisd.org/sites/default/files/2021-06/enb09756e_0.pdf> (accessed 10/02/2022). See also Mika Schroder, 'Biodiversity Negotiations Should Account for COVID-19 and Ensure Equity' IISD SDG Knowledge Hub (August 2020) <https://sdg.iisd.org/commentary/guest-articles/biodiversity-negotiations-should-account-for-covid-19-and-ensure-equity/> (accessed 10/01/2022). The virtual nature of negotiations also brought with in additional challenges for my own work, including carrying out interviews and so on, discussed further below.

[22] See Text Box: Scheduling days during CBD meetings

[23] Triangulation refers to the use of several sources (for me, CBD documents, Observations, Dialogues and Interviews) to reach an understanding of something (an event, widely held opinion etc.) to confirm one or several sources. See Norman Denzin, *The Research Act: A Theoretical Introduction to Sociological Methods* (2017).

and confirm the habitual nature of certain practices and processes within the CBD. Notably, by the time I began working as a reported at the CBD negotiations, I had begun to be treated as "part of" the process; people recognised me, turned to me to discuss certain topics, stopped treating me as the "outsider" that I was during COP-14. This therefore highlights the changes in positionality that one may experience when engaging in ethnographic work. In some ways my changing, or overlapping role as researcher-reporter also reflects, and made it easier to relate to the ways that most people attending CBD negotiations often do so "wearing several hats" all at once. In addition, in me becoming associated with the ENB I also gained a changed "status" within the meetings, with me gaining easier access to certain groups, such as country delegates and members of the Secretariat.[24] In this sense, becoming an ENB reporter, and I suppose also a frequenter of these spaces, led to a change, and perhaps deepened immersion into the CBD processes, and have certainly helped enriched my observations, discussions, and eventual analysis.

Text box 1: ***Approximate scheduling and workflow of days during CBD meetings***

Days doing Ethnographic work ("on site")	**Days doing ENB reporting (virtual, from home)**
6.30 – 8.00 Breakfast and travel to the venue **8.30 – 10.00** Attended caucus strategy meetings **10.00 – 13.00** Floated between Working Group and Contact Group sessions, or meeting colleagues **13.15 – 14.45** Alternated attending side events, Contact Group sessions, grabbing coffee and/or lunch with colleagues, or catching up on notes **15.00 – 18.00** Floated between Working Group and Contact Group sessions, or meeting colleagues **18.15 – 17.45** Alternated attending side events, Contact Group sessions, grabbing coffee and/or lunch with colleagues, or catching up on notes **19.00 onward** Attended Contact Group meetings, some of which would run past midnight. **00.00** Approximate arrival at hotel and arranging notes before bed	*Days leading up to this would usually involve multiple pre-session caucus meetings for discussing strategy and drafting statements.* **10.00 – 13.00*** reporting on negotiations (providing very detailed summaries of negotiation process) **13.00 – 15.00** lunch and finalising notes for report **15.00 – 18.00** reporting on negotiations **18.00 onward** finalising notes, drafting web-text, editing earlier drafts, strategizing with team, and catching up with colleagues. In final days this also includes writing overviews of outcomes, arranging meetings with participants to gain insight into their perspectives, drafting analysis text, and editing existing drafts. Work usually did not wrap up until 20.00. * The actual time of day would depend on time-zone of the meeting. Ultimately, I worked different hours.

Detangling Experiences: Observations, Dialogues and Interviews

Entering into the spaces of international legal negotiations was a profound experience, prompting a shift in my own thinking and understanding of law and legal research. It came

[24] Notably, the ENB has its own culture around engagement and confidentiality, which reflects the delicate relationship it holds with these institutions and country delegates, which I have drawn on when engaging with my notes from days doing ENB-reporting, in ways that has not compromised my own ethical framework.

after spending five years studying international law from textbooks and university lectures, where we have primarily (explicitly or implicitly), been taught to only concern ourselves with laws as they appear after adoption – the black letter law. In this sense, learning and seeing where laws come from, the process and actors involved in their drafting, review and adoption was eye-opening, and has changed my relationship with the discipline in numerous ways. In terms of research process, the wide and tall, buzzing rooms and halls of the COP, SBSTTA and WG8J[25] were wholly different to the desk-based research I was used to, and my conversations with people deepened my understanding of the subtle nuances and complexities that these spaces (and thus the texts themselves) carry. My mind has been expanded by now seeing more clearly the multiplicity of layers, agendas and goals of international law and their processes, with time also taking on new meanings and forms as the weeks bore on in fast-and-slow time. For instance, the sometimes (simultaneous) painstaking-slowness-but-also-rapidness of the negotiations meant a readjustment of mind and readiness to pick up subtle changes to dynamics in process and textual edits. Negotiators could be swiftly going through a text on a paragraph-by-paragraph basis, only to then be halted for hours to discuss a single sentence, phrase, word or punctuation. Rooms went from holding an air of comfort, with soft murmuring between nods, to suddenly giving off a palpable tension where you could hear the drop of a pin.

I write the above for two reasons. Firstly, to stress the significance of my ethnographic approach for gaining an understanding of the participatory processes within the CBD negotiations. Without the above-mentioned experiences, any study purporting to study `participation` at the CBD, I believe, would fall short. Second, it also highlights that, as a one-woman team, my time doing data collection was intense, messy[26] and at times overwhelming. It was my first ever ethnographic study, and my first time at international negotiations. Yet maybe for that reason, it was also an immense experience, and I recall days of running off pure adrenaline and the energy that comes with meeting and connecting with fellows. I went with clear ideas for *how* I was going to collect my data, with these inevitably changing along the way, adapted to my experiences and capabilities.

While attending the negotiations for my research, I tried keeping the following journals, which at times merged into one another: a logbook which functioned as my daily planner; a diary on reflective observations, such as early experiments with spatio-legal-temporal thinking; diary on informal chats, where I jotted down topics of spontaneous meetings and discussions; personal diary, for my own reflections of my experiences; and digital notes, used during the negotiations themselves and became combined with the content of the above journals at the end of the day.[27] In total, from what amounts to a total of four weeks of negotiations, I have

[25] Chapter 4 provides an overview of the institutional, governance and decision-making arrangements and structures of these processes.
[26] See for instance John Law, *After Method: Mess in Social Science Research* (Routledge, 2004).
[27] I read John Van Maanen and Paul Atkinson as my main sources of inspiration for developing an approach for organising my thoughts, observations and reflections. See Van Maanen, *Tales from the field* (University of Chicago Press, 2nd edition, 2011); Paul Atkinson, *Thinking Ethnographically* (Sage, 2017).

85 in-depth documents (averaging 3-4 pages) detailing my *observations, dialogues,* and *interviews.*[28] My *Observations* cover my collected notes (from across my various diaries and journals) from negotiations, side events, and caucus meetings which I was given permission to attend. They were often written up at the end of the day or following a particular event, containing both my observations, as well as my initial reflections on what took place, with the occasional summary of a discussion had with a person in the seat next to me.[29]

Of my 85 digital notes, ten are from interviews (with a total of 22 participants), which averages at one hour long each.[30] The difference between *interviews* and *dialogues* is that the former refers to a deliberate, scheduled discussion between me and one or more participant, whereas the latter may of happened spontaneously, a meeting in the corridor, over breakfast or on the bus going to the venue, in the queue for a coffee or lunch, a whispered discussion *during* negotiations to help explain a particular statement, what has taken place, initial reactions or so forth.[31] It also includes discussions of meetings that I could not attend, which given the simultaneous nature of the negotiations, proved absolutely crucial for giving me insight into things that I may of missed. In a sense it reflects the hive-mind which emerges at the negotiations, across the various groups working together and collaboratively. Because of the complexity and highly technical nature of discussions – where it naturally becomes that people are put in charge of certain agenda items within a collective – as well as the simultaneous nature in which negotiations take place – making it impossible for any one person to follow everything – it becomes necessary for everyone to rely on each other in order to keep our heads above water and manage to have a somewhat decent overview of how the meeting is progressing. Later on, during my analysis, I found the content of *Dialogues* incredibly important for unearthing the ways that the *tilts* and *atmospherics* materialise at the negotiations. What began to emerge in my analysis was the collective significance of these for understanding the nuanced, and sometimes minute ways, that spatial in/justice emerged within a given space.

For the *Dialogues*, if containing delicate information, or personal reflections, I sought consent from the person before bringing it into my thesis. If generic, or part of a wider pattern of

[28] See Annex Table 2 for a more detailed "breakdown" of what these documents/digital notes covered.
[29] This illustrates for instance the overlapping nature of my "data sets" where especially Dialogues and Observations merge into one.
[30] Because the majority of my interviewees chose anonymity (bar two individuals), I cannot provide many details of whom they were, but I can confirm that I interviewed at least one individual from each continent, with a gender split of 3:1 with the majority being women. In order to respect the anonymity of my interviewees, I will provide a little more detail during my viva, on the presumption that this is treated with utmost confidentiality.
[31] This is inspired by my own experience as an ENB reporter, where the approach taken for drafting the popular section "In the Corridors" follows a similar approach for grasping a general sense of the various opinions held by participants, in a confidential manner. I chose a similar approach when considering the issue of consent for *Dialogues* precisely because of the unwieldy nature that such a task would swiftly become, given that the collective number of people I spoke to during all negotiations likely numbers the several hundreds. That said, as I mention above, I did seek out consent if containing delicate, or personal information. Indeed, I'd like to think that this approach illustrates the flexibility of my own ethical framework, which I kept flexible precisely so that it could be responsive, and adaptable to established cultural practices so long as they did not undermine my core ethical principles. See the following section 3.3 for more insight into my ethical framework.

experiences or reflections by people, or a retelling of an event which many others would have been part of (e.g., negotiations), I did not, and rather treated them as part of the collective memory of participants. As explained in the next section on my ethics, I only approached people for interviews after COP. Some took place online, while others were had during the November 2019 meetings. The majority were recorded, enabling me to write transcripts that the participants could then read over and adjust if they wished. If participants preferred not to be recorded, I simply wrote up a summary afterwards, which was then sent to them for checking. This is in reflection of my ethical framework, which has played a considerable role in my thinking and acting throughout this PhD research, providing a guiding light into what direction I may wish to take my research and analysis, always reminding me of my overarching aims and responsibilities as a researcher. Following my short subsection below offering an overview of my approach to analysis and treatment of my ethnographic "data", I will provide more detail and depth on my ethical framework.

Re-entangling Experiences: Analysis

I decided on adopting a grounded approach for the development, analysis and presentation of my research findings.[32] In several ways, institutional ethnographies demand this – ensuring that the research questions, analysis and drafting remains guided by experiences in the field, as well as being responsive to the emerging patterns or phenomena which are not apparent before the fieldwork begins. In carrying out, and presenting an ethnography, we must resist the temptation to "organise", "structure", "map" data sets into neat pre-conceived themes or categories, or present "messy" processes as "ordered". I went to the CBD COP-14 with an open mind, and (mostly) blank journals. While there, I had the opportunity to not only observe, take notes, and talk with people, but also test my theoretical framework. This included trying to conceive of the *spatial* conditions of negotiations, how this is shaped by law, time and other factors, and how this influences the conditioning of `participation`. It also meant considering the challenges posed by decolonial literature and critical theories, and what thinking about these *within* the halls of international biodiversity negotiations, can provide in terms of helping inform efforts towards more globally just processes and institutions. Until put to work within the spaces that they critique, the questions and challenges they pose – which to be sure, are very valid – will remain in the theoretical realm, and to some appear too abstract to grasp. In this sense, institutional ethnographies can help bring these theories into a different light, with the theories doing the same to the sites of the institutional ethnography. This is the form of interdependence I strived for throughout the research journey, as well as in my analysis, where my theory, methodology and experiences at the CBD meetings gave rise to a mingling and co-emergence of insights from across all these elements.

In terms of the "nuts and bolts" of this, I used Microsoft-excel to catalogue all my digitized notes, including my transcribed interviews. Here, I used the documents to help identify themes to help guide a grounded approach in the development of my research approach. As

[32] Chamaz, *Grounded theory methods in social justice research* (2011).

mentioned above, my understanding and thinking on spatial in/justice, coupled with the challenges posed by decolonial literature and critical theories, had deepened by this point, with me having a better appreciation and understanding of how they may help inform my research agenda and analysis.[33] This, coupled with my ethics (introduced later in the chapter), meant having my insights from the field (my observations as well as my discussions with `participation`) help inform areas of focus. The themes that emerged were that of the power-sovereignty nexus, questions of knowledge (epistemology), power dynamics amongst non-state actors, and language/terminology. In several ways, these themes feature throughout all my substantive chapters, with the overlap in my note-documents (for instance when one spoke to several themes) meant that I kept a broad picture of the issues throughout the stages of my analysis and writing. That said, the overall thesis structure does in some ways reflect the themes individually too. Ultimately, Chapter 4 on the *Staging of Biodiversity Negotiations* looks closer at the power-sovereignty nexus, and how this influences and shapes the participatory spaces for non-state actors. Chapter 5 looks more directly at the power dynamics amongst non-state actors from a linguistic/terminology perspective, and the consequences of this in the positioning of actors at negotiations. Chapter 6 looks closer at the question of knowledge (epistemology), as well as worldviews (ontology) given that I perceive these as inextricably linked. Questions of language features throughout all my chapters, with particular terminologies often acting as "entry points" or exemplars for my analysis into the materialisation of spatio-legal conditions of negotiations, and the emergence of spatial in/justice therein.

3.3 Ethics as Embodied Practice

3.3.1 Colonialism, Environmentalism and Research Ethics: *Foregrounding respect and responsibility*

Research has historically played a central part in the colonising project over groups and collectives such as Indigenous Peoples, their territories and cultures, acting as a tool to justify physical and psychological abuse, theft, discrimination and oppression.[34] Through practices of categorization, collection, classification, external representation and evaluation, research practices have acted in ways that undervalue, simplify, ignore and undermine Indigenous Peoples, their knowledges and practices, and thus their status in society.[35] Still today, some

[33] For instance, in being guided by decolonial scholarship and thinking, I have from the outset questioned, rather than taken for the granted, the very tenets of international law and governance which places states and state sovereignty at the centre.

[34] Tuhiwai Smith, *Decolonizing Methodologies* (2012), 68-9. Notably, these experiences extend beyond Indigenous peoples, and research has been used discriminately on select, traditionally marginalised groups of society.

[35] Rauna Kuokkanen, 'From research as colonialism to reclaiming autonomy: Toward a research ethics framework in Sápmi' Report from Seminar: *Sáme- ja álgoálbmotdutkama etihkka. Seminára raporta, Kárášjohka 23-24 November 2006.* Kautokeino: Sámi Instituhtta, 48; Smith, *Decolonizing Methodologies* (2012) chapters 2-3; Anna-Lill Drugge (ed) *Ethics in Indigenous Research: Past Experiences – Future Challenges* (Vaartoe – Centre for Sami Research, Umeå 2016). In Sweden for instance, the Sámi were subjects, until the mid-1930's, of research grounded in racial biology. Methods for this included the measurement of skulls, with results used for

research practices are marked with imperialist practices of studying and representing the "other" in contradiction to the civilised, western world.[36] Likewise, critiques have emerged against problematic practices and dehumanising terminology that re-embeds existing power structures (internal and external to the communities themselves) and further alienates particular groups. It is therefore unsurprising that there is a movement of scholars and activists calling for a decolonisation of research processes, articulating their own research agendas[37] and methodologies, and exploring ways that research can be used as a tool to further self-determination and improvement of lives and social conditions.[38] For Indigenous scholars, this includes demanding that research concerning Indigenous issues emanates from the needs and concerns of the affected groups, the dissemination, or 'giving back' of research findings amongst the communities in an appropriate and meaningful way,[39] and that the non-Indigenous researcher commits to a process of reflecting on their positioning within the broader research agenda. In relation to this latter point, emphasis needs to be placed on the responsibility of the researcher vis-à-vis those with whom they are conducting research, understanding and acknowledging their privileged positioning within historical and contemporary power

designating the Sámi as a 'lesser' race than that of the remaining Swedish population. This was used by the Swedish government to justify discriminatory practices, including the segregation between the Sámi's and the remaining population, and policies related to land and economics which led to the theft of Sámi territories. See work by Pekka Isaksson, for instance Pekka Isaksson, 'Kumma kuvajainen. Rasismi rotutukimuksessa, rotuteorioiden saamelaiset ja suomalainen fuusinen antropologia' in *Pohjoisen historiat 1. Kustannus Puntsi* (Gummerus kirjapaino Oy, 2001).

[36] See for instance Michael Dodson, 'The end of the beginning: Re(de)finding Aboriginality' in Michele Grossman (ed) *Blacklines: Contemporary critical writing by Indigenous Australians* (Melbourne University Press, 2003); Bronwyn Fredericks, ''We don't leave our identities at the city limits': Aboriginal and Torres Strait Islanders living in urban localities' (2013) *Australian Aboriginal Studies.*

[37] Gabrielle Russel-Mundine draws on a number of diverse Indigenous scholars in identifying, broadly, key principles for research by, or with, Indigenous Peoples: seek to empower Indigenous peoples; aim to decolonise and reframe research; be critical and liberationist recognising social, political and historical contexts; have political integrity; privilege Indigenous voices; recognise and represent the diversity of cultures, voices and experiences; allow Indigenous peoples to set the agenda; focus on matters of importance to Indigenous peoples; use core structures of Aboriginal world-views; integrate cultural protocols, social mores and behaviours into methodology; Integrate Indigenous ways of knowledge creation. See Russel-Mundine, 'Reflexivity in Indigenous Research: Reframing and Decolonising Research' (2012) 19 *Journal of Hospitality and Tourism Management*, 86-87. In particular, she quotes Judy Atkinson, Maggie Brady, John Henry, Karen Martin, Martin Nakata, Lester-Irabinna Rigney and Linda Tuhiwai Smith.

[38] Lester-Irabinna Rigney, 'A First Perspective of Indigenous Australian Participation in science: Framing Indigenous research towards Indigenous Australian Intellectual Sovereignty' (2001) 7 *Kaurna Higher Education Journal*; Karen Martin and Booran Mirraboopa, 'Ways of Knowing, being and doing: A theoretical framework and methods for indigenous and indigenist re-search' (2009) 27 *Journal of Australian Studies*; Tove Bull, 'Kunskapspolitikk, forskningsetikk og det samiske samfunnet', in *Samisk Forskning og Forskningsteknikk* (Oslo, De nasjonale forksninsetiske komitéer 2002); Jelena Porsanger, 'An Essay about Indigenous Methodology' (2004) 15 *Nordlit*; Åsa Nordin Jonsson, 'Ethical Guidelines for the documentation of árbediehtu, Sami traditional knowledge' in *Working with Traditional Knowledge: Communities, Institutions, Information Systems, Law and Ethics. Writings from the Árbediehtu Piilot Project on Documentation and Protection of Sami Traditional Knowledge* (Sámi allaskuvla/Sámi University College 2011).

[39] Tuhiwai Smith, 'Researching the Native Māori' in Denzin and Lincoln, *The SAGE Handbook of Qualitative Research* (Sage, 2005), 132.

hierarchies, and actively engaging to "dismantle colonial constructs"[40] by challenging beliefs, biases, prejudices and assumptions within the academy.[41]

Commonly, research involving humans tend to be regulated through legislation and guidelines on the domestic or institutional level, and researchers must often go through the processes of ethical reviews. However, these are often standardized, and based on presumptions of universal values for what constitutes ethical conduct, and fail to provide space for the representation of groups that have faced historical systemic and institutional marginalisation and vulnerability. Much less do these processes engage with their ontologies and epistemologies,[42] including their own perceptions of what constitutes ethical and respectful behaviour.[43] As Linda Tuhiwai Smith states in her critique of the top-down approach to ethical codes, "the discussions, dialogues, and conversations about what ethical research conduct looks like are conducted in the meeting rooms of the powerful".[44] It is for instance not common for ethical codes and guidelines to recognise that research should be grounded on the establishment of relationships founded upon respect and reciprocity, [45] but rather clinical, formal relations of emotional distance. This stems from traditional university ethical frameworks having their roots in biomedical models, with the processes geared towards "do no harm" as opposed to "do good" and an "ethics of care", grounded upon utilitarian and consequentialist approaches.[46]

Furthermore, it has been illustrated that some concepts found in standard ethical frameworks today can prove not only inadequate, but actively counterproductive to the aims of the groups involved. Take for instance the principle and practice of informed consent. Smith problematizes these processes in light of embedded power relations between the researcher and those invited to take part. These relationships shape dialogues and negotiations in ways that can have negative consequences on the agency of the "researched" in determining when and why they should give consent.[47] Further to this, differences in language (including formal,

[40] Emma LaRocque, *When the Other is Me: Native Resistance Discourse, 1850-1990* (University of Manitoba Press, 2010), 162.
[41] Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?' in Nelson and Grossberg (eds) *Marxism and the Interpretation of Culture* (MacMillan Education, 1988); Kuokkanen, *Ethics in Sámi and Indigenous Research* (2006).
[42] Smith, *Researching the Native Māori* (2005).
[43] Smith for instance challenges the apparent universal value of respect, given that the basic premise for that value is quintessentially Euro-American. "What at first appears as a simple matter of *respect* can end up as a complicated matter of cultural protocols, languages of respect, rituals of respect, dress codes". See Ibid, 131
[44] Ibid, 129. Further to this, several scholars have pointed towards the potential issue that university research ethics committees may not have the necessary disciplinary skills and expertise to appreciate the particularities and full scope of complexities in proposals. See Saskia Vermeylen and Gordon Clark, 'An alternative ethics for research: Levinas and the unheard voices and unseen faces' (2016) *International Journal of Social Research Methodology*.
[45] Gaile Cannella and Yvonna Lincoln, 'Predatory vs. dialogic ethics: Construction an illusion or ethical practice as the core of research methods' (2007) 13 *Qualitative Inquiry*; For instance, within the Strathclyde Ethics process, the template Consent Form only elaborates on what the "subject" is "signing away", and does not propose an elaboration of the key responsibilities of the researcher in this respect. In fact, when elaborating on these in my own consent form, I was told by the ethical board that this was an unusual practice, and it was discouraged.
[46] Vermeylen and Clark, *An alternative ethics for research* (2016), 4-6.
[47] Smith, *Native American Feminism* (2005), 131-132.

academic terminology) and differing educational backgrounds can also act as hindrances to people gaining sufficient information in order to make that decision.[48] Smith also points to the fact that consent is considered an individual right stemming from liberal thought, which fails to adequately protect the collectively shared knowledge amongst communities, something she highlights is particularly concerning in an "era of knowledge hunting and gathering",[49] and is particularly pertinent to issues of international environmental governance where diverse knowledge systems are becoming increasingly recognised but also commodified, as discussed throughout this thesis. Here, we begin to the see the significance of considering matters of ethics in participatory processes. It is simply not enough to ask whether someone has a seat at the table, but rather whether their inclusion in process was done in a respectful manner which recognises and pays homage to their own particular positionality, showing respect for their worldviews and knowledges, which may include asking questions on how these knowledges may best be "used", by whom and to what ends. Therefore, this illustrates the importance of having an ethical framework which flows throughout the research process, having it embedded within the theory and methodology, and guiding the posing of questions and analysis.

Related to this, there is also growing recognition that ethics should be considered an ongoing, flexible and reflexive process, as opposed to a one-off box-ticking exercise. For instance, many Indigenous authors and activists are calling for processes in which the groups with whom the research is concerned should be part of the elaboration of research goals and agenda.[50] Apart from empowering Indigenous Peoples and privileging their voices, this would also ensure that the research sufficiently and meaningfully addresses community concerns. Notably, this may require extensive time spent on building relationships and trust, something often significantly hampered by funding and university-driven timelines.[51]

Reflexivity on behalf of the researcher is also incredibly important, and should be ongoing throughout the course of the research process. Gabrielle Russel-Mundine suggests that the reflective practice must challenge the unequal structures embedded in the dominant culture, including reflecting on one's own positioning and actions. This should go as far as questioning whether the researcher *should* be working within the chosen space, a question which requires honesty and awareness about oneself, the culture and society from which one is coming and seeking to join, and the history between one's own culture and that with whom the researcher engages.[52] With regards to power relationships, it is important to continually ask whether the acting upon of one's power and privileges by virtue of our positioning in society

[48] Ibid.
[49] Ibid, 131. Notably, the American Anthropological Association stresses contingencies rather than universal principles in its ethical review of research, and stresses also the importance of process in obtaining, and retaining consent throughout the research project. See American Anthropological Associated, *Code of Ethics* (2009).
[50] See footnote 36 above.
[51] Russel-Mundine, *Reflexivity in Indigenous Research* (2012), 88. I have myself found this particularly challenging, especially given the nature of my own "field sites".
[52] Ibid, 87.

has exclusionary consequences on people from traditionally marginalised groups.[53] This includes also the need to, as Spivak calls it, "unlearning one's learning", referring to the researcher learning "to behave as a subject of knowledge within the institution of neo-colonial learning".[54] Here, one must critically examine one's beliefs, biases and assumptions, coming to terms with how they have arisen and become normalised in the first place.[55] We must also be prepared for situations where our ways of knowing and understanding is put into question and challenged.[56] For this project, this has for instance meant unpacking and confronting the assumptions of positivist legal education, which provided the benchmark for how I had previously studied and come to understand law and legal research.

This speaks to what Saskia Vermeylen and Gordon Clark have proposed with regards to adopting open-ended approaches to ethics in the field – 'ethical sensibilities cannot be anticipated; they emerge only through encounters in the field'[57] – and an adjustment of research methodologies and practices to reflect this by research participants.[58] This way the researcher is better prepared to face and deal with potentially contradictory and *paralysing* experiences in the field, where a pre-determined set of rules will be of little help in unforeseen circumstances.[59] My approach has aimed towards incorporating this, along with the elements discussed above, including questioning the universal language surrounding the idea of consent, and that I as researcher challenges power relations when the opportunity arises. In the following section, I will illustrate more concretely how I have let the above influence my research process in the field and at home.

3.3.2 Ethical Practices Away and at Home

By taking the above discussion as my point of departure, I set out intending on making my ethical framework a dynamic and interactive process embedded within my research project. It is therefore clear that the purpose of this section is not to relay an exhaustive list of rules that I vowed to follow in a strict sense, precisely for the reason that I recognise the need to remain flexible in order to respond and adjust according to the needs and wishes of those to whom my research is relevant and actively engages with. That said, I can put forward a set of principles which guided my actions in the field and at home.

First, my research process sought to establish and maintain relationships based upon respect, trust, reflexivity and responsibility on behalf of myself as the researcher vis-à-vis participants and other groups or persons potentially affected by my research. It always felt important that

---

[53] Bronwyn Fredericks, 'Epistemology that maintains white race privilege, power and control of Indigenous studies and Indigenous people's participation in universities (2009) 5 *Australian Critical Race and Whiteness Studies Association e-Journal,* 9.
[54] Sara Danius and Stefan Jonsson, 'An Interview with Gayatri Chakravorty Spivak (1993) 20:2 *Boundary2*, 25.
[55] Rauna Kuokkanen 'The Responsibility of the Academy: A Call for Doing Homework' (2007) *Journal of Curriculum Theorizing,* 81-2.
[56] Vermeylen and Clark, *An alternative ethics for research* (2016), 10.
[57] Ibid.
[58] Ibid.
[59] Ibid, 6-9.

my research process "gives back" to those that participate in it, either directly or by offering my time towards their own causes.[60] I have also sought to frame my research in ways that remains relevant to the groups I am working with.[61] For this, I have openly discussed my research agenda with participants, and asked for feedback and comments. At the CBD COP-14, I regularly reflected on how my research could be adjusted in order to align with the interests of my research partners. In practice this meant having preliminary discussions with people about what they considered important for looking at the practice of `participation` at COP-14, where did their priorities lie and so forth. This then drove my research planning and activity over the following weeks, informing the design of my research agenda and my own participatory observations.

I have also adopted a flexible and open process for my interviews in order to accommodate the particular and peculiar nature of CBD meetings and the lives of my colleagues. To begin, I wanted interviews to take place in ways that did not reflect the typical interviewing scenario where the spatial and material clearly reflects, and reinforce differences in power between the researcher and interviewee, as I believe these are unhelpful to ensure respectful, open and honest discussions.[62] To achieve this, all must be comfortable, and more importantly, the interviewee must be familiar with me and my work before agreeing to be interviewed, as well as feeling able to contribute as they wish. This meant that the early days of COP-14 and the other meetings was spent meeting and catching up with people, establishing dialogues relating to areas that would help inform the direction of my research. These took place in lines waiting to gain access to the venue, in between or during negotiation session, while on busses or transport between locations, grabbing a coffee or lunch outdoors to get some much-needed fresh air and stretch one's legs. My guiding principle in these instances was to gauge the preference of my colleagues and come to understand whether they were at all interested, or felt comfortable speaking to me "on the record".[63]

The CBD COP-14 posed a particular issue with regards to people giving *informed* consent in relation to participating in my research, which requires prior familiarity with the project. This issue stemmed from my own unfamiliarity with the processes, and lack of contacts amongst the relevant groups. This meant that I did not know before the meeting who was attending

[60] This has taken on a number of forms, and I have helped individuals or collectives with a number of matters. This includes offering support in funding applications, helping with arranging accommodation during meetings, proof reading work, sat in during caucus meetings to offer my expertise, helped in drafting caucus statements, written up minutes, blog posts, and so on. Importantly, this has never been done "in exchange" for interviews or information. In fact, many of the people I have worked with in this regard have not been interviewed. Rather, I did it by way of seeing myself become part of the ecology of these movements and believing in the importance of their work.

[61] Kuokkanen, *The Responsibility of the Academy* (2007), 81.

[62] Enabling a safe and trusting environment proved particularly important. Spending some extra moments for finding a protected corner, moving furniture around, taking time to get to know people with introductions and enabling a relaxed atmosphere has contributed to moments of both my research partners and I being happy and feeling that it has benefitted us all.

[63] On a more practical level, remaining flexible proved important in order to meet with certain people who were difficult to pin down up until you found yourself standing in the same queue for food or coffee.

and thus who I may want to approach. The approach to sending out information documents was made harder by there being no participant list provided before the meetings. I also learned later that such efforts would likely not of borne fruit, since those receiving an email would not have had time to read and consider them anyways. It also would have made my first time engaging with actors impersonal, something which is problematic when engaging with people whose communities may previously have had poor experienced with research groups and research practices.[64] Additionally, simply because of the temporal conditions of COP, it simply wasn't possible, nor ethical given peoples' busy schedules, to have in-depth discussions about my research while there. This led me to early on during COP-14 deciding not to hold interviews at the meeting, but rather afterwards, once people had been given a chance to settle and read my information document and considered my research. This changed at the later meetings since by that point people were familiar with me and my work.

I have interpreted the concept of consent as an ongoing process. In this regard, I have attempted to ensure that my participants feel like they hold control over the interview process, and in the ways that they are represented in my research. When considering the consent form, they had the opportunity to choose the format of the interview, whether what they say will be anonymous,[65] and whether they wish to be recorded. Following the interview, I have always sent participants the transcript and given them a chance to comment or change the record, also offering them with the opportunity to discuss my analysis, with this option remaining upon until I submit my thesis. This, alongside other responsibilities that I hold as a researcher was listed in the consent form,[66] with my intention in this regard being to make clear, and emphasise my responsibilities vis-à-vis participants.[67]

Not only have these approaches proven important to me in terms of feeling comfortable with the way that I carry out my research, but it has also meant that my research has been well received. In illustrating early on that I was interested in incorporating the perspectives of actors to whom this research is relevant, and in subsequently indeed taking on board their ideas, several colleagues have seen it beneficial to participate in my research. For instance, a

[64] Indeed, this was made clear in two instances when I spoke with people about my project, and before they agreed to participate, they asked the simple question "who are you?". This shows an awareness of the indistinguishable nature between researcher and research, with people only agreeing to participate once they had gotten to know me better.

[65] The issue of presumed anonymity was brought to my attention by Chrissy Grant, Indigenous Peoples Representative who has frequented the CBD meetings since the 1990s. Here, she highlighted the ways that the go-to anonymising approach has in the past made invisible the distinct contributions of Indigenous Peoples, stripping their own significance within research processes and findings. While anonymity can at times be preferred due to the sensitivity of a particular scenario, this will not always be the case, and unexpected consequences may follow, which remove the agency of actors to choose. This illustrates well the importance of remaining flexible in one's approach in order to respond appropriately to different historical and political contexts.

[66] See Appendix A.

[67] Upon submitting this to the university ethics committee for review, it was noted how unusual such an approach was, which illustrates the discussion held above about researchers being slow to adopt measures called for by ethical scholars and activists.

number of colleagues have said that our discussions have been helpful in giving them space to think through issues that they otherwise would not spend time on.

Responsibility on behalf of the researcher will also manifested itself in me "doing my homework". This relates to the discussion above concerning understanding, and reflecting on my own positioning in relationship with participants and interviewees, and when possible working towards breaking down barriers. For instance, it is important for me to not enter blindly into meetings without understanding the way in which the history of international law and legal practices, as well as its influence on every-day life (especially that pertaining to conservation) has contributed to the colonisation of Indigenous lands, and the continuous displacement and marginalisation of particular groups (including women and youths).[68] In this regard, my own positioning, as a white woman, non-Indigenous researcher requires attention and regular reflection on my behalf.[69] In no way have I sought to speak on behalf of, or represent Indigenous Peoples, their voices, and cultures. Similarly, while I identify as a woman, and technically fall within the category of "youth" within these spaces, I do not equate that with an ability of understanding, representing, or speaking on behalf of the experiences of peoples who share with me this common identity. Identities are fluid and complex, with my experience as a woman and youth also being shaped by my skin colour, the countries that recognise me as a citizen and resident, the wealth and professions of my parents, my own educational journey, and so on. My intention is to look inward at the processes that derive from international law (in which I am trained), the academic community (of which I am a part) and the political systems (that privilege me). As a Western academic trained and active within the British university system where that training has given me significant insight into the processes of international biodiversity law, my overarching ambition has been to "study up" (study the oppressor instead of the oppressed) and focus on ways to deconstruct, bring attention to, and challenge the hegemonic structures and discourses embedded within spaces addressing biodiversity conservation, and the barriers to `participation` that ensue.

Throughout these four years of my PhD journey, I have sought to make this ethical framework become an *embodied* practice, for instance shaping my every-day decisions and the overarching direction of my research. It has taken me to unexpected places, both intellectually and geographically,[70] and led to instances where I made the decision of de-prioritising my own

[68] This is a dynamic and forever ongoing process. Importantly, it requires engaging with information beyond that found in academic literature, keeping in mind the rather exclusive nature of this type of knowledge. My mind remains open and critical when engaging with conservation stories which refrain from mentioning effects on local groups. I specifically seek out stories and other literature written from within the relevant impacted groups themselves, and this has in a wider sense led to an effort towards decolonising my own libraries and practices.
[69] Spivak, *Can the Subaltern Speak?* (1988); Norman Denzin, Yvonna Lincoln Linda Tuhiwai Smith (eds) *Handbook on Critical and Indigenous Methodologies* (Sage, 2008); Margaret Elizabeth Kovach, *Indigenous Methodologies: Characteristics, Conversations and Contexts* (University of Toronto Press, 2009) 33. A key way that this played out during the CBD COP was me remaining attentive and reflexive regarding my positioning within particular spaces, and I sometimes had to question whether it was at all appropriate for me to be present at certain meetings, either in taking up space otherwise better left for others, or in terms of upsetting others with my presence.
[70] The most prominent here was my decision to take a four-month voluntary suspension to take up Spanish training in order to enable a collective of Spanish-speakers into my research project. It would've otherwise felt

research. This latter emerged in relation to COVID. Already before the pandemic, the majority of my colleagues within the caucus groups were not being paid for their work at CBD meetings, with their attendance often requiring taking unpaid leave, or in some instances paying for extra holiday, as well as time away from family and loved ones, missing precious time and crucial seasons associated with particular harvest. This was compounded during COVID, when the usual distinction between physical meetings and the space/time there-between which typically allowed for compartmentalisation and scheduling of time and work, essentially broke down, with people suddenly expected to provide input, engage in discussions, and attend seminars around the clock. The number of relevant workshops taking place shot up, discussion works and webinars took place on the weekly, with people struggling to keep up with this along with their usual, paid work. Already prior to COVID I did my best to respect, and show consideration for the challenges facing individuals, when asking for their time. This became increasingly indefensible after COVID, for the reasons mentioned above, and I made the decision to stop pursuing interviews in early 2020. Additionally, a sense of urgency, especially associated with Post-2020 Global Biodiversity Framework (GBF) negotiations, began to settle amongst colleagues. Therefore, from early 2020 onwards there have been periods, sometimes several weeks, when I have put aside my own research so to focus on contributing to these processes in a non-research capacity, but rather as part of the caucus teams themselves. In terms of reflexivity, this was an important reminder to myself that my research is, at the end of the day, a mere drop in the ocean of a much bigger environmental justice movement, and that upholding its integrity sometimes requiring putting aside your own priorities.

3.5 Conclusion

This chapter has laid out the methodological basis upon which I carried out my data collection, and analysis for the rest of this thesis. I began by offering my rationale for choosing to do an institutional ethnography, illustrating the benefits of gaining an emic perspective of the CBD spaces, as well as connecting this to the theoretical foundations introduced in the previous chapter. I also walked the reader through the "nuts and bolts" of the decisions regarding my `fieldwork`; the relevant lawscapes, and the ways that I went about collecting and organising my data. Here, I also offered some insight into the process of my analysis, and how I let my experiences at the negotiations influence and ways that my analysis and writing unfolded. Finally, I introduced my ethical framework, premised upon principles of respect, trust, reflexivity and responsibility, which has had a big influence in the shaping of my project, and the choices made along the way of carrying it out. My final subsection offered some insights into my practices in this regard, offering glimpses into how I have approached ethics as an embodied experience, when attending CBD meetings, as well as when working from home.

hypocritical and disingenuous if my project was to reproduce the barriers to participation experienced within the CBD negotiations, and following earlier challenges with interpretation, I felt this was the best option.

Part 2: *Spatialising In/Justice within Biodiversity Negotiations*

> *The symbolic, theatrical and performative dimensions of summitry are rarely theorised, but their implications are profound, not only for responses to the ecological crisis, but for the nature and character of global politics and the potential for resistance and dissent.*[1]

I take Death's study of *summitry theatrics* as the starting point for this second part of my thesis, going deeper into the finer details and nuances of the staging, casting and scripting of international biodiversity law and negotiations. The relevance of theatre as an analogy for what takes place at summits became apparent to me before coming across Death's work, however I am grateful for the reassurance that later came with reading it. There were so many elements of viewing the CBD lawscapes through the prism of theatre which spoke to me, with the most significant being that it denotes a carefully constructed space, with the actions and narratives prominent therein meticulously thought-out and deliberate. This makes space for spontaneous, organic resistance and dissent, difficult, and efforts to alter, or shift dominant narratives and cultures all the more so.

The concept of spatial in/justice, along with its ways of perceiving, and making tangible the *tilts* and *atmospherics* within its lawscapes, I find fitting and helpful for teasing out the ways that these carefully constructed spaces shape and enable (or do not) the `participation` of local actors within its walls. For regardless of whether summits "succeed" or "fail", they still continue to fulfil a function in terms of elaborating and re-embedding dominant discourses on biodiversity loss and protection.[2] And as such, they also play a fundamental role in scripting, and casting, the roles and responsibilities of actors therein, including the space provided for the emergence and nourishment of `alternative` visions, world views, knowledges and ways-of-life, which have become increasingly referenced across environmental law discourse. My hope is that the following three chapters offers you glimpses into these worlds, and that your understanding of how `participation` materialises (and does not) therein expands.

[1] Carl Death, Summit Theatre: exemplary governmentality and environmental diplomacy in Johannesburg and Copenhagen (2011) 20:1 *Environmental Policies*, 1.
[2] Ibid, 13.

Chapter 4: Staging Biodiversity Law

Spatialising participation and the In/exclusion at International Biodiversity Negotiations

4.1 Introduction

The core question driving this chapter forward is what barriers local groups face when engaging with the CBD negotiations, and the sources of their emergence and continued existence. It does this through a spatial in/justice lens, exploring and communicating the importance of spatial, temporal and discursive influences within international law-making when considering participatory practices, stressing the deeply political and value-laden nature of its emergence, interpretation and practice.[3] It takes the participation of local groups within international biodiversity law as its starting point. Building on institutional ethnography and the concept of spatial justice, I look closer at the ways in which space and law co-produce spatio-temporal conditions, reflecting unequal power relations therein. In drawing on spatial in/justice and critical participatory studies, I wish to direct attention to the peculiar form that participation has taken within international law-making in the context of biodiversity; as in some ways empowering yet simultaneously making invisible local representatives whose constituents remain the most vulnerable, but also most proactive across the field of ecological and social wellbeing. My argument in this regard is that the spatio-legal ordering of international negotiations, with the ensuing *material* positioning, discursive and linguistic conditions which set the stage for its processes, have established what Philippopoulos-Mihalopoulos describes as *oppressive atmospherics*. These condition, at times suppressing the visibilisation of opposition by these actors, as well as their positioning as *key contributors* within the process of international law-making.

In looking at participation in particular, my aim is to foreground law's materiality, with my emphasis being that we cannot understand law – that is, existing legal texts as well as what they are and what they could be – without understanding, and engaging with the process of its emergence. Especially at a time when social and environmental justice, including discussions of human rights-based approaches has entered into the vernacular of even the most repressive regimes, we must remain attentive, and critical of the ways in which these ideas are drawn upon, and who gets to hold the mic.

In taking a closer look at the practice of CBD negotiations (their structure, governance, negotiating spaces, history and practices) and the ways that the participation of local actors takes place therein, this piece is situated alongside wider, long-lasting and emerging debates within critical legal scholarship, international development studies and critical geographies. Building on data from institutional ethnography, it follows in the footsteps of scholars inviting for renewed attention to be paid to laws materiality, and builds on reflections scholars

[3] Davies, *Asking the Law Question* (2017), 32-36.

challenging positivist traditions embedded within the global structures and institutions of international environmental law, and participatory discourse itself.[4] Through the lens of spatial in/justice, this piece goes beyond existing literature looking at participatory mechanisms within the CBD and other multilateral environmental negotiations, seeking out what participation *actually looks like* within its walls, and what this can tell us about the CBD itself, as a body amongst bodies with change-making agendas. As discussed in Part 1 of the thesis, this has meant taking a step back and asking questions about how decisions emerge within the CBD, and remaining attentive to the manifestations of power, the positionality of actors, the dis/privileging of certain knowledges, and the way these materialise spatially, culturally, temporally and linguistically within the lawscapes of the CBD negotiations. These arguments and perspectives are carried into the following chapters, where I will look more in depth on the positioning/casting of actors and onto-epistemological hierarchies driving forth the scripting of international biodiversity law.

This chapter begins with introducing public participation within international law and sustainable development discourse, along with long-standing critiques against its continuous inference and framing. Having emerged from within the international development discipline, these critiques have failed to make their way into mainstream legal scholarship, including the literature looking closer at international environmental law in particular.[5] Here, a central critique is the win-win rhetoric which accompanies participatory approaches in change-making endeavours, which when coupled with a failure to take seriously the imbalance in positionality and power relations between development agencies and 'local' actors (not to mention power relations *within* local sites) acts to re-embed conditions of disempowerment. Emerging scholarship from participatory geography scholars argue that the incorporation of spatial perspectives can provide deeper interrogations of the material conditions and manifestations of (unequal) relations and interactions between actors and bodies within decision-making, helping us illustrate areas requiring change as well as concepts inspiring alternatives to the status quo. This speaks to work on spatial in/justice and lawscapes, which calls attention to the ways that law and space co-produce conditions which enable preferential treatment to particular actors, knowledges and worldviews according to dominant discourses and narratives. The section ends with bringing in the emerging scholarship of institutional ethnography, which has laid the groundwork for considering the materiality of international law-making processes, bringing to the fore new questions of substantive and procedural importance. The section is admittedly long, but necessarily so, as it sets the scene for not just this chapter, but for the remainder of the thesis, in terms of laying out the overarching critical literature that has informed the very basis of my enquiry. Yet, it does provide the

[4] Ibid; Davies, *Law Unlimited* (2017); Anna Grear, 'Foregrounding vulnerability: materiality's porous affectability as a methodological platform' in Philippopoulos-Mihalopoulos and Victoria Brooks, *Research Methods in Environmental* Law (Elgar, 2017).

[5] See for instance Ebbesson, *The Notion of Public Participation in International Environmental Law* (1997); Duvic Paoli, *The Right to Public Participation in International Environmental Law* (2012) 83 *Yearbook of International Environmental Law;* Sellheim, The Evolution of Local Involvement in International Conservation Law (2018).

foundations of my analysis in this chapter specifically, which is why I have decided to have it contained here rather than in my initial theory and literature review.

The following section seeks to *demystify* the CBD process by introducing its core negotiating spaces; their governance, institutional and governance structures, and procedures. Here, I begin to engage with wider meta-discourses framing negotiating space, for instance the insistence between *technical* and *political* spaces that shapes the discursive and cultural conditions within them, which has ramifications on *how* actors engage with one another, and with the processes and debates themselves. I will also introduce the discursive culture of diplomacy which underpins official communication within the CBD negotiating rooms. The section also introduces the avenues for `participation` afforded within the CBD process, setting out the foundations for understanding the process and "staging" of international law-making. This section is also long, and again necessarily so, as it helps provide the very backdrop of the CBD lawscapes that have made up the institutions and sites of my ethnography. It is a complex lawscape of lawscapes, with differing rules, aims and values guiding each distinct space. As my ensuing analysis will show, this differences amongst the negotiating spaces are significant for a number of reasons, not least because they offer varying levels of access and inclusivity for local actors.

The final section begins to draw on my institutional ethnography, looking closer at the conditions underpinning the CBD processes that enables the in/exclusion of actors within the process itself. Here, my focus is on the performative aspects of the negotiations, as well as how the elaboration of international biodiversity law is shaped by spatio-temporal and linguistic constraints. I look at the ceremonies of the varying CBD spaces, and what these tell us in terms of the values, worldviews and knowledges driving forward their work, and what this means for the actors involved. As hinted at above, the contrasts between the negotiating spaces are significant, an aspect that I will return to throughout this thesis and discuss towards the end in my conclusion chapter. Yet, throughout the CBD processes, I identify a number of *tilts* pertaining to how time, language and performatives materialise across the spaces, and illustrate the ways that this impacts actors differently, and especially restrict access by traditionally marginalised groups. A key finding is the *oppressive atmospherics* that have emerged with regards to the linguistic and temporal conditions of the negotiations, underpinned by the powers held by governments and other actors by virtue of overarching concepts such as state sovereignty, which has fundamental consequences on the relationships between actors, and the way some may feel able to express dissent and critique, or even represent their own constituents.

4.2 Spatialising participation at International Biodiversity Negotiations

4.2.1 Participation as Emancipation: From Empowering, to Tyrannical, and then back again?

Embracing Public Participation within Change-making Endeavours

Early participatory discourse, which emerged within international development literature and practice, first arose in response to what critics perceived as the top-down, eurocentric approaches to modernity and international change-making, driven forward also by international law and its associated institutions.[6] Towards the end of the Cold War, the rhetoric of participation, empowerment and human rights began to be used alongside the discourses for strengthened democracy and good governance.[7] At the time, growing criticism levied against the international development agenda was that it was far too *expert* driven, out-of-touch with local realities, and reinforced the idea that developing societies, in order to prosper, had to adopt Eurocentric ideas of modernity, rational process and industrial-capitalist economies. To many, the distribution of power, resources and knowledge, had remained *tipped* in favour of *experts*, organisations and institutions adopting a Eurocentric outlook, thus reproducing and re-embedding power imbalances associated with coloniality.[8] In response, scholars and practitioners proposed a shift in ways of thinking by imagining alternatives to development.[9] The emerging methods grounded in participatory techniques[10] allegedly embraced *bottom-up* approaches and discourses, with the intending results being that this made the process of development more empowering, democratic, just and effective.[11] Key components of these approaches was the incorporation of input from local peoples early on in research and planning phases of development projects, and the incorporation of local knowledges into their processes. Proponents suggested that this would

[6] See Chapter 2 Section 2.2 for a reflection on the link between international law and development.

[7] Rajagopal associates the rise of participatory and 'democratic' models to development with the end of the Cold War period, prior to which political development thinkers perceived participation and democracy as obstacles for economic growth, suggesting instead that human prosperity was better achieved by expanding people's choices through the growth of the middle class (i.e., economic growth would contribute to democracy in an *indirect* way only). Rajagopal, *International Law from Below* (2003), 147-8.

[8] Arturo Escobar, 'Imagining a post-development era? Critical thought, development and social movements' (1992) 32: *Third World and Post-Colonial Issues*, 24; Brian Christensen and Paul Speer, 'Tyranny/Transformation: Power and Paradox in Participatory Development' (2006) 22:7:2 *Forum: Qualitative Social Research.*

[9] See for instance Esteva and Prakash, *Grassroots Post-modernism* (1998, 2014); Mike Kesby, 'Retheorizing Empowerment-through-Participation as a Performance of Space: Beyond Tyranny to Transformation' (2005) 30:4 *Signs: Journal of Women in Culture and Society,* 2055; Niloshree Bhattacharya and Vinod K. Jairath, 'Social Movements, 'Popular' Spaces, and Participation: A Review' (2012) 61:2 *Sociological Bulletin, Indian Sociological Society*, at 301.

[10] Key early approaches came from Paulo Freire, *Pedagogy of the Oppressed* (Seabury Press, 1970), Robert Chambers, *Rural Development: Putting the Last First* (Longman Press, 1983); Robert Chambers, *Whose Reality Counts? Putting the First Last* (ITDG Publishing, 1997); Orlando Fals-Borda and Muhammad Rahman, *Action and Knowledge: Breaking the Monopoly with Participatory Action Research* (Apex Press, 1991).

[11] See Cornwall (2002) for an overview of the historical progression of 'participation' within mainstream development practice. Andrea Cornwall, 'Making spaces, Changing Places: Situating Participation in Development' (2002) *Institute of Development Studies Working Paper 170.*

level power imbalances between development experts and challenge top-down approaches to knowledge production.[12]

The early participatory rhetoric to development went as follows: by enabling local peoples to become involved in the planning phases of a project, they could contribute to the setting of goals and bring insights of local situations, while organisations benefitted from having projects that were more likely to succeed due to local support and by reflecting local scenarios.[13] This win-win rhetoric led to the approach quickly becoming commonplace within mainstream development practice, and the popularisation of its principles across the world by international institutions working at the intersection of development and law.[14] Indeed, the role of these institutions[15] are central for understanding the relationship between the two change-making projects of international law and development. Early on, these institutions were put forth as the apparatuses for enabling and managing societal changes brought about by development,[16] seemingly disconnected from those States that drove their establishment and rise to power. They came to play central roles in reform initiatives, sometimes through direct intervention in the form of legal drafting or by making the provision of financial assistance dependent upon particular regulatory or policy changes, practices still common today.[17] Beyond this they also became producers of knowledge related to questions on what constitutes healthy economies, enables economic growth, well-being amongst populations, good governance and so on. They have thus come to hold significant influence on the discourses regarding economic, societal and legal change through the dissemination of advice and "best practices".[18] Because of this uptake of participation across international institutions, often operating on the basis of quantitative and prescriptive approaches, it was made into a set of technical approaches to be "applied" within a given project.[19] Today, this old justification-framing of participation as a matter of input/output legitimacy, and the enhancement of implementation-efficiency within projects, remains the dominant lens through which we conceive it today, including within international environment governance.[20]

---

[12] David Mosse, '"People's Knowledge", Participation and patronage: Operations and Representations in Rural Development' in Cooke and Kothari (eds) *The New Tyranny* (2001); Christensen and Speer, *Tyranny/Transformation* (2006) 22:7:2.

[13] Ibid (Mosse).

[14] Rajagopal, *International Law from Below* (2003), 147-8.

[15] This includes the various UN bodies (UNEP, UN Development Programme, UN Food and Agricultural Organisation (FAO), UN Human Rights Council, and so on), but equally the World Bank, the International Monetary Fund (IMF), International Labour Organisation (ILO), International courts, etc. Ibid.

[16] Ibid, 26-7.

[17] Kerry Rittich, 'Theorizing International Law and Development' in Anne Orford and Florian Hoffman (eds) *The Oxford Handbook of the Theory of International Law* (OUP 2016), 827. See for instance the 2019 nation-wide Indigenous and farmer protests in Ecuador following the government accepting an IMF-loan which mandated the overnight scrapping of fuel subsidies.

[18] Ibid.

[19] Giles Mohan, 'Participatory Development: From Epistemological Reversals to Active Citizenship' (2007) 4:1 *Geography Compass*, 783.

[20] See for instance Peter Willetts, 'The Cardoso Report on the UN and Civil Society: Functionalism, Global Corporatism, or Global Democracy? (2006) 12:3 *Global Governance: A Review of Multilateralism and International*

Alongside the emergence of participatory approaches within development practice, similar discourses began gaining traction within environmental law and governance, especially linked to wildlife conservation, which provides a clear example of the intersection between development and the environmental movement. Here, traditional top-down approaches to conservation, stemming from 19th century naturalist-romantic philosophy[21] and adopted in the expansion of game reserves across captured and stolen lands within colonial territories, were largely premised upon culturally imperialist and racial ideas that local peoples could not possibly sustainably manage their own land and resources.[22] As these approaches became increasingly discredited amongst critical scholars and difficult to defend in light of the social justice movements of the 1970s, coupled with the rise in international donor aid during the same period, participation came to feature extensively also within conservation governance discourse. A similar shift took place within environmental governance more broadly, and by the time that the Brundtland Report was published in 1987 and the Rio Declaration drafted and signed in 1992,[23] both feature participation as a cornerstone of environmental protection and human well-being. The Brundtland Report enthusiastically promoted the role of civil society in progressing the sustainable development agenda, whereas Principle 10 of the Rio Declaration expressly recognised the rights of citizens to participate in decision-making processes, and have access to information related to the environment and to judicial and administrative proceedings.[24]

This shows the ways that participatory discourse within decision-making affecting environmental and human health has been envisaged across scales.[25] This is reflected in the growing culture, and popularisation of civil society participation and activism at international meetings, especially high profile negotiations such as the CBD and the UN Framework Convention on Climate Change, as well as at the meetings of international environmental

Organisations, 305-324; Willetts, *Non-governmental Organisations in World Politics. The Construction of Global Governance* (Routledge, 2011).

[21] See for instance Dan Brockington, Rosaleen Duffy and Jim Igoe, *Nature Unbound: Conservation, Capitalism and the Future of Protected Areas* (Earthscan, 2008), 18-20; Bill Adams, *Green Development: Environment and Sustainability in a Developing World* (Routledge, 4th edition, 2019).

[22] See Chapter 2 Section 2.2.

[23] Both these are considered founding documents for the principle of sustainable development and the modern regime of international environmental law.

[24] This Principle has since come to be enshrined within the Aarhus Convention, which enjoys wide ratification in European and across some Central Asian nations, and become enshrined within the jurisprudence of the European Court of Human Rights. The Escazú agreement, relevant to Latin America and Caribbean, was signed in 2018, and established environmental rights (including the right to participation as enshrined in Aarhus Principle 10) held by vulnerable peoples. See Rio Declaration on Environment and Development, Doc. A/CONF.151/26, Principle 10; Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 25 June 1998), Arts 1, 3(7), 4, and 5; and Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú, 4 March 2018).

[25] Notably, the UN Charter, drafted 1941 and signed 1945, provided for the participation of NGOs under consultative status, awarded by UN Economic and Social Council (ECOSOC) under Article 71. The participation of representatives from grassroots levels, for instance Indigenous Peoples representatives, did not emerge until the 1970s. The privileging role afforded to NGO's will be discussed in the next chapter.

institutions such as UN Environment Programme (UNEP) and International Union for Conservation of Nature. Here, as on the local level, large-scale NGO's have traditionally dominated these spaces, as participating on behalf of the 'environment' or the 'public' more generally, something which will be discussed in greater depth in the following chapter.

Within the CBD, signed at Rio in 1992, grassroots participation by Indigenous Peoples, small-scale farmers, and more recently youth and women representatives, have become more commonplace and is now standard at both its COP and intersessional meetings. Leading this cultural shift is the Indigenous Peoples and local communities caucus, whose work is often associated with Article 8(j) and its associated provisions (Article 10(c), 17.2 and 18.4) which addresses the participation of Indigenous peoples and local communities, for instance recognising the need to respect and include these groups' knowledges and practices within biodiversity management. Progress under Article 8(j) and its associated provisions showcases some of the Convention's most progressive and forward-looking work,[26] contributing to wider debates regarding the intersections between environmental law, social justice and human rights, with some attributing this to the input and participation of grassroots activists at meetings.[27] Despite this, few studies on participation approaches within international legal scholarship exist, with those that do often adopting doctrinal approaches of looking at relevant legal texts as opposed to exploring its practice.[28] Equally, within the CBD spaces, some practitioners (including Secretariat staff) seem to suggest equating 'full and effective participation', which is yet to be clearly defined, with existing practice, thus suggesting that this has already been achieved within the Convention.[29] In fact, as will be argued throughout the thesis, this is far from the case, and while the participatory processes at the CBD are some of the most advanced within the field of environmental law, this doesn't actually tell us a lot given how 'low' the bar has been set elsewhere.[30]

The lack of critical research in this area has two ramifications; first, we have limited understanding of the significance of opening up international legal processes to non-state actors and the effects this has on the substantive and procedural emergence of international

[26] See for instance CBD Decision 7/16, Appendix; Decision 7/16, Annex (Akwé: Kon Guidelines); CBD Decision 8/5 (Voluntary Funding Mechanism; CBD Decision 10/42 (Tharihwaié:ri Code); CBD Decision 13/18 (Mo'otz Kuxtal Voluntary Guidelines); CBD Decision 14/12 (The Rutzolijirasixik Voluntary Guidelines); CBD Decision 14/13 (Glossary of relevant key terms).

[27] Elisa Morgera 'Against All Odds: The Contribution of the Convention on Biological Diversity to International Human Rights Law' in Denis Alland et al (eds), *Unity and Diversity of International Law* (Brill, 2014).

[28] See for instance Boyle and Chinkin, *The Making of International Law* (2007), 41-93. Notably, their chapter predominantly addresses the participation of NGOs within International law-making. See also footnote 5 above.

[29] Authors notes, Observations from CBD COP-14, SBSTTA-23 and WG8J-11. This is often done implicitly, through a country delegate, Chair, or Secretariat staff member making statements regarding, for instance, access to funding "for the continued achievement of full and effective participation of [relevant actors] at CBD meetings".

[30] For instance, at the UNFCCC, procedures only allow for a very limited number of local representatives to actually participate in the negotiations themselves. The International Whaling Commission is notoriously difficult to access, with talks often happening behind closed doors. At both CITES and CMS, participation by civil society is usually carried out by large NGOs.

environmental law.[31] This is especially important in relation to addressing important matters of social and environmental in/justice, including issues of recognition in bringing forth the perspectives, expertise and autonomy of peoples who have historically faced systemic marginalisation and oppression across scales (at the hands of multiple actors, including States).[32] Along this vein, adopting a spatial justice perspective to take a closer look at participation at the CBD, can tell us a lot about the Convention itself, and the conservation agenda it promotes; the actors and relations driving its development, the knowledges shaping its decision-making, and it receptiveness to onto-epistemological shifts in enabling *more* just and diverse spaces for negotiations. Second, and linked to the first point made above, within international law, we are ill equipped to reflect on, and understand the promises and dangers associated with un-critical acceptance of participatory approaches, as well as the barriers local representatives face when seeking access to negotiations. For instance, as shown below, critical scholars have highlighted instances where participatory approaches risk re-embedding unequal power dynamics and structures of oppression, undermining the very justifications upon which participation is framed. A key concern here is that participation, as part of a wider agenda for democratisation of decision-making processes and change-making endeavours, is often associated with the increased legitimisation of process, when in reality little changes in terms of shifting and addressing underlying causes of environmental harm or the marginalisation and oppression of certain groups. This thesis addresses these gaps by looking closer at participation at CBD meetings, with the ensuing subsection introducing some of the key critical perspectives of participatory approaches, which will help frame my analysis throughout the thesis.

Tyrannical change? Problematising Participation

Following the widespread adoption of participatory models in development discourse and practice, critiques emerged bringing into question the extent to which the approach and its methods fulfilled promised aims.[33] Its strongest critics argued that the approach itself lead to instances of disempowerment, the reinforcement of existing power relations and that the implementation of policies and processes harmed those it was meant to empower.[34] A key critique was that development agencies were implementing participatory practices in ways that served their own agendas and underlying ideologies. Majid Rahnema for instance has argued that the radical concept of participation became manipulated, reduced to a less-threatening form of 'cooperation', which effectively provided a new way for

[31] Throughout Chapter 5 discuss the consequences of research adopting technocratic approaches to participation, grounded in functionalism and neocorporatism.

[32] See for instance Coulthard, *Red Skin, White Masks* (2014).

[33] Nici Nelson and Susan Wright, *Power and Participatory Development: Theory and Practice* (IT Publications, 1995); Chambers, *Whose Reality Counts?* (1997).

[34] Cooke and Kothari, *The New Tyranny* (2001); Majid Rahnema, 'Participation' in Wolfgang Sachs (ed) *The Development Dictionary* (Orient Longman, 1997), 116-131; Andrea Cornwall, 'Whose Voices? Whose Choices? Reflections on Gender and Participatory Development' (2003) 31:8 *World Development.* Notably, an early key text exploring gender issues in participatory development is Irene Guijt and Meera Kaul Shah*, The Myth of Community: Gender issues in participatory development* (IT Publications, 1998).

organisations to exercise power over dispossessed groups under the guise of good process.[35] In ensuing practice, he argues, participation became a technical framework, adopted under the neoliberal agenda, successfully concealing key underlying issues regarding power and onto-epistemological hierarchies that would otherwise need addressing in order to achieve structural transformation of development projects.[36] To place this within the context of the CBD, similar discussions have begun to emerge in relation to its negotiating processes and the extent to which its text and provisions permit for alternative approaches to conservation beyond that of the mainstream. While some have suggested – with reservations – that the Convention text and its associated provisions and processes provides space for different views and approaches to emerge with regard to what constitutes biodiversity conservation.[37] Meanwhile, others have challenged this, arguing instead that the Conventions processes, including those enabling participation, only provide limited opportunity for the negotiation of fundamental meanings of nature and culture.[38] My work contributes to this debate by exploring in more detail, from an emic perspective, the spatio-legal conditions of these 'opportunities' (however limited) within the Convention, and the way these influence the enabling and, or restricting of onto-epistemological diversity and its representation within the CBD framework, hoping that this opens up a more honest debate about process.

In returning to participation discourse and practice, the seminal collection *Participation: The New Tyranny* (hereafter *The New Tyranny),* edited by Bill Cooke and Uma Kothari,[39] provided a biting critique of participatory approaches to development and research. It marked the highpoint of backlash against participatory approaches, following a period of long and deep criticism.[40] Throughout the book, three types of tyrannies are introduced, which the contributors argue, due to their prevalence in the field, pose a significant challenge to those wishing to adopt participatory approaches. The first refers to the enduring dominance of decision-making control held by multinational institutions, organisations and funders, which inhibits fundamental shifts in power relations between actors. Second is the obscuring of limitations and manipulations that supress local differentials by virtue of the heavy emphasis on commonality within participatory processes, which ultimately leads to failure in addressing (or simply willingly ignoring) power imbalances on the local level. Finally, the authors reflect on the effect of having dialogue and practice being dominated by an un-critically acceptance

[35] Rahnema, *Participation* (1997).
[36] Ibid.
[37] Kabir Bavikatte, *Stewarding the Earth: Rethinking Property and the Emergence of Biocultural Rights* (OUP, 2014); Louisa Parks, 'Spaces for Local Voices? A discourse analysis of the decisions of the Convention on Biological Diversity' (2018) 9:2 *Journal of Human Rights and the Environment*.
[38] Elsa Reimerson, 'Between Nature and Culture: Exploring Space for Indigenous Agency in the Convention on Biological Diversity' (2013) 22:6 *Environmental Politics*; Ulrich Brand and Alice B. M. Vadrot, 'Epistemic Selectivities and the Valorisation of Nature: The Case of the Nagoya Protocol and the Intergovernmental Science-Policy Platform of Biodiversity and Ecosystem Services (IPBES)' (2013) 9:2 *Law, Environment and Development Journal*; Kimberly R. Marion Suiseeya, 'Negotiating the Nagoya Protocol: Indigenous Demands for Justice' (2014) 14:3 *Global Environmental Politics*.
[39] Cooke and Kothari, *The New Tyranny* (2001).
[40] Hickey and Mohan, *Transformation* (2004).

of participatory approaches as empowering, which limits dialogue and consideration of other methods for cultivating transformative change. Ultimately, their conclusion is that participation, as it is being deployed in practice, is inherently imbued with powers of domination, and is thus most likely to become tyrannical. [41]

In many ways these still ring true; since *The New Tyranny,* critiques continue to highlight the continued role played by strong, dominant actors (be it international agencies, NGOs, research institutes, funders, etc.) within decision-making processes, as well as the limitations this places on the ability of local groups in contributing to the early-stage envisaging and planning of projects geared towards change.[42] Similarly, the almost automatic lending of credibility and legitimacy that has come with adopting participatory methods by virtue of its simplistic win-win rhetoric.[43] Likewise, the assumption that "empowerment" emerges automatically from participatory approaches, has also overshadowed issues regarding transparency, accountability, and the difficulties posed by multi-scalar work carried out within short timeframes.[44] Indeed, countless critics have witnessed projects professing inclusive and participatory methods to decision-making, when in reality important decisions have been pre-determined by the agencies and organisations outside of the communities. [45]

This largely echoes the argument made by Rahnema that the radical concept of participation has been manipulated, *softened* to the point of losing its transformative potential, instead providing multinational organisations and agencies a way of advancing their corporate image while simultaneously remaining in control over decision-making.[46] As will be discussed in this, and the following chapters, these criticisms also gain traction in relation to the CBD with regards to some of the space held by large-scale global actors within decision-making and implementation.

A response to *The New Tyranny* came in Samuel Hickey and Giles Mohan's edited collection *Participation: From Tyranny to Transformation* (hereafter *Transformation*), which has proven important if nothing else for its prompts in continuing debates following the rather discouraging conclusion of Cooke and Kothari's book. While not refuting or denying the claims made in *The New Tyranny*, the collection sought to extend the critical debate towards the

[41] Ibid, 7-8.
[42] We have seen this for instance within the field of conservation, with concepts and approaches incorporating participatory practices attracting criticisms along the lines as those introduced in *Tyranny*. See for instance Woldfram Dressler at al., *From Hope to Crisis and Back Again?* (2010); Lorenza Fontana and Jean Grugel, 'The Politics of Indigenous Participation Through "Free Prior Informed Consent": Reflections from the Bolivian Case' (2015) 77 *World Development*; Martin Papillon and Thierry Rodon, 'Proponent-Indigenous Agreements and the Implementation of the Right to Free, Prior and Informed Consent in Canada' (2017) 62 *Environmental Impact Assessment Review*, 216-217; Wesley Flannery and Geraint Ellis, 'Exploring the Winners and Losers of Marine Environmental Governance' (2018) 17:1 *Planning Theory and Practice.*
[43] Ibid.
[44] See in particular Paul Francis, 'Participatory Development at the World Bank: the Primacy of Process' in Cooke and Kothari, *The New Tyranny* (2001).
[45] See Christensen and Speer, *Tyranny/Transformation* (2006).
[46] Rahnema, *Participation* (1997).

modification of participatory theory.[47] It set out to articulate a meta-theoretical ideal which sought to incorporate critical sensitivity to context while also accounting for power structures and matters of agency. The book draws on, and introduces particular themes which have continued to guide debates since, including the incorporation of geography perspectives and the idea of critical modernisms, built upon the idea of embracing onto-epistemological diversity in how we understand and seek 'change'.

The premise of critical modernisms is that `modernity` is not singular, not universal, nor does it develop in a linear fashion. Critical modernisms is not inherently wedded to capitalism or a singular rationality, despite this often being how we are taught to conceive of `development` and `modernity`.[48] Instead, it exists in multiplicity, emerging from the process in which the ideas and ways of `modernity` have become 'appropriated and re-embedded into locally situated practices', creating multiple modernisms, with multiple rationalities.[49] Their existence destabilises the notion of a singular idea of European `modernity`, prompting us to instead understand the 'encounters between multiple and divergent modernities'. Under this premise, `development` becomes a 'resolutely dialectical process … [which is] … a sort of mixing, a syncretism and cross-fertilisation rather than a rude mimicry or replication'.[50] This links to lasting works in the field of legal pluralism, especially that of Peter Fitzpatrick, whose concept of 'integral plurality' looks to the interaction between normative orders, seeing the emergence and development of state law as resulting *from and in* the plurality of social forms across society. In highlighting this dialectic relationship, it becomes apparent that law derives from societal forces, and is 'constantly and inherently subject to challenge and change'.[51] Simultaneously, in relation to `modern` law, which Fitzpatrick sees as wedded to capitalist economy and singular ideas of `modernity`, a form of power as expressed through law is the formation of norms and institutions which shape the individual into suiting particular societal ideals.[52] This is to highlight the formative role of law in shaping peoples, places, relations, knowledges and so on, in society but also the co-constitutive nature of this relationship, and thus the importance of not 'applying a certain idea of law to the world'.[53]

The authors in *Transformation,* in navigating these multiple modernisms, draw on Iris Marion Young's politics of difference, which is intricately tied to her idea of social justice being

[47] This is contrary to the conclusion in *The New Tyranny*, in which Uma Kothari and Bill Cooke ultimately suggest that participatory approaches to development are doomed to lead to tyrannical structures and processes of decision-making.
[48] Mohan and Hickey, *Relocating Participation* (2005), 256. See also Alberto Arce and Norman Long, 'Reconfiguring Modernity and Development From an Anthropological Perspective' in Alberto Arce and Normal Long (eds) *Anthropology, Development and Modernities* (Routledge, 2000).
[49] Ibid.
[50] Michael Watts, 'Development and Governmentality' (2003) 24:1 *Singapore Journal of Tropical Geography*, 23.
[51] Peter Fitzpatrick, 'Law and Societies' (1984) 22 *Osgoode Hall Law Journal,* 138.
[52] Fitzpatrick, 'Marxism and Legal Pluralism' (1983) 1 *Australian Journal of Law and Society*; Fitzpatrick, 'Law, Plurality and Underdevelopment' in David Sugarman (ed) *Legality, Ideology and the State* (Academic Press, 1983); Sousa Santos, *Toward a New Legal Common Sense* (COP, 3rd edition, 2020).
[53] Fitzpatrick, *Law and Societies* (1984), 135.

conceived as the elimination of institutionalized domination and oppression.[54] Here, the politics of differences requires "not the melting away of differences, but rather for institutions to promote reproduction of and respect for group differences without oppression"[55]. More specifically, she pushes back against purely distributive conceptions of justice, arguing that these fail to enable institutional conditions necessary for the emergence and exercise of individual capacity (empowerment) and collective communication and cooperation.[56] This is of direct significance to the CBD. Given that the question of distributive justice features within its very core objectives, [57] it is worth questioning and exploring the extent to which its processes and provisions also address other aspects of environmental justice.

Within the social justice debate, Young perceives the need for recognition[58] (of differences, dignity, onto-epistemologies, power) within institutional structures and social relations as being intricately linked to the idea of procedural justice; if you are not recognised, you cannot participate; if you cannot participate, you are not recognised.[59] Justice must thus focus on process (legal, political, societal, cultural) in order to address inequitable distribution, but also those conditions undermining social recognition. To Young, democratic and participatory decision-making procedures are an element of, but also a condition *for* social justice; they challenge institutional exclusion and the social culture of misrecognition.[60] Injustice thus comes out of social structures, laws, cultural beliefs and institutional contexts which are intolerant of differences in society (cultural, ethnic, class, gender, spiritual, religious, etc). Therefore, for participation to be transformative, projects need to be located within the premise of critical modernism and dedicated to a broader project of social justice and emancipation.[61]

Bringing this to light in discussions around participation within international law, and the CBD in particular, parties to the Convention have to a lesser extent already recognised worldviews beyond that of *Western* modernity linked to mainstream development agenda.

---

[54] Young, *Justice and the Politics of Difference* (Princeton University Press, 1990), 15. To Young, the sources of oppression are exploitation, marginalisation, powerlessness, cultural imperialism and violence.
[55] Ibid, 47.
[56] Ibid, 39.
[57] Its third objective is "the fair and equitable sharing of benefits arising out of the utilization of genetic resources". See CBD, Article 1.
[58] This ties in with literature on *misrecognition* within social justice debates, spearheaded by Axel Honneth. Notably, the very idea of 'recognition' is itself a contentious subject, with its proponents arguing that it is a central tenant in emancipatory relations between States and marginalised communities linked to freedom and wellbeing in relation to societal cultural differences. Critics, on the other hand, primarily from critical Indigenous scholarship, have argued that the relationship between Indigenous Peoples and colonial States cannot be significantly transformed through the emerging politics and mainstream models of recognition alone, with these simply being used as a smokescreen for the continuation of colonial structures of oppression and marginalisation. See for instance Honneth, *The Struggle for Recognition* (Polity Press, 1996); Simon Thompson and Majid Yar (eds) '*The Politics of Misrecognition* (Ashgate, 2011). For an Indigenous perspective, see Coulthard, *Red Skin, White Masks* (2014).
[59] Schlosberg, *Defining Environmental Justice* (2007), 26.
[60] Young writes that 'where social group differences exist and some groups are privileged while others are oppressed, social justice requires explicitly acknowledging and attending to those group differences in order to undermine oppression). See Young, *Justice and the Politics of Difference* (1990), 3.
[61] Mohan and Hickey, *Relocating Participation* (2005), 69.

For instance, within its Decisions and reports, references are made to *Mother Earth*, *cosmovisión*, and the need for integrating diverse perspectives and worldviews across its programmes of work.[62] Likewise, IPBES, in light of criticisms highlighting its rather restrictive remit with regards to engaging with knowledges from disciplines other than the natural sciences,[63] has taken steps to bring in Indigenous Peoples and local community representatives within its expert workshops, and its most recent Global Assessment Report apparently drew on a 'substantive body' of Indigenous and local knowledges.[64] However, as critical perspectives of `participation` has highlighted, literal inclusion does not guarantee that marginalisation and exclusion does not take place in other ways. Additionally, as Indigenous scholars have been arguing for decades, Indigenous knowledges are living, contextual, circular, and can (and should) only be understood within their own culture, spirituality, and situatedness within the community, surrounding landscapes and seascapes. Leroy Little Bear reiterates this in making the point that Indigenous knowledge 'is not a product or object that can be defined and studied in isolation; it is participatory and experiential'.[65] In light of this, and as discussed later, the mere reference and granting of recognition to other worldviews, or the use of Indigenous and local knowledges and knowledge systems within global studies and reports, does not address the nuance and complexity that lie under the surface of such claims, nor the processes that they demand.[66]

In approaching this from spatial in/justice, and the idea of critical modernisms, we are invited to confront the fact that the CBD and its associated processes and texts are already teeming with value-laden assurances which reinforce particular ways of viewing the world, which have historically disenfranchised Indigenous and local knowledge systems, as well as enabled harm against those who carried them.[67] Here, spatial in/justice brings to the fore what the authors in *Transformations* arguably did not account for in their – largely theoretical – writing on critical modernisms, namely the unequal distribution of power acquired by the types of modernisms that exist, and dominate, decision-making processes.[68] While a shift in perspective that recognises the validity of `alternative` modernisms and `alternative` rationalities does, in theory, destabilise *the* myth of Western, neo-liberal, capitalist `modernity` being superior; in practice, this remains the paradigm within which mainstream international law and

[62] References to *Mother Earth* and *cosmovision* generally represent the embracing of onto-epistemological diversity, with the terms widely being associated with movements such as the rights of Nature, Buen vivir, and Pachamama as an earth goddess within Indigenous cultures across the Andes. See Chapter 6 for more discussion. For inclusion in CBD decisions, see for instance Decision 14/5, Annex, para 10; Decision 14/16, *Annex (c).*

[63] See for instance Vadrot, *The Politics of Knowledge and Global Biodiversity* (2014), 114 and 142; Brand and Vadrot, *Epistemic* Selectivities (2013), 216 and 218.

[64] See report on CBD website <https://www.cbd.int/gbo5> (accessed 10/01/2021).

[65] Leroy Little Bear, 'Traditional Knowledge and Humanities: A Perspective from a Blackfoot' (2012) 39:4 *Journal of Chinese Philosophy*, at 520. In addition to being participatory and experiential, scholars have also highlighted that it is situated, and a product of its material, spiritual and cultural surroundings. See Tuhiwai Smith et al., *Indigenous Knowledge, Methodology and Mayhem* (2016), 130. See also Chapter 3 Section 3.3.1.

[66] This form of co-development of knowledge demands, from an ethical and onto-epistemological perspective, deep reckoning with power hierarchies and dynamics within/across these spaces.

[67] See Chapter 2 Section 2.2. This is also discussed in Chapter 5 and 6.

[68] See footnote 58 above.

development is envisaged and carried out today. In this regard, a key question I seek to explore in my own work is to what extent instances of *recognition* within the CBD actually amount to a meaningful form of participation that enables an envisaging and embracing of alternative approaches to understanding conservation.

Notwithstanding the emerging work by IPBES mentioned above, scholars have been critical of what they see as inadequate recognition of (and care in engaging with) Indigenous and local knowledge-systems, precisely because of the onto-epistemological hierarchies, and 'epistemic selectivities'[69] embedded within the CBD processes, as explored in Chapter 6. Similar arguments have been made by grassroots activists, regarding CBD provisions recognising the importance of enabling the participation of Indigenous Peoples and local communality, women and youth into its processes. Here, critics argue that the ability of these groups to prompt necessary shifts remains minimal so long as dominant discourses centre economic growth rationales and States continue to frame their relationship with these groups along patriarchal and paternalistic lines.[70]

Responding to this, critical modernisms and spatial in/justice both highlight the relevance of broadening our scope to encapsulate a multiplicity of spaces, scales, epistemologies and ontologies into which particular ideas are brought in and transformed. The idea of alternative modernisms destabilises the atmospherics of a neoliberal, positivist, capitalist modernity which provides the criterion against which all peoples and cultures should be compared, and in accordance to which we are meant to live our lives. This also points towards a potential *withdrawal*, *rupture*, which may have the ability to shift relations towards *more* just conditions (a lesser tilt) within a given lawscape. In the case of the CBD, without critical perspectives it is easy to assume that participation achieves this by virtue of its win-win rhetoric and "transformative" potential. However, as argued throughout this thesis, what takes place is far more nuanced and complex. As I will show, *ruptures* towards epistemic conditions within the CBD lawscapes have occurred in minute, small ways, contributing to the slowly emerging instances of cultural shifts towards more inclusive forms of process. At the same time, the slowness of this process highlights the significant barriers, and confrontations participants face in prompting shifts within the process addressing epistemic tilts, which I argue are equally part inscribed within the CBD structural and institutional framework.

In relation to participation, ideas of modernity and "progress" within dominant discourses that shape negotiation space will have a far-reaching impact on the ways that alternative narratives, future and solutions are received and incorporated into debates. It will also influence the positioning of actors, and 'other' knowledges within change-making agendas. This requires remaining attentive to, and interrogating the ways that atmospherics

[69] Ibid. See also Brand and Vadrot, *Epistemic Selectivities* (2013).

[70] See for instance the Statement read by the International Planning Committee for Food Sovereignty during the SBSTTA-23 session on Agenda Item 3, *Progress towards Aichi Biodiversity Target.* See also Sarah Bracking, Aurora Fredriksen, Sian Sullivan and Philip Woodhouse (eds) *Valuing Development, Environment and Conservation: Creating Values that Matter* (Routledge, 2018).

distributes *power*, and positions actors vis-à-vis each other within participatory processes. Here, geography scholars promote spatial perspectives for deeper interrogations of power dynamics and the bringing into focus scalar and temporal interactions in decision-making and knowledge-production processes.[71] In recognising upfront that participation is inherently spatial, they aim to shift theory away from its acontextual footing, with it instead becoming more attuned to the overlapping and dynamic nature of decision-making spaces, and the conditions driving particular decisions therein.[72] As within Philippopoulos-Mihalopoulos' lawscape, there is a recognition here of the continuum of spaces, which unfold in multi-scalar, non-linear temporal manners, stemming from a multiplicity of political, social, cultural, onto-epistemological relations which continue to evolve as time passes, in an outwardly, expanding manner.

This brings us to the concept of power, and the idea of empowerment, which has since the emergence of critiques against participatory approaches, laid at the heart of this debate; the reducing and circumventing of power relations which prompts inequalities in processes of change and the 'empowerment' of communities who have traditionally faced marginalisation in the design, implementation and outcome of change-making programmes.[73] *The New Tyranny* concluded that *because* participation constituted a form of power, as something embedded within the change-making project, it must resisted as something bad, and avoided all together. [74] Mike Kesby, although agreeing with the initial proposition, disputed the 'binary logic' which suggests that we can only response to this realisation with resistance. [75] Drawing on spatial perspectives, he instead calls for a deeper theorisation of participatory spaces which recognises the interdependence of conditions therein (technologies and arenas of participation, social conditions, discourses) as well as the entanglement between *power* and *em*powerment.[76] Here, he adopts Foucault's notions of knowledge/power,[77]

[71] See Kesby, *Retheorizing Empowerment-through-Participation* (2005), 2053; Mike Kesby 'Spatialising participatory approaches: the contribution of geography to a mature debate' (2007) 39 *Environment and Planning A*, 2822. Kesby argues that an understanding of change as temporal under its traditional guise of 'static' and 'linear', provides for an impoverished understanding of its deeper dynamism, rhythms, and nuances. As highlighted by Hickey and Mohan, sensitivity to temporal dynamics are important in three related ways: for understanding *histories*, *overlapping temporalities*, as well as the unfolding of political processes in relation to *catalytic interventions and critical moments*. See Hickey and Mohan, *Relocating Participation* (2005), 23-4.

[72] Rachel Pain and Sara Kindon, 'Guest Editorial: Participatory Geographies' (2007) 39 *Environment and Planning*.

[73] Mike Kesby, *Rethinking Empowerment* (2005) ,2037-8.

[74] In short, Cooke and Kothari argued that participatory-approach advocates believed themselves capable of circumventing power in their quest for enabling empowerment by ignoring the fact that authority and domination remained embedded within externally imposed development projects. Cooke and Kothari, *The New Tyranny* (2001); Kesby, *Spatialising Participation* (2007), 2814.

[75] Kesby, *Spatialising Participation* (2007), 2817-8. Kesby also has difficulty reconciling Cooke and Kothari's work that denounces participation due to it being embroiled with power relations, while simultaneously pointing towards empowerment as a tool for change, ignoring the fact that empowerment is also steeped in power.

[76] Ibid.

[77] This refers to the ways in which Foucault perceives knowledge as a form of power. Ibid.

governmentality[78] and biopower,[79] which takes the understanding of power within *The New Tyranny* further; as well as being a decentred and ubiquitous force, 'dispersed throughout the complex networks of discourse, practices and relationships', it is also not inherently limiting or repressive.[80] Rather, power is 'productive of actions, effects of subjects'; it functions not only through rejecting, but also by permitting, enabling, and conditioning the range of actions available to people and groups.

Viewed this way, power is not only present when enacted, but wholly inescapable, it is everywhere, embedded within the fabric of our societal lives and exists even in the silences and absences of speech and actions. Much like the way that Philippopoulos-Mihalopoulos perceives power in the lawscape, power here is a shifting force between bodies (humans, non-humans, more-than-humans), embedded within the spatio-temporal configurations of the space within which we find ourselves, part of the continuum of in/deliberate decision-making which has brought us to this point in time.[81] The *effects* of power are not intrinsically stable; the appearance of stability derives from the continued reproduction (and performance) of knowledge hierarchies and practices constituting prevailing inequalities;[82] what we would call *atmospherics* in the lawscape.

In bringing this back to participatory approaches, power effects materialise in multiple ways, depending on the actors, resources, discourses, knowledges, and spaces (and their constellations) in question. For instance, in reflecting back on the historical processes that underpinned the critique in *The New Tyranny*, Kesby highlights that global institutions (governments, the World Bank etc.) sought to affect the legitimisation of neoliberal `development` blueprints, while simultaneously discursively producing 'chains of equivalence' between `participation` and concepts such as partnership, accountability, good governance, empowerment, ownership. In doing so, they managed to fundamentally change its meaning,[83] and in the process reinstated themselves as the experts and agents of change. This naturally constitutes a dominating form of power which is rightfully in recipient of the critiques explored above. Yet, Kesby argues that even when deployed within a progressive framing, participatory approaches may give rise to oppressive power effects which are unintentional and

[78] While a broad concept, what is relevant for our purposes here is its understanding of governmentality as the "art of government" in a broad sense – the ways in which power is historically unfolding and dispersed (i.e., not necessarily concentrated in the state), lends control over populations and the self. See generally Michel Foucault, *Discipline and Punishment: The Birth of the Prison* (Allen Lane, London 1975); Michel Foucault, *The History of Sexuality* (Penguin, 1976).

[79] Also a broad concept, Foucault used this term to refer to the 'technologies of power' (technique, skills, methods) for managing/controlling large groups of people by exploring specifically political relations between bodies ('anatomo-politics') and the establishment/use of societal disciplinary institutions ('biopolitics of populations'). Ibid.

[80] Foucault, *Discipline and Punishment* (1975), 194; *The History of Sexuality* (1976), 92-102.

[81] This is particularly illuminating when looking at the ways that power is enacted and materialises within the CBD; it is expressed through what goes *unsaid* as well as said, who is *absent* as well as who is present, what *doesn't* make it into drafted text as much as what does.

[82] Kesby, *Rethinking Empowerment* (2005), 2040.

[83] See for instance Andrea Cornwall and Karen Brock, 'What do buzz words do for development policy? Acritical look at 'participation', 'empowerment' and 'poverty reduction'' (2005) 26 *Third World Quarterly*.

unforeseeable. Mohan for instance points to the paradox of empowerment within participatory approaches by asking the following: 'does a powerful group 'giving' power to an apparently powerless group constitute empowerment or does it reinforce the power of the development agency/actor/agent and deepen the dependency of the beneficiaries?'[84] While an intricately complex question with several possible answers depending on the context, this illustrates the ways in which power and empowerment are entangled, and the need to take care so to not unintentionally reinforce power divides. Underpinning this is the understanding that empowerment is strongest when organic, emerging from *within* individuals/groups.

Text Box 2. Key summary from participatory critiques used in analysis

Three tyrannies of participation identified in *A New Tyranny*

1) Enduring dominance of decision-making control held by multinational agencies and funders
2) "Unitary" process obscure limitations and manipulations that suppress local differentials by virtue of heavy emphasis on commonality and unity within process
3) Dialogue and practice remains dominated by un-critical acceptance of the method/approach as empowering

Reflecting this, the authors ultimately draw the conclusion that "participatory" approaches should be rejected as emancipatory or solutions to power disparities.

In *Transformations*

Authors extended the debate, promoting critical sensitivity to context and accounting for power structures and matters of agency so to improve conditions for emancipation. Most crucial for this piece:

- Drew on *critical modernisms* as a concept that embraces onto-epistemological diversity in its rejection of `modernity` as a singular, universal ideal.
- Conceived of power as an "effect" between bodies (and not inherently tyrannical). Interrogated its function as spatially/temporally conditioned upon technologies, arenas of participation, social conditions, discourses, knowledges and so on. It materialises through the rejecting, permitting, enabling and conditioning the range of actions available to peoples and groups.

For understanding the practice, and impact of `participation` within the CBD and conservation initiatives more broadly, we must pay attention to power differentials. *How they materialise, the ways they are prescribed for within legal text and provisions, enacted and performed at negotiations.* Taking on board critical perspectives of `participation` introduced above, coupled with more nuanced understandings of power emerging from

[84] Giles Mohan, *Participatory Development* (2007), 783.

participatory geography and spatial in/justice, brings to the fore several questions about the spatial manifestations and processes seemingly enabling participation within the CBD framework, and the positioning of actors and knowledges therein.

How does the actions of States and other key players enable, yet simultaneously restrict the empowerment of actors at the CBD and within multi-scalar conservation projects? Do the provisions recognising the role of local actors, and of the importance of diverse knowledges in decision-making processes, simultaneously risk re-embedding power asymmetries of gatekeeping? How does the idea of state sovereignty, upon which the CBD processes are premised upon, restrict not only the practice of participation, but also our understandings/imaginings of conservation more broadly? How do power effects materialise at the negotiations themselves? What un/expected factors influence participation across conservation, that are not accounted for in the legal texts, or in the way we generally understand international law-making to take place? These questions would provide for more nuanced, deepened understanding of participation, and its impact, within the CBD framework and conservation discourse. Answering some of them, as I endeavour to do in this thesis, requires emic perspectives of the negotiation spaces themselves.

4.2.2 Spatialising participation: Institutional Ethnography and New Legal Materialisms

A handful of studies across disciplines have, in recent decades, employed institutional ethnography as a method for taking a closer look at international institutions and organisations, teasing out in greater detail, the complex interactions, functions and processes of these 'world-reforming' bodies engaged in international law and policy-making.[85] This emerging scholarship has done much to *bring to life* these seemingly distant, prestigious structures, whose staff, consultants and experts bring forth reports, recommendations and projects which have wide ranging impact on millions of people across the globe, and provide the backbone of international change-making agendas linked to, amongst others, human well-being and environmental protection. In a slowly growing fashion, we have gained insight into the contradictions making up these self-imagined harmonious institutions.[86] Beyond exploring their everyday practice [87] – the constant shift between in/formal spaces, the discreet yet crucial conversations at cafés or sidebars to overcome an impasse in negotiations and so on –

[85] Niezen and Sapignoli (eds) *Palaces of Hope* (2016), *Foreword* by Series Editors.

[86] In Niezen and Sapignoli's own words, "…Many of their goals involve correcting the wrongs of states, yet they are persistently, almost defiantly state-centric; and even with the creation of new norms and the dramatic rise of NGO participation in their initiatives, their decision-making remains dominated by states. They trumpet their efforts to be transparent and accountable, yet regularly generate documents that heighten obscurity, while producing ideas and policies behind closed doors. They are commonly seen as epicentres of an oppressive neoliberal world order, associated with a dramatically widening global income gap between rich and poor, while being called upon to lead the way in ending hunger, reducing poverty, and promoting development." See Ibid, Introduction.

[87] See for instance Neils Nagelhus Schia, 'Horseshoe and Catwalk: Power, Complexity and Consensus-Making in the United Nations Security Council' in Neizen and Sapignoli (eds) *Palaces of Hope* (2016)

emerging themes have looked at the modes of negotiations and influence of technology,[88] the culture of bureaucracy,[89] the 'knowledge economy' and the creation and valorisation of experts,[90] the myth of apoliticism furthered by the 'supposed neutral realms of measures and technical procedures',[91] and the role of language in reinforcing ideas of neutrality, impartiality and harmony amongst actors.[92] Over the past years, the number of studies looking at local stakeholder activism and `participation` at international environmental negotiations, especially those on climate change, have risen sharply, again often within disciplines other than law.[93] These pertain to scholars tracking avenues available to local representatives in accessing and influencing the elaboration of international environmental policy.[94] Others have situated `participation` amidst broader struggles for environmental justice, for instance linking it to the youth[95] and food sovereignty[96] movements gaining traction at the climate negotiations.

While the majority of studies have emerged from within the political sciences literature, there is an emerging interest amongst legal scholars to adopt creative multi- and transdisciplinary approaches in looking closer at the spaces and processes from whence the legal texts we traditionally analyse emerge. For instance, legal anthropologist Sally Engle Merry has carried out ethnographic research to explores the creation, negotiation and use of global statistics at the UN Statistical Division, bringing to light debates pertaining to what should be measured, how and by whom. By being present and reporting back from the meetings themselves, she shares instances that expose fault lines between States stemming from resources disparities, tying this to wider reflections on the historical continuum of these practices and the fact that early European ideas on economic relations continues to frame global analysis, and inform

[88] See for instance Corneliu Bjola and Marcus Holmes (eds) *Digital Diplomacy: Theory and Practice* (Routledge, 2015); Brian Hocking and Jan Melissen, *Diplomacy in the Digital Age* (Clingendael, 2015); Rebecca Alder-Nissen and Alena Drieschova, 'Track-Change Diplomacy: Technology, Affordance and the Practice of International Negotiations' (2019) 63 *International Studies Quarterly.*

[89] See for instance Colin Hoag, *Assembling Partial Perspectives* (2011).

[90] See for instance Annalise Riles, 'Models and Documents: Artefacts of International Legal Knowledge' (1999) 48 *International and Comparative Law Quarterly.*

[91] Neizen and Sapignoli (eds) *Palaces of Hope* (2016), 14; See also Kevin Davis et al., *Governance by Indicators: Global Power Through Quantification and Rankings* (OUP, 2012); Sally Engle Merry, 'Expertise and Quantification in Global Institutions' in Ronald Niezen and Maria Sapignoli (eds) *Palaces of Hope* (2016).

[92] See for instance Birgit Müller (ed) *The Gloss of Harmony: The Politics of Policy-Making in Multilateral Organisations* (Pluto Press, 2013); Jane K. Cowan, 'The Universal Periodic Review as a public audit ritual: An anthropological perspective on emerging practices in the global governance of human rights' in Hilary Charlesworth and Emma Larking (eds) *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (CUP, 2015).

[93] That said, RECEIL published a special issue (with all being doctrinal studies) in the summer of 2015 specifically dedicated to the topic of Public Participation within Climate *Governance*. For a summary see Sébastien Jodoin, Sébastien Duyk and Katherine Lofts, 'Public Participation and Climate Governance: An Introduction' (2015) 24:2 *RECEIL*. See also discussion in Section 3.2.1 in Chapter 3.

[94] See for instance Rebecca Witter et al, 'Moments of Influence in global environmental governance' (2015) 24:6 *Environmental Politics*.

[95] Harroet Thew et al*., "Youth is not a political position"* (2020); Leehi Yona et al, 'Applying a leverage points framework to the United Nations climate negotiations: The (dis)empowerment of youth participants' (2020) 8:36 *Elem Sci Anth*.

[96] Priscilla Clays and Jessica Duncan, 'Food sovereignty and Convergence Space' (2019) 75 *Political Geography.*

international law and policy across the world today.[97] Similarly, Miia Halme-Tuomisaari has written extensively about her experience at the UN Human Rights Committee, looking closer at the *practice* of human rights visions; how they have been kept alive through the work of global institutions, and how 'universalism' as an outcome of action, emerges and must be maintained through continual engagements between actors.[98] Ronald Niezen and Maria Sapignoli have both contributed to the scholarship, particularly in relation to global debates on the Rights of Indigenous Peoples. Niezen, has for instance tracked the emergence of certain terminology within bureaucratic and technocratic legal processes, asking the question of why some become more powerful, inspiring community support and activism which transcends 'borders', while others do not. *What are the forces involved, what is the link to the production of legal knowledge about issues, and when does the vagueness so characteristic of these bureaucracies obstruct the possibility of garnering the recognition of rights*?[99] Sapignoli, whose multi-scalar research within the field of conservation and Indigenous Peoples' rights, has also offered us an insiders' view of the emergence and development of the UN Permanent Forum on Indigenous Issues, providing insight into the ways that these processes are shaped by the principle of state sovereignty and rules of diplomacy.[100]

These tie in with calls by Margaret Davies for a *new legal materialism*,[101] in which she claims that classical accounts of law acts to cast human beings as recipients, rather than actors, within our idea of law in society. She also argues that classical accounts of positivist law also removes materiality from our understanding of it and the legal world, presenting law as immaterial, abstract, universal, non-geographical; it is simply an instrument in our path towards impartial, blind [to power], and objective justice.[102] Rather, as put forward by Davies, and reiterated in my own theoretical framework explored in Chapter 2 and above, law is reflected within us and across society; it is an effect of our actions and relations. Davies' materialist understanding of law endeavours to 'reconnect law, place and physical things'[103] Recognising the connection between decisions, actions and consequences across scales, and the spatial, discursive and cultural conditions from within which they arise and are negotiated, is an important step in this direction.

---

[97] See for instance Sally Engle Merry, 'Expertise and Quantification in Global Institutions', in Niezen and Sapignoli (eds) *Palaces of Hope* (2016); Engel Merry, 'Measuring the World: Indicators, Human Rights, and Global Governance' in Damani Partride, Marina Welker and Rebecca Hardin (eds) *Corporate Lives: New Perspectives on the Social Life of the Corporate Form* (Wenner-Gren Symposium Series *Current Anthropology*, Vol. 52*:3,* 2016).

[98] Miia Halme-Tuomisaari, 'Guarding Utopia: Law, Vulnerability and Frustration at the UN Human Rights Committee' (2020) 28:1 *Historical Geography*; Miia Halme-Tuomisaari, 'Meeting "The World" at the Palais Wilson: Embodied Universalism at the UN Human Rights Committee' in Niezen and Sapignoli (eds) *Palaces of Hope* (2016).

[99] Niezen, 'The Anthropology by Organisation: Legal Knowledge and the UN's Ethnological Imagination' in Niezen and Sapignoli (eds) *Palaces of Hope* (2016).

[100] Sapignoli, 'A Kaleidoscopic Institutional Form: Expertise and Transformation in the UN Permanent Forum on Indigenous Issues' in Niezen and Sapignoli (eds) *Palaces of Hope* (2016).

[101] Davies, *Asking the Law Question* (2017); Davies, *Law Unlimited* (2017), viii.

[102] Davies, *Asking the Law Question* (2017), 67.

[103] Ibid, 71.

This is another important contribution by institutional ethnographers and ties in with the theme of participation within international law-making processes. Shalini Randeria, whose work in social anthropology also spans legal pluralism, has contributed to the scholarship by delineating the various trajectories of *globalisation* in examining the interplay between international institutions, civil society actors including grassroots movements, and the state. Here, she writes lucidly of how globalisation and international law as imagined and constructed at the international level is *locally experienced* through the actions of international and State actors. Simultaneously, she also points out that local struggles for environmental justice is increasingly being waged through the use of national courts and international legal fora, including international negotiations.[104] In this regard, it is important to understand the promises and limitations of public participatory practices within international negotiations. For instance, within the field of 'public diplomacy', scholars are highlighting ways that public participation is undermined by traditional diplomatic practices relying on techniques of branding and marketing, as well as traditional 'backstage methods of diplomacy.[105] This highlights the importance of understanding the spaces within which public participation takes place, so that we can form a realistic idea of how it takes place, and what inhibits more progressive and inclusive processes to emerge.

By drawing tangible links between law, law-making processes, actors and the impacts felt across scales and in our everyday lives, we begin to see its permeable nature, and through this, alternatives become possible. When understanding that we are ourselves agents within the lawscapes, carrying the law with us, enacting it; we are empowered to call out the inadequacies of its processes, the inequity of its distribution of power, the prejudices in its assumptions, discourses, and ideologies. This is particularly important within participatory processes, as the traditional projection of law and legal processes as static, impenetrable, state-centric, can discourage those participating from believing in their own ability to prompt shifts in ways of thinking; of giving insights into alternative perspectives, knowledges, and visions. On the other hand, without critically reflecting on public participation within international law-making, we risk endorsing a concept for its *discursive* promise of democratic legitimacy when indeed we known little of the risks it brings. This highlights a tension at the heart of this thesis; of believing in the transformative potential of participatory processes in enabling procedural and substantive shifts in ways that international law is negotiated, while also remaining wary of its malleable nature and the way its use can reinforce existing power imbalances, and actively do harm. As mentioned above, precious few legal scholars have adopted ethnographic methods in exploring participation at international environmental negotiations, and fewer still have looked at the CBD in particular. As a consequence, the contribution by local representatives, and the significance of their presence at international negotiation has gotten little attention in international legal scholarship. The remainder of this

[104] Shalini Randeria, 'Cunning States and Unaccountable International Institutes: Legal Plurality, Social Movements and Rights of Local Communities to Common Property Reds' (2003) XLIV:1 *Arch. Europ. Social.*

[105] Tess Altman and Cris Shore, 'Paradoxes of 'public diplomacy': Ethnographic perspectives on the European Union delegations in the antipodes' (2014) 25:3 *Australian Journal of Anthropology*, 20.

chapter introduces the structures, provisions and frameworks for negotiations, and begins offering insights into how this frames the spatio-temporal conditions within which participation takes place, and how the processes are understood and experienced by some of its participants.

4.3 Demystifying I: *Institutions, Processes and Governance of CBD Negotiations*

Seen through the lens of spatial in/justice, the lawscapes of the CBD extends far beyond the physical spaces of its negotiations. They include the meetings of other Conventions, governmental offices, industry boardrooms, classrooms, protected areas, community gardens, watersheds, forests, coasts and oceans, and all other spaces and inhabitants whose lives are shaped by the elaboration of international environmental policy. Yet, for our purposes here, it is worth looking closer at the spaces, processes and organisational structure within which the main CBD negotiations take place – the main 'stages' of the CBD project if you will. This is so to paint a snap-shot image of the negotiations for the reader to understand and appreciate how decisions are made, the avenues of participation and how opposition to, or tensions within process and substance can be voiced and addressed. As participants will testify, these are not easy processes to understand, nor to access and follow – they are an assemblage of un/official spaces, each with their own un/official set of rules of conduct, with the techno-legal-scientific jargon itself being largely inaccessible and specialised, also often obscuring its deeply normative and value-laden underpinnings which are telling of the history and past directions of these processes themselves. The processual culture which has emerged over three decades of meetings means that it is not always clear whether a rule is written (and to be found amongst the CBD archives), or has emerged through less official means. This makes understanding its process hard, and finding documentation to clarify matters, at times, even harder. This first section seeks to disentangle and 'demystify' these CBD processes.

4.3.1 Institutional Structure

In its own terms, the CBD provides a "global legal framework for action on biodiversity", enabling "political" and "technical" processes for discussing topics under its remit (its thematic programmes and cross-cutting issues), and facilitates the negotiation of text which ultimately becomes what we understand as international environmental and biodiversity law.[106] This distinction between *political* and *technical/expert* is stubbornly guarded at its meetings, where State delegates are adamant in their referral to its various meetings along these, apparently binary, categories. The Conference of the Parties (COP) is its main "political" space, where text is officially negotiated and adopted as international law through consensus. Since COP-14 in Egypt, running alongside the CBD COP are also the Meetings of the Parties (MOP) of its Protocols – the Cartagena Protocol on Biosafety[107] and the Nagoya Protocol on Access

[106] CBD Website, 'History of the Convention' <https://www.cbd.int/history/> (accessed 7/04/2022).

[107] The Cartagena Protocol aims to ensure the safe handling, transport and use of living modified organisms resulting from modern biotechnology that may have adverse effects on biodiversity, taking also into account

and Benefit Sharing.[108] The COP-MOP takes place approximately every 2 years depending on various factors.[109] Occurring in between the COPs are intersessional meetings – the *Subsidiary Body on Scientific, Technical and Technological Advice* (SBSTTA), its *Subsidiary Body on Implementation* (SBI) and the *Working Group on Article 8(j)* (WG8J). According to Rule 26 of its Rules of Procedure, COP has the power to establish additional subsidiary bodies as well as committees which it deems necessary for the implementation of the Convention. Notably, with the WG8J having fulfilled its programme of work at COP-14,[110] there are ongoing discussions of what will now happen with the group. Parties are considering options for institutional arrangements that would enable the continued existence of the body, with one option being a body of a more permanent nature.[111] Discussed in more depth later, these discussions are proving difficult, with certain States seeking to block efforts for strengthening the role of the Working Group, with some fearing that they may even bar its continuation.[112] Given the WG8J's significance in enabling the `participation` of Indigenous Peoples and local community representatives within the Convention, this could have serious repercussions on its participatory landscape.

The distinction between *political* and *technical/expert* is peculiar, and omnipresent within the negotiations, traced back to the various documents establishing the mandates of the relevant bodies, coupled with traditional understandings and logics underpinning international law, such as state sovereignty and legal positivism.[113] The insistence of this dichotomy, I believe, is the legacy of positivist dualistic epistemic thinking within international environmental law, [114] as well as the materialisation of tension inherent within the international law project. These emerge as a constant push and pull between the establishment and identification of common rules and values promoting ideas of international community, and the regular insistence by States regarding their own sovereign rights within their territories. [115] The ensuing

risks to human health. Adopted on 29 January 2000 and entered into force 11 September 2003. CBD website, 'The Cartagena Protocol on Biosafety' <http://bch.cbd.int/protocol> (accessed 21/01/2022).

[108] The Nagoya Protocol aims to ensure the fair and equitable sharing of benefits arising from the utilisation of genetic resources. Adopted 29 October 2010 and entered into force on 12 October 2014. CBD website, 'The Nagoya Protocol' <https://www.cbd.int/abs/> (accessed 21/01/2022).

[109] Things that will impact on the scheduling of these meetings include general logistics, such as the timings of other important international meetings, including its own intersessionals, as well as other worldly events. For instance, for obvious reasons all CBD meetings were continually and then indefinitely postponed in light of the COVID-19 pandemic.

[110] The adoption of the Rutzolijirisacik Voluntary Guidelines for the Repatriation of Traditional Knowledge (CBD Decision 14/12) marked the completion of the WG8J programme of work adopted at COP5 in 2000. See footnote 118-9 below.

[111] See Recommendation adopted by the WG8J-11, CBD/WG8J/REC/11/2, 22 November 2019.

[112] Authors notes, Observations at COP-14 and Dialogues at COP-14 WG8J-11.

[113] See generally Chimni, *International Law and World Order* (2004); Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005).

[114] See footnote 38 above.

[115] For instance, as noted by Susan Pedersen, the League of Nations was set up to promote, on the one hand, international standards of trusteeship and human rights, while also not undermining the principle of State sovereignty. See Susan Pedersen, 'Back to the League of Nations' (2007) 112 *American Historical Review*. This tension is witnessed in the CBD Convention text, where in its preamble, three distinct pieces of text stand out in this regard:

section will introduce the intersessional bodies, with the rest of this chapter, aiming to, amongst other things, convey the ways in which ideas such as *political* and *technical/expert* spaces influence the emergence of these meetings, their processes, our experiences within them, and the consequences this has on `participation` therein from a spatial in/justice perspective.

SBSTTA was established under Article 25 of the Convention, to provide COP and (as appropriate) other subsidiary bodies with "timely advice" relating to the implementation of the Convention.[116] Described as multidisciplinary and made up of government representatives "competent in the relevant field of expertise", its mandated to prepare and provide scientific and technical assessments of the status of biodiversity and of the effects of measures taken in accordance with CBD provisions; identify innovative, efficient and state of the art technologies relating to conservation and sustainable use; provide advice on scientific programmes and international cooperation in research and development; and respond to scientific, technical, technological and methodological questions provided by COP and its subsidiary bodies.[117] SBI was established at COP12 in 2014, replacing an earlier ad-hoc working group. Aimed at improving the efficiency and processes of the Convention, its core functions are to review progress of implementation of the convention; assist COP by preparing decisions on enhancing implementation; identify and develop recommendations to overcome implementation challenges as well as propose strengthening mechanisms; and review impacts and effectiveness of existing CBD processes related to implementation of the Convention.[118] Finally, WG8J was established at COP4 in 1998, [119] and its programme of work adopted at the following COP5 in 2000. Its mandate is to provide advice on the application and development of legal and other appropriate forms of protection for the knowledge, innovations and practices of Indigenous peoples and local communities; provide the COP with advice on the implementation of Article 8(j) and related provisions; identify objectives and activities falling within the scope of the Convention, recommend priorities and the referral of work to other international bodies or processes and identify opportunities for collaboration and coordination with other international bodies; and provide advice to COP on measures to strengthen cooperation at the international level among Indigenous peoples and local communities and propose ways

[…] *Affirming* that the conservation of biological diversity is a common concern of humankind,
Reaffirming that States have sovereign rights over their own biological resources,
Reaffirming also that States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner, […]
Article 3 of the Convention text also states 'State have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.'

[116] CBD, Article 25(1).

[117] Ibid, Article 25(2)(a)-(e).

[118] See CBD Decision XII.26 *Improving the efficiency of structures and processes of the Convention: Subsidiary Body on Implementation.* Annex 1: Terms of Reference for the Subsidiary Body on Implementation.

[119] See CBD Decisions IV/9 *Implementation of Article 8(j) and related provisions.*

for strengthening such mechanisms.[120] That these meetings being designated as intersessionals effectively means that they take place in-between the COP meetings.[121]

What stands out when looking closer at the mandates and Programmes of Work of these bodies is that they are set up to *provide advice*, *recommendations*, *identify opportunities* (and so on) to the COP, rather than, in an outwardly official manner, make specific decisions of political significance. The COP is the official negotiating space of the CBD, meaning that it is outwardly recognised as political, through and through, and is understood as the space where Parties engage in exchanges for negotiating and adopting legal texts. In contrast, as seen in the mandates of the intersessional bodies, these were established to discuss and offer *expert* advice to COP. As mentioned above, they are stubbornly referred to as non-political, but rather *technical* and *scientific*,[122] with State delegates regularly insisting that discussions within their walls are *not* negotiations and should thus not be fuelled by politics. Indeed, as shown later, regardless of whether the inference of spaces as *political* or *technical* fall foul of epistemic debates which question the existence of these apparently binary concepts as *real* (and indeed the actual practice which illustrates it), their ideas have shaped the culture within these spaces, influencing the ways people interact, speak and engage with the topics at hand, as well as with each other.

Despite this assertion by state delegates *during* meetings, what became clear when attending SBSTTA, WG8J and COP is that participants across *all spaces* are engaging in political discussions. Despite COP being regarding as *the main negotiating space*, when asked, most people would say that the actual negotiations happen at the intersessionals, [123] where texts go through careful editing and are subject to intense back-and-forth between Parties seeking the 'middle ground' on contentious issues. Once the 'finished' text from the intersessionals (in the form of Recommendations) arrive at COP, no major changes can realistically be made, unless Parties agree for them to be returned to intersessional bodies for further debate. This means that some of the most important groundwork regarding the direction and meta-framings of international legal texts get teased out at intersessional meetings and in smaller expert groups, while the smaller details, and grand rituals of text being adopted as international law, takes place at COP. This ultimately shows that the distinction between *political* and *technical*

[120] Ibid. See also CBD Decision 5/16 *Article 8(j) and related provisions* for the Programme of Work.

[121] SBSTTA will often meet twice in between COP meetings, with SBI and WG8J meeting once. Importantly, there are a number of other intersessional meetings that take place between the COP meetings, most significant right now is the Ad Hoc Open-ended Working Group on the Post-2020 Global Biodiversity Framework, which will meet a total of three times before the next COP. See CBD Decision 14/34.

[122] This is especially the case for SBSTTA, while WG8J is often referred to as *advisory*. Notably it is mainly at SBSTTA where participants feel the need to reinforce the binary divides between what is *political* and *technical*/*scientific*.

[123] This was expressed in most of my interviews and discussions with participants, including delegates themselves. Indeed, one Indigenous representative said that "[…] a lot of decisions are already made at the intersessionals, so we have to make sure that we have […] Indigenous representatives at SBI and SBSTTA and other expert meetings […] to influence the meeting reports already at that stage that informs decisions made at COP." Interview H.

spaces is far less clear-cut than the institutional structure of the Convention appears on paper, or indeed as it is put forward by some participants at the meetings themselves.

From a practical perspective, whether the inference of a space as *technical* is shorthand for *neutral* – which can both act to legitimise the process from a scientific-rationality perspective – as well as be inferred during deadlocked discussions when Parties are keen to have conversations move forward is not clear, and it may be a bit of both. Regardless, this does highlight important questions about the role of science in law-making and other political processes, and highlights the inherently political nature of knowledge production, recognition and interpretation, as well as the ensuing questions of how political bodies respond to, and use knowledge output from a policy perspective. Indeed, given that the very role of SBSTTA and WG8J is to interpret and inform on developments across disciplines and practice, the matter of how these bodies respond to reports of, for instance, accelerated declines in forest cover, is a political matter given that it lies in certain countries political and economic interests to downplay certain effects of climate change and biodiversity loss. For instance, there were reports at SBSTTA-23 that delegates from one country had been given strict instructions not to recognise explicit links between extreme weather events and climate change.[124]

This lies at the core of spatial justice, which not only invites for interrogations of the *ways* knowledge is produced, but also poses important questions regarding knowledge *use*; what knowledges are respected and recognised and from what perspective are they understood? Approached from another angle, are they understood and received in accordance to a dominant onto-epistemological framework into which other knowledges must 'fit' in order to be deemed important, or are frameworks in place to ensure that knowledges are understood and treated in ways that align with the cultures and communities from whence they emerged, unfold and live?[125] While largely beyond the scope of this thesis, these questions do mandate further study, and some will be discussed in Chapter 6. For our purposes here, what is interesting is that, notwithstanding the epistemological significance of these categories, the act of distinguishing between *political* and *technical/advisory* has influenced the ways these spaces have emerged in practice, the language used and the ceremonies taking place therein, as well as the relationship between relevant actors, including the role of the various caucus groups within the CBD framework. I highlight some these aspects in the remainder of this chapter, with the following section beginning to do so by introducing the procedures and governance of the CBD meetings.

4.3.2 The CBD Meetings and Processes

Essentially, the journey of a CBD negotiated text is that it is drafted ahead of the Intersessional meetings following prior consultation, workshops, online forums etc., with "relevant actors", as mandated by in a previous COP decision. These go through careful assessment and negotiation at their respective meetings (SBSTTA, SBI and WG8J and other smaller intersessional

[124] Authors notes, Dialogues at SBSTTA-23.
[125] See Chapter 3 Section 3.3.1.

meetings), before being approved and sent to COP. The COP and Intersessional meetings are open to both Party and Non-party states,[126] as well as Observers.[127] In order for an organisation to receive observer status at the CBD, they need to request accreditation, which is available for any organisation "that is qualified in the fields of biodiversity conservation and sustainable use".[128] Beyond registration, there still exist significant administrative and financial barriers for smaller grassroots groups in accessing meetings, associated with visas and travel costs. Indeed, at all meetings that I have attended, I have been told of instances where grassroots organisers have been accredited and either could not attend due to limited funds or because, although they received funding, they were informed too late for them to receive visas on time. [129]

Of all participants, only Parties are able to make textual amendments to negotiated text in pursuance of the "making" of law through consensus.[130] This means that their proposals for edits during meetings are given more weight compared to the statements of Observers which need support by at least one member state in order to be *considered* in the drafting and editing of texts. Essentially, because States have the option to effectively 'veto' a text by blocking consensus, they have a far stronger bargaining power at negotiations. Following Kesby, the CBD consensus process illustrates how one particular group of actors (in this case States) 'hold' significant power which they can put into 'effect' in ways that can significantly alter the outcomes of negotiations.[131] Therefore, what we see already from a spatial in/justice perspective is a lawscape which is organised and structured in a way which privileges the positions of States, following from traditional understandings of international law as emerging between, and affecting, only sovereign nations which are assumed to (adequately) represent the interests of their citizens. These dynamics, and the assumptions underpinning this logic is an area requiring further study, with aspects of it looked upon in the following chapter. In returning to the negotiations, this is all not to say that Observers do not have opportunities to influence textual negotiations, however the avenues for their suggestions to make it into

[126] A country is a Party as soon as they have signed and ratified the treaty, which gives them voting rights in all processes. As of December 2020, there are 196 Parties, making it one of the few MEAs with almost global reach in its membership. A notable country *not* on the Party list is the United States of America.

[127] There are a number of ways that the CBD categorises and distinguishes between the observers which attend its meetings. This will be more carefully addressed in the following chapter. For now, the CBD meetings are generally attended by the following 'types' of observers: Intergovernmental Organisations, United Nations Organisations, Education/University, Business and Private Sector, Large/Global Non-governmental Organisations, Grassroots Organisations, Youth delegates, Women delegates and representatives of Indigenous Peoples and local communities.

[128] CBD Rules of Procedure 7.1.

[129] Authors notes, Dialogues leading up to SBSTTA-23.

[130] This is not unique to the CBD with many other multilateral environmental agreements having similar consensus-making processes for the adoption of international law. See for instance UNFCCC, Convention on Migratory Species, and the Ramsar Convention on Wetlands.

[131] Notably, this power held by States is not distributed equally amongst those participation, even though that may be the purpose of the 'consensus' system. I will explore below the multiple ways that dis/empowerment of States at negotiations plays out. Ultimately, at best, the consensus voting system acts as a buffer for 'weaker' States to not accept anything that goes against their interests in significant ways.

the redrafting of texts are far less straight-forward, and less certain or clear, compared to those by States, as discussed below.

At each CBD meeting (see Figure 1), negotiations are organised through a multitude of meetings, often taking place simultaneously. First, there is Plenary, which is, at each of the meetings, the *main* room in the sense that this is where texts go through the ritual[132] of being adopted by consensus by Parties. During COP, the Plenary will generally meet four times; one to open, two to review progress during the weeks of COP, and on the last day for adopting draft texts and to carry out closing formalities and rituals. At the intersessional meetings, adopted texts are called *Recommendations*, which are then sent to COP and provide the basis for texts negotiated there. If adopted at COP, these become *Decisions* and are further elaborations, interpretations or clarifications of norms developed under the CBD framework to guide the implementation of the Convention. In other words, CBD Decisions constitute important provisions within international law by offering consensus-based interpretations of the CBD Convention, establishing further tasks, principles, guidelines and best practice protocols for implementing the Convention.[133]

Ahead of COP, agenda items will be divided into two separate Working Groups by the COP Bureau (see below), which will run in parallel throughout the COP. Each Working Group tends to address related matters; Working Group 1 will mostly negotiate on recommendations by SBI covering operations, finances, implementation and cooperation, while Working Group 2 often discusses "technical and scientific" issues, focusing on recommendations by SBSTTA.[134] At each Working Group, participants consider items on the agenda, including draft Decisions before they are sent for consensus adoption at Plenary. If text is bracketed[135] or issues exist which prove difficult to resolve, a Contact Group[136] is established to try and tease out the relevant issues. According to participants, this is where the real negotiations take place; text is carefully scrutinised and Parties can be 'stuck' on negotiating a sentence, sometimes even a single word or punctuation, for hours, if not days. If the issue gets resolved, the text then returns to the Working Group, and if approved there, on to the Plenary for consensus adoption. If they do not get approved (and/or still contain brackets), they will be sent back to the intersessional meetings (see Figure 1), with the process of negotiations beginning all over

[132] Here, I adopt the idea of 'secular ritual' by Sally Moore and Barbara Myerhoff, who have identified six characteristics of these types of rituals: (1) repetition; (2) being self-consciously acted rather than spontaneous; (3) special behaviour, stylisation; (4) order; (5) evocative presentational styles; and (6) a collective dimension. See Moore and Myerhoff (eds) *Secular Ritual* (Assen, 1977), 7-8.

[133] Elisa Morgera, 'Under the Radar: the role of fair and equitable benefit-sharing in protecting and realising human rights connected to natural resources' (2019) 23:7 *The International Journal of Human Rights*, 1117.

[134] Melina Sakiyama and Christian Schwarzer, *CBD in a Nutshell* (Global Youth Biodiversity Network, 2nd Edition, 2014), 153.

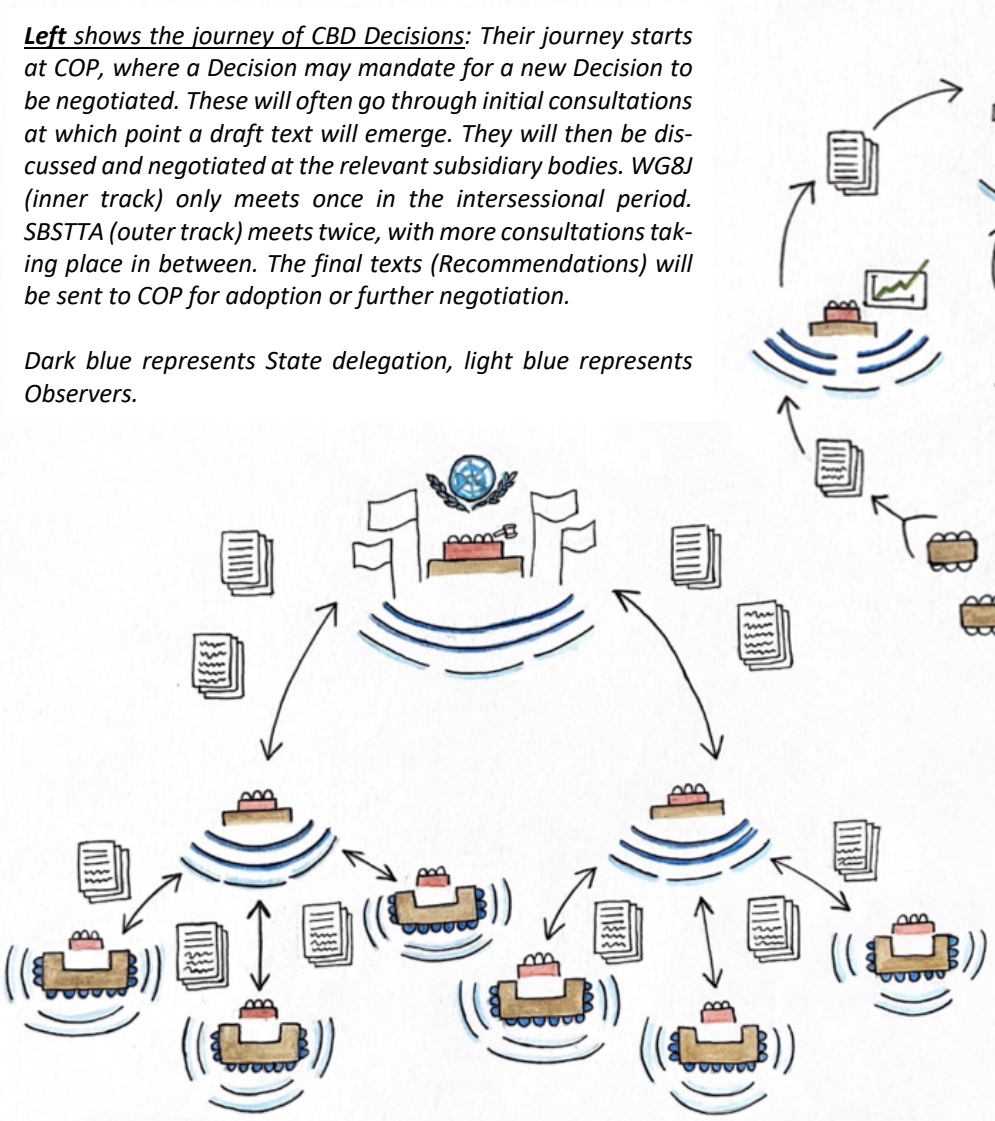
[135] A text being bracketed indicates that the relevant part is not supported by consensus, which means it cannot be adopted at Plenary. Brackets are a big part of International Conference culture, at times attracting audible groans and prompting frustration amongst participating delegates when proposed.

[136] Occasionally, if the issue is minor, with the Chairs anticipating a relatively easy resolution, they will call for a Friends of the Chair, which will often meet at the back of the room to try and resolve the issues before the session ends.

again. At SBSTTA, SBI and WG8J, the negotiation of text happens largely in the same way as at COP, only at different scales, and with the main difference being that the adoption of text at COP means that it becomes part of international law. Once adopted, the text is taken on a new journey of hopefully influencing domestic and regional law and policy, prompting new initiatives, actions, or may in fact mandate for a new Decision or Recommendation to be drafted, starting the process all over again for a new piece of text.

Left *shows the journey of CBD Decisions: Their journey starts at COP, where a Decision may mandate for a new Decision to be negotiated. These will often go through initial consultations at which point a draft text will emerge. They will then be discussed and negotiated at the relevant subsidiary bodies. WG8J (inner track) only meets once in the intersessional period. SBSTTA (outer track) meets twice, with more consultations taking place in between. The final texts (Recommendations) will be sent to COP for adoption or further negotiation.*

Dark blue represents State delegation, light blue represents Observers.



Right *shows COP meetings: at the top we see Plenary, with the various draft Decisions sent to the two Working Groups (happening in parallel). There texts are negotiated, with contentious ones sent to Contact Groups for more thorough discussions. These also happen simultaneously throughout the weeks of COP. Towards the end of the COP all texts will return to Plenary for either adoption or sending through a new round of negotiations during the intersessional period.*

Figure 1 showing the journey of CBD Decisions and COP meetings.
Illustration created by Tegen Seager-Gibbs in consultation with author.

During COP, there are often multiple Contact Groups happening all at once, meaning that for smaller delegations and civil society groups, following *all* agenda items becomes virtually impossible. There are often the same amount of Contact Groups emerging at the intersessionals, however given their shorter lists of agenda items (with COP being an accumulation of the agenda items across *all* intersessionals), they do not always happen simultaneously during these meetings. Regardless, this illustrates an issue within the negotiations where the size of delegations (be it Party States or other groups) – which ultimately comes down to a question of monetary resources[137] – greatly shapes the ability of groups to engage with, and participate in a meaningful way, with all agenda items during meetings. In practice, what happens is that Party and Observer groups with smaller delegations end up forced to choose what debates they think are the most important for them, and focus on those. A consequence of this is that States with smaller delegations (with many located in the Global South) are from the outset prepared to agree to legal texts that they have not negotiated on. This is essentially the reproduction (and materialisation) of power imbalances amongst States and actors where those who hold *more* monetary resources can enjoy significantly higher and more qualitative participation and input at meetings, with ensuing texts effectively reflecting *their* perspectives, values and narratives. There are ongoing attempts to address this, with financially wealthier States contributing to voluntary funds which help both States and Observer groups in sending representatives to meetings.[138] However, these are insufficient in addressing the problem and balancing out numbers between attending groups, which at times differs significantly.[139] That these conditions are deemed "acceptable" rather than potentially undermining fair and inclusive process, and that warrant serious discussion regarding procedural reform, suggests an atmospheric where such inequalities are accepted in favour of "getting the job done", not to mention constitute a very particular, and arguably narrow understandings of democratic decision-making.

These technocratic and managerial logics hold significant sway within the temporal and spatial organising of international negotiations, where important questions of process are often undermined in favour of having negotiations "move forward" and for text to be adopted in a show of upholding ideals of global cooperation and unity at the heart of the UN project. For instance, the Presidency at COP-10 in Nagoya famously took extraordinary procedural

[137] Attending meetings is incredibly costly, with funds needing to pay for wages (if paid at all), travel accommodation and food. Naturally the number of people in a delegation may also reflect the extent to which States prioritise the issue at hand. Regardless it is unquestionable that monetary resources do inhibit several States from having larger delegations.

[138] Information on the BE and BZ Voluntary Trust Funds (to support activities approved under the Convention, including facilitating the participation of Parties) can be found on the CBD website. Visit <https://www.cbd.int/convention/parties/contributions.shtml#tab=0> (accessed 8/12/2020).

[139] Unfortunately, because participant lists are not published, I do not have exact numbers. But, from hearsay at COP, some of the biggest delegations (not counting the EU which counts as one delegation even though it is essentially a collection of all EU states) constituted 10-15 members, whereas some countries only had one representative. This issue is magnified at the UN Framework Convention on Climate Change (UNFCCC), where I have heard of some of the biggest delegations having up to 50 members, while the smaller are two to three.

measures, including closed-door bilateral consultations with regional leaders – something highly uncommon at CBD negotiations which prides itself on its transparency and openness to public participation – to ensure the adoption of the Nagoya Protocol. Despite this usual and less transparent process, the very adoption of the Nagoya supposedly marked COP-10 as "the most successful meeting in the history of the Convention".[140] This is just to show the way that the positioning of actors and procedures do fall below usual institutional expectations in ways that goes largely unchallenged – or at least not enough for a sustained discussion to arise – due to the need of upholding political harmony, or "getting the job done". In this regard, the positivist, doctrinal lawyer's obsession with substance over the politico-legal process of law-making, and the way this would provide for deeper understandings of the text itself, falls to the wayside. This highlights a key contribution of the spatial in/justice lens, as it demands attention to the very processes and ways through which law (and space) is elaborated, as opposed to merely focusing on a "final outcome" (the black-letter law). Here, international lawyers are confronted with clear instances where the very processes themselves fail to live up to established standards practices and principles, bringing to the fore important questions as to the legitimacy of international law itself in light of such democratic deficits.

In returning to standard CBD processes, it is important to note that its consensus procedure does provide some buffer to the imbalances between States, with countries able to reject changes at Plenary or the Working Group if they are not happy with what was agreed during Contact Group discussions.[141] This however does not change the fact that States with larger delegations are in a much better position to lay the groundwork for overarching narratives and approaches in international environmental law and policy. As highlighted by Carol Bacchi, the drafting of policies (and laws) means that the very articulation of problems and solutions to societal concerns, the codifying of a discourse in accordance with a particular onto-epistemology (i.e. interpretation of the world), is determined by those doing the drafting.[142] Crucially, beyond reinforcing dominant narratives related to how we come to conceive and understand the world (for instance in accordance with ideas of modernity, "nature",

[140] IISD ENB, Report CBD COP10 Highlights: Thursday, 28 October 2010*,* Vol.9 No. 543*;* IISD ENB Summary of CBD COP-10 (October 2010) Vol. 9 No. 544.

[141] A stark example of this is what took place during discussions on 'Ecologically or Biologically Significant Marine Areas' (EBSA) at COP-14. Late one evening, following several days of discussions in Contact Groups and Friends of the Chair, attendees finally thought they had come to agreement on a key sticking point. However, at the final moment, the Philippines delegate said that they could not agree with the proposed changes. When asked by a visibly perturbed co-negotiator why they hadn't voiced this during the Friends of the Chair or Contact Groups, the Philippines delegate responded that they hadn't been present because they are a single person team and had to attend other meetings running concurrently. Some moments of silence ensued where States reckoned with the hours of progress lost, before launching into another few hours of deliberations. After everything, the Draft Decision still contained square brackets, thus failing to be adopted at COP, and was sent back to the intersessionals for further work. Authors notes, Observations at COP-14.

[142] Carol Baachi, *Analysing Policy: What's the Problem to be?* (Pearson, 2009); Carol Baachi, 'Why Study Problematisations? Making Politics Visible' (2012) 2:1 *Open Journal of Political Science.*

natural resources, "biodiversity" and so on[143]), this articulation involves creating and attributing identities and roles to particular groups and their associated knowledges, thus also determining their authority in decision-making and policy implementation.[144]

As highlighted by political scientists in the field of institutional ethnography, these processes can act so to 'consolidate institutional identities, authority and social networks'.[145] Indeed, political scientist Alice Vadrot, who has carried out ethnographic research at international negotiations on marine biodiversity, has argued that these conferences 'set the stage for the recognition of legitimate voices in global environmental politics'.[146] It is therefore worth asking what the implications of the large discrepancies in delegations sizes, and other procedural inequalities mentioned above, means for the drafting of international law and policy at these meetings, regardless of existing safeguards which only go a short way towards addressing the issue. The predominant international legal literature, which tends to be more concerned with the resulting texts of these negotiations, is thus poorly aligned with these insights from international politics and sociology, and ill equipped to address the procedural discrepancies in the drafting process of ensuing texts. This shows the ways in which international lawyers end up reproducing unequal procedural conditions when perpetuating the presentation of legal texts as reflecting universal agreements, despite the fact that the "universal" in these instances materialises in rather shallow ways.

In relation to *actual participation* by non-state representatives, the most explicit form of this is "taking the floor" after States, to make position statements and/or suggestions for textual edits which need State support in order to be considered in the drafting of texts. That said, participation takes many forms, including the lobbying of governments in-between or during sessions, cooperation with other attendees, including the CBD Secretariat on publications and workshops, organising protests and speaking at side events. This means that, at every CBD meeting, other important spaces exist beyond the Plenary, Working Group and Contact Groups, such as the café areas, corridors, side events, restaurants and caucus rooms. This adds significant pressure on participants to be on constant alert, and contributes to a unique tempo, and sense of activity at the meetings. Outside of the official negotiating spaces, there is always a buzz of activity; people trying to resolve issues before returning to negotiations, non-state actors seeking support for a statement or textual amendment, important alliances being forged, strategies discussed and seeds for future collaborations sown. This form of participation in the negotiations is subtle yet omnipresent, a central aspect to these processes. Arguably, depending on how they take place, these informal exchanges risk undermining the transparency of negotiations, for instance making it hard to trace the origins and

[143] See Chapter 6 for a more in-depth discussion on these terms in light of onto-epistemic, and spatial in/justice within biodiversity law.
[144] Ibid. See also Chapter 5.
[145] Catherine Corson, Lisa M. Campbell and Kenneth I. MacDonald, 'Capturing the Personal in Politics: Ethnographies of Global Environmental Governance' (2014) 14:3 *Global Environmental Politics.*
[146] Vadrot, *Multilateralism as a 'site' of struggle* (2020).

support for certain ideas,[147] whether they emerged from within a State ministry, or from conversations with corporate partners, big NGOs, Indigenous Peoples and local community representatives, and so on. At the same time, these informal spaces offer a respite from the highly political and performative nature of the negotiations themselves. To Observers in particular, they highlight opportunities, where participants can speak more freely, and where the chance encounter with a potential partner may prompt a ripple of change throughout the CBD process, affecting what happens within the towering walls of the negotiating halls.

4.3.3 Governance

Presiding over each meeting is the **Chairperson**, who opens the meeting, introduces the agenda, oversees work and reports back to the Plenary in-between sessions. Although it might not seem like it, the Chair can have a significant impact on the way that meetings and negotiations develop, for instance by deciding on strategies in moving through texts (e.g. sentence by sentence, paragraph by paragraph, or the whole text), proposing compromises during a deadlock, deciding on the order of interventions[148] and making decisions on Observer interventions when time is running low. As meetings are pressed for time, it often happens that they also restrict the time and ways that non-State participants may make interventions, which also has a huge impact on their ability to contribute to debates (discussed further below). Indeed, in discussions with Chrissy Grant, who has regularly been attending CBD meetings as an Indigenous representative since the 1990s, said that Chairs at Contact and Working Groups are often inconsistent in the extent to which they allow civil society participation and contributions at meetings, showing that even a key avenue for participation – the making of statements during meetings – can be restricted by the whims of elected Chairs.[149] This can include deciding not to open up a topic for discussion, severely restricting the time given to stakeholder groups, or even policing who can speak on behalf of what group.[150]

[147] For instance, during COP, there was notably an air of tension surrounding the discussions on Digital Sequencing Information and Synthetic Biology precisely because of rumours circulating that some State delegates had been "bought" by corporate and research partners. Whether true or not, the matter remains that the negotiations were affected by heightened tension and distrust amongst participants. Authors notes, Dialogues at COP-14.

[148] For instance, after a particularly heated debate during a SBSTTA Working Group session, one seasoned civil society participant suggested that geopolitical forces had played a role in the Chairs decision to allow a particularly country have the final say in the debate, which significantly impacted the final outcome of the textual negotiations. Authors notes, Observations and Dialogues at SBSTTA-23.

[149] Authors notes, Interview K. This was also seen during the virtual meetings of SBSTTA-24 and SBI-3, where Chairs of certain Contact Groups did not allow any non-state actors make statements in the interest of time. Authors notes, Observations at SBSTTA-24 and SBI-3.

[150] This took place during the COP-14, where the Chair refused to let a non-Indigenous representative speak, despite them having being part of Indigenous Peoples caucus for decades and had been asked to present on their behalf. Because there was no other representative in the room at the time, their statement was not read, effectively barring them from participating at all. This is a sensitive topic, with opinions varying amongst Indigenous scholars and activists within and outside of the CBD spaces. Regardless, I would argue that the question of *who* represents Indigenous interests is a matter to be addressed *within* the caucus, as opposed to one policed externally by a State representative acting as Chairs. Authors notes, Observations at COP-14.

Furthermore, one seasoned attendee at CBD meetings pointed out to me the way that Chairs can have an influence on the "air in the room" at meetings, recalling how, at a past COP, the Chair of a Contact group on Indigenous knowledge began the meeting by making dismissive and legally inaccurate comments regarding Indigenous issues. This set a tone which was unsympathetic, and indeed directly unwelcoming and hostile to the Indigenous representatives in the room.[151] This goes to show the more/less visible ways that Chairs can influence the process and outcomes at meetings, as well as set a tone to make participants feel more/less welcome, and perhaps even bolster the perspective of States opposing Indigenous participation at meetings. As discussed below, there are varying extent, and various avenues, through which issues like this can be brought up during CBD meetings.

The Chair at the COP Plenary, also called the COP President, is often held by the Minister of Environment from the host government,[152] a symbolically significant designation as it is also this person who carries out ceremonies associated with the adoption of legal texts, such as the "whacking" of the hammer when text is adopted at the end of COP. For the intersessional meetings, the Chairs are usually part of state delegations, elected at the previous COP.[153] Here, the WG8J stands out by having two co-chairs within its negotiating spaces; an elected state delegate, as well as an Indigenous representative, elected from within the Indigenous Peoples and Local Communities caucus. This is, to several Indigenous participants, symbolically important, and significant in relaying a visual gesture of attempting to address power imbalances at CBD meetings.[154]

In terms of governance, there is also the **COP Bureau**, which is made up of the COP President and two State representatives from each of the regional groups.[155] The Bureau meets before COP to set the agenda, then meets continuously throughout the weeks of COP to discuss matters of process, progress and outcome of the meetings.[156] It continues to meet after COP has finished, discussing progress towards the next COP. The Bureau also attends the intersessionals, carrying out a similar task during these meetings. During WG8J meetings, there is also a **Friends of the Bureau**,[157] where the Indigenous Peoples Caucus selects seven individuals, each representing Indigenous Peoples from the seven geo-cultural regions of the world as

[151] Authors notes, Dialogue with colleague just after SBSTTA-23 and WG8J-11.
[152] CBD website 'The COP Presidency' at <https://www.cbd.int/cop/presidency/> (accessed 11/01/2021).
[153] CBD Rules of Procedure, Rule 26.3.
[154] Authors notes, Interview F.
[155] These include the following politico-geographic designated areas: Africa, Asia and the Pacific, Central and Eastern Europe, the Group of Latin America and Caribbean Countries, and Western Europe and Other Groups.
[156] UNEP, MEA Negotiator's Handbook (2007) accessible at <https://leap.unep.org/content/e-learning-material/mea-negotiators-handbook> (accessed 24/01/2022).
[157] There is remarkably little text about the mandate and rules around the establishment of the Friends of the Bureau during WG8J. Snippets of information is only found in the Reports and Minutes of the various CBD meetings, including the Minutes of the Meeting of the Bureau of the COP held in 2007 (see UNEP/CBD/COP/Bur/2007/4/2) and Report of WG8J-7 held in 2012 (UNEP/CBD/COP/11/7). Notably the latter report suggests that the designation of a "Friends of the Bureau" is a matter of past practice, as opposed to mandated for in CBD procedural rules. This is important, and highlights, on the one hand, the significance of emerging cultural practices within these spaces, and on the other, the inherent insecurity of such important practices.

identified by the UN Permanent Forum on Indigenous Issues (UNPFII).[158] As a mechanism set up to enable dialogue between the Bureau and the Indigenous caucus, this represents a significant, and unique avenue for Indigenous representatives to articulate concerns regarding the Working groups, with several Indigenous representatives stressing the importance of this in terms of overcoming some of the barriers to participation at meetings.[159]

The CBD Executive Secretariat is integral to Convention's day-to-day tasks. Its key role is to support its goals, with its main functions being the preparations for, and service of its meetings, and coordination with relevant international bodies. It is designated as "neutral" and is accountable to the COP and its subsidiary bodies.[160] It is made up of a myriad of staff members amongst its main Divisions and Units, providing various supporting and facilitating roles leading up to, and during meetings, including preparing documentations and drafting recommendations ahead of meetings. At the meetings, members of the Secretariat sit alongside the Chair on the podium, as Secretary, providing advice throughout the meeting, taking notes, summarising and synthesizing the contributions from participants, prepare draft decisions and recommendations, respond and provide clarifications when requested, and so on.[161]

As for participants' ability to voice frustrations linked to process at CBD negotiations,[162] there are a few different avenues available, depending on who is making the complaint, and at which meeting. At any time during negotiations, a participant with the right to make statements can include in these a frustration with process. I have witnessed this numerous times, for instance during the Working Group session on EBSA's[163] at COP-14, where several Parties challenged the Chairs attempts at moving forward with the text at a high pace. At this point, as well as during other times throughout the COP, the Chair can then turn to the Secretary and their staff at the Secretariat to assess Rules of Procedure and explore ways forward. It is also common for participants to go through less formal avenues, for instance by speaking directly to Secretariat staff members about a particular complaint. This can be very effective. However, it requires that the person or group has an established connection with a staff member who carries sufficient influence to affect the relevant process. Therefore, this will be easier for some actors than others, especially those who have been regularly attending CBD meetings since its inception, illustrating a discrepancy and bias in relation to who may receive

[158] Notably, UNPFII rejects the official UN geographical regions saying that these do not reflect the reality of regional distribution of Indigenous Peoples around the world. The regions recognised by UNPFII are Africa, Asia, Central and South America and the Caribbean, the Arctic, Central and Eastern Europe, Russian Federation, Central Asia and Transcaucasia, North America, and the Pacific.

[159] Authors notes, Interview I, and F. See also Jennifer Corpuz, Onel Masardule and Mikhael Todyshev, (2010) 'Indigenous Peoples' Free, Prior and Informed Consent in the *Convention Biological Diversity*: An Overview' in Sam Grey (ed) *Indigenous Peoples' Contributions to COP-8 of the Convention on Biological Diversity* (IIFB 2006).

[160] Convention on Biological Diversity, Article 24.

[161] For a longer list, see Sakiyama and Schwarzer, *CBD in a Nutshell* (2014), 154.

[162] This can, for instance, include Chairs moving through text particularly quickly, not letting everyone have a chance to read out their statements.

[163] The negotiations on EBSA's are famously contentious, with negotiations ongoing since COP-11 in 2012 where texts go through SBSTTA discussions, only to fail at reaching consensus voting at COP, starting the whole process over again.

effective redress during negotiations.[164] As noted above, WG8J provides additional avenues through the Friends of the Bureau, which makes it easier for the Indigenous Peoples caucus members to voice grievances directly to the Bureau, who can in turn seek to make adjustments to process, such as extending time-limits for interventions. This is a significant institutional safeguard to ensure better access at WG8J, which already constitutes a unique space in giving valuable support to Indigenous Peoples and local community representatives for their participation at the meetings,[165] as introduced and discussed below. In summary, the section above has so far introduced the institutional and governance structures of the CBD negotiations, introducing the primary spaces and processes which provide the conditions through which negotiations take place. I highlighted the frames through which discussions are understood (expert/political) as well as a few of the underlying challenges that arise with regards to process, concerning for instance temporality and the ways this influences access to discussions. In this regard I have also shone light on some of the avenues through which certain actors can seek remedies for what they sense is inadequate process. Yet, as will be illustrated in the following section, the enabling or constraining conditions for participation at the CBD negotiations goes beyond the mere institutional and governance structures of its meetings.

4.4 Demystifying II: *Spatio-Temporal and Ontological Insights into the Materiality of CBD Negotiations*

This section aims to communicate the importance of spatial, temporal, and discursive influences within international law-making at the CBD, and the way this impacts on participation within its processes. The piece draws on the critical perspective of participation and the introduction of the CBD structures, governance and processes introduced above, and brings my own insights from attending these spaces and speaking with participants. The first subsection sets out to highlight the ceremonial and ritualistic aspects of the negotiating spaces; the differences between these, and ways that personal, inter- and intra-state politics shapes what takes place therein and contributes to shaping the legal-elaborative process. The following subsection looks closer at the ways that space, time and linguistics is shaped, expressed and used by various actors throughout the negotiations, and the ways this shapes the conditions under which the participation of various actors take place, leading to their in/exclusion from process and legal drafting. As such this section also lays the groundwork for the next two chapters, which looks closer at how non-state actors are cast at CBD negotiations, the knowledges drawn on and what this tells us of the positioning of local representatives and alternative onto-epistemologies in debates.

[164] I discuss such examples below.
[165] See Corpuz et al., *Indigenous Peoples FPIC* (2010), 81; Morgera, *Against all odds* (2014).

Soundscapes[166]

I begin this section with two soundscapes from the SBSTTA and WG8J negotiations I attended in November 2019. The two clips offer segments of the opening ceremonies of each space, which I believe speaks volumes about the particularities of the spaces themselves. They are meant to offer you as reader some experiential, and immersive insight into the stark transformation of this one physical place which provided room for both WG8J and SBSTTA, just a few days apart.

WG8J-11 Opening
November 20th 2019

Please play 13.23 - 15.22 or onwards

SBSSTA-24 Opening
November 25th 2019

Please play 14.28 - 16.54 or onwards

4.4.1 Performing International Law and Politics: Ceremonies and Rituals at COP, SBSTTA and WG8J

This subsection looks closer at the various ways that space and discourse materialise at the negotiations, and what this tells us about the commonalities and differences amongst these spaces and the bearing it has on what goes un/said therein, and the relationships formed between actors. For instance, while WG8J is a "hybrid" space in the sense that it is framed and supposedly driven by both State as well as Indigenous Peoples representatives, COP and SBSTTA are clearly shaped by their designation as *political* and *technical* spaces respectively. As discussed below, this has a bearing on the ways in which actors act and can contribute to discussions, reflecting both on their identities and positionality within the respective spaces.

[166] In order to make them work please open your camera app on your phone and scan the QR-code. They should bring you straight to the relevant video link. In case they do not work, here are the relevant links:
WG-11 - shorturl.at/knGRS
SBSTTA-23 - shorturl.at/artC2

The one thing which sets COP[167] aside from the intersessionals is its long list of political announcements, rituals and performances, which effectively hides underlying tensions, challenges and frustrations. As a space grounded in traditions of diplomacy and international relations, the continuous centring of States as its main actors, both at negotiations as well as within the sphere of biodiversity governance, illustrates the embeddedness of state sovereignty within its processes and discussions. That this gets reinscribed through the articulation and codification of law and policy mentioned above[168] shows the entrenchment and circular nature of its own legitimisation and that of its discourses.[169] This brings to light the challenge facing less powerful actors in shifting dominant discourses and narratives, as well as highlighting the importance of giving meaningful space to other actors, and their perspectives, within discussions. While any given lawscape holds a plurality of perspectives, imaginaries and experiences,[170] this sharing of space is teemed with tension, constituting "sites of struggle"[171] where certain ideas, in this case the concept of state sovereignty, remains dominant in terms of how we come to understand socio-ecological harms, and how we can best address them, including who should be at the helm of such efforts.

In recalling the idea of *atmospheric* within the lawscape, we can see state sovereignty not as an inevitability, but rather as a deliberate discourse, supported and re-inscribed through historical process and contemporary cultural practices, such as an accompanied code of conduct making frank communication all the harder to achieve, and a direct challenge of power dynamics difficult. For instance, when a country with a record of violating environmental standards and persecuting minority groups and land rights activists, has their representative stand up to profess their commitment to protecting minorities and minimising environmental harm,[172] participants may roll their eyes, but no one can/will challenge them. This illustrates the pervasiveness of political relations and its performance within these spaces, highlighting the naturalisation of uneven power relations throughout the negotiations, and the difficulty of achieving clear communication in *official* and *political* spaces. These acts of concession essentially constitute a re-embedding, and normalisation of tilts in the lawscapes, implicitly confirming the uneven conditions (and the exclamations emerging from them) as *atmospherics*.

A similar matter which best relays the *performance* of international law and politics is precisely the positioning and practices of Plenary, and at times its working Groups, as *the* most important of negotiations. Outwardly, they were the most visible spaces of negotiations; they held space for several thousand people; had translators to ensure easy communication across select language barriers. They are the spaces that most reporting agencies write about and it

[167] The act of hosting a COP is significant, with States often seeing the conference as an opportunity to showcase national action and positioning themselves as spearheading change. At Sharm-el Sheikh in Egypt, the opening ceremony was a cultural performance which also drew on ideas of emerging generations of change-makers, global cooperation, regional animal and plant life, national landscapes, and success stories.
[168] See book by Baachi in footnote 142 above.
[169] Davies, *Law Unlimited* (2017), 24.
[170] Massey, *For Space* (2005), 14 and 113.
[171] Vadrot, *Multilateralism as a 'site' of struggle* (2020).
[172] Authors notes, Observations at COP-14 and WG8J-11.

is where all the relevant press photos are taken. In the case of Plenary, it is where the dramatic whack of the hammer marks the success of the text getting adopted. Yet, that these are not the spaces where tensions or issues get resolved is precisely part of the "show". Seasoned participants know what these spaces are not where drafts go through substantive negotiations and alternations; it is where they are brought in to get adopted as legal texts. The formality of language (see below) used within these spaces also reflects the highly outwardly political nature and task of the Plenary and Working Group negotiations.[173] Diplomatic lingo means that frank conversations on conflicts is not possible, they are best left to Contact Groups where Chatham House rules dictate that no one is allowed to report on substantive discussions that take place within their walls, nor the unique positions of actors. Equally, participants are asked at the beginning not to attend to social media messaging while in the room, with pictures of text when projected onto a screen, strictly forbidden.

These are carefully and deliberately crafted spaces, and all part of the performance of political diplomacy at the "official" meetings establishing international law, enabling particular forms of communication so to uphold appearances of international cooperation and collaboration, ideas central to the United Nations project. In short – like mentioned above, open, frank and honest dialogue about issues of contention is not possible, with critical discussion for addressing complex and messy issues of biodiversity loss and environmental injustices being reduced to frames of political diplomatic discourse, which has a bearing on the way we understand relevant issues, the positioning of actors, and the envisaging of "solutions". Although omnipresent and seldom discussed explicitly, such conditions highlight the blind spots of international biodiversity law and its associated processes; they weigh heavy on the form of interactions that can take place therein, and the discussions that can/not be had.

In terms of spatial aesthetics, both SBSTTA and COP struck me as distinctly corporate-like, and as furthering a "professionalised" and "formal" imagery.[174] At big side events there were podiums where experts sat clearly separated from the audience, reinforcing divides between so-called experts and "non-experts", reflecting the dualistic logics equally underpinning the designation of some spaces as "technical" and others as "political". The clinical expression of these rooms impact reception, and sends particular messages about what occurs therein, who participates, and who is centred in debates. With rooms often devoid of natural light, windows, fresh outdoor air, let alone biodiversity itself, the negotiating spaces do little to remind the participants of why they are there.

[173] Communication is ... profuse: "… would like to request … with your indulgence… Madam Chair Person…". This type of language was dropped during the Contact Groups.

[174] At SBSTTA, this was particularly contrasted to the more casual and inclusive experience of WG8J just the week before. Discussed below.

Space outside of one of the Working Groups at COP-14 (left); Inside one of the Working Groups at COP-14 prior to negotiations starting (right). Photos taken by the author

While a small number of participants wear traditional dresses throughout negotiations, the fact that a majority of people come dressed in suits carries with it a strong business-professionalism-air, policing both tone and social interactions between people. Whether deliberate or not, this can have an excluding effect on those attending the meetings which do not frequent such spaces,[175] with the outfits people choose being deliberate in signifying whether one is conforming to, strategically drawing on, or rejecting this status quo. Indeed, throughout discussions with participants, it was made clear on multiple occasions that their choice of outfit had a significant impact on how they were treated at meetings, illustrating not only the various ways that we *perform* our identities (deliberately or not), but also how this carries with it consequences for our positionality within a given space. [176]

In contrast to SBSTTA and COP, WG8J stands apart in both its governance and spatial configurations and practices. Set up to provide advice on the implementation of Article 8(j) and to enhance the role and involvement of Indigenous Peoples and local communities, WG8J is unique in that it is a sort of hybrid; it is *outwardly* driven by State parties as well as Indigenous and local community representatives. This materialises in several ways. For instance, as opposed to the opening of COP which is clearly a political performance, or the "neutral" opening at SBSTTA-23, the WG8J-11 meeting was opened by a Mohawk Elder, who carried out a ritual of physical and spiritual cleansing (clearing our minds, ears, throats, mouths and hearts) so to prepare participants for the ensuing negotiations. In a beautiful show of integrity and temporal relativity, the Elder took their time, speaking first in Kanien'kehá and then translating to English, despite having been told by the Secretariat that they "didn't have much time". This

[175] In fact, at one side event that, an Indigenous colleague who was to present and who wore their customary dress, expressed sentiments of feeling out of place. Authors notes, Dialogues at COP-14 and WG8J-11.
[176] For instance, in conversation with multiple local representatives attending the meetings, they explained that choice of dress was a deliberate, and at times, strategic one. Ahead of meetings, newcomers are often taught that while there is no strict rule, wearing a suit will mean "better" access to powerful actors, and certainly being treated differently in certain settings. On the other hand, wearing traditional clothing can be an important part of self-identification and in ways a form of resistance against the "official" nature of these meetings, notwithstanding that it will impact on how you're perceived and received at meetings. Authors notes, Dialogues at COP-14.

temporal aspect is significant, and the experience profound. Time at CBD meetings is always tight, and interruptions occur regularly, especially of local representatives.[177] That it did not happen here, despite the Secretariat obviously feeling pressure in that the opening was going on for longer than usual, is an important show of respect. Whether deliberate or not, to me the Elders opening constituted a subtle form of resistance against the policing of cultural practices; agreeing to carry out the ceremony while also not allowing the temporal scales and restraints of the CBD spaces to have a bearing on how these are carried out, as sacred acts. It shows a subtle act of withdrawal from the traditional CBD lawscapes' onto-epistemological configurations, and upon returning the bringing in of `alternative` temporality, linguistics, and spirituality. This is significant as it illustrates an instance of the particularity of WG8J as providing a different; emerging space for cultural and spiritual relativity and practice beyond what is common within CBD spaces. In a similar fashion, during COP, the meetings and side events organised by the Indigenous Peoples caucus were always opened with a prayer.

Following the opening of WG8J, Executive Director of the Secretariat Elizabeth Maruma Mrema acknowledged that the meeting was taking place on the traditional ancestral lands of the People of the Flint, the Kanien'kehá:ka, the Mohawk Nation.[178] While it is significant for land acknowledgements to be made within such politically loaded spaces, here is where the designation of WG8J as *non-political* is significant. By rejecting the *political* nature of the spaces, the statement itself is disassociated from participating State actors, and as such the potential *political and legal* significance of recognising historical and contemporary land injustices on Canadian soil is lost. In fact, when a similar land acknowledgement was made at a virtual event launching the Local Biodiversity Outlook, in September 2020, Elizabeth Maruma Mrema, she explicitly justified the statement on the basis of the *type* of event (a launch of the Local Biodiversity Outlook Report). In other words, only because the event was in relation to the Local Biodiversity Outlooks, which is spearheaded by the Indigenous Peoples caucus, was a land acknowledgement considered relevant.

Notwithstanding these debates, that the land recognition did not engage in deeper questions on Nations' rights to ancestral lands and self-determination, along with the fact that no land recognitions were carried out at SBSTTA or at COP, can attract criticism of it purely being a symbolic gesture, a gimmick, as opposed to one actively seeking to disrupt the continuum of unjust practices tied to stolen lands. This is significant for its insight into the performance of law and politics at these spaces, and the ways that the framing, and designation of a space as, say, *non-political* or *political* influences what goes un/said therein, and the legal significance of this as a result. In other words, statements such as these constitute a purely symbolic gesture, which reflects the performative nature of these spaces and the questionable impact

[177] I have witnessed countless occasions where Chairs at meetings will simply mute the mic of local actor representatives mid-speech. At another event, a workshop on the CBD negotiations and the importance of Indigenous peoples' rights, held virtually in the beginning of COVID-19, an Indigenous representative was interrupted mid-sentence by a Secretariat. Authors notes, Observations at COP-14, WG8J-11 and SBSTTA-23. Also Observed at online CBD workshop held April 2020.

[178] The Kanien'kehá:ka name for Montreal is Tiohtiá.

they can have in bringing about tangible normative shifts towards *more* just relations, and in addressing historical injustices. There is however another side to this argument, namely that progressive change often comes in a piecemeal fashion within these spaces, perhaps first as symbolic gestures or mentions which with time become more common, only to later, once more established, can help shift decisions or practices of more legal significance. This idea has emerged in discussions with colleagues and collaborators, and is also reflected in the slow but steady increase of references to the relevance of Indigenous Peoples, local community, Women and Youth inclusion and `participation` in relation to biodiversity decision-making. The journey of ideas is not one of instant adoption into hard legal provisions, but rather a "slow burn" where concepts become, over time, part of the broader discourse, only to be adopted once it has gained wide acceptance across States and observer groups. Other matters play a part in this dynamic process, for instance the extent to which a concept can garner support from constituents, and whether they are capable of attaching themselves to important normative concepts such as human rights.[179]

That land recognitions are not made in CBD spaces outside of the context of WG8J can also come down to the constraining elements of political performance. In accordance with Butler's idea of performativity, attendees of international meetings must behave in ways that make them identifiable and intelligible in accordance with established definitions and norms.[180] Understood within the context of the lawscape, which recognises the overlapping nature of these spaces within wider processes across scales, we are better able to understand the motivations and driving forces behind these utterances, and their legal, political and social significance. For instance, while State representatives and CBD staff can show sensitivity and to some extent solidarity with wider global movements linked to environmental justice struggles, they are still constrained to act in accordance with established norms of international relations and diplomacy. This precludes them, as individuals, from making normative statements which reflect their own ideological stance within justice endeavours, as they are *performing* in accordance with the role handed to them either by their government department or as dictated within the UN framework.[181] Viewed together, we begin to see the limitations of these actors in being drivers for radical change that disrupt power and onto-epistemological hierarchies, given that their performances involve the reproduction and re-inscription of what underpins them in the first place. Within the context of the WG8J, this tension is perhaps addressed implicitly by "friendly" delegates asking Indigenous representatives to share their position on a given issue throughout discussions (as opposed to at the end of negotiations), something which occurred regularly at its eleventh meeting, but did not happen at COP or SBSTTA. Finally, what this event also shows is that, despite good intentions, concepts

[179] Ronald Niezen explores this aspect in relation to the emergence of "Indigenous Peoples" and "local community" movements within the UN framework. See footnote 94 above.
[180] Butler, *Gender Trouble* (1990).
[181] I have been told as much by state representatives themselves, recalling instances of feeling constrained in what they can do, illustrating internal tensions experienced by people struggling to reconcile their personal positions, with the performance they must carry out within their role as State representatives.

originating from within more progressive justice movements, which are meant to be empowering acts set to challenge hegemonic and colonial contemporary practices, risk getting reduced to "empty" symbolic gestures within these spaces when acted out by actors constrained in such ways.

Compared to WG8J, what took place at SBSTTA the following week was in stark contrast – the space had been reshuffled; the plenary room made twice as big, with regional State groups receiving the big rooms for their strategic meetings while all non-party observers received small spaces on the top floor with make-shift, free-standing shutters with no sound proofing. This meant that there was no safe (closed) space for groups to speak freely about their strategies. While the Secretariat faces inherent limitations in what/how much space they can acquire for its meetings, this nonetheless shows a de-prioritisation of these groups at SBSTTA. Additionally, this will likely become a bigger issue as participatory numbers within these groups continue to grow (reflecting wider public recognition of the importance of biodiversity negotiations). In this sense, it also poses a challenge for future work seeking to further integrate Indigenous and local knowledges, and youth and women perspectives, across the CBD themes, including those often covered by SBSTTA.[182] In other words, the shift at SBSTTA illustrated, in spatial terms, the weakening, and pigeonholing of Indigenous Peoples `participation` within CBD spaces. When viewed along broader lines of onto-epistemological pluralism within its frameworks, in that participant numbers grew significantly for SBSTTA-24, we also witness a disconnect between the discussion and practical actions among member states regarding the importance of including Indigenous knowledge and expertise (as discussed at WG8J-11), as well as socio-ecological concerns, across CBD action areas.

As with COP-14 and WG8J-11 whose openings were revealing of their spatio-material conditions, so is the fact that SBSTTA-23 did not have an opening ceremony, other than a statement by the Chair reiterating the importance of "scientific and technological knowledge".[183] This is again telling of the discursive and material conditions of these spaces, and the way that institutional rules and culture impacts on their emergence as decision-making spaces, and the positioning of actors and epistemologies therein. At SBSTTA, compared to WG8J, the language shifted; it became more managerial; more technocratic.[184] Discussions became harder to follow as discussions became increasingly specialised and highly technical, with party delegates (made up of expert state representatives) regularly making the point that it was *not* a political process, and that they were only there to seek and provide scientific, technical and technological advice. Yet, that these statements have to be made illustrates precisely the political

[182] See generally Louisa Parks and Mika Schroder, 'What we talk about when we talk about 'local' participation in International Biodiversity Law. The Changing Scope of Indigenous Peoples and local communities ' participation under the Convention on Biological Diversity' (2018) 11:3 *Partecipazione & Conflitto.*

[183] I will discuss the significance of onto-epistemic conditions and in/justice in Chapter 6.

[184] Language has gained attention within scholarship, amongst other things looking at its strategic and deliberate use to homogenise discourse, the re-inscription of particular onto-epistemologies, as well as the use of 'clinical' terminology which 'conceptually flattens' categories of actors. See for instance Birgit Müller, 'Lifting the Veil of Harmony: Anthropologists approach International Organisations' in Birgit Müller (ed), *The Gloss of Harmony. The Politics of Policy Making in Multilateral Organisations* (Pluto Press, 2013).

nature of these debates and reflects the contentious nature of the discussions taking place at the meetings. Questions regarding what information and sources to mention in texts, the appropriate "official" State responses and reactions to notable reports and so on; these are all political and contentious by nature. This, along with the onto-epistemic hierarchies within the CBD, became very clear when references Indigenous, traditional and local knowledge systems were suddenly contested, despite their recognition and utilisation having been central to discussions only a week before.[185]

As well as highlighting inequalities (tilts) in the treatment and positioning of onto-epistemes amongst these spaces, the above also suggests a sort of insularity between the negotiating spaces, showing a discontinuity of process. Situated within the idea of spatial in/justice and lawscapes, we are reminded of the situatedness of these processes in amongst wider external processes and pressure which influence the movement and uptake of progressive ideas *between* CBD spaces. In several ways this should be unsurprising, and from the perspective of WG8J, perhaps even a good thing – if meetings were instead driven by the same cultures, rules and etiquette, barriers in one space would persist in the other. That WG8J exists and represents a unique (albeit far from perfect[186]) space for Indigenous Peoples and local community representatives to access and influence the negotiations more than at other meetings is certainly positive. Yet, if that influence on substantive texts does not go beyond its walls and filters into the other spaces of decision-making, there is a gap of processual integration which needs addressing.[187] This is especially frustrating given the years of local actors, and certain States, urging for stronger engagement with marginalised ontologies and epistemologies within scientific and technical discussions. That this is still not happening in a meaningful way across the CBD processes, despite the widespread recognition that this is key for addressing biodiversity loss,[188] seriously undermines the CBD's potential in achieving its purpose, as will be discussed in Chapter 6.

4.4.2 Spatio-temporal and Linguistic In/exclusion at Biodiversity Negotiations

Through the lens of spatial in/justice and the lawscape,[189] I remind readers of the ways that legal frameworks, dominant cultures, discourses and onto-epistemes are reflected in space,

[185] Authors notes, Observations at SBSTTA-23.

[186] Indeed, as a space still grounded in traditional ideas of international law as being state-driven, WG8J still reproduces and reinscribes several of the barriers to participation that will be explored in this and other chapters. As spatial in/justice and the idea of lawscapes reminds us, systemic oppression and onto-epistemological hierarchies *do* also permeate across spaces grounded in similar logics, and this is certainly the case with the WG8J. Regardless, this doesn't change the fact that WG8J sets itself apart from other CBD spaces, as explored throughout this thesis.

[187] Indeed, nothing illustrated this as clearly as a state delegate I happened to sit next to during a SBSTTA Contact Group just days after WG8J closed, whispered under their breath to a colleague "What does IPLC mean?".

[188] See for instance Aichi Biodiversity Target 18 on Indigenous knowledge, innovations and practices. See also *Global Biodiversity Outlook 5* stating that the role of Indigenous knowledges "remains poorly recognised in national processes". CBD Secretariat, *Global Biodiversity Outlook 5* (2020), 112.

[189] Philippoloulos-Mihalopolous, *Spatial Justice* (2015). See also Blomley, *Law, Space and the Geographies of Power* (1994); Blomley, Delaney and Ford (eds) *The Legal Geographies Reader* (2001); Jane Holder and Carolyn

time and language. This next subsection looks closer at the spatio-temporal and linguistic aspects of the CBD negotiations, reflecting on what this tells us about the lawscapes as decision-making spaces, and the consequences these have on the `participation` of local actors therein. Grounded in ethnographic fieldwork, a key aim is to highlight instances of material and symbolic in/exclusions of actors at negotiations which aren't captured in orthodox conceptions of international law and its processes.

Spatio-temporal Emplacement at Negotiations

The **Plenaries** and **Working Groups** at both COP-14, SBSTTA-23 and WG8J-11 were all set up in windowless rooms, without natural light. They had a stage in front, like you'd expect at concerts or theatres, towards which all hundreds of tables and chairs faced. Graced with the seats on stage were those presiding over the meetings; the Chair/s and the Secretary. Closest to the stage were the rows of seats for State delegations in alphabetical order. Observer groups: Business, NGOs, Indigenous Peoples and local community, Women and Youth representatives were further along the back. Non-assigned seats were the furthest from the front, left for researchers, media and other attendees. These rooms held capacity for several thousand people (although WG-11's Plenary was half the size of SBSTTA-23, which was in turn half the size of COP-14), and as mentioned above, are outwardly the most visible space of negotiations. From a purely spatial perspective, this illustrates the centrality of States as actors within the processes, and the ways in which these spaces constitute the stage for the performance of diplomatic relations reflecting wider principles of State sovereignty and multilateralism. The formality of the language used within this space also reflects the highly "outwardly" political nature and task of the Plenary and Working Group negotiations.[190]

Compare this to the Contact Groups. These are known, amongst those well-versed in CBD meetings, as the *true* spaces of negotiations, where text goes through thorough and persistent reading and debate between participants. The rooms are significantly smaller, the biggest at COP having a capacity of up to three hundred people. The main stage is the negotiation space, which is exclusively meant for Parties. At COP-14[191] this was made up of a collection of tables forming a U-shape, with the co-chairs sat at one end, forming a link between those at either end. In contrast to the Working Groups and Plenary space, negotiators here face each other, offering an air of cooperation, unity and understanding across the range of perspectives and interests contained in the room. The language also shifts; compared to the

Harrison (eds) *Law and Geography: Current Legal Issues, Volume 5* (Oxford University Press, 2003; Graham, *Lawscape* (2011).

[190] See discussion on this below on common phrases used by participants.

[191] Notably, the Contact Group spaces of SBSTTA and WG8J were different, perhaps because of the fixed (bolted) nature of its furniture. Here, the space was organised largely in the same way as Plenary and the Working Groups, with the "audience" facing an elevated stage where the Co-chairs and Secretary sit. The main section of seating is in the middle, with comfortable chairs with accompanied desks. Along the side of the room folding chairs were provided. Participants to the negotiations, be it State delegates or Observers, sat in the middle section, whereas non-negotiating Observers (including myself) tended to sit off to the side, in what appeared to be an entirely voluntary way of attendees distinguishing ourselves in accordance with categories established by the CBD system.

diplomatic form of community mentioned above, here discussions are frank and direct, albeit still respectful.

Opening Plenary at COP-14 in Sharm el-Sheikh, Egypt (right). Ongoing negotiations during a Contact Group which went on well into the night (left). Photos by author

The elephant in the rooms, muttered about in the corridors, are the frank debates waiting to be had over the multiple contentious topics on the agenda; with the avoidance of *public* debate within the formal space glaringly obvious.[192] Turning this around, the difference between the negotiating spaces highlights the importance of discussions within the Contact Groups, despite outward appearance. Here, disagreements become clearer and are addressed in a *more* direct manner, albeit still in accordance with diplomatic code. That there exist rules forbidding these meetings to be recorded, tweeted about, or officially reported on, is telling of attempts to protect the process from diplomatic conventions. As explained to me, if Contact Groups were to become open in a way that Working Groups and Plenary are, State delegations would become far more constrained in how they could engage in debate.[193]

In returning to how `participation` in textual negotiations takes place at the Working Group and Plenary meetings, the Chair assigns the microphone to a given speaker, with States often given two minutes to read their statements. Not until the Chairs have exhausted the list of States and non-member States[194] wishing to speak, do they turn to those with Observer status. Although the general rule is for these statements to also be 2 minutes, it happened multiple times during COP-14 and SBSTTA-23 that these were cut down to 1 minute with little or no warning, or that groups were suddenly asked to combine their statements with others so to make joint ones on behalf of the major groups, who occasionally get more time allocated

[192] I have attended multiple meetings where State delegates will make round-about comments pertaining to the relevance of a particularly contentious topic, saying things like "you know what I'm talking about" rather than vocalising what exactly the issues concerns. Authors notes, Observations at SBSTTA-24 and SBI-3.
[193] Authors notes, Dialogues at COP-14 and with colleagues in-between the meetings.
[194] The USA is the only UN member state that has not ratified the Convention. The Holy See is also registered as a non-member state. Non-member states that have ratified it are the Cook Islands, Niue and the State of Palestine, but due to geopolitical relations, these cannot have member status under the Convention.

to them. Similar displacements take place within the Contact Groups which, as discussed above, is where most people consider the 'real' negotiations to take place.

Notwithstanding the fact that asking multiple groups to make joint statements does a huge disservice to the diversity of perspectives and interests represented within the major groups (discussed in the next chapter), the spatio-temporal conditions of these instances of participation highlight restrictions to these groups' ability to contribute to negotiations. In fact, this is, to many local representatives, seen as a *key barrier* to meaningful participation.[195] From a temporal perspective, it is often the case that States will carry on exchanges between themselves for hours, moving through the paragraphs of a text one by one, only for the Chair to, at the very end, ask Observers to make their statements. A consequence of this is that participants may note an objection, or make a suggestion on a topic that was discussed (and perhaps "resolved") hours earlier. If supported by States and brought up for discussion, this can lead to fragmented discussions, with other States voicing frustrations about the inefficiency of process and the "loss of time".[196] It may also happen during Contact Groups that Chairs will simply dismiss the comments as no longer relevant to the "current" discussion, which can only be challenged by States supporting a Statement. During the Working Groups or Plenary, where diplomatic speech and the performative aspects of participation is more poignant, if a Statement here is supported the Chair will simply make a note that it will be considered in the legal drafting, and then move on.

This shows the round-about way that concerns expressed by observer groups are not guaranteed to make it into substantive discussions at negotiations, but rather only feature as a comment, long after States have agreed on a way forward. This illustrates the relevance of critical perspectives of participation highlighted earlier, especially those made in *Tyranny* regarding the enduring dominance of decision-making power and control held by actors who have traditionally held those roles. This inhibits fundamental shifts in power relations between actors and undermines the ability of less powerful actors to prompt tangible changes in decision-making,[197] bringing to question what makes "full and effective participation"[198] just that. At the CBD, this takes place through the spatio-temporal positioning of actors in accordance with traditional hierarchies where the positions of States is privileged in accordance with traditional methods of international law-making.[199] Notwithstanding the argument that international law is purported to be an inherently state-centric endeavour, perspectives from *Tyranny* brings to light questions as to the "participatory" nature of these

[195] Indeed, an Indigenous representative explained it that "[…] we should be able to – this is where States feel that we are stepping on their toes – speak earlier. Because it is hard to come in only in the end when everyone has already asked for the floor and had their said, so our proposals are never part of the discussions. […] In a sense, they do not get … to hear our views until it is too late." Authors notes, interview H.
[196] Authors notes, Observations at COP-14 and SBSTTA-23.
[197] Cooke and Kothari, *The New Tyranny* (2001).
[198] The use of the term "full and effective participation" is regularly inferred within the CBD spaces in relation to the participation of Indigenous Peoples, local communities, women and youth, both in how inclusive procedures are envisaged on the international and local level of decision-making.
[199] See Boyle and Chinkin, *The Making of International Law* (2007).

spaces when its instances are so undermined and rigidly contained. As highlighted in *Transformation,*[200] answers to this question are seldom a straightforward yes or no, which is precisely why engaging in a more nuanced, and honest debate, based on the theoretical perspectives introduced in this thesis, is helpful.

Bringing in spatial in/justice and insights from participatory geographers can help gleam some more nuanced perspectives and understandings of the ways in which power materialises and is enacted both spatially and temporally within these participatory instances of CBD negotiations. In the spatial sense, there is first the power-symbolism of States being placed up front in the room, signifying their closeness to the head of the meeting (the Chair and Secretary). Although the *physical spacing* of States does not make it easier for them to contribute to the negotiations, this tells us, and reminds observing participants, of the State-centric nature of these spaces and the wider setting within which these debates take place. Second, there is also the spatial metaphor of the varying degrees of *closeness* between Observer groups and States, and the way this affects their ability to influence negotiations. As mentioned above, in order for Observer statements to be considered in legal drafting, they must have a State's explicit support. Getting this can be, and often is, negotiated and arranged in the corridors prior to sessions, reminding us of the multiplicity of (sometimes unseen) negotiations that take place alongside the public-ceremonial spaces of Plenary and the Working Groups. Here, power as *effect*,[201] or as the 'manipulation of resources in order to produce particular outcomes',[202] gives us a way to unpick the instances of tilts that materialise in these scenarios.

To begin with, those Observer groups who are better 'established' within the negotiations, carry with them an edge to influence decision-making by having access to contacts within State delegations, making it easier for them to garner support. In other words, regardless of whether one's statement vocalises an argument important to debate, the question of whether it will be considered often depends on your positioning vis-à-vis State actors, and your ability to frame your contributions, insights and arguments in a way that is appealing to States themselves. This highlights the imbalance of power held between relevant Observer groups, discussed in the following chapter. It also brings us back to the first point made above, namely the power of States within the process, and the significant bargaining power they hold in negotiating with Observers about endorsements for statements. By being the deciding factor as to whether a statement makes it into the textual drafting process, States hold a significant upper hand in these discussions, and thus in the framing of contributions made by local actors. Here, whether a group agrees to adjust their draft statements in light of State positions depends on strategy. On the one hand representatives may attend meetings to bring about substantive changes to legal texts, which requires keeping to diplomatic codes and conduct. Another strategy includes attending meetings so to bring to light insufficiencies and injustices in ways that fundamentally disrupts the status quo, often using language and performatives

[200] Hickey and Mohan, *Transformation* (2004).
[201] See discussion on Kesby in Section 4.2.1 above.
[202] Ibid.

which are often too blunt and explicit to garner State support.[203] Often groups adopt a mixed approach in their work, being mindful of when and where they feel it is realistic that they can affect legal drafting, while adopting a more 'hard line' approach in other areas.[204] This highlights the intricate and complex lawscapes which local representatives need to navigate when attending negotiations, and the performative aspects and difficult trade-offs non-state actors must consider in order to have a potential influence in the substantive outcome of international legal drafting. It also brings to light instances of gatekeeping whereby input from local representatives is brought in, not by virtue of its importance in light of biodiversity conservation, but rather by virtue of its alignment with a State agenda.

In returning to the above description of the procedure where local actors can try to contribute to international legal drafting by making statements, this also gives insight into the *tilts* in the temporal conditions of those opportunities. During COP, the Chairs of the Working Group would literally turn off the mic of Observers whose statements went over the designated time. Even the very sudden decision to *halve* the time allowed to speak, to one minute is incredibly restricting, and does not account for the many hours local representative spend in drafting these texts, carefully adjusting them to fall within the usual two-minute limit.[205] Having gone through this process myself by aiding in statement drafting, I can attest to the large amount of preparation, both in terms of reading all relevant background documents, and discussions with constituents, that goes into writing a statement. The choice to temporally limit participation in order to save a handful of minutes, when seldom doing so for States, as well as having multiple Contact Groups run in parallel, shows the ways in which access and the de-prioritisation of non-State actors and smaller delegations materialises at these meetings. It also highlights the curious, malleable nature of time within these spaces, and the way it is used in different ways depending on the issue. Ultimately, only so much time can be dedicated to the ceremonial negotiations at COP, SBSTTA, WG8J, with States often making declarations along the lines of reminding attendees that "time is of the essence" and "we must act now to curb [insert environmental crisis]". As seen above, such statements often act to justify short time scales in favour of jeopardizing fair and inclusive decision-making processes. It is also a bargaining tool, used as a strategy for making participants come to agreement quicker, or by individual States pushing through compromises when stalemates occur.[206] At the same time, there are instance at these negotiations where discussions are at a stand-still over

[203] This was discussed in a group interview, where participants reflected on these two meta-strategies that participants need to consider when attending negotiations. Authors notes, Interview G.

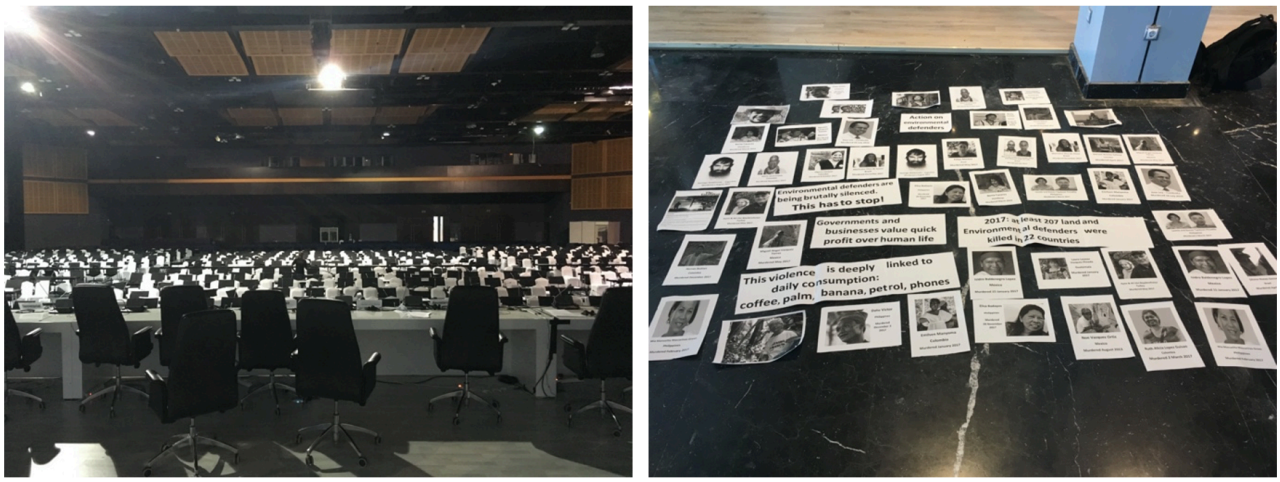
[204] In one interview, a participant reflected on the balance needing to be struck between being diplomatic and doing trade-off with States, and other instances where they would not budge on their position given the gravity of the issue at hand. Authors notes, Interview H.

[205] Authors notes, Observations and Dialogues at COP-14 and SBSTTA-23.

[206] For instance, a known strategy of one particularly "strong" State delegation across MEAs, which was practiced several times during both COP-14 and SBSTTA-24, is them noting their displeasure about an issue, letting debate carry on until finally giving ultimatums along the lines of "either the text reads as we like or you can delete the entire paragraph/put it in brackets" which effectively means going back to square one in negotiations. Such proposals are often met with audible groan amongst participants, yet with the discussion carrying on, and the final text often reflecting heavily compromised text.

seemingly futile issues (albeit of political or legal significance), with hours at COP-14 spent discussing whether States are "concerned" or "very concerned" about climate change impacts on biodiversity.[207] Participants eye-rolled at this instance for days after it occurred, yet simultaneously brushed it off as "normal".

Time is not constant, nor is it equally experienced or expressed. Around the world there is a temporal discrepancy in how people and areas feel the effects of biodiversity loss and climate change.[208] The scheduling of meetings will have an impact on those participants who have other commitments at home, and for those attending several meetings (often unpaid), doing so is a huge sacrifice.[209] Here, there is the individual experience of time that must be considered. On the whole, two weeks may not seem like a lot to negotiate and finalise international environmental legal texts, but for the representative who has taken time away from family, from work on unpaid leave (or has to buy holiday)[210] or from a way of life that sustains them (e.g., a farmer missing harvest), it is a significant amount of time with potentially big consequences. This links up to literature on temporality and law, and the way that law and legal processes draw on time, and shape it in ways that does not correspond with how time is experienced by others. Here, Benjamin Richardson has proposed that environmental law needs to go through a temporal reckoning so to ensure better appreciation of the temporalities of environmental law and "to advance a better timescape for governance".[211]



The difference a day makes – the "empty" space of Plenary and Working Group I at COP-14, just a day after the closing of the meeting (right). Protest by civil society members reminding participants of the increasing violence facing defenders of water, land and human rights (left). Photos by author

[207] Authors notes, Observations at COP-14.
[208] See for instance Judith Bopp and Anna Lena Bercht, 'Considering time in Climate Justice' (2021) 76 *Geographica Helvetica*, 29.
[209] One colleague, a farmer, harvester and seed-keeper highlighted that attendance of WG8J and SBSTTA meant missing important harvesting seasons. Authors notes, Interview G.
[210] One regular participant at the CBD meetings, an Indigenous representative, had to "buy" additional holiday from their usual job in order to attend the CBD meetings. Authors notes, Interview B.
[211] Benjamin Richardson *Time and Environmental Law: Telling Nature's Time* (CUP, 2017), 10-15.

At the CBD meetings there is a push and pull in how time is perceived and used to shape negotiations and prompt particular actions from certain actors. This is arguably not surprising given the varying temporal manifestations and clashes between the *urgent and rapidly escalating* environmental crisis and the *slowness* of law-making. Issues arise from a spatial justice perspective when some actors hold *more* power in the ways they can enact and use time to shape the debate and process. At the CBD, States are in a position to either "speed up" or "slow down" negotiations based on their own positionings, with this highlighting significant tilts in the inequalities within the temporal-procedural aspects of the negotiations, including how this may be used to constrict participation and the incorporation and new ideas and perspectives into discussions. The following subsection will explore another way that participation is constricted at negotiations, through the lens of linguistics and spatio-cultural conditions.

Linguistics of Speech and Tact

Access to, and participation at CBD meetings is significantly shaped by virtue of their linguistic conditions. This emerges in two main ways. First, there is the example of spoken language, and the English-centric nature of interactions at CBD meetings. Second, there is the highly technical and diplomatic language which is inferred and affects how people interact with each other, and with the process. Language and terminology will be looked at more closely in the next chapter, delving deeper into the ways that these space certain conditions for *public* participation within the CBD lawscapes.

In terms of spoken language, English remains the dominant negotiating language throughout the CBD meetings, with it being the commonly used language during all meetings, as well as at the side events. Within the big negotiating spaces – Plenary and the Working Groups – participants are provided with interpretation between all the official UN languages; Arabic, Chinese, English, French, Russian and Spanish. This is also the case for written documentation, with most official documents being made available in these languages on the CBD website. There are a couple of different considerations to take into account regarding interpretation and translation. To begin with, interpretation is not provided at Contact Groups, which may be an issue of logistics and funds. Given the multiplicity of Contact Groups going on simultaneously, having interpretation during all of these would be logistically difficult, and financially costly. However, given that these rooms constitute the main spaces of negotiations, where the crux of texts get debated and terminology picked apart to its finest, most minute detail, this is a significant barrier to participation by non-English speakers, State and Observers alike. It was common during COP-14 that even State delegations during Contact Group negotiations qualified their contributions with something akin to "apologies, English is not my first language", which has the effect, from the outset, of undermining what they have to say. On a similar note, the fact is that several grassroots representatives who attend CBD meetings on behalf of their communities do not speak English, meaning that they can't follow or contribute to discussions during Contact Groups. This highlights a stark example of *direct*

exclusion from key negotiations at CBD meetings, which all comes down to whether one has had the opportunity to learn another language, something not granted to many around the world.

There is also a temporal element regarding when translation and interpretation is made available. Just a week prior to WG8J-11, followed by SBSTTA-24, it was brought to my attention by an Indigenous representative that no translations of the relevant preparatory texts had been made available online.[212] This signifies a massive challenge to multi-lingual groups like the Indigenous Peoples and local community caucus where members need to first consider the documents with their constituents, in order to then join in discussions amongst the caucus members to collectively decide on a strategy for each agenda item. Therefore, not having these texts available in the relevant languages before the meetings greatly hampers the preparedness of these groups to craft their opinion and arguments within the debates in a qualitative manner, thus illustrating another barrier to `participation` happening on an equal footing.

Notwithstanding the question of *when* translation and interpretation is made available, there is also the additional question of accuracy. Interpretation and translation, especially under time-pressure and during fast-paced complex negotiations featuring highly specialised terminology, is incredibly hard, and people are bound to make mistakes. For instance, there have arisen times when the accuracy of translations of particular legal terminology has been brought up and debated on the floor, and where translators have had to go back to edit text in order for participants to be 'on the same page' in terms of what is being discussed.[213] This is not an issue only facing Observer groups, but something affecting all non-English speaking peoples.

Additionally, as pointed out by scholars in legal semiotics and hermeneutics, mastering a language, and interpreting it, requires knowledge of not only the language itself, but also of its cultural referents.[214] This becomes immensely complicated in the context of global languages; Spanish spoken in Europe has completely different cultural referents, and at times different grammar and terminology, than that spoken across the Americas, which itself contain immense diversity of the Spanish language. The same goes for French spoken in countries across the globe; Benin, Canada, France, Switzerland, Cote D'Ivoire, Haiti and so on. This highlights a key difficulty in communicating across languages in general, which is crucial within the context of international law, and unfortunately there is no clear solution to these challenges within the context of international negotiations.

Regardless, the use of English as the 'main' language with which negotiations take place does have a bearing on the construction of international law, with a result being the legal

[212] Authors notes, Dialogues with colleagues ahead of WG8J-11 and SBSTTA-23.
[213] Authors notes, Observations at COP-14 and SBTTA-23.
[214] Referents here signifies 'expression, content, object'. Evandro Menezes de Carvalho, *Semiotics of International Law: Trade and Translation* (Springer, 2011), xxiii and 58.

inscription of Anglo-Saxon-centric ways of formulating understandings of the world.[215] Looking at this from a critical perspective, this can be interpreted as a systemic re-inscription of colonial relations and histories, effectively extending the reach of imperialist framings and the dominance of anglophone and Westphalian worldviews. Although legal comparative scholars have studied language in the context of interpretation and translation between various legal systems, I have not come across studies looking precisely at the consequences of Anglophone framings within international legal negotiations, which I believe is a gap within international law research. The consequence of linguistics from an onto-epistemological perspective within the CBD will be explored in Chapter 5 and 6, especially as it relates to the use of terminology in identifying relevant actors granted entry to negotiations, as well as the inscription of scientific and technological terminology within global biodiversity negotiations more broadly.

Beyond the influence of spoken language and the technologies employed to manage these with varying success and frequency during the CBD negotiations, there is also the matter of linguistic culture which shapes these processes. At the CBD this includes the already mentioned diplomatic language and code of conduct which restrains what can be said and how. In addition to this, there is also the use of legal and technical terminology which shapes discussions and debate. Featuring both separately and together throughout the negotiations, both are characterised by their perceived "neutrality", and the effect this has on participants', as well as the public perception of ideas, problems and solutions articulated at legal negotiations and in texts. As already noted by international legal scholars, discursive frames play an important role in the emergence and development of international law, having distinct normative and regulatory implications by carefully selecting and accentuating certain aspects of reality, positioning actors in certain ways, highlighting particular harms, promoting distinct solutions in alignment with their own agendas and worldviews.[216] This can be explored on account of meta-frames, which shape overarching legal approaches in how we understand issues such as biodiversity loss, its causes and solutions.[217] Yet, what is under-explored in this instance is the ways that this plays out on a procedural level, and how *tilts* between actors within negotiating spaces is shaped, but also shaped by the ways that people act, what they *can* say, and how tensions are dealt with (if at all). Given the overarching un-critical framing of `participation` across biodiversity law, the implicit ways that `participation` is in effect inhibited by suppressive atmospherics is left forgotten, or deliberately made invisible. These aspects are introduced above, and explored in greater depth in the following chapters.

[215] Ibid, xiii and xix. As discussed in Chapter 6, participants will occasionally challenge this by bringing in non-Westphalian concepts into the legal drafting, such as *Buen Vivir* and *Pachamama* (discussed in Chapter 6). Regardless, the overarching framing of sentences, actions and so on, will follow an English linguistic discourse structure.

[216] André Nollkaemper, 'Framing Elephant Extinction (2014) 3:6 European Society of International Law <https://esil-sedi.eu/fr/esil-reflection-framing-elephant-extinction/> (accessed 10/03/2021); Baachi, *Analysing Policy* (2009); Baachi, *Why Study Problematisations?* (2012).

[217] See for instance Timothy Forsyth, *Critical Political Ecology: The Politics of Environmental* Science (Routledge, 2003); Robbins, *Political Ecology* (2004); Brand and Vadrot, *Epistemic Selectivities* (2013) 9; Vadrot, *The Politics of Knowledge and Global Biodiversity* (2014).

With regards to diplomatic language, I have already highlighted what this tells us of the political performance of negotiations during Plenary and the Working Groups.[218] Here I will speak more to the ways this shifts between CBD negotiating spaces, and reflect on its consequences for participation and expression of differences at negotiations. For instance, as mentioned above already, the formality of diplomatic language within the "official" negotiating spaces reflects the political dynamics underpinnings them, and detracts from the ability of participants to engage in frank conversations about the framing of problems and solutions linked to biodiversity loss and socio-ecological justice. Instead, communication becomes contrived, manipulated by round-about performances; "Madame Chairperson…", "would like to request…", with your indulgence", "in the spirit of cooperation…" and so on. These phrases mark the discursive (and material) inscription and re-embedding of these spaces as accommodating a particular vernacular and culture of global cooperation and unity, which lies at the heart of the UN Project.[219]

The setting of these spaces as highly collaborative align with the "soft**er** law" approach often adopted within international environmental multilateral negotiations with its associated "carrots" approach to punitive responses related to implementation and enforcement. Beyond the long-standing debate of whether the CBD should be celebrated or critiqued for its approach contra the benefits of its flexibility, not to mention the important political and legal influence CBD provisions carry, for instance vis-à-vis international human rights law,[220] what has been missing from these debates is the impact this has on the *actual* processes of drafting.

This is especially important with regards to the participation of local groups due to the legitimising effect their presence has on these processes from a democratic perspective. As highlighted in *Tyranny,* when participatory discourse is heavily emphasised on commonality and unity, these overarching framings obscure limitations and manipulations that suppress local differentials, and make avenues for highlighting and addressing conflict difficult. In fact, this goes hand in hand with the problematic assumption that tends to accompany participatory discourse, tied in with its win-win rhetoric, which overshadows important issues of transparency and accountability.[221] In effect, the risk of having a space largely shaped and framed by collaborative ideals, is that difference and explicit protest is suppressed. During Contact Groups, along with the space shifting, so does the language. In contrast to the diplomatic form of communication mentioned above, discussions here become frank and direct, albeit still respectful. Yet, because this still happens within the setting of States dominating and remaining gatekeepers for what makes it into textual negotiations, open critique is not welcomed and thus seldom expressed. Chairs during Contact Groups will still routinely call on

[218] See early discussions in Section 4.4.1.
[219] See discussion in Section 4.3.2 above.
[220] See for instance Stuart Harrop and Diana Pritchard, 'A Hard Instrument Goes Soft: The Implications of the Convention on Biological Diversity's Current Trajectory' (2011) 21 *Global Environmental Change*; Patricia Birnie et al, *International Law and the Environment* (OUP, 2009), 594-5; Morgera, *Under the Radar* (2019), 1116-8. The relation between the CBD and human rights will be discussed in Chapter 5.
[221] See discussion in Section 4.2 above.

participants for their "cooperation", furthering an imagery of international unity and scolding critique as unnecessary and "not conducive" to the process. For instance, I once sat in during a side event where the moderator, a Secretariat staff member, scowled those posing questions they perceived as confrontational or antagonistic, saying that they would "stomp" down on such critique.[222] This goes directly against basic principles of constructive dialogue, and indeed makes attempts at addressing (or event recognising) injustices of process difficult.

Recalling Butler's work on performativity,[223] this brings forth another instance where participants, unless they are able to adopt the necessary linguistic culture and discourses as their own while within these spaces, they risk becoming placed at the margins and have their contributions ignored. This is linked to the discussion above regarding the different strategies adopted by groups in the framing of their Statements during Plenary and Working Group negotiations.[224] Notwithstanding the bearing this has on one's relationship to State delegates who decide on whether ones Statements will make it into the drafting process, looking at it through a linguistic lens illustrates the ways that Observer groups are positioned in ways that undermine their autonomy in representing their constituents. During a group dialogue with grassroots organisers in the weeks of WG8J-11 and SBSTTA-23, the participants reflected on their collective decision that "the time to be polite is over" and that this was reflected in their Statements,[225] which did not get State support during negotiations. This, to them, came from a feeling that they were doing what was right for the people they represent, and that in this case being in the room and raising concerns, however critical, was most important for them. On the other hand, they also recognised that some groups adopted more diplomatic approaches out of pure necessity, with one participant sensing that some groups seemed "a little scared of funding bodies and the political power that they may or may not have when they go home […] people are treated so badly for it". In other words, the choice of what to say (and how to say it) is part of the wider system in operation where peoples' livelihoods and safety, and their platform to speak up about issues, is dependent upon their very ability to adopt particular language and say (or not say) certain things.[226]

The above highlights the way that power is inscribed through discourse, and is enacted and performed at negotiations. In effect, the language of unity and polite diplomacy is protected by – and indeed protects – the political performances of these spaces, with those benefitting capable of reinforcing it through their gatekeeping of what makes it into textual negotiations. And thus, we witness a circularity in how power is used, performed and re-inscribed within

[222] Authors notes, Observations at COP-14. The relevant questions related to observers asking how many State representatives were actually in the room, to highlight the issue that the important topics discussed therein were being siloed as those holding more power were not present to hear them.
[223] Butler, *Gender Trouble* (1990). See discussion in Chapter 2, Section 2.4.1 and above under Section 4.4.1.
[224] See Section 4.2 above.
[225] Authors notes, Interview G.
[226] In another interview, one participant told me that they receive death threats in their home country by virtue of the land-environmental issues that they work with. Although not necessarily impacting on their actions at the CBD, this highlights the fact that several people attending these meetings do so, along with their other work on the frontlines of these crises, at great risk to themselves and their loved ones. Interview I.

these processes, illustrating also the challenges it poses for enabling participation in a way that actually challenges existing hierarchical (and perhaps tyrannical) power structures. Closely associated with this is the use of particular terminology, which can act so to make invisible, and in effect re-inscribe *tilts* between actors, discourses and onto-epistemologies in discussions, which will be discussed in the following chapters.

4.5 Conclusion

This chapter has filled a couple of different functions. To begin with, it introduced the critical literature on participation, which has informed the premise of my research. Here, scholars have highlighted the importance of problematising mainstream practices of participation, so to avoid scenarios where mainstream discourse and practice re-produces and re-inscribes unequal power dynamics between actors, knowledges and worldviews. Within traditional legal scholarship, we are ill equipped to reflect on, and interrogate the promises and dangers associated with the un-critical acceptance of win-win rhetorics, as well as the common mistake of equating "recognition" or seats at a table, with sufficient participatory practices. This chapter challenges practitioners to do just that. In this regard, it invites doctrinal legal scholars to be more mindful of the ways that participation materialises, and how it is employed in ways that legitimise a process, in spite of this happening on a rather superficial level.

The chapter also provided the first insights into the CBD lawscapes; its negotiating spaces, as well as the procedural, institutional and governance structures which all make up, and conditions the ways that negotiations take place, including how non-state actors can participate therein. I then brought the above critical perspectives, the overview of the lawscapes and spatial in/justice into conversation with my own emic perspectives form my ethnography, providing new insights into the *ways* that public participation materialises, and takes place at negotiations. Here, my finding is that the spatio-legal ordering of international negotiations, with the ensuing material positioning, discursive and linguistic conditions which set the stage for its processes, have established instances of *oppressive atmospherics*, which suppress the visibilisation of opposition and, at times, the input by local actors as *key contributors* within the processes of international biodiversity law-making. Herein lies also the tension at the heart of my thesis. On the one hand is my belief in the transformative potential of participatory processes for enabling procedural and substantial shifts in the ways that international law is negotiated, elaborated and implemented. On the other I also remain critical and wary of its malleable nature and the way its use can reinforce existing power imbalances and actively do further harm.

By way of example, in the final section I provided new insights into how the procedural and material aspects of each of the CBD lawscapes has enabled slightly different conditions of participation to emerge, with WG8J for instance providing a unique, to some more inclusive, space for local actors. On the other hand, I also identified barriers facing participants across all CBD lawscapes, inhibiting more progressive and inclusive processes to emerge, with

participation here in some ways falling foul of tokenism. I also delved into the ways that the political performances shaping the negotiations and the relations between State and non-state actors has led to temporal-spatial emplacement of local representatives, and the ways in which power materialises and is enacted between bodies, affecting the agency of actors in representing their constituents. Here, local participants have to navigate difficult terrains in order to have their proposals considered in textual drafting, thus illustrating the rather constrained conditions for participation with regards to enabling shifts in narratives and practice. Finally, I discussed how language and linguistic culture has shaped negotiations, and influenced the people access into, and within these spaces. This sets the stage for the upcoming chapters, where I will continue looking at what language, and particular terminology, can tell us about how instances of participation are conditioned, as well as explore the onto-epistemic groundings of biodiversity negotiations, and how this may inhibit the emergence of spatial justice therein.

Chapter 5: Casting Actors

Accounting for Differences and Responsibilities in the identification and recognition of local actors at the CBD Negotiations

5.1 Introduction

The aim of this chapter is to explore in greater depth the actors enrolled in the CBD processes, their positioning in amongst its lawscapes, and the consequences of this in light of spatial in/justice within the negotiating spaces. Spatial in/justice invites us to look at the ways that negotiations and their processes are shaped by concepts found within broader Westphalian legal and political systems, as well as prevailing discourses of public participation within the environmental movement, and in international biodiversity law specifically. It calls special attention to the ways that *atmospherics*, grounded in dominant onto-epistemologies, risk undermining deeper recognition, and space for diversity and difference within negotiation processes. Assessing this requires going beyond looking purely at the actors themselves, and asking questions of what their explicit/implicit inclusion within process signifies in terms of underlying values, ideologies and the onto-epistemological conditions of the lawscapes and the ways decision-making is framed therein. Keeping this in mind, my overarching claim is that the idea of participation at negotiations demands attention to the "casting", and spatio-legal positioning of actors within the negotiations and negotiated texts, as this has knock-on effects on their positioning within wider biodiversity policy discourse.

I will begin by introducing the theoretical framework for my analysis, by first recalling the concept of spatial in/justice and the critical literature exploring the potentials and pitfalls of *public* participation within international policy- and law-making. Here, I focus my attention looking at the concept of civil society, in part as a term, but also as a wider social concept/phenomenon used to describe and refer to non-state actors within policy-making and wider societal change-making endeavours. Here, I primarily draw on literature from the political sciences as it is therein that the participation of civil society within international negotiation has enjoyed most scholarly attention. My point here is to highlight the way the terms use risks overshadowing the distinct and unique characteristics of a given group and the particularities of their messaging and demands, providing instead simplistic, homogenous imagery of individuals and collectives battling oppressive systems. Similarly, the common practice of equating civil society with representation by global NGOs does a huge disservice to grassroots movements who carry the burden of combatting inequality, marginalisation and violence on the "front lines" of global struggles, signifying also a wider shift towards the depoliticisation, and settling of managerial and technocratic logic within environmental protection and social justice movements.

Following on from this I will introduce and explore the overarching narratives and discourses framing public participation within international environmental law and politics, and the terminologies employed to describe and position actors the CBD processes and debates.

This relates to the referencing, and "casting" of actors as *stakeholders, knowledge-holders* or *rights-holders*. Drawing on interviews and observations, I tease out the ways that existing legal discursive framings risk falling short of tackling spatial injustice. Instead, I find that they risk enabling *oppressive atmospherics* that undermine the ability of local actors to represent their constituents and hold space for nuance and contention within debates. I also look at the overarching struggle against homogenising and commodity discourse which underpins much of the global efforts to stem biodiversity loss. The term *rights-holder* has only recently made its way, in explicit terms, into the terminology of CBD Decisions. Therefore, my analysis with regards to this will be slightly different, rather exploring the opportunities and risks associated with the incorporation of human rights discourse within biodiversity law, and what may be needed for it to address current shortcomings.

5.2 Theory and Analysis Framing

As the rest of this thesis, my work in this chapter remains grounded in ideas of spatial in/justice, which helps us visualise law's materiality by exploring the ways in which law-time-space interact and produce the conditions of our societies, relations, and decision-making spaces. While the previous chapter explored each of these aspects in tandem, I will here focus more specifically on the perhaps less *physically* spatial aspects of the CBD lawscapes, instead conceiving of the position of actors in an onto-epistemological sense; *where they are passively placed within debates; whether and how their distinctiveness is/not accounted for in the formal recognition*[1] *that grants them access to the CBD spaces; if the discursive space that enfolds and emerges at the CBD negotiations can provide for the progression and amplification of deeper emancipatory visions and concepts which may eventually be encapsulated within adopted text, countering current hegemonic structures and ways of thinking*. This ties in with Philippopoulos-Mihalopoulos' concepts of *atmospherics*,[2] *ruptures*[3] and *withdrawals*.[4] Here, each signify the ways that lawscapes, as made up of overarching dynamics between law-space-time grounded in onto-epistemological hierarchies, can be oppressive yet capable of being challenged in ways that enable longer-lasting, tangible reorientation and shifts in the *tilts* that facilitate normalised conditions of marginalisation and spatial-discursive-legal

[1] See contentious surrounding mis/recognition in Chapter 4.

[2] ***Atmospherics*** signals the embeddedness of certain conditions in the lawscape, to the extent that they are taken for granted, go unchallenged and need not be reinforced. It is the process in which law's materiality begins to go unnoticed; the forces shaping our worlds become hidden from view (and thus difficult to challenge). It is the visual – **not actual** – withdrawal of authority; authority is still there, its source just become naturalised.

[3] **Withdrawal** is the performative disagreement with the atmosphere which aims to highlights the sources and conditions of its conflicts and marginalising consequences.

[4] A withdrawal will amount to a **rupture** of the atmosphere if it prompts a reorientation of the lawscape and shift imbalances in power relations between epistemes, ontologies, and bodies. This signals the potential for spatial justice to emerge and asserts itself by disrupting these tilts and providing space for the reassessment of legal and spatial displacements in the lawscape. They must target atmospherics, proposing new epistemological and ontological foundations for moving ahead, a readjustment of the weight of bodies, knowledges, ideologies and worldviews.

displacement. These elements are part of the process in which spatial justice *may* begin to emerge.

When exploring ideas of public participation at international negotiations, spatial justice, coupled with literature from environmental justice and critical literature on participation discourse, can be helpful in teasing out, and questioning often taken-for-granted logics of state sovereignty, global capitalism and depoliticised, technological-managerial framings of societal ills-and-solutions. Here, participation goes from being a one-off "be all, end all" solution for enabling "better" and "inclusive" decision-making, to a process which requires confronting deeper onto-epistemological questions of how our worlds are constructed, what they should look like, and how that may be brought about.

Tied to my point above, the way that certain individuals or groups are referred to, or "categorised" within decision-making spaces will have a knock-on effect in how their participation in process is understood, and how their contributions to discussions will be seen and received. This also ties in with overarching narratives which frame connections between environmental protection, land- and societal wellbeing in ways that silences and ignores historical processes of trauma, oppression and dispossession. Looking closer at this can also tell us a lot of the overarching logics, values and onto-epistemological hierarchies that underpin work within these spaces and how this enables or restricts power discrepancies between actors, as well as undermines the creative processes of imagining alternatives. For parts of this chapter, I draw inspiration from the idea of performativity and the *performatives* (introduced in Chapter 2) that actors and groups get confronted with by virtue of terminology that prescribes roles and identifies that determine the ways that participation can take place at negotiations. Here, I argue that the terminology, and thus the *performatives* themselves, are grounded in certain ideologies and assumptions, raising expectations of actors to act in particular ways. I will also explore how this prompts and supports the emergence and settling of certain power dynamics, into *atmospherics.*

5.3 The Subversion of Difference in Public Participation

This section explores two primary ways that non-state actors are described, cast, and positioned within CBD negotiating spaces, and biodiversity discourse more broadly. The first speaks of the overarching setting of public participation at negotiations, within which the CBD is seen as enabling access to *Observers*,[5] a malleable category with porous definitions. Here, my main point is to caution against the homogenising categorisation of a global civil society representation within international settings, warning that the particularities of the diverse range of actors calls for a more deliberate engagement with terminology. This also concerns questions of historical and contemporary accountability and transparency from actors taking the floor on behalf of their declared constituents. To varying extents, the CBD

[5] CBD COP1 (1995) Decision 1/1 Rules of Procedure for the Conference of the Parties.

lawscapes[6] have enabled the emergence of a structure which sometimes, in limited ways, recognises and pays attention to the distinctiveness between groups. Yet as I will also show, the lack of clarity in procedural rules[7] means that actors still risk being excluded from process by virtue of simplified categorisations. This enables actors who have traditionally held *more* space and power within dominant conservation discourses, such as global conservation NGOs, to act in ways that reinforce problematic historical dynamics of paternalism and misrepresentation, and are in turn implicated in reproducing disjointed power dynamics and oppressive *atmospherics*. This first section is divided into themes exploring the problematic origins of the term `civil society`, the paternalism and saviourism logic which still permeates a lot of work within the field, and finally the critiques and concerns about the NGO-isation of work across the sector and how this undermines empowerment and transformative change endeavours.

The second set of framings that I will look closer at is the designation of peoples and groups as *stakeholders*, *knowledge holders* and *rights holders*. For the first two categorisations, my aim is to illustrate the consequences of each of these framings for the discursive and material positioning of actors within debates and conservation practice, in turn having significant impacts on their relationships vis-à-vis each other, as well as with powerful actors, include States. The final subsection looks at the emerging discourse of rights-framings within conservation law and policy.

5.3.1 NGO's and the Defining and Representation of `Civil Society`

> *On the very second day of COP-14, those paying careful attention during Working Group Two would have sensed a shift in tension within the room, following an attempt by the Chair of narrowing the list of Observers invited to take the floor. This was made all the worse by a rather embarrassing bungle by a Research representative while delivering a statement "in the name of women".*
>
> *The Item on the Agenda was Synthetic Biology, a topic alight with controversy, including accusations of State corruption and illicit corporate relations, as well as strong opposition from the local caucus groups who are proposing a mortarium on the release of organisms containing gene drives. It all began with the Chair suggesting that, due to time constraints, they limit the number of statements by Parties, highlighting that many were merely repetitions from previous sessions. A Party delegation challenged this, with statements by Parties continuing, leading to a significant delay in proceedings. Once the list of Parties was finished, the Chair said that "in the interest of time", they wanted "relevant interest groups" to submit joint statements, in turn calling on representatives from Academia,*

[6] See Chapter 4 Section 4.3 on disentangling the CBD lawscapes.

[7] Notwithstanding the diverse factors and actors which make up the CBD lawscapes, ultimately the positive texts of the CBD – e.g., Rules of Procedure, Decisions, and so on, ultimately provide very little detail in this regard.

Business, Education and NGOs to make only one statement each. There was a sudden flurry of activity; eyes scanned the floor, the sound of shuffling paper filled the room, followed by rapid footsteps, downturned heads and whispered voices. A palpable sense of tension thickened the air. Those well-acquainted with the Secretariat could see a member of their staff swiftly make their way towards the podium and engage in a hushed but quickened exchange with the Chair and their team. After a short break, the Chair opened the floor for statements by Observers. In addition to the above-mentioned groups, they now also called on the Indigenous Peoples and Local Communities, Women and Youth caucuses to make separate statements.

When it was the Womens caucus' turn to speak, there was first silence, some shuffling of seats, before a woman took the floor, introducing themselves as coming from a US Ivy league university, and as a woman thus representing "women's interest". While reading their statement in favour of activities related to Synthetic Biology and gene drives, they took great care to emphasise the interest of "women" alongside the remaining long list of beneficiaries of their research work. Mid-speech there was an audible tussle in the front of the room, disrupting the statement if only for a second, before the speaker finished. At this point there was more loud objections being made up front, followed by silence, after which the Chair took the mic to clarify that this had been, it turned out, the statement on behalf of research institutes.

These events, on the second day of COP-14 in Sharm el-Sheikh set the tone for what was to be a meeting riddled with complaints of process. Observers as well as Parties made several frustrations known in both official statements, as well as during corridor discussions. Complaints ranged from Chairs taking liberties when assigning the mic, their scheduling of sessions, and misinterpreting of standard inclusive practices and rules of procedure.[8] Certainly, the events relayed above speak to many of these issues. In fact, later on during COP-14, I was told that the very next day a Chair at one of the Working Groups *made the very same attempt at limiting Observer statements* according to the four groupings.[9] What I wish to hone in on here is a matter which I have observed often goes overlooked when speaking of `public participation` at international negotiations, namely the tendency of scholars and practitioners alike of conceiving *Non-governmental Organisations* (NGOs) as analogous with `civil society`.[10] This narrows the very idea of `civil society`, and reproduces dynamics

[8] Authors notes, Observations at COP-14.
[9] Authors notes, Dialogues at COP-14.
[10] See for instance Brühl, *Representing the People?* (2010). As pointed out by Karen Morrow, there is a danger in NGO's coming to be seen, by others as well as by themselves, 'as a form of proxy for the public in terms of participation' which, combined with other factors, poses problems for 'direct citizen involvement in decision-making processes'. This will be discussed in greater depth in the following chapter. See Karen Morrow, 'Perspectives on Environmental Law and the Law Relating to Sustainability: A continuing role for ecofeminism?' in Philippopoulos-Mihalopoulos (ed), *Law and Ecology. New Environmental Foundations* (Routledge, 2011).

underpinning instances of mis-representation, homogenisation and paternalism discussed within critical participatory scholarship.[11]

For some insight into the CBD process and procedures, as explained in the previous chapter, participants at CBD meetings are divided into *Parties* and *Observers*.[12] This latter group essentially constitutes "everyone else" other than sovereign states party to the Convention; non-state Parties, UN institutions, Indigenous Peoples and local community, Youth and Women delegates, representatives from Intergovernmental Organisations, the education/university sector, business and the private sector, large/global non-governmental organisation and well as grassroots organisations grounded in bottom-up activism.[13] What is often seen within scholarship,[14] and across the UN, is the bunching of these groups into *Civil Society, Business and Private Sector, Education and Research, and Intergovernmental Organisations,* with `civil society` in turn often being used interchangeably with *NGOs,* as bodies representing the interest of people at large.[15] Indeed, it was exactly this type of logic witnessed above, which saw the conflation between an incredibly diverse range of participants, such as Indigenous Peoples, local communities, women and youth, along with large-scale global NGOs. This homogenizing, and effectively reduction of diverse groups into *one thing,* becomes all the more problematic when considering the fact that some global NGO's still work within colonial conservation paradigms, partnering up with corporations violating human rights, and have been implicated in practices disenfranchising of local peoples in areas they claim to be protecting.[16] These issues, along with a few others will be discussed in greater detail below, along with me addressing why this matters when speaking of `public participation` at the CBD.

The provisions underpinning `participation` of *Observers* can be found in a Decision from the very first COP, held in 1995. Rule 7 provides for the `participation` (without voting rights) of "anybody or agency, whether governmental or nongovernmental, qualified in the fields relating to the conservation and sustainable use of biological diversity …". When looking back at the participant list from that very first COP, *Observers* were then divided into *UN bodies, Specialised agencies, Inter-governmental organisations, and Non-governmental Organisations*. In this last grouping, clearly understood as representing `civil society`, we see that during the first COP, a wide range of actors were bunched together, including the Biotechnology Industry Organization, Global Resource Bank, Safari Club International, Conservation

[11] See discussion in Chapter 4 Section 4.2.1.
[12] CBD COP1 (1995) Decision 1/1 Rules of Procedure for COP.
[13] Sakiyama and Schwarzer, *CBD in a Nutshell* (2018).
[14] See discussion below in Section 5.4.1.
[15] Critical insights into these groupings have been extensively covered by Aziz Choudry, including in a collection of essays edited by him and Dip Kapoor: Choudry and Kapoor *NGOization* (2013). Yet, these insights have not made it into mainstream international political literature talking about activism and participation at international negotiations.
[16] The most telling example of this for me is the partnership between Conservation International and Chevron. See footnote 55 below.

International, Greenpeace International, the Worldwide Fund for Nature (WWF), the Third World Network, the Indigenous Peoples' Biodiversity Network, and the Māori Congress.[17]

As way of appreciating what these various bodies are and what they do: **The Biotechnology Industry Organization** is now the largest trade and advocacy association representing member companies, state biotechnology groups, academic and research institutions and related organizations across the USA and other countries.[18] **The Global Resource Bank** describes itself as a "democratic network of shareholders who monetize the earth's life-supporting natural resource commodities of air, water, soil, sunlight, plants, food, climate, and animals with the GRB cryptocurrency" without their website providing much more information than this.[19] **The Safari Club International** is a US-based pro-hunting organisation and lobbying group "protecting the freedom to hunt for generations to come".[20] **Conservation International** is an international, non-profit with offices in Virginia (USA) the that works to "spotlight and secure the critical benefits that nature provides to humanity" through partnerships with business, governments and communities, with a vision to "build upon a strong foundation of science, partnership and field demonstration [to] empower societies to responsibly and sustainably care for nature, our global biodiversity, for the well-being of humanity". Notably, they also currently have a partnership with Chevron, in spite of the multi-decade-long legal struggles of Indigenous communities in Ecuadorian Amazonia following the company's refusal to take necessary clean-up measures following oil spills on Indigenous lands during extraction operations by Texaco (later purchased by Chevron) between 1964-1992.[21] **Greenpeace International** is an international non-profit with its international coordinating body based in Amsterdam (the Netherlands) which "uses non-violent creative action to pave the way towards a greener, more peaceful world, and to confront the systems that threaten our environment" known today well-known for its work in climate change litigation.[22] **WWF** is an international non-profit with international headquarters in Vaud (Switzerland) that focuses to "tackling the problems that drive the loss of nature" (WWF-UK Annual Report Summary 2019-2020), whose reputation in recent years has been marred by scandals ranging from staff in regional offices enabling illegal logging, and the financing of armed eco-guards in Congolese national parks who carried out human rights violations against local Indigenous communities.[23] **The Third World Network** is an independent non-profit international research and advocacy

[17] Doc. UNEP/CBD/COP/1/Inf.11 *List of Participants*.
[18] See bio.org (accessed 27/05/2021).
[19] See grb.net (accessed 27/05/2021).
[20] See safariclub.org (accessed 27/05/2021).
[21] See conservation.org (accessed 27/05/2021); Alex Baldwin and Paul Paz y Miño, 'Chevron is refusing to pay for the 'Amazon Chernobyl' – we can fight back with citizen action', The Guardian, 17th September 2020 <https://www.theguardian.com/commentisfree/2020/sep/17/chevron-amazon-oil-toxic-waste-dump-ecuador-boycott> (accessed 11/10/2021).
[22] See greenpeace.org (accessed 27/05/2021).
[23] See www.org.uk (accessed 27/05/2021); Global Witness Report, 'Pandering to the Loggers' <https://cdn.globalwitness.org/archive/files/pdfs/pandering_to_the_loggers.pdf> (accessed 27/05/2021); John Vidal, "Armed ecoguards funded by WWF 'beat up Congo tribespeople'", The Guardian, 7th February 2020 <https://www.theguardian.com/global-development/2020/feb/07/armed-ecoguards-funded-by-wwf-beat-up-congo-tribespeople> (accessed 27/05/2021).

organisation founded in Penang (Malaysia) "involved in issues related to the development, developing countries and North-South Affairs" with their mission being "to bring about a greater articulation of the needs and rights of people in the South, a fair distribution of world resources and forms of development which are ecologically sustainable and fulfil human needs".[24] **The Indigenous Peoples' Biodiversity Network** is a coalition of Indigenous Peoples groups from around the world that facilitate open-ended and ongoing discussion among Indigenous Peoples concerning opportunities within the CBD for promoting, preserving and protecting their rights to manage, control and benefit from their own knowledge and resources.[25] **The Māori Congress** was established in July 1990 by the United Tribes of Aotearoa and provides "a national forum for participating tribes to address economic, social, cultural, environmental and political issue within a Māori framework, and to advance a unified national Māori position on significant policy matters nationally and internationally".[26]

Recollecting the story relayed above, it is not hard to see here the issues that would arise with regards to asking these groups to combine their efforts to draft *one single* statement to represent civil society. Going further, as will be explored further in this section, even the positioning of these groups alongside each other, especially that of the Safari Club, Global Resource Bank, or the Biotechnology Industry Organisation, alongside the Third World Network, the Indigenous Peoples' Biodiversity Network and the Māori Congress is highly problematic precisely because of the connection between their respective activities, to historical and contemporary environmental and social injustices caused and experienced by these respective groups. Additionally, in recalling critical work within international development literature, scholars have long critiqued the practice of treating the idea of 'community' as a static, homogenous and harmonious group, masking biases in interest, needs and aims.[27] What we see here, within the CBD process (and across international negotiations) is effectively the upscaling of this logic, with the ensuing instance of "participation" being a severe reduction in terms of achieving any genuine input that reflects the diversity of experiences, opinions and needs across the public. Addressing this from the perspective of participation and recognition, it also illustrates the risks of "recognising" the importance of input from a certain group, without actually engaging with issues of nuance, difference and risks of assimilation when it comes to facilitating avenues for contribution to debate.

Granted, CBD mechanisms for public participation have become refined over the years, with the Convention's process now officially recognising, and distinguishing between several caucuses amongst Non-state actors, including civil society more specifically, with

[24] See twn.my (accessed 27/05/2021). TWN also works closely with fellow grassroots organisers within the CBD Alliance, which in turn has close contact with the Indigenous Peoples and local communities, women and youth caucuses during CBD meetings and in-between sessions.
[25] See povertyandconservation.org (accessed 27/05/2021).
[26] See natlib.govt.nz (accessed 27/05/2021).
[27] See Kothari, *Power, Knowledge and Social Control in Participatory* (2001); Kimberly Marion Suiseeya and Susan Caplow, 'In Pursuit of Procedural Justice: Lessons from an analysis of 56 forest carbon project designs' (2013) 23 *Global Environmental Change*, 968-979.

things continuing to change and evolve at each individual meeting.[28] Beyond the basic rules which say that Observers have no voting rights, and must have explicit support from a State delegation in order for their proposed amendments to make it into the textual drafting, no CBD provisions determine what exactly `participation` looks like, leaving this largely open, and to be determined at each individual meeting. As a result, `participation` has taken a manoeuvrable, malleable form which has, and continue, to emerge and change. This has provided space for opportunities to strengthen `participation` as called for by local actors, and has given rise to a more inclusive culture unique to the CBD, which continues to change in progressive/regressive ways at meetings.[29] Yet, it has also, as shown above and in the last chapter, simultaneously left participants in a vulnerable position regarding *if, how,* and in what capacity they may be able to take the floor. To be clear, this speaks to the broader issue of the homogenising exercise that takes place in order for any type of representation to happen within international meetings. However, my point here is that this happens at various scales and to varying extents, with the question of representation, reflexivity, transparency, and accountability being important when considering who speaks for whom, and how the institutional and procedural structure of the CBD negotiations enables or restricts better or worse practice in this regard. In many ways, historical practices and processual cultures continue to permeate these spaces in un/seen ways, as attention to the idea of `civil society` shows us. The remainder of this section unpacks this further.

Problematic Origins

On the whole, the casting of NGOs as the representation of `civil society` more broadly – which seems common practice within scholarship and practice,[30] as well as occurs occasionally within the CBD meetings as seen above – is problematic for a number of reasons. To begin, several of them have been linked to past and contemporary colonial and imperialist paradigms of traditional conservation approaches such as fortress conservation,[31] with some being

[28] See for instance the scenario note posted ahead of the virtual meetings of SBSTTA24 and SBI3, which gave a detailed order at which Observers would be called at, with Major Stakeholder Groups (Indigenous peoples and local communities, women, youth and NGOs) being invited to speak before others. This may reflect the fact that several groups expressed concern at the backpedalling of the inclusivity of these process under virtual formats, with the scenario notes showing attempts to address these concerns. See Scenario Note CBD/SBSTTA/24/1/Add.2; CBDA Open Letter <http://cbd-alliance.org/en/2020/open-letter-post-2020-and-peer-review-process> (accessed 18/02/2022).

[29] Ibid. Further to this, despite this move to ensure that these particular groups may take the floor, when time was short during the actual meeting, the Chair omitted to call on even the 'Major stakeholder groups' for their statements, urging them instead to turn to their contacts amongst State delegations, with similar things happening in the virtual Contact Groups, where in one instance the Co-Chair, after interrupting a local actor representative mid-statement, said that the decision of whether to open the floor was entirely up to whether they deemed participation relevant to the discussion. Authors notes, Observations at COP-14 and OEWG-3.

[30] For instance, in an UN-mandated report from 2005 on 'Civil Society in United Nations Conferences', there is not a single mention of Indigenous Peoples or youth representation, with a few mentions of women movements. The author themselves admit that "Studies on civil society's role in UN conferences usually provide broader definitions of civil society than that of NGOs through, once the concept of operationalized, it is generally reduced to the NGO sector." See Constanza Tabbush, 'Civil Society in UN Conferences: A Literature Review', Programme Paper #17, UN Research Institute for Social Development, 7.

[31] See discussion in Chapter 2.

implicated in recent scandals associated with militarised conservation approaches, responsible for the violence and human rights abuses faced by local communities in areas where they operate.[32] The fortress conservation approach has come under increased scrutiny over the past decade,[33] and while many NGOs are moving away from this model in an explicit sense, for instance by rhetorically committing to human rights standards, several critics are still arguing that global NGOs, along with partner institutions, continue to perpetuate what is ultimately colonial and imperialist logics when discussing causes of the biodiversity crisis, and ways to address it.[34] From those who have made attempts at distancing themselves from colonial origins or more recent scandals of human rights abuses, actually taking responsibility for facilitating these actions is lacking,[35] as are efforts towards addressing historical injustices, for instance through reconciliation and reparations. Seen from a spatial justice lens, with an appreciation for temporal interlinkages between past, present and future conditions, the need to address the contemporary consequences of historical practices becomes absolutely paramount. This could include addressing present and potential future consequences of past actions and the embeddedness of dominant narratives which have led to the disruption of community ties with culture, language, land and kin, including the generational trauma suffered as a result.[36]

Paternalism and Saviourism

Additionally, critical scholars across `international development` studies, including critical participatory studies, have brought to the fore frustrations regarding the operations of global NGO's reinforcing their own powerful positioning within aid discourse, and reinforcing paternalistic and saviourism relations with local community groups within areas where they

[32] See discussion above on WWF. See also Rosaleen Duffy, 'Waging a War to Save Biodiversity: The Rise of Militarised Conservation' (2014) 90:4 *International Affairs*; Francis Massé, 'Anti-poaching's politics of (in)visibility: Representing nature and conservation amidst a poaching crisis' (2018) *Geoforum*; Rosaleen Duffy et al, 'Why we must question the militarisation of conservation' (2019).

[33] See for instance Report of the [UN] Special Rapporteur of the Human Rights Council on the Rights of Indigenous Peoples, Victoria Tauli-Corpuz, UN General Assembly, A/71/229, 29 July 2016.

[34] See for instance "Open Letter to the Lead Authors of 'Protecting 30% of the Planet for Nature: Costs, Benefits and Implications'", <https://openlettertowaldronetal.wordpress.com> (last accessed 2/06/2021); Bluwstein et al, 'Commentary: Underestimating the Challenges of Avoiding a Ghastly Future' (2021) Frontiers of Conservation Science. Within the CBD, this can be seen in the continued obsession with number-based targets for establishing protected areas, which risk enabling displacement, not to mention fails to address the main drivers to biodiversity loss.

[35] For instance, the clear efforts in the WWF Annual Review to distance themselves from the **seven** instances of abuse linked to WWF funding explored in an independent review, as opposed to highlighting their own responsibilities as funders of activities which hold a history of disenfranchising local communities. WWF-UK Annual Report Summary2019-2020 <https://www.wwf.org.uk/annual-reports> (last accessed 21/05/2021); WWF, 'Embedding Human Rights in Nature Conservation: From Intent to Action: *Report of the Independent Panel of Experts of the Independent Review of Allegations raised in the Media regarding Human Rights Violations in the context of WWF's conservation work',* 17th November 2020, <https://wwfint.awsassets.panda.org/downloads/independent_review___independent_panel_of_experts__final_report_24_nov_2020.pdf> (accessed 21/05/2021).

[36] See for instance the Svenska Kyrkan, 'The Church of Sweden and the Sami – results from a White Paper Project' (2017) <https://www.svenskakyrkan.se/forskning/the-sami---a-white-paper-project-> (accessed 08/02/2022).

work.[37] It cannot be denied that, historically, these groups have played a central – and arguably disproportionate role, from the perspective of civil society input – in the elaboration of international policy framework, such as the SDGs and the Aichi Biodiversity Targets. Notably, the former of these carries a heavy sustainable development discourse with regards to reinforcing the importance of economic prosperity through growth in the protection of natural resources, which supports claims that global NGOs are contributing to the reinforcement of capitalist logics and green washing within environmental protection narratives.[38] This also gets reproduced within CBD Decisions which often position NGOs alongside Parties and international institutions as central to the agenda across the Conventions thematic areas;[39] as holders of important forms of knowledge to help inform decision-making or through capacity-building initiatives, or as having monetary resources and special know-how in sustainable development which can be used to fund and partner with local conservation projects and initiatives.

With regards to paternalistic narratives, the traditional environmental movement, including international environmental law in general,[40] along with historical conservation paradigms mentioned above, have often relied on tropes and stereotypes of victimhood and primitivism. These reduce entire groups of people to passive recipients of changes to policy and/or as part of static, fixed-in-time cultures, obscuring from view both important work, efforts and different-ways-of-doing that exist or emerge within and across these communities and groups. These narratives also ignored the underpinning, often institutional and structural causes of systemic vulnerabilities and discrimination that these groups have, and continue to experience. [41] Although no longer always explicit, the remnants of these paternalistic logics are still seen within these spaces today; permitting others to speak on behalf of particular groups, granting access only when it suits established narratives.[42] Indeed, across grassroots

[37] Raja Swamy, 'Disaster Relief, NGO'-led Humanitarianism and the Reconfiguration of Spatial Relations in Tamil Nadu' in Choudry and Kapoor, *NGOization* (2013).

[38] Aziz Choudry, 'Saving Biodiversity, for Whom and for What? Conservation NGOs, Complicity, Colonialism and Conquest in an Era of Capitalist Globalization' in Choudry and Kapoor, *NGOization* (2013).

[39] This compared to the traditional confinement of Indigenous peoples and local communities and women to particular agenda items to which they have tended to be associated with. For Indigenous peoples and local communities this remains Article 8(j) and related provisions, and for women this concerns the Gender Plan of Action. See Parks and Schroder, *'Local' Participation in International Biodiversity Law* (2018).

[40] See for instance Lina Álvarez and Brendan Coolsaet, 'Decolonizing Environmental Justice Studies: A Latin American Perspective' (2020) 31:2 *Capitalism Nature Socialism.*

[41] Critiques of reductive discourses – be it casting women as helpless passive victims; or stereotyping of Indigenous cultures as 'set-in-time' or as 'noble savages' – point out that these are not only damaging to the relevant peoples globally, but also provide poor, simplified groundings upon which to formulate and design policies, obscuring from view the more nuanced and complex drivers of systemic vulnerabilities, as well as local forms of resistance which counter reductionist narratives. See for instance Ruth Smith, 'Women in International Development', The Ecologist, 13 May 2019. Available at <https://theecologist.org/2019/may/13/women-international-development> (accessed 2/03/2020).

[42] For instance, Karin Louise Hermes, a young climate justice activist of Pilipino-German descent found herself only being invited to talks to relay the horrors of what her family is experiencing in the Philippines with regards to climate change impact, but when it came to actually discussing solutions she was pushed out of talks. This was an issue she witnessed regularly within the climate change movement. See Karin Louise Hermes, 'Why I Quit Being A Climate Activist' VICE News Motherboard, 6 February 2020. Available at

movements working within the field of environmental justice, actors are questioning the legitimacy and appropriateness of global NGO's speaking on behalf of them and their communities.[43] At the same time, these relationships can also emerge in more lucid forms, for instance like when a representative from a domestic, European development research institute, over a coffee at one of the CBD COP-14 side events, offered me an opportunity to do fieldwork "in one of *their* communities" within the east-Asian region.[44] This terminology, and the "offer" itself relays a sense of ownership which ignores important concerns of agency, consent and ethics that should go hand-in-hand with research planning and practice.[45]

The paternalism and saviourism that continues to plague third sector work in part stems from the *atmospherics* within which these groups operate, where these logics have become normalised and reinforced over decades, alongside dominant ideologies of development, modernity, both concepts grounded in cultural imperialism.[46] Here, existing relations and processes actively invite for the reproduction of these conditions. For instance, inscribed within the CBD provisions that have positioned NGOs and other international institutions alongside state parties in implementing conservation efforts, is the favouring of particular onto-epistemological knowledge systems and worldviews that centre these actors as most capable of elaborating conservation solutions, enabling paternalistic narratives in pitching certain actors – those operating across the international, as opposed to local scale – as best to carry out this work over others. The receipt of funding for NGOs to support their work relies on their ability to live up to these expectations; to self-promote and retain their own positioning within mainstream conservation discourse as taking up an essential role across work streams.

Equally, the role that NGOs and other large institutions play in supporting – either through funding or research partnerships – local community initiatives (which will often be framed in alignment with international targets as a form of ad-hoc implementation), gives them further opportunity to dictate conservation programmes that are in alignment with their own interests, agendas and visions. When looked at through the lens of the lawscapes, we are invited to see these actions not as isolated incidents, but rather as patterns emerging throughout the continuum of CBD meetings, alongside decisions taken elsewhere, which to varying extents have embraced or ignored work across other levels. For instance, while it is true that more recent work across the Convention, and amongst global NGOs and other powerful international institutions, has shifted towards incorporating the language of environmental justice

<https://www.vice.com/en_ca/article/g5x5ny/why-i-quit-being-a-climate-activist?utm_source=vicetwitterus> (accessed 2/03/2020).

[43] See for instance Michael Fakhir, 'Third World Sovereignty, Indigenous sovereignty, and food sovereignty: living with sovereignty despite the map' (2018) 9:3-4 *Transnational Legal Theory*; Nora McKeon *The United Nations and Civil Society: Legitimating Global Governance – Whose Voice?* (ZED Books, 2009), 12; Annette Aurélie Desmarais, 'The Vía Campesina: Consolidating an International Peasant and Farm Movement' (2002) 29 *Journal of Peasant Studies*, 103.

[44] Authors notes, Observations and Dialogues at COP-14.

[45] See Chapter 3 Section 3.3.

[46] Brühl, *Representing the People?* (2010).

and rights-based approaches,[47] it is not lost on me that these are issues that local actors have been calling for over the past decades. This speaks to the observations by critical scholars within the environmental justice movement, that despite the privileged position that many of these groups have historically held within dominant conservation discourses, they have been poor at calling out the marginalisation of other actors, or even support calls for better inclusion or changes to policy.[48] Therefore, not only has the seat held by dominant groups at the negotiating table and within dominant discourse been rather central and widely accepted, but it has also been sustained by a set of conditions and relations which uphold suppressive atmospherics[49]. While in the short term it may lead to strengthened positioning for the relevant organisation, in the long term this undermines and constrains the emergence of more critical analysis into systemic shortages of dominant discourses, leading to the continuation of harmful activities and narratives which undermine important action, and contributes to the invisibilisation of local struggles and efforts. This illustrates the entanglements between the power held by some actors and the sustenance of oppressive *atmospherics*, as well as the circular nature of their (re)embeddedness.

NGO-isation

Intertwined with this, people wary of the dominant positioning of global organisations within advocacy and third sector work, have critiqued the *NGO-isation* of these movements. This refers to the increased professionalisation, bureaucratisation, depoliticisation and demobilisation of organisations, which has far-reaching impacts on agendas, leadership, decisions and relations across society.[50] It leads to organisations that are far-removed from the places and communities they claim to benefit, something for instance seen in the fact that the vast majority of international NGOs have headquarters and leadership staff based in the `Global North`, while their work is often focused in the `Global South`. Linked to what was said above, commentators have also argued that the preoccupation with, and dependence on external funding diverts energy away from local mobilisation, not to mention forces these groups to align themselves with donor targets, aims and agendas, which risks suppressing radical change that challenges embedded power structures.[51] Aziz Choudry for instance points out

[47] Reference a bunch of statements by Observer groups (esp. NGOs) quoting the importance of HR-approaches.
[48] This is an observation of the environmental movement in general, not to the CBD specifically. See for instance David Schlosberg, *Environmental Justice and the New Pluralism: The Challenge of Difference for Environmentalism* (OUP, 2002), 145-154; Vermeylen, *Environmental Justice and Epistemic Violence* (2019).
[49] These atmospherics include, for instance, people wearing business attire within these spaces, speaking a common (English, scientific, diplomatic) language which is founded upon the idea of not calling out contradictions in policy/action, etc.
[50] See for instance Sangeeta Kamat, 'The Privatization of Public Interest: Theorizing NGO discourse in a neoliberal era' (2004) 11:1 *Review of International Political Economy*; Andrea Smith 'Introduction: The Revolution will not be funded INCITE!' in Smith (ed) *The Revolution will Not be Funded: Beyond the Non-Profit Industrial Complex* (Duke University Press, 2007).
[51] Ibid. See also Choudry and Kapoor, *NGOization* (2013) and Choudry and Kapoor (eds) *Learning from the Ground Up* (Palgrave, 2010).

the fact that many NGO's work remains framed in accordance with sustainable development logics in ways that often obscure the capitalist assumptions that ground them.[52]

Discussions on NGO-isation also focus on strategies adopted by several global organisations associated with what Choudry calls an *ideology of pragmatism*, which "assumes the most that can be hoped for in terms of social change are limited gains as opportunities permit *within* existing structures".[53] This is coupled with the depoliticisation of work, which ignores the fact that adopting sustainable development, neo-liberal and capitalist logics across workstreams is an ideological decision and choice.[54] It is instead under the guise of presenting certain choices as inevitable and solutions as "the only way" that organisations have, for instance, justified partnerships with powerful actors whose work perpetuate activities harmful to ecological integrity, and in some instance are linked to human rights abuses across the globe.[55] Within the CBD lawscapes, we see this being expressed spatially through NGO representatives wearing business attire (as opposed to less formal clothes often donned by local representatives), speaking on panels promoting the role of business in biodiversity conservation,[56] and using their statements during negotiations to reiterate traditional mainstream conservation discourse and decision-making structures that centre them within processes. Recalling the spatio-temporal and linguistic conditions that underpin the CBD negotiations, the 'professionalisation' of NGOs has meant that within these spaces, people representing these large-scale global groups speak the same jargon, and are familiar with the diplomatic and technocratic format in which these negotiations take place, thus making navigating these spaces easier and more comfortable.[57]

Finally, recalling the story above on the research representative taking the floor and speaking in the interest of "all women", the issue of representation is incredibly important.[58] As mentioned above, representation is always an exercise of reduction and homogenisation/harmonisation of diversity and nuance. Some level of this is inevitable, yet actions can be taken to reduce its harmful effects. For instance, when done in a way where a person assumes representation without reflecting on their own privileged positions and fail to grasp that gendered oppression takes many different forms, representation becomes problematic. The instance witnessed showed not only a lack of understanding of gendered struggles, but also a lack of

[52] Choudry, *Saving Biodiversity, for Whom, and for what?* (2013).
[53] Choudry, 'Global Justice? Contesting NGOization: Knowledge Politics and Containment in Antiglobalization Networks' in Choudry and Kapoor (eds) *Learning from the Ground Up* (2010), 20-21.
[54] Ibid, 19.
[55] Take, for instance, the cooperation between Conservation International and Chevron, which is currently in a three-decade long battle with Sarayaku communities in the Amazonia region of Ecuador, following oil contamination across the region during operations by Texaco (purchased by Chevron in 2000). See discussion above.
[56] One example of this includes a WWF representative partaking in a panel at the Rio Pavilion entitled "How to create an enabling environment to engage business in the post 2020 global biodiversity framework?". See Rio Conventions Pavilion Programme, available at <http://static1.1.sqspcdn.com/static/f/1058662/28032222/1543249345277/CBD+COP14_Sharm+El+Sheikh_Egypt2_26Nov-full.pdf?token=CifGIiP4nR%2BWjZrAdJuSf2%2FTcao%3D> (accessed 11/09/2021).
[57] See Chapter 4 Section 4.4.2.
[58] See for instance Brühl, *Representing the People?* (2010).

reflexivity regarding the ways that research has led to the disenfranchisement of several groups across society, including rural, Indigenous or racialised women. As discussed above, the practice reduces a widely varied group of people holding incredibly different perspectives, interests and experiences, into *one thing*, which in this case was framed in line with the position of research institutes which the actual women's caucus opposed. It is a similar logic that underpins the practice of tokenistic inclusion, and misrecognition,[59] where one person is believed capable of fulfilling a gender diversity quota, or the consent of one person is taken to represent the consent of an entire community despite this going against community protocol. In this sense, the act of group categorisation, and the practice of representation, when infused with reductionist logic which has become normalised within these spaces, denies the agency of these groups to self-organise, and to carry out decision-making according to their own established practices, not to mention makes invisible, or undermines careful and reflexive representation. It also disregards the unequal power dynamics that exist amongst and between `civil society` groups.

While on the topic of representation, it is worth reflecting discussions had with local representatives during the meetings, which illustrate ways that they incorporate reflexivity into their own work. To begin, throughout conversations, it was recognised that representation is a tricky matter, which requires ongoing dialogue and internal individual and communal reflection and reflexivity. Participants during discussions explained that this often takes place through dialogue between the caucuses, but also between representatives and people from their homes. For instance, one Indigenous representative spoke of the difficulties in relaying the importance of Indigenous knowledges in these processes while not seeing themselves as holders of "that" knowledge.[60] By recognising this and reflecting on it in their work, they were able to position themselves in debates in ways which they felt comfortable with, by respecting the communities they represent and the *knowledge holders* whose interests and perspectives they speak for. In a group discussion, participants also expressed the worry that comes with the idea of relaying perspectives "on behalf of their communities" as one cannot possibly represent this in a complete manner.[61] They felt a deep sense of responsibility to attend these meetings in ways that are meaningful to those they represent, with this requiring a lot of work before, during and after the meetings finish.

What discussions with representatives show, are that complex issues of representation happening across scales, including within relatively small communities which one is part of, are effectively magnified when expectations and practices within international spaces do not recognise these conflicts. For instance, representation is made all the harder when one person is asked to speak on behalf of an entire continent (an act which itself conflates the experience of millions across geo-political borders), which is common practice across international

[59] See for instance work by Iris Marion Young and Glen Coulthard on mis/recognition and the risks associated with this practice when not done in carefully crafted processes that respect onto-epistemological diversity across groups.
[60] Authors notes, Interview H.
[61] Authors notes, Interview G.

negotiations.[62] Here, I show how these processes and systems employ, through their "simplified" categories and divisions of the world, mould and manipulate, and condition participation and representation in homogenizing forms, effectively normalising it and settling yet another oppressive *atmospheric* where simplicity is favoured over complexity and nuance.

As mentioned above, and discussed in chapter four, these *atmospherics* are brought about by the spatial and temporal structuring of these spaces themselves, and the politico-diplomatic and managerial logic which simplifies the idea of representation and conflates the identities and experiences of people across the world. In relaying this back to my original point, if a person selected from within their own communities finds representation a tricky business and hard, how can we expect organisations primarily working on the global level to provide a genuine portrayal of local peoples' experiences, needs and preferences? In regard to seeing representation as a *process*, how can accountability be exercised when global actors relay ideas of "local communities" in an abstract manner? Indeed, in reflecting on what was said above regarding the de-politicisation of discourses and activities, and the dependence of global groups on external funding and thus the need to align themselves with donor agency targets and aims, to whom are these groups ultimately accountable; their funders or the public they claim to represent?

This is all not to suggest that global environmental NGOs do not have a part to play within the wider debate and efforts in formulating biodiversity policy and ways forward in addressing the biodiversity crisis. It is simply to raise caution against the practice of associating NGOs with wider civil society representation, and even the adequacy and capability of global NGOs in representing the interest of people and ecologies across localities.[63] Ultimately, these spaces come with their own pre-determined frames and assumptions (which materialise spatially, temporally and discursively) of what groups do and how/why they can contribute. Within international environmental law and policy in particular, these processes are not built upon ideas of nuance and difference, but rather on unity and one-ness. As discussed in the previous chapter, this focus on commonality and unity materialises throughout CBD negotiations, and works so to suppress important differentials, complexities and disagreements. The unifying of civil society under one banner furthers the marginalisation of different perspectives, experiences and positions, reinforcing power differential between groups. Globally operating NGO's have played a disproportionate role in the historical elaboration of biodiversity discourse, and they have benefitted from the dominant narratives that have positioned them as central to this work, at the cost of making invisible local grassroots action and

[62] This was particularly pronounced in an instance relayed to me during an interview, where a representative of a local community was the sole person from a particular sub-region, and was asked to act as sole representation for their subregion within a group where the other sub-region was represented by more than 10 people. Authors notes, Interview C.

[63] See for instance Rajagopal, *International Law from Below* (2003); Nicholas Hildyard et al, *Pluralism, Participation and Power* (2001); David Mosse, 'Authority, Gender and Knowledge: Theoretical Reflections on the Practice of Participatory Rural Appraisal' (1994) 25 *Development and Change*.

mobilisation.[64] As I mention above, in just over the past years, indeed *in the period of me researching for this thesis*, there has been a shift within these groups towards incorporating more environmental justice and human rights discourse into their work, including in their own calls for funded projects proposals. Yet, local actors at the CBD have called for such inclusion for decades, with these falling on deaf ears then, and only being taken up once it became palatable and popularised in public discourse. While this is not to say that we should immediately reject the work of globally operating NGOs, it does suggest that we should be cautious of turning to these groups to elaborate on, and lead the radical and "transformative" change needed to stem biodiversity loss and socio-ecological injustice.[65]

5.4 Casting Actors, Signifying Relations and Framing the Conditions of participation

In building on the previous section of cautioning us to remain mindful of how we group, refer and perceive the idea of "public" representation, especially within decision-making spaces, this next section goes deeper into the ways that the current categorisation of local actors within the CBD shapes and conditions participation (and its performance) across scales in fundamental ways. I aim to unearth the multiplicity of meanings articulated in legal terminology and how this shapes our understanding of ourselves, society and each other, as well as fundamentally prescribes roles, identities and performatives which condition the ways in which participation can take place within the CBD lawscapes.

In drawing on Balkin, *[law] shapes the imagination of those who live under it around the categories and institutions that it produces. Law does not simply distort the world – or even merely represent it correctly; rather it makes a world, one in which and through which we live, act, imagine, desire and believe.*[66] Here, society is not only indeterminate, and prescribed for by the conditions upon which law places before us, but it is also the scene in which certain understandings of the world take dominance over others in shaping our worlds and relationships to each other, and our place within societal change. My aim is to unpack, and identify legal terminology that provides the conditions (and performatives) that prescribe roles and understandings of the world, and give more/less meaning and emphasis to certain perspectives of society and social interactions within CBD decision-making.

As we will see, the concepts of *stakeholders, knowledge-holders* and *rights-holders* adopt different reasoning for *why* participation should take place, and as a consequence prescribes different conditions for participation, including varying prescribed roles. Part of my study here looks closer at how local actors in particular are *cast* (and recognised), and how the terminology enables or omits: ways of engaging in process; but also alternative

[64] See also Lisa Ann Richey, 'White People and the Animals they Love' (2021) *Conservation and Society* for a book review of the book Robert Shumaker (ed), *Saving Endangered Species: Lessons in Wildlife Conservation from Indianapolis Prize Winners* (John Hopkins University Press, 2020) critiquing white saviourism and heroism within traditional – and in some regards, still mainstream – conservation discourse.
[65] This is discussed in greater depth in Chapter 6.
[66] Jack Balkin, 'The Promise of Legal Semiotics' (1991) 69 *Texas Law Review*.

visions and understandings of the world and peoples' role therein and within environmental decision-making and wider societal change. How do the varying castings, and their associated takes of participation or these processes – brought into being through particular terminology used throughout the CBD lawscapes – enable the settling of particular ideologies and discourses which contribute to particular types of atmospherics that may be less/more repressive of alternative visions of society.

Implicit within this discussion is also the importance of recognition, as one of the core pillars of environmental justice literature. Although not used as a central foregrounding theory in the discussions of this chapter, my thinking remains informed, and inspired by the work of critical scholars who look at the idea of mis/recognition in society as also a conditioning, and disempowering act if not done, and seen, as requiring deep ontological process.[67] Simply *recognising* the relevance of Indigenous and local knowledge systems, or recognising the important role of local actors within the realms of biodiversity conservation, is not enough to enable emancipatory conditions, or prompt a shift away from dominant, traditional conservation paradigms, despite what the CBD texts may indicate. It is true that the designation of individuals or groups as *stakeholders*, *knowledge-holders* and/or *rights-holders* within ongoing CBD negotiations and existing provisions is an act of recognition in the sense that it is an act that enables (however limited) access to the CBD negotiating spaces as well as provides a strengthened basis for inclusion within domestic and local decision-making processes. Yet, these *can* also be acts of misrecognition, in the sense that the designations are often *done* to a group, as opposed to being organic, coming from within. As mentioned above, and discussed below, they can also have serious and profound impacts on *how* one may take up that space, determining *when* participation is allowed, and under what conditions. As we know, this has knock-on effects on outgoing decisions, as well as contributes to the settling of suppressive *atmospherics* within the process itself. As I will explore below, some groups defy the *stakeholder* categorisation, and are wary of the *knowledge-holder* label. One underlying reason for this is precisely the way that these designations shape and constrain ideas of participation and wider public understandings of relevant interests, knowledges, peoples and perspectives.

Part of exploring the ways that the ideas of *stakeholders*, *knowledge-holders* and *rights-holders* signify, shape and give meaning to particular understandings of environmental decision-making, requires glancing back at its beginnings and the ways that its practices, as well as the ways it has been spoken about and understood, has continued to evolve. This will then frame the discussion on the casting of local actors and its consequences for environmental decision-making.

5.4.1 Constructing and Framing public participation at International Negotiations

[67] See for instance Glen Coulthard, 'Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada' (2007) 6 *Contemporary Political Theory,* 428-9; Coulthard, *Red Skins, White Masks* (2014).

The participation by non-state actors within international negotiations arose during the end of the twentieth century as a potential way to address the democratic deficit facing traditional forms of international governance.[68] This *crisis of executive multilateralism* stemmed from the perception of these spaces and processes as state-centric, elite driven and technocratic, wholly underdeveloped in terms of inclusivity, participation and public accountability.[69] As a response, public participation was promoted as a way for re-establishing the link between citizens and internationalised policy making, increasing both citizen input and accountability, in turn enhancing legitimacy of process.[70] Notably, as explored in the previous chapter looking closer at critical participatory studies, an increasing number of international organisations, including the UN and its associated bodies, the International Monetary Fund (IMF) and the World Trade Organisation (WTO) have committed themselves, at least rhetorically, to participatory strategies in the hopes of gaining democratic credentials in their economic reform programmes.[71] Within international environmental processes in particular, there is now a long history of inclusion by non-state actors at various UN processes, with it having become institutionalised for instance within the UN Forum on Forests, UN Environmental Assembly, the UNFCCC,[72] and, as we know, the CBD. Especially since the Rio Summit in 1991, these negotiation spaces have become a meeting point for NGO's, grassroots movements, representatives from women's, youth, Indigenous peoples' and local community groups, industry, as well as local authorities and governments.

In terms of how participation has been understood within the structures of these spaces, across their actors and within scholarship, this varies significantly and remains shaped by their overarching framings. Take for instance the predominantly quantitative studies underpinning political science literature looking at global governance,[73] where attention has tended to be directed towards those who usually dominate public attention, discourse and debate, such as global NGOs, business and industry and researchers. For instance, in a survey looking at sentiments around participation within the UNFCCC, a questionnaire was

[68] Jens Steffek and Maria Paola Ferretti, 'Accountability or "Good Decisions"? The Competing Goals of Civil Society Participation in International Governance (200) 23:1 *Global Society*; Michael Zürn, 'Global Governance and Legitimacy Problems' (2004) 39:2 *Government and Opposition*.

[69] Ibid.

[70] Steffek and Ferretti differentiate between these two as the epistemic claims (broader input provides for more justified and effective decisions) and accountability claims (providing closer scrutiny of political decision-making and action) underpinning justifications for civil society participation at negotiations. See Steffek and Ferretti, *Good Decisions?* (2009), 40-43.

[71] Ibid.

[72] Notably, notwithstanding progress on greater inclusivity at negotiations, there are still those arguing that, within these processes, states remain the main source of authority, reflecting the sentiment that international law remains first and foremost a matter of relations *between states*. In the survey study by Nasirtousi, Hjerpe and Bäckstrand, looking at sentiments within the UNFCCC, the idea that non-state participation should **not** take place at negotiations was, although far from a popular view, a view which some respondents prescribed to nonetheless. See Naghmeh Nasirtousi et al., 'Normative arguments for non-state actor participation in international policymaking processes' (2015) *European Journal of International Relations*.

[73] Granted this is a broad stroke generalisation and exceptions do exist. However, this is a notable trend within what is considered "main texts" on global environmental governance. See generally Donatella della Porta and Michael Keating, *Approaches and Methodologies in the Social Sciences* (Cambridge University Press, 2008).

organised according to the following observer groups: business and industry, researchers, environmental NGOs, local governments, inter-governments organisations, and 'other'. The first reflects the major, and most influential UNFCCC constituencies, with those groups who had 'too few' respondents – trade unions, Indigenous Peoples, women, youth and farmers – were placed in the 'other' category. [74] Such categorisation does a great disservice to those groups who work hard, and make significant sacrifices, to attend these meetings and represent interests from their constituencies. It also effectively makes invisible their efforts and presence, not to mention the incredibly wide range of diverse perspectives, knowledges, insights and ways-of-being that they bring to negotiations. This illustrates the ways that scholars themselves bring certain framings to their work which can also have the effect of undermining more empowered forms of decision-making to emerge. By equating public participation with the inclusion of dominant actors, in turn measuring and studying it from that angle, brings to the fore warnings of participation becoming disempowering and effectively re-embedding tilted power dynamics, spoken of in the critical scholarship explored in the previous chapter.

A big strand of the scholarship that has informed the way we understand and think about public participation at international negotiations, and thus also the casting of actors therein, looks specifically at *why* it should happen, tying it with its legitimising effects on decision-making process. Here, access to decision-making spaces is effectively conditioned on the legitimisation of what actors can "bring to the table".[75] Studies often differentiate between *input* and *output* legitimacy, in which the former relates to the strengthening of procedural values (e.g., representation and transparency), while the latter concerns improving performance outcomes (e.g., 'better' informed decisions). In the framework identified by Willetts[76], the dominant discourses drawn upon in understanding the benefits of public participation are that of ***functionalism***, ***neocorporatism***, and ***democratic pluralism***. While not subscribing to these myself,[77] these do offer important insight into how participation is perceived and justified, with each offering differing emphasis on particular actors and particular ways of thinking and perceiving decision-making. In other words, depending on which one proves to be the dominant discourse in how participation is referred to, the knowledge, work and voice of some actors may hold bigger sway than those of others.

Neocorporatism emphasises the inclusion of affected sectoral and social groups in order to ensure buy-in policies, claiming both *input* and *output* legitimisation by enhancing implementation efficiency. The emphasis here is therefore on bringing in those groups that can improve

[74] See Nasirtousi et al, *Normative arguments for non-state actor participation* (2015).
[75] See for instance Nasirtousi et al, *Normative arguments for non-state actor participation* (2015). See also Steffek and Ferretti, *Good Decisions?* (2009); and Minu Hemmati, *Multi-stakeholder Processes for Governance and Sustainability: Beyond Deadlock and Conflict* (Routledge, 2002).
[76] Willetts, *The Cardoso Report on the UN and Civil Society* (2006), 305-324; Willetts, *Non-governmental Organisations in World Politics* (2011).
[77] In short, my own understanding of why participation should take place go beyond the "quantifiable" question of process (input/output) legitimacy, to more fundamental questions of re-shaping and re-imagining decision-making endeavours.

outcomes by engaging popular mobilisation, aiding in implementation and driving change on the ground. Viewed from another perspective, this rationale is not concerned about whether marginalised views are included or not, but rather the bureaucratic aspects of process as to whether actors can enhance the fulfilment of international rules and policies. As will be discussed further below, this is aligned with the designation of non-state actors as stakeholders.

Functionalism highlights the contribution of non-state actors to *output* legitimacy. In relying heavily on expert-driven decision-making as a source of legitimacy, it promotes the depoliticisation of decision-making, believing that 'impartial information and expertise' strengthens evidence-based decision-making.[78] In other words, this discourse puts forward the ideal scenario of decision-making as one being technocratic and based on rational and logical thinking, supported by evidence-based, scientific and technical information.[79] In several ways, this aligns with the designation of individuals and groups as *knowledge-holders*, which will be discussed more below.

Finally, ***Democratic pluralism*** claims that the presence of non-state actors increases *input* legitimacy through procedural value, i.e., enhancing transparency, representation, inclusion and accountability. Under this discourse, a key component of `participation` is to facilitate a public dialogue between agencies of public governance and those affected; `civil society` plays a critical role here in terms of scrutinising arguments and debates. As opposed to functionalism and neocorporatism, this discourse contends that `civil society` enhances the representation and empowerment of marginalised societal groups, enabling opinions to be channelled to policymakers that would otherwise risk go unheard. Although not equivalent, the idea of *rights -holder* is best correlated with this approach to decision-making, if nothing else because within the spaces and groups from where *rights-holders* is emerging is from those groups who have been historically under- or dis-privileged across society; Indigenous Peoples, rural communities, women, youth, small-scale farmers, and so on.

In the 2015 study mentioned above exploring the views of state and non-state actors at the UNFCCC COPs, it was found that the *neocorporatist* discourse was the most popular, followed by *functionalism*, with *democratic pluralism* being the least 'preferred' reason for `participation`, with some in fact not thinking it necessary all together.[80] What this tells us is that it is not a clear-cut matter of only one approach being adopted. Rather, multiple logics exist simultaneously, with some holding a more persistent and settled place within the relevant process. We can see this in the ways that *stakeholder, knowledge holder* and *rights holder* is used within the negotiations, and the fact that some terminology, and approaches which they correspond with, are more common and settled than others. This ultimately means that the

[78] Willetts, *Functionalism, Global Corporatism, or Global Democracy?* (2006).
[79] See critiques in Chapter 4 Section 4.2.
[80] Notably, the average numbers following polling at four COPs (17-20; 2011-2014), was that 50% of responses indicated a neocorporatist 'preference' for inclusion, 32% followed functionalist reasoning, and 15% put down grounds akin to democratic pluralism. The final 3% references those not believing that the inclusion of non-state actors was important. While there were slight fluctuations in opinions at each COP, the 'order' of preference remained the same. See Nasirtousi et al., *Normative arguments for non-state actor participation* (2015).

ways `participation` is spoken about, and practiced, holds an emerging, manoeuvrable and malleable character, giving rise to both opportunities and barriers to deeper forms of inclusive decision-making and recognition of the particularities that various groups bring to a given process and space. The preference of a certain type of discourse within a given space will tell us about how international negotiations, the issue at hand, as well as the role of different actors is understood within environmental decision-making and governance.

Notwithstanding the fact that there are "preferred" discourses within each given space and process, this dynamism, and the fact that the discourses and processes are constantly emerging/changing, means that each approach holds varying degrees of permanence and strength. This may be dependent on the extent to which each understanding of `participation` is scripted – or signified – in policies, whether actors – as well as *which* actors – subscribe to which approach, and the responsiveness to which the actors themselves are ready to shift in accordance with changes in public opinions, or via appreciations that certain forms of progress require certain changes. Here, it is important to keep in mind that the categorisations introduced below are also dynamic. They have been embraced and rejected, tried and tested – some to a greater extent than others – and in the process have become more nuanced and complex, and in some instances, have been used to push the boundaries of how we understand broader concepts such as knowledge, expertise, rights and sovereignty, opening up space and dialogue for new framings of how we problematise societal ills and solutions.

The above sets the stage for the remainder of this chapter. Within the CBD process, previous COP Decisions tells us that the predominant approach within the texts of the CBD is the neo-corporatist discourse, followed by functionalism, then democratic pluralism. This is clear from the ways in which the adopted texts overwhelmingly refer to non-state actors as *stakeholders*, with *knowledge holders* being used far less often, and *rights holders* only really emerging at the latest COP. The rest of this section will look closer at the consequences of this by specifically exploring the signals that each of these terminologies – as well as their logics – send out in terms of identities, responsibilities, roles, and relationships with each other, our governments, and the ecologies that surround us. The analysis is driven forward by an appreciation of spatio-temporal dynamics through the lens of spatial justice, drawing also on work associated with performativity, in the sense that the legal texts prescribe identities, roles and thus performatives accordingly.

5.4.2 The Casting and Signifying of Actors and Identities within the CBD

5.4.2.1 Stakeholders

In 2016, the term *stakeholder* made it into the Lake Superior State University (LSSU) "banished words" list, with the accompanied justification: *A word that has expanded from describing someone who may actually have a stake in a situation or problem, now being overused in business to describe customers and others.* This provides some insight into why and how the term `stakeholder` has become problematic; from its financial and business connotations to the fact that it today has become so broad in meaning so to be rendered more or less

useless when speaking of actors who should be taking part in decision-making. The origin of the term equally connotes financial significance; it has been used, since the early 1700s, to describe those people who hold bets when a wager is made and while the game is ongoing.[81] By 1821 it was used in reference to persons or companies which held a concern, or interest (especially financial) in the success or failures of an organisation or business, coming to be associated with, for instance, economic, company, land and tort law on trusteeship.[82] These origins tells us a lot of the underlying values and logics grounding the term, as well as the way that its use influences, informs and shapes the procedures and spaces within which it has now become an integral part.

To begin, the term has become associated with quantitative measurements of outcomes in terms of gains and losses, with the ultimate supposed goal being the "pleasing" of stakeholders.[83] Indeed, we see this in the coupling of the term with its associated participatory discourse on neocorporatism mentioned above, which ultimately justifies `participation` on the basis of input *and* output legitimacy, where the inclusion of "interested actors" (i.e. stakeholders) leads to the elaboration of policies with better uptake and realisation on the ground. This is particularly pertinent within the context of the CBD where the implementation of its decisions are often perceived by the international community as a matter of capacity.[84] What this ultimately means is that `participation` then is seen through the lens of who can *do the most* in terms of having international policies realised; organising popular mobilisation, providing financial and technical means for aiding the implementation of policy, incorporating rules into organisation structures, and driving change through other means. How this translates in practice is effectively the opening up of a space underpinned by the idea that those holding more resources in terms of enabling societal change, or even making decisions that have far-reaching consequences, are *more* justified to take up space than traditionally marginalised actors whose voice in society have often been, at times, deliberately suppressed.

Indeed, the common argument from a traditional international environmental law perspective goes that engagement with sectors is part of the implementation of mainstreaming objectives across MEAs.[85] Yet, what is framed as a "legally rational" solution and process of decision-making, is actually a decision teeming with ideological and onto-epistemological consequences, infusing decision-making space with very particular forms of relationships and capabilities stretched across actors. Especially, the argument that corporations should participate in order to ensure implementation is also one grounded in ideology; the reality is that countries make laws regulating the activities of their citizens every day without having them

[81] "Stakeholder" Oxford English Dictionary Online. Oxford University Press 2021. <https://www.oed.com/view/Entry/246856?redirectedFrom=stakeholder&> (accessed 7/07/2021).
[82] Ibid.
[83] Sharfstein, *Banishing "Stakeholders"* (2016), 477-8.
[84] This can be seen within the substantive discussions between Parties and actors across the agenda items commonly covered by the Subsidiary Body on Implementation. Authors notes, Observations at SBI-3.
[85] This is associated with the push for policy-makers to address the underlying drivers of biodiversity loss, as opposed to simply pursuing the protection of biodiverse areas. See for instance CBD Decision 10/2 *Strategic Plan for Biodiversity 2011-2020,* Document CBD/COP/DEC/10/02.

involved in the elaboration of those laws and policies. A key difference with corporations is the power they hold – be it through resources, choice of locality, lobbying prowess and so on – they hold within these spaces that can enable policies to be aligned with their own interests.[86]

In this instance, the adoption of the neocorporatist logic for participation and calling on the inclusion of *stakeholders* within these processes, ultimately justifies the inclusion of actors who are, and have been, contributing to, and benefitting from ecosystem destruction and biodiversity loss for decades, in spite of clear warnings that their activities promoted widespread and long-term ecological and social harm.[87] From a spatial justice perspective, this works in order to settle an atmosphere that normalises tilts in the relations and dynamics of the lawscape which greatly benefits already powerful actors. We see this even within the subtle geo-politics that gets enacted at the negotiations. For instance, during one of the CBD intersessional meetings, the delegation of a country known for their heavy reliance on monocrop plantations for export and the country's economic growth, emphasised working with the agricultural sector when speaking of *stakeholder*participation,[88] dismissing those emphasising engagement with small-scale farmers whose work is key for enabling food sovereignty, agency and dignity across society.[89] At another of the intersessionals, a country promoted rules that supported the roll out of synthetic biology and living modified organisms, speaking of the need to consult and work with actors across the main sectors including universities, agriculture and business, rather than focusing on the involvement and participation of local communities whose lives will be altered and shaped by the release of these beings into their homelands and that will have far-reaching impacts on their daily lives.[90]

My point here is not to say who should be part of decision-making, but rather to highlight that the use of *stakeholders* as a term *signals* an input/output logic and aim of participation which centres, and favours the engagement of actors who already hold powerful positions in terms of financial and political means, and that carry significant terra-altering potential. This has prompted several grassroots movements to reject ideas such as 'multi-stakeholder dialogues', in part because of the issue of power relations within such spaces.[91] The stabilisation of an *atmosphere* in which only those capable of contributing "in kind" to process, will ultimately largely benefit those whose contributions align with corresponding understandings of what "in kind" looks like. In bureaucratic and managerial processes like the

[86] See for instance Prakash and Potoski, *Racing to the Bottom?* (2006).
[87] See for instance Alice Bell, 'Sixty years of climate change warnings: the signs that were missed (and ignored), The Guardian 5 July 2020 <https://www.theguardian.com/science/2021/jul/05/sixty-years-of-climate-change-warnings-the-signs-that-were-missed-and-ignored> (accessed 8/07/2020); Erik M. Conway and Naomi Oreskes, *Merchants of Doubt* (Bloomsbury Press, 2010).
[88] Authors Notes, Observations at SBSTTA-23.
[89] See generally Priscilla Claeys, *Human Rights and the Food Sovereignty Movement* (Routledge, 2015).
[90] Authors notes, Observations at SBSTTA-23 and SBSTTA-24.
[91] Claeys, *Human Rights and Food Sovereignty* (2015), 112.

CBD and within State governments, this means quantifiable, tangible and measurable.[92] Here, numbers talk; be it financial resources promised by business partners or global NGOs in conservation projects, the percentage of land- and seascapes protected (or compensated for)[93] under centralised schemes and structures, the sheer amount of biodiversity policies being implemented, as well as the allure of win-win solutions where the pursuance of economic growth *is framed as* sustainable.[94]

In this sense, the use of `stakeholder` also signifies a broader cultural shift towards corporate and marketized logic becoming increasingly common with the CBD, if it was not already there at its inception.[95] Certainly, given its history and the trajectory of international environmental law more broadly, [96] there is no doubt that `stakeholder` as a term carries with it strong associations with business-language. And while it is urgent that we "mainstream", or rather bring biodiversity concerns into all aspects of society and social life, and to tackle head-on direct and indirect drivers to biodiversity loss, many have voiced concern that the way this is happening is essentially through the corporate capture of biodiversity discussions,[97] echoing similar claims within the UNFCCC.[98] In fact, according to some scholars, economic and market-thinking always lay at the heart of CBD debates, with its grounding on mainstream economics being one of the reasons it has been widely celebrated as "sound" environmental policy.[99]

---

[92] This is seen, for instance, in the ways that the GBOs structured the reporting on the achievement (or lack) of the Aichi Biodiversity Targets, as well as the emphasis on targets and indicators for the upcoming post-2020 Global Biodiversity Framework. It is also seen across Government policies and structures when elaborating and implementing policies, and within IPBES attempting to address the knowledge-policy interface within biodiversity decision-making. See for instance Erik Löfmarck and Rolf Lidskog, 'Bumping against boundary: IPBES and the knowledge divide' (2017) 69 *Environmental Science and Policy*.

[93] Ashish Kothari, 'The 'net-zero' greenwash', Wall Street Journal, 13 July 2021 <https://wsimag.com/economy-and-politics/66356-the-net-zero-greenwash> (accessed 27/07/2021).

[94] See Chapter 2 Section 2.2.

[95] See for instance Valérie Boisvert and Franch-Domonique Vivien, 'Towards a political economy approach to the Convention on Biological Diversity' (2012) 36 *Cambridge Journal of Economics*.

[96] See for instance Natarajan and Khoday, *Locating Nature* (2014).

[97] See for instance Simone Lovera, 'SDG 15: Trends in the Privatization and corporate capture of biodiversity' and Lim Li Ching 'Corporate capture of agricultural biodiversity threatens the future we want', in Civil Society Reflection Group on the 2030 Agenda for Sustainable Development, *Spotlight on Sustainable Development: Reclaiming policies for the public* (2030 Spotlight, 2017), 136-142.

[98] For instance, at UNFCCC COP25, protesters were kicked out and not allowed back into negotiations for the rest of the day following protests against discussions on corporate trading mechanisms being prioritised over more direction action on climate justice. See for instance Tom Goldtooth et al, '"Shame!" Indigenous Leaders & Delegates from Global South Stage Dramatic Protest at COP25 in Madrid', Democracy Now!, December 2019, available at <https://www.democracynow.org/2019/12/11/cop25_walkout_indigenous_leaders_global_south> (accessed 10/02/2020); Fiona Harvey, 'Activists protest at 'side-lining of social justice' at UN climate talks, The Guardian, December 2019, available at <https://www.theguardian.com/environment/2019/dec/12/activists-protest-un-climate-talks> (accessed 10/03/2020). See response by UNFCCC, 'Joint Statement between UNFCCC and some Observer Organizations', available at < https://unfccc.int/news/joint-statement-between-the-unfccc-and-some-observer-organizations> (accessed 10/02/2020).

[99] See for instance Boisvert and Vivien, *A Political economy approach to the CBD* (2012); Boisvert and Armelle Caron, 'The Convention on Biological Diversity: An Institutionalist Perspective of the Debates' (2002) 36:1 *Journal of Economic Issues*, 1512. For wider debate on environmental governance more broadly, see Umberto

In turning to the practical implications of this, and on the potential consequences of *stakeholder* participation, a recent report by the Global Forest Alliance found that "the main reason [economic incentives driving biodiversity loss and disenfranchising local communities] endure is that the very corporations benefiting from them often have a disproportionate influence over national and international policy-making".[100] If true, following on from the discussion above, the very use and popularisation of the term *stakeholder*, along with the logic of participation which underpins it, has contributed to the shaping of a space and process which may in fact undermine its own supposed aims of overcoming ideas of *executive multilateralism*. From a spatial justice perspective, and keeping in mind the critical scholarship on participation discussed in the previous chapter, we can see the ways that a term used overwhelmingly in association with participation within the Convention processes has signalled for the prioritisation of certain actors whose interests and perspectives are already privileged and embedded across mainstream discourses.[101] This also aligns with work by Rahnema, who stress that under these conditions, participation and input has been equated with *harmony* and *coming to agreement*.[102] This re-embeds overarching ideas of *unity, collaboration* and *partnership* which ultimately discourages friction and normalises the alienation of actors seeking to disrupt epistemic violence done through the invisibilisation of groups and alternative discourses which aim to challenge the status quo, discussed in the previous chapter.

This brings me to the next aspect of how the term *stakeholder* fails to address risks of participation in terms of tackling *executive multilateralism* and shifting towards less tilted lawscapes in biodiversity law and governance. Namely, when speaking of those holding interests, or "stakes" in environmental concerns, *aren't we all stakeholders?* Indeed, on the face of it, the term carries the assumption that all "stakes" are equal,[103] with everyone thus having supposed equal access to consultations and decision-making processes.[104] Meanwhile, following the discussion above, unless processes where everyone is a stakeholder recognises power asymmetries, less room is awarded the public interests, or traditionally marginalised voices.[105] Here, as long as any form of participation is seen to automatically enable empowerment, discussions on the barriers that groups face in accessing those processes are left forgotten, or ignored. What also falls to the wayside then is equal

Sconfienza, 'Narrative of Public Participation in Environmental Governance and its Normative Presuppositions' (2015) 24:2 *Review of European Community & International Environmental Law*, 140-141.

[100] Global Forest Coalition, 'Corporate Contagion: How the private sector is capturing the UN Food, Biodiversity and Climate Summits', May 2021 <https://globalforestcoalition.org/wp-content/uploads/2021/05/UN-corporate-capture-EN.pdf> (accessed 8/07/2021).

[101] Sconfienza, *Narrative of Public Participation in Environmental Governance* (2015).

[102] Rahnema, *Participation* (1997).

[103] Sharfstein, *Banishing "Stakeholders"* (2016).

[104] Indeed, this is clear from looking at the CBD Voluntary Guidelines on Biodiversity-inclusive Environmental Impact Assessment. See CBD Decision 8/28, *Annex, Box.1.*

[105] With this explored in other contexts, see for instance Maria Ntona and Mika Schroder, *Regulating Oceanic Imaginaries* (2020) 19 *Maritime Studies*; Robert Pomeroy and Fanny Douvere, 'The engagement of stakeholders in the marine spatial planning process (2008) 32:5 *Marine Policy*.

"recognition" of the diversity of interests, perspectives and knowledges amongst actors, as well as other associated responsibilities that actors hold, for instance within rights-based approaches. Again, it is of course essential to ensure that processes listen to the perspective of those affected by policies, yet the catch-all nature and ambiguity of *stakeholders* leaves the doors open to anyone in claiming a seat at the table, with the strength of that claim resting on their ability to insert themselves as important actors within existing structures and discourses, as well as having the necessary resources to hold that space.[106] In this sense, the indeterminacy and abstract nature of the very term *stakeholder,* and its associated logics, risk being an obstacle, rather than enabler, of targeted discussions on the transformative change we need across decision-making.[107]

To be sure, in recent years more awareness, and wariness has been expressed regarding the ways that the term *stakeholder* has shaped the idea and practice of participation across the CBD. As recent as during the – at the time of writing – latest CBD SBSTTA-24 meetings that took place online, one country delegation explicitly asked for the rewording of a sentence so to make it clear that "Indigenous Peoples are not stakeholders", implying rather that they should be regarded as something more specific than that; be it knowledge- or rights-holders.[108] Sometimes wording is vague in this regard, with the simple in/exclusion of the phrase "*and other stakeholders*" after a reference to Indigenous Peoples and local communities being important. In fact, during one of my interviews, an Indigenous representative specifically said that Indigenous Peoples did not wish to be referred to as *stakeholders* precisely because of the way that this ultimately disenfranchises them within decision-making processes.[109]

This speaks to the literature on mis/recognition mentioned above, as well as discussions in the previous chapter, which warns against forms of recognition that aim towards assimilation rather than accounting for, respecting, and taking seriously the diversity and difference of experiences, knowledges, values, and perspectives that actors bring to discursive spaces, as well as what this requires with regards to addressing historical injustices and onto-epistemic hegemony.[110] As explored above, the risk here is that under the idea of *stakeholder*, Indigenous Peoples and local communities, women and youth, are placed alongside essentially all other non-state actors under the "same banner", suggesting that they all hold the same place and role ensuing process. As explained to me, this ignores their unique histories, positionality, perspectives, and knowledges which to them – and many others – are crucial for halting biodiversity loss, and for which they should be considered "strategic partners" with regards to the development, elaboration and implementation of decisions under the

[106] As I explored in the previous chapter, "resources" here does not only refer to monetary resources, but also time, proximity, know-how, and so on.
[107] See Chapter 6 for discussion on the "transformative change" discourse within biodiversity discussions.
[108] IISD ENB, 'Summary of the 24th Meeting of the SBSTTA of the CBD: May-June 2021' (2021) Vol. 9 No.756, 8.
[109] Authors notes, Interview A.
[110] See for instance Young, *Justice and the Politics of Differences* (1990); Coulthard *Red Skin, White Masks* (2014).

Convention.[111] As could also be argued by scholars within the field of international law, existing practice ignores developments elsewhere, for instance in relation to international human rights law, progress in food sovereignty debates and so on. In order for this to happen, a shift must take place in how these actors, as well as other groups that have been marginalised, are positioned within negotiations and conservation policy more broadly, be it through the upholding of their rights and/or a strengthened recognition of their knowledge systems, experiences and perspectives. This illustrates some key blind spots of the *neocorporatist* approach to `participation`, namely that its logic is grounded in a form of temporality which favours the continuity of *existing* structures and logics by benefitting already powerful actors and discourses, making deep and meaningful change all the more difficult. To be sure, this is already happening to varying extents, especially within the context of Article 8(j), which will be discussed in the following subsection.

5.4.2.2 Knowledge-holders

Within the CBD, the inclusion of local actors, especially Indigenous Peoples and local communities, is largely associated with its Article 8(j), which states that *each Contracting Party shall, as far as possible and as appropriate […] subject to its national legislation, respect, preserver and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices*.[112] Despite its significantly qualified formulation, this provision has provided important opportunities for actors to bring forth questions of environmental justice and human rights, especially relating to "fair and equitable benefit sharing", as well as engaging with the wider discussion of enhancing the `participation` of local actors within the work of the Convention.

In lieu of this, the Working Group on Article 8(j) (WG8J) and its related provisions[113] was established in 1998 at COP4, and its programme of work adopted at the following COP in

[111] Authors notes, Interview A.

[112] CBD Convention Text, Article 8(j).

[113] The related provisions are as follows:
Article 10(c) states that *Each Contracting Party shall, as far as possible and as appropriate, […] protect and encourage customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements;*
Article 17.2 states that *[Exchange of information relevant to the conservation of sustainable use and biological diversity] shall include exchange of results of technical, scientific and socio-economic research, as well as information on training and surveying programmes, specialised knowledge, indigenous and traditional knowledge as such and in combination with the technologies referred to in Article 16, paragraph 1. It shall also, where feasible, include repatriation of information*; and
Article 18.4, states that *Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.*

2000.[114] According to this, its main purpose was to further the implementation of commitments under Article 8(j) and to enhance the role and involvement of Indigenous Peoples and local communities in the achievement of the objectives of the Convention.[115] As mentioned in the previous chapter, the outcomes of the WG8J showcases some of the Convention's most progressive and forward-looking work with regards to exploring and strengthening the intersections between environmental law, human rights and issues of justice.[116]

In this sense, the original text of the Convention provided for the recognition of certain local actors as *knowledge-holders*, something distinct from `stakeholders`, which justifies their access to decision-making processes within both the Convention, as well as in domestic and local settings related to biodiversity conservation. This subsection will explore this designation in greater detail, addressing both its potentials and pitfalls in terms of enabling shifts towards balancing the onto-epistemological *tilts* in the lawscape of the CBD decision-making spaces. Importantly, the following chapter will look more specifically on the onto-epistemological *tilts* and the shifts needed for this to occur, hence why I have tried to keep this subsection short and concise so to avoid overlap. In this sense, this section may be seen as a form of introduction to some of the topics further looked at in the next chapter. For now, I will remain focused on seeking out how the term *knowledge-holder* may influence `participation` in decision-making from a spatial justice perspective.

Building on the previous section's discussion on the term `stakeholder`, it is clear that the designation – or not – of groups and individuals as *knowledge-holders* has connotations for the space that they may take up in decision-making. In a sense, knowledge has always laid at the heart of political decision-making, in that it has always been driven by particular ways of seeing and understanding the world, and our relationship to it, be it through pluralistic or singular/monocle lenses. [117] Seen through the lens of spatial justice, many of the tilts that exist across the lawscapes are grounded in onto-epistemological hegemony; where ways of perceiving the world (ontological), and ways of understanding, and of recognising and valuing certain types of knowledge (epistemology), dominate in shaping and informing the way decisions are made, and who gets to make them. In this sense, the act of determining what counts as knowledge also involves the distribution of power and *signalling of meaning and authority* to certain actors, relationships and visions of the world.[118]

Indeed, from a historical perspective, scholars have long highlighted the way that colonial and imperialist thinking, through the knowledge-power nexus, influenced early environmentalist

[114] CBD website, 'Working Group on Article 8(j)'. <https://www.cbd.int/convention/wg8j.shtml> (accessed 14/07/2021).
[115] CBD Decision 5/16 *Article 8(j) and related provisions.*
[116] See for instance Elisa Morgera, 'Dawn of a New Day? The Evolving Relationship between the CBD and International Human Rights Law' (2019) 54 *Wake Forest Law Review*.
[117] This will be explored further in the following chapter. See generally Sheila Jasanoff, 'Heaven and Earth: The Politics of Environmental Images' in Jasanoff and Marybeth Long Martello (eds) *Earthly Politics: Local and Global in Environmental Governance* (MIT Press, 2004); and Vadrot, *The Politics of Knowledge and Global Biodiversity* (2014).
[118] See discussion in Chapter 2 Section 4.1. See also following chapter.

thought and conservation agendas through the construction, and disenfranchisement of the "other".[119] Within this context, the "other" was cast as non-white, non-European and un-educated poor peoples who were incapable of understanding and following modern ideals of living. This, coupled with cartesian dualism on the nature/culture divide and "[men] as masters and possessors of nature," was used to justify the removal of people from "pristine wilderness" areas, and undermine their presence as legitimate holders of knowledge across decision-making spaces.[120]

In this sense, on the basic level, the recognition of *knowledge-holders* as those beyond the traditional onto-epistemological hegemony[121] – can be an important move towards addressing the *tilts* within the CBD lawscapes and enabling more inclusive decision-making. What we see in this regard is effectively a form of recognition awarded to alternative knowledge systems and ways of perceiving the world which go beyond the dominant structures which currently shape how certain actors access decision-making spaces.[122] By opening up space for onto-epistemological diversity, power may get re-distributed provided that this recognition goes beyond the written word and is enacted across the various stages of decision-making, and have impacts on the lawscapes from a material and temporal perspective.

Within the CBD, many have put forward Article 8(j) as playing a crucial role in the emergence of more participatory processes within the CBD, especially with regards to Indigenous Peoples and local communities. For instance, studies have shown an increase of references to the participation of these groups within CBD Decisions, specifically tied to the cross cutting issue of 'traditional knowledge, innovations and practices' specifically tied to Article 8(j) and its related provisions.[123] Similarly, in discussions with Indigenous and local community representatives, several have pointed out that it was within the confines of Article 8(j) that they focused their attention during the early years of the Convention in order to strengthen their role at its meetings.[124] From this perspective, the relevance of Article 8(j) in providing a springboard from which underserved and marginalised – and in some instances persecuted – groups can push for their voices to ring louder, and from a more secured platform, should not go under-appreciated, especially when considering some of the important texts that have emerged from WG8J.[125]

This all said, the significance of dominant onto-epistemic *atmospherics* within decision-making spaces, and the way this shapes process should not be underestimated, with the verdict still outstanding on the extent to which the designation of actors as *knowledge-holders* within the CBD is in fact as empowering as some claim and suggest. On the whole, some have suggested that within the broader narrative of public participation within environmental

[119] See for instance Reimerson, *Between Nature and Culture* (2013), 994-5.
[120] Ibid. See also following chapter for a more in-depth discussion on this process.
[121] See following chapter.
[122] Sconfienza, *Narrative of Public Participation in Environmental Governance* (2015), 143.
[123] Parks and Schroder, *'Local' Participation in International Biodiversity Law* (2018).
[124] Authors notes, Dialogues and Interview A, F, and H.
[125] See footnotes 24 in Chapter 4.

governance stemming from the 1992 Earth Summit, the focus on bringing "better information" as well as "new perspectives and values" in decisions-making provide some of the most significant potential for challenging dominant neoliberal approaches to environmental governance. Here, Sconfienza has suggested that these aspects open up space for *counter-narratives*, with the starting point being the questioning of existing paradigms. [126] Yet, Sconfienza himself makes the point that even this positive outlook of the potential of public participation, constitutes "contested terrain" in the sense that "among a variety of normative presuppositions justifying practices of public participation, one can also find a market-friendly rationale."[127] This highlights a key debate within the field, in which scholars disagree at the extent to which Article 8(j) actually *does* provide for a diversity of perspectives and values, and a reconfiguration of knowledge (and thus re-shuffle of power relations) within the CBD framework, and across conservation discourse more broadly.[128] From an onto-epistemological perspective, this is tied to what many see as the stubborn persistence of market-friendly logics, along with the emphasis on technical and scientific solutions stemming from western models of knowledge, rooted in Enlightenment thought and grounded in the ideals of rationality and modernity, and underpinned by a deep seated understanding of the world through a dualistic lens.[129] In other words, within a structure where the dominant onto-epistemology runs so deep to be ubiquitous, effectively informing the very imagining and wording of debates and underpins the issue/solution discourse, is the optimism for onto-epistemic diversity ill-founded?

This highlights the potential limitations, and risks of grounding participation in functionalist logics which emphasise the input/output legitimacy of decision-making from the perspective of expert-driven process. Going back to the Willet's definition of this discourse, within environmental governance, the functionalist approach to non-state actor participation has its foundations in the technical-scientific and dualistic logics mentioned above, which effectively promotes the depoliticisation of decision-making (in the sense that politics and knowledge-production remains separate under dualism), and promotes the idea that 'impartial information and expertise' strengthens evidence-based decision-making.[130]

In this sense, concern has been expressed by scholars and practitioners alike that the designation of knowledge within conservation policy more broadly is done within a hegemonic structure, which either risks excluding important knowledges from decision-making, or, when done, follow traditional extractive processes which disregard the important cultural and situated nature of Indigenous and local knowledge systems across the world. Here, the relevance on access and benefit sharing, as well as rights associated with free, prior and informed

[126] See generally Sconfienza, *Narrative of Public Participation in Environmental Governance* (2015).
[127] Ibid, 139.
[128] See for instance Reimerson, *Between Nature and Culture* (2013); Brand and Vadrot, *Epistemic Selectivities* (2013); Suiseeya, *Negotiating the Nagoya Protocol* (2014).
[129] Louisa Parks, *Benefit Sharing in Environmental Governance: Local Experiences of a Global Concept* (Routledge, 2020), at 110. See also discussion in Chapter 6.
[130] Willetts, *Functionalism, Global Corporatism, or Global Democracy?* (2006).

consent, is central, tied to issues of bio-piracy [131] and unethical research practices which seek to identify, map and 'codify' Indigenous knowledges in ways that ultimately commits violence to the ontologies from whence they emerge, and the communities within which they live and get passed on, often in accordance with customary community practices.[132] Similarly, there are also instances where those already holding privileged positions by virtue of being "experts" in accordance with traditional western knowledge systems, effectively gatekeep access by virtue of constraining the understandings of what constitutes knowledge. Indeed, each of these scenarios signify pre-existing power imbalances at multiple stages of decision-making, with the result being minimal changes to power dynamics between people, and where some groups may find themselves worse off than before.

In interviews with participants, it is also clear that this onto-epistemic imbalance is in ways internalised, prompting representatives to feel less justified in taking up space precisely because of the discrepancy in how knowledges are treated across biodiversity governance, including CBD spaces. For instance, one interviewee, despite having attended several CBD meetings, and having significant lived experience and knowledge in working on preserving and adapting seeds and "traditional" agricultural practices, found themselves questioning whether they should be there on the basis of them not having attended university, nor having a scientific background, or worked with law and/or policy.[133] This illustrates a form of internalisation of suppressive *atmospherics* where knowledge hierarchies embedded within the language and discussions at meetings make those with crucial lived experiences and local knowledges feel insufficient and unwelcomed. It also shows that it is not enough to incorporate recognition of diverse knowledges across agenda items unless the negotiating spaces shift alongside these to extend *deeper* recognition of knowledges and worldviews so to enable more inclusive process. This effectively means that although on the face of it, the designation of non-state actors as *knowledge-holders* opens up space for onto-epistemic diversity and for historically excluded actors to be able to contribute to debates at international, domestic and local levels, this may be far harder to achieve in practice due to the perseverance of onto-epistemic tilts upheld by *oppressive atmospherics* within such spaces. This discussion will be expanded on further in the following chapter.

Beyond the issues of onto-epistemological foundations and the ways that these may impede on the transformative potential of non-state actors being designated as *knowledge-holders,* the wording of Article 8(j) itself carries with it signifiers which has long been critiqued for its reinforcement of essentialised imagery and identifiers of Indigenous Peoples and rural communities. A number of critical scholars have argued that the ways in which the 'local' is represented in biodiversity policy and the CBD is reductive and relies on stereotypes and homogenised notions of "traditional" and "indigeneity" as seen through fixed temporalities and

[131] See for instance Bavikatte, *Stewarding the Earth* (2014).
[132] See discussion on research ethics in Chapter 3 Section 3.3.1.
[133] Authors notes, Interview G.

modern-imperialist understanding of cultural diversity.[134] To begin, Indigenous Peoples' contribution to biodiversity conservation is often tied to colonial discourse which imagine Indigenous peoples as "closer to nature"[135] – a logic grounded in dualism and the "othering" of nature, which historically worked to justify the dispossession of peoples from their customary territories.[136] Effectively, the very idea of "traditional", as supposedly standing in opposition to the idea of modernity (and thus as "backwards", "inferior")[137] has been invoked and understood across mainstream public discourse to suggest an innate fixed-in-time characteristic,[138] ignoring the fact that Indigenous cultures, their customary laws, knowledges, like all things cultural and societal, hold a dynamic, fluid, malleable character which respond and adapt to changing circumstances, be it social, political, economic, geographical. In this sense, in addition to potentially reinforcing homogenous and essentialised understanding of what it means to be Indigenous, another effect of tying this to ideas of "traditional" also ignores colonial histories of forced assimilation, in which State policies were specifically geared at committing cultural genocide by separating Indigenous peoples from their communities, cultural practices, territories, worldviews, and languages.[139]

With regards to participation within the CBD, some have argued that this can have the effect of constraining, and narrowing the recognition of Indigenous Peoples role within biodiversity debates. For instance, Elsa Reimerson, has argued that the wording of Article 8(j), as well as other provisions under the CBD relating to Indigenous Peoples, their "traditional lifestyles" and "traditional knowledge" and their relevance to biodiversity conservation, draws a 'chain of equivalent' which essentially suggests that those Indigenous Peoples *not* embodying "traditional lifestyles" (whatever this means), or *not* holding "traditional knowledge" (whatever this means) do not have a role within biodiversity conservation and sustainable use under the work of the CBD. Given that 'traditional lifestyles' and the 'knowledge, innovations and practices' under Article 8(j) are concepts open for arbitrary interpretation,[140] not to mention arguably outdated, the inclusion of Indigenous Peoples within decision-making is far from certain at the outset, and in fact risks re-embedding already powerful actors as gatekeepers and arbiters of who should be included in processes.

In recalling ideas of performativity explored in the previous chapter,[141] the conditioning of participation along the wording of Article 8(j), when applied on a domestic level, has

[134] Kent H Redford, 'The Ecologically Noble Savage' (1991) 15:1 *Cultural Survival Quarterly*; Agrawal, *Dismantling the Divide Between Indigenous and Scientific Knowledge* (1995); Beth A. Conklin and Laura R. Graham, 'The Shifting Middle Ground: Amazonian Indians and Eco-Politics' (1995) 97:4 *American Anthropologist*; Agrawal, *Environmentality: Technologies of Government and the Making of Subjects* (Duke University Press, 2005).
[135] Reimerson, *Between Nature and Culture* (2013), 1003-4.
[136] See for instance Kuehls, *Beyond Sovereign Territory* (1996).
[137] Reimerson, *Between Nature and Culture* (2013), 999.
[138] See for instance Singh Nijar, Traditional Knowledge Systems, *International Law and National Challenges* (2013); Tobin, *Why Living Law Matters* (2014), 180.
[139] See for instance Coulthard, *Red Skin, White* (2014); Tanya Talaga, *All Our Relations: Indigenous Trauma in the Shadow of Colonialism* (Scribe, 2020).
[140] Reimerson, *Between Nature and Culture* (2013), 999.
[141] See discussion in Chapter 2 Section 2.4.1 and Chapter 4 Section 4.4.1-2.

the risk of restricting Indigenous agency by forcing groups to express themselves, and "perform" in accordance with preconceived notions of "traditional lifestyles" and what it means to hold "traditional knowledge". Likewise, the recognition of rural women as holders of important agroecological knowledge relevant for the conservation of biodiversity is intricately tied to patriarchal notions of societal gender roles as well as other external pressures from globalisation, with women often tasked with farming, resource management on the household or community-level.[142] So, while the positioning of women as *knowledge-holders* provides an important entry point into decision-making spaces, this also risks reinforcing and reproducing patriarchal notions of social relations, and may also reify essentialised understandings of womanhood.

Granted, the designation of groups and individual as *knowledge-holders* does challenge traditional top-down structures of decision-making, and helps us move away from perceiving certain groups who have historically faced peripheral treatment as passive recipients to policy-changes. In this sense, it goes further than recognising groups as *stakeholders*, and from the outset positions them as important actors within decision-making processes in terms of enhancing the quality of discussions. Yet, given the discussion above, it is equally clear that things are not clear cut, with a multitude of issues arising with this designation.

Notwithstanding the debates on the conditioning of participation on the basis of the knowledge one holds, wider concerns amongst especially Indigenous movements point towards issues of the commodification of knowledge, which could expose communities and cultures to further exploitation. This brings to the fore epistemic tensions within the decision-making spaces, with the entrenchment of onto-epistemic hierarchies determining the space given to diverse knowledge systems and those holding certain knowledges, not to mention how they will be treated therein. Arguably the input/output legitimacy which underpins the categorisations of *stakeholders* and *knowledge-holders*, corresponding with the participatory discourses of *functionalism* and *neocorporatism*, risk reducing the idea of inclusivity to being a matter of managerial and technocratic ideals of efficiency and expertise. This reproduces problematic power dynamics, prompting the question of whether the issue of *executive multilateralism* ever really went away. Given that this is/was the very reason for participatory approaches emerging in the first place, it is high time for processes to engage in a deep reckoning with their methods and practices, and be ready to embrace new ways of understanding space, actors, and relations therebetween. To many, the increasing talk of human rights within conservation discourse may be an avenue for achieving this, as will be discussed in the next sub-section.

5.4.2.3 Rights-holders

[142] UN Women, *Research Paper: Towards a Gender-Responsive Implementation of the Convention on Biological Diversity* (UN Women, 2018), 3. < https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2018/towards-a-gender-responsive-implementation-of-the-convention-on-biological-diversity-en.pdf?la=en&vs=4802> (accessed 3/08/2021).

Across the world, social movements, practitioners, and academics are increasingly drawing on human rights discourses in framing their work for pursuing social justice and addressing concerns of socio-ecological harm.[143] Over the past decades, this has emerged through increased work on litigation addressing, for instance, climate change and toxic pollution,[144] advocacy and research challenging land grabbing and labour exploitation across agricultural and extractive sectors,[145] as well as pushing for human rights-based approaches to be adopted within decision-making processes related to biodiversity conservation. We can see this within the CBD, with increasing calls made by Observer groups (and supported by some Parties) on the integration of human rights language into the Convention texts. Importantly, this section is not a doctrinal analysis of the existing laws regarding human rights and the environment. Nor is it a comprehensive discussion on the significance of human rights-discourse within the CBD, which arguably deserves its very own chapter or thesis. Rather, it is an initial discussion on the potentials and pitfalls of a more explicit recognition of actors as *rights-holders* within the CBD. In some ways, it is a response to the previous two sections by asking whether recognising certain observers as *rights-holders* may help address the shortcomings unearthed in the previous two subsections. For this, I will begin by offering a very short introduction on some of the international efforts exploring entanglements between human rights, land and environmental governance, so to set the scene of discussions leading up to their incorporation into current CBD discussions. I will then spend the rest of the subsection engaging with the critical human rights scholarship, along with work that has reimagined the core concepts underpinning human rights discourse, especially pertaining to food and land. Here, I reflect on the potential that such efforts hold in enabling shifts in the participatory processes of the CBD and biodiversity management more broadly.

Across international law more broadly, the interconnectivity between ecology/land/human rights has been explored from various, albeit rather fragmented perspectives and by multiple groups. By way of example, this includes work at the FAO looking more closely at the issue of land fragmentation and secure land tenure for smallholder and family farmers, which addresses rights of land tenure. [146] Its Voluntary Guidelines on the governance of Tenure looks at both land, fisheries and forests. They reference human rights in general, expressing that land tenure is not only associated with rights of access and use, but also civil and political rights of human rights defenders, including the rights of peasants, Indigenous Peoples, Fishers, Pastoralists and rural workers.[147]

[143] Lorenzo Cotula, 'Between Hope and Critique: Human Rights, Social Justice and Re-Imagining International Law from the Bottom Up' (2020) 48 *Georgia Journal of International and Comparative Law*, 475

[144] See generally Danya Nadine Scott, 'Environmental Justice and the hesitant embrace of human rights' in James May and Erin Daly (eds) *Human Rights and the Environment: Legality, Indivisibility, dignity and geography* (Edward Elgar, 2019).

[145] See generally Lorenzo Cotula, *Between Hope and Critique* (2020).

[146] Morten Hartvigsen, 'Land Tenure Journal 1-19' (FAO, 2019), 3-4.

[147] FAO Voluntary Guidelines on the Governance of Tenure (Rome 2012), 5-6. Available at <https://www.fao.org/3/i2801e/i2801e.pdf> (accessed 15/02/2021).

Elsewhere, the UN has appointed Special Rapporteurs (SR), who are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspectives. Those who have been the most vocal and embedded within the intersections between human rights and environmental governance and decision-making, include the SR on the rights of Indigenous Peoples,[148] SR on the right to food[149] and the most recent one on human rights and the environment.[150] Their reports have gone a long way in expanding and deepening our understanding of the interconnectivities between human rights and issues pertaining to environmental governance. To many, the last appointment signifies a strengthened recognition of the indivisible, and mutually supportive nature between a healthy environment and human wellbeing, which advocates argue is protected under certain fundamental human rights.[151] Indeed, in October 2021, the UN Human Rights council passed a resolution recognising for the first time that having a clean, healthy, and sustainable environment is a human right.[152] Notably, the current SR on human rights and the environment, David Boyd, has been invited to speak at a number of CBD events alongside Observer groups, to highlighting the significance of bringing human rights-based approaches into the Post-2020 GBF, [153] and the CBD provisions more broadly.

In 2007, the UN General Assembly adopted the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), providing the minimum standards for the survival, dignity and wellbeing of Indigenous Peoples across the world. It recognises, *inter alia*, Indigenous Peoples' right to self-determination, which includes having the right to autonomy or self-government (Article 3-4); the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions (Article 5); and the right to not be subject to forced assimilation or destruction of their culture, with States required to provide effective mechanism for preventing or redressing actions posing such risks, including those dispossessing them of their lands, territories or resources (article 8).[154] Article 26 also states that Indigenous Peoples hold rights to

[148] See website <https://www.ohchr.org/en/issues/ipeoples/srindigenouspeoples/pages/sripeoplesindex.aspx> (accessed 15/02/2021).
[149] See website <https://www.ohchr.org/EN/Issues/Food/Pages/FoodIndex.aspx> (accessed 15/02/2021).
[150] See website <https://www.ohchr.org/en/Issues/environment/SRenvironment/Pages/SRenvironmentIndex.aspx> (accessed 15/02/2021).
[151] UNSR on Human Rights and the Environment John Knox, Report on Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, (2018) UN Doc. A/73/188, para 59.
[152] UNHRC Resolution 48/13. The text was proposed by Costa Rica, the Maldives, Morocco, Slovenia and Switzerland, and was passed with 43 votes in favour and 4 abstentions from Russia, India, China and Japan. Interestingly, Resolution 48/14 called for increased focus on the human rights impacts of climate change by establishing a Special Rapporteur whose work would be dedicated specifically to that issue.
[153] Early drafts of the GBF refers to the rights of Indigenous Peoples and local communities over lands, territories and resources. See CBD Document CBD/WG2020/3/3, Target 21.
[154] UNDRIP, adopted 13 September 2007 (A/RES/61/295), available at <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (accessed 15/02/2021). The International Labour Organisation Convention No. 107 and 169 also address the rights of Indigenous Peoples within the relevant signatory states. The former was adopted in 1957 and was underpinned by a mindset in which integration and assimilation was seen as the most appropriate way to address the marginalisation of Indigenous Peoples and cultures. The latter replaced the former in 1989, and addresses lands, territories and resources. Notably, many Indigenous Rights groups have criticised the ILO No.169 for its lack of language on self-

own, use, develop and control the lands, territories and resources that they possess through traditional ownership, occupation or use.

More recently, in 2018 the Human Rights Council adopted the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP). Its preambular paragraphs more explicitly recognise the interlinkages between environmental degradation and human rights, with its text touching on a wide range of issues from securing rights associated with social and environmental impact assessments (article 5); food safety, labour and environmental standards (article 10); protection from chemical waste commonly used in rural areas (article 14); ensuring that rural development, agricultural, environmental, trade and investment policies and programmes contribute to protecting and strengthening local livelihood options (article 16); and the conservation and protection of environment, and their lands and resources (Article 18).[155]

The above provides just a snapshot of some of the progress made with regards to the increased recognition, and activity, at the intersections between human rights, and ecological health and governance. It also illustrates the various spaces at which these discussions have been taking place, with the CBD in turn constituting just one of the many overlapping lawscapes exploring these questions. Although the matter of rights, primarily Indigenous Peoples rights, have featured within the CBD negotiations since its very adoption in 1992, it is only now that human rights-based language is emerging more explicitly in its texts, and as a matter of its own intrinsic importance, as opposed to connected to separate agenda items. That it is now emerging explicitly arguably reflects its wider acceptance among Member States, which comes off the back of not just the above-mentioned initiatives, but also decades of hard work by people on the ground in mass mobilisations, highlighting the interlinkages between human and environmental suffering. [156]

Notably, the CBD text itself lacks any mention of human rights, nor were there any references to human rights within the CBD context at the time of its adoption.[157] Ever since, this has been an emerging field of both research and mobilisation, with the intersections between human rights and biodiversity law becoming all the clearer and more pronounced. This includes especially progress in connecting work under the CBD with the human rights of Indigenous Peoples, associated with work under Article 8(j), most often touching upon questions of access

determination, weak provisions, and the absence of Indigenous Peoples in the drafting and revision process. Many argue that it should be viewed as an absolute "minimum" statement on Indigenous rights. See Fergus MacKay, 'A Guide to Indigenous Peoples' Rights in the ILO' the Forest Peoples Programme (2010) <https://www.forestpeoples.org/sites/default/files/publication/2010/09/iloguideiprightsjul02eng.pdf> (accessed 17/04/2022).

[155] UNDROP, adopted 28 September 2018 (A/HRC/RES/39/12), available at <https://digitallibrary.un.org/record/1650694?ln=en> (accessed 15/02/2021).

[156] See for instance prominent movements by human rights and environmental defenders, including for instance the Waorani Indigenous Community in Ecuador challenging the government's actions in failing to consult them before offering their lands for oil exploration; or the protests by the Standing Rock Sioux Tribe challenging the construction of the Dakota Access Pipeline in the Northern United States.

[157] Dinah Shelton, 'What Happened in Rio to Human Rights?' (1992) 3:1 *Yearbook of International environmental Law*.

and benefit sharing regarding the use of "genetic" resources,[158] but also in exploring questions associated with the Right to Free, Prior and Informed Consent.[159] Despite Parties in the past clearly pushing back against bringing human rights into the CBD framework, there is increasing reliance on its provisions in relation to human rights work, for instance at the Inter-American Court of Human Rights, as well as in the work of the SR on Human Rights and the Environment.[160]

Given that these entanglements exist and have become more pronounced regardless of Parties traditionally avoiding references to human rights language at the CBD, the idea of people as *rights-holders* within its framework has arguably been relevant even before the term was brought in explicitly at COP-14. Regardless, its incorporation now does signify an explicit shift in linguistic and legal culture, with many hoping that it can enable the emergence of new dynamics and relations between actors and legislation within biodiversity discourse and decision-making spaces. At the same time, there are still those who remain cautious of its incorporation, drawing on long-standing criticisms of human rights-based approaches and framings. These highlight procedural, substantive and ontological aspects that have far-reaching consequences, such as reinforcing existing power structures and systematic imbalances and societal disparities. Even within the CBD, several of the local representatives who have contributed to this thesis have spoken of the need to tread with caution so to not reproduce current systemic thinking that enable socio-ecological harm, while also remaining hopeful that careful navigation can have human rights-based approaches prompt the cultural shifts necessary to reverse biodiversity loss and enable the emergence of socio-ecologically sound societies. Here, my main argument is that the inclusion of human rights discourse into the CBD must be done in a way that responds to the ontological diversity of the people claiming them.

Indeed, some scholars, while mindful of the criticisms of human rights discourses (introduced below), argue that certain human rights, especially those emerging from within grassroots movements, have the capacity to challenge Westphalian orders and structures by reconceptualising societal concepts. This includes rethinking notions of territory, citizenship, property, and the idea of individual entitlement and the distributive economic models which lie at the heart of mainstream human rights discourse.[161] Although not explicitly, and while still emerging and evolving, rights-talk at the CBD does touch upon these debates, with the rest of this

[158] See for instance Morgera, *Dawn of a New Day?* (2019). Crucially, the question of intellectual property rights has prompted significant debate within the CBD and justice literature more broadly, and due to the complexity of these debates, and the constraints of this thesis, I have chosen to not engage with them in detail here.
[159] Ibid. See also for instance CBD Mo'otz Kuxtal Voluntary Guidelines (CBD/COP/DEC/XIII/18).
[160] Morgera, *Dawn of a New Day* (2019), 2. Notably, when changing terminology to be more in alignment with UNDRIP regarding referencing "Indigenous Peoples and local communities", there was significant push back from States, with the relevant text stating that the change should not be seen as affecting the legal meaning of Article 8(j) and its related provisions, nor change the rights or obligations under the Convention. CBD COP Decision XII/12 (2014), para 2(a) and (b).
[161] Benno Fladvad, Silja Klepp and Florian Dünckmann, 'Struggling against land loss: Environmental (in)justice and the geography of emerging rights' (2021) 117 *Geoforum*

section looking closer at this, and what the inference of human rights, and the designation of actors as *rights holders* may signify within the CBD lawscapes. It is worth noting that this subsection differs from the previous two, it that it looks more broadly at what it means to bring rights discourse into the CBD, as opposed to the designation of *rights-holders* more specifically. Ultimately, given that the term has only just begun to feature explicitly within negotiated texts, a similar assessment to those above is difficult. As this is an emerging field of study, my hopes are to introduce these debates and offer glimpses into their relevance within the context of the CBD.

As mentioned above, a handful of legal scholars and practitioners have turned to human rights discourse in attempting to strengthen the case for environmental protection, with one argument being that this enables a shift in environmental concerns going from being a matter of *policy*, to one of *state obligation.*[162] To others, it is a way of institutionalising environmental justice claims – through judicial interpretation or legal drafting – like we've seen for instance within climate litigation, which ties in with work challenging regression of environmental (and social) safeguards in the face of growing natural resource extraction and intensification of production and consumption patterns.[163] From this perspective, with regards to `public participation`, the identification of groups and individuals as *rights-holders,* can go some ways in addressing the discrepancy of power dynamics discussed with regards to the previous two identifiers above – *stakeholders* and *knowledge-holders* – in that they may in fact refer to *existing* state obligations*.* This is certainly the line of argument adopted by many of the groups campaigning for its inclusion within the CBD, such as the ICCA Consortium which has been vocal in their support of the term *rights-holders* over the term two terms explored above.[164] Here, the inclusion of non-state actors is not a matter of inviting *powerful groups* or *only those identified as holding particular expertise*, but rather of upholding established rights on the one hand, and responsibilities on the other.

In this sense, types of rights referred to within the CBD – e.g. rights of Indigenous Peoples, rights to land tenure, rights of women, girls and youth, and so on – go beyond the usual procedural rights often associated with `participation` within environmental law under the `sustainable development` agenda, which also underwrote the categorisation of actors discussed in the previous two subsections.[165] Within the former group of rights emerging within the CBD negotiations, being recognised as a *rights-holder* can provide important legal,

[162] See for instance Rebecca Bratspies, 'Do We Need a Human Right to a Healthy Environment?' (2015) 13 *Santa Clara Journal of International Law*.

[163] Scott, *Environmental Justice* (2019); John Barry and Kerri Woods, 'The Environment' in Michael Goodhart (ed), *Human Rights: Politics and Practice* (OUP, 2009).

[164] ICCA Consortium website, 'Indigenous Peoples' Rights and Human Rights' <https://www.iccaconsortium.org/index.php/international-en/human-rights-en/> (accessed 17/04/2022) and <https://www.iccaconsortium.org/index.php/2018/03/06/icca-consortium-attends-launch-of-un-environmental-rights-initiative-in-geneva/> (accessed 17/04/2022).

[165] Across dominant international environmental law scholarship and practice, since the Rio Summit in 1992, rights associated with the environment have often been procedural, such as, *inter alia*, the right to be informed of developments in a particular local area, rights to information about environmental impact assessments, rights to freedom of assembly, rights to self-determination and rights to participate in environmental decision-making.

political and moral traction in decision-making processes, especially where relevant provisions on activities pose risks to certain rights recognised under international and domestic legislation. Here lies what many argue is the *potential* of human rights in supporting political and social (including socio-ecological) emancipatory struggles, namely by it being used as a tool to lay bare, and indeed institutionally challenge, wrongdoings or inefficiencies in public policy or action.[166] It signifies, in unambiguous and publicly familiar terms, a limit to entitlements stemming from sovereign rights to exploit natural resources (and pursue economic growth) by identifying the *obligations* and *responsibilities* of States, providing also a clear message and agenda for public mobilisation.[167] Therefore, on the face of it, the identification and designation of some as *rights-holders* may enable strengthened and more opportunities for local actors to engage in decision-making that has the potential of shifting power dynamics, compared to the other two identifiers.

Yet, this brings to the fore tensions within human rights discourse and practice, and the wider aim of environmental and social justice. Sceptics within social justice movements and critical scholarship argue that mainstream human rights discourse in various ways fail to address underlying causes of socio-ecological harm, and may even be employed in ways that reproduce embedded power dynamics due to their underlying ontological foundations. Some for instance argue that employing human rights discourse can be counterproductive to emancipatory struggles, opening up social justice movements to 'capture' – be it far-right, corporate or neoliberal – in ways that could further re-embed systemic injustices and hegemonic onto-epistemologies. While this subsection does not have capacity to cover all these critiques in detail, I will aim to address those most relevant to the topic of `participation` in line with this chapter. I will focus my attention on exploring the consequences of some of these critiques, and their responses to the positioning of actors within the CBD lawscapes, and how this influences, and enables/restricts different forms of decision-making and thinking across these spaces.

To begin, many critique contemporary – dominant, mainstream – conceptions and interpretations of human rights as ontologically grounded in 'enlightenment' logic[168] and rooted in neoliberal conceptions of society and societal relations.[169] In effect, this has led to the individualisation of rights frameworks and public discourse that emphasises individual entitlements and economic liberalism. Here, the global employment of rights discourse is a sign of Westphalian imperialism,[170] which many argue has provided an 'ideological apologia' for

[166] Paul O'Connell, 'On the Human Rights Question' (2018) 40 *Human Rights Quarterly*; Barry and Woods, *The Environment* (2009), 324-5.
[167] Cotula, *Between Hope and Critique* (2020), 516.
[168] Kevin Kolben, 'Labor rights as human rights?' (2008) 50:2 *Virginia Journal of International Law*, 453; Jennifer Hendry and Melissa Tatum, 'Human Rights, Indigenous Peoples and the Pursuit of Justice' (2016) 34 *Yale Law & Policy Review.*
[169] Rajagopal, *International Law from Below* (2003); Terri Libesman, 'Human Rights and Neoliberal Wrongs in the Indigenous Child Welfare Space' in Hendry et al (eds) *Indigenous Justice* (2018)
[170] David Landy, 'Talking human rights: How social movement activists are constructed and constrained by human rights discourse' (2013) 28:4 *International Sociology*.

Western intervention and sustained colonial presence across the world, with the result being the strengthening of hegemonic western-modern-state apparatus.[171] This has brought critics to argue that contemporary rights discourse is not geared at enabling societal change and emancipation, but rather to entrench and sustain the status quo in terms of global geo-politics and inter-state power dynamics.[172]

On a deeper, ontological level, this also risks alienating activists and the public from localised cultural structures and perspectives, ultimately jeopardizing alternative visions of life, the self, and our relations with others, including our surroundings.[173] In other words, this risks undermining calls for deeper recognition of onto-epistemological diversity and genuine emancipation from colonial states grounded in collective care.[174] In this regard, pointing to the liberal character of mainstream human rights discourse and its focus on economic liberties, several see their use as an instrument for the expansion of free market capitalism and neoliberalism.[175] In fact, this also ties in with broader critiques against traditional distributive framings of social justice, which in practice has led to societal (and individual) progress being measured through the distribution of goods and resources in line with capitalist economic ordering,[176] as opposed to addressing the core societal structures that enable and produce maldistribution (of wealth as well as power) in the first place.[177]

A good example of this can be found within debates on food security, the right to food and the right to food sovereignty. **Food security**, being the dominant approach undertaken by the UN and development agencies, focuses on increasing productivity and liberalising markets to enhance food distribution, and does not engage with rights-framings beyond the basic work on the "right to be fed"; the **right to food** employs a primarily distributive lens through social liberal ideology; while **food sovereignty** advocates perceive neoliberalism and capitalism as *the* ideological pillars underpinning global production and consumption models, and thus responsible for creating structures of dependence, maldistribution and ecological harm.[178] Many would, and do argue that the first two framings are inadequate for tackling and addressing justices along the food system, with the right to food sovereignty movement being lauded for its reframing of rights that go beyond the purely distributive paradigm.

[171] See for instance Wendy Brown, 'Suffering Rights as Paradoxes' (2000) 7 *Constellations*; Wendy Brown, '"The Most We Can Hope For …": Human Rights and the Politics of Fatalism' (2004) 103 *The South Atlantic Quarterly;* Hendry and Tatum, *Human Rights, Indigenous Peoples and the Pursuit of Justice* (2016); Libesman, *Human Rights and Neoliberal Wrongs* (2018).
[172] Ibid.
[173] Sally Engle Merry, 'Changing rights, changing culture' in Jane K. Cowan, Marie-Bénédicte Dembour, and Richard A. Wilson (eds) *Culture and Rights: Anthropological Perspectives* (CUP, 1997).
[174] See Chapter 2 and Chapter 6.
[175] See for instance Ziauddin Sardar, *Postmodernism and the Other: The New Imperialism of Western Culture* (Pluto Press, 1998).
[176] See for instance John Rawls, *A Theory of Justice* (1999).
[177] For an overview of critique against distributive justice, see for instance Nancy Fraser, 'Rethinking Recognition' (2000) 3 *New Left Review*; Fraser, 'Recognition without ethics?' (2001) 18 *Theory, Culture & Society*; Young, *Justice and the Politics of Difference* (2011); Schlosberg, *Defining Environmental Justice* (2007).
[178] Claeys, *Human Rights and Food Sovereignty* (2015), 86.

Instead, it embraces a more ontologically diverse understanding of food and food systems that includes struggles associated with land management and control, rights of food providers and workers, as well as ensuring culturally appropriate access to food grounded in agency and dignity of people.[179]

These debates and critiques speak also to the concerns raised above regarding the marketized logic and discourses employed in CBD negotiations, which undermine `alternative` ways of understanding human-nature relations, and threatens emancipatory struggles by reinforcing solutions-framing that centres the role of powerful actors.[180] As we've seen above, this can work so to influence ways that `participation`, and the broader inclusion of actors, is framed within conservation discourse. Similarly, the embeddedness of some rights and their wider societal framings within domestic structures and wider social discourse, makes challenging them all the harder, and can require groups to rely on systems that worked to undermine their freedoms in the first place.

Take land rights as an example; historically, these emerged from industrial-mechanised associations with landscapes and territories as economic resources, to be used for the purpose of economic growth and furthering `modernisation/development` of regions and peoples.[181] During European colonial expansion, the equating of property (and thus territorial sovereignty) with economic rationales of utilising (and harnessing/dominating) natures "productive capacity" justified the dispossession of local peoples, and the rejection and discrediting of `alternative` associations and relations with landscapes. This ultimately paved the way for cultural and social disenfranchisement and violence against Indigenous peoples in colonised and stolen spaces, and the breaching of human rights across the globe.[182] Connections to land, historically and today, go far beyond the economic, and are experienced through social, cultural, spiritual, health and other ties, which are often left forgotten and/or ignored within traditional rights-based framings of land.[183] Therefore, groups may struggle, oppose, or feel uncomfortable with the idea of invoking positive law instruments which require them to "translate" their demands into legal and political-economic categories (such as the right to property) which are associated with dominant economic and political orders and

[179] Ibid.

[180] See for instance Boisvert and Vivien, *Political Economy Approach to the CBD* (2012).

[181] Kuehls, *Beyond Sovereign Territory* (1996); Stuart Banner, 'Why Terra Nullius? Anthropology and Property Law in Early Australia' (2005) 29 *Law and History Review*.

[182] Kuehls, *Beyond Sovereign Territory* (1996); Jevgeniy Bluwstein, 'Colonizing landscapes/landscaping colonies: from a global history of landscapism to the contemporary landscape approach in nature conservation' (2021) 28:1 *Journal of Political Ecology*; Renee Racette, 'Tsilhquot'in Nation: Aboriginal Title in the Modern Era' in Hendry et al. (eds) *Indigenous Justice* (2018); Amrita Mukherjee, 'Customary Law and Land Rights: The Cautionary Tale of India, Jharkhand, and the Chotanagpur Tenancy Act in Hendry et al. (eds) *Indigenous Justice* (2018).

[183] Gina D. Stuart-Richard, 'Contestation of Space: Developing a Twenty-First Century Indigenous Cartographic Practices' in Hendry et al. (eds) *Indigenous Justice* (2018); Racette, *Tsilhquot'in Nation* (2018). Here, Racette in particular reflects on the uncertainty that arises from legal process in Canada with regards to the thresholds that communities must overcome in order to "prove" and ascertain their land title claims, which given the colonial histories of many areas, and the violence and harm this has brought to communities and spaces alike, may be impossible to provide.

ideologies.[184] Recalling the idea of *atmospherics*, we can see how certain ways of understanding the world and our relations to it risk invoking concepts steeped in historical colonial-imperial-expansionist thought. Here, that such ideologies and logics having become embedded within global discourse and institutions (be it legal, social, political, cultural and so on), means that they provide the very foundations of social organising and solutions-framing,[185] with actors needing to navigate this difficult terrain when seeking to invoke human rights-based arguments and thinking across the CBD lawscapes.

So, must we avoid human rights discourse all together when attempting to challenge unequal power dynamics within environmental governance more broadly? I do not believe so, provided that we pay more careful attention to the ways that human rights risks embedding such logics, which also thinking of ways for subverting them, and allowing for more ontologically diverse and respectful approaches to emerge. Notably, not all claims to land are grounded in hegemonic world-framings and capitalist ideology. Across the world grassroots movements have invoked rights-based discourses in their framings of social justice that aim to re-write understandings of land and land-relations. These embrace more diverse, multicultural and relational approaches, rejecting static ideas of territory as based on colonial lines on a map, or as the binary divides between public/private, mine/yours/ours, and challenging neoliberal and capitalist ideas of private/individual ownership.[186] This also came through when speaking with and hearing from Indigenous representatives at the CBD, who although invoke human rights discourse also stress the need to focus on relational association with land and ecologies, and emphasising responsibilities as well as rights of access, management and self-determination.[187] For instance, Chrissy Grant, Aboriginal Elder (Kuku Yalanji from the Jalunji-Warra clan) and Torres Strait Islander (Mualgal from Kubin on Moa Island) spoke of a community project in which the framework for action and understanding progress was grounded on the recognition of interlinkages between the health of people and health of Country. Here, land and territory was not understood as a static collection of resources to be divided and distributed, but as an agential body with whom certain communities hold deep and meaningful bonds and relations with; where "people need Country and Country needs people".[188] From this perspective, ancestral land title, a form of "ownership" over land, draws on institutional structures of a colonial State, yet subverts and reimagines a hegemonic concept of the world

[184] Watson, *Raw Law* (2015); John Borrows, 'Aboriginal Title and Private Property' (2015) 71 *The Supreme Court Law* Review; Cotula, *Between Hope and Critique* (2020), 515; Talaga, *All Our Relations* (2020).

[185] Indeed, many have critiqued the "return to colonial" paradigms in the current GBF target on protected areas. See 'Open Letter to Waldron et al' available at <https://openlettertowaldronetal.wordpress.com> (accessed 17/02/2021).

[186] See for instance Claeys, *Human Rights and Food Sovereignty* (2015); Fladvad et al., *Struggling against land loss* (2021).

[187] Authors notes, Dialogues at WG8J-11 and Interview A.

[188] Authors notes, Interview K. See Chrissy Grant, Leah Talbot and Liz Wren, 'Fact Sheet 3: The Strong Peoples-Strong Country Framework', the Australian Government <https://www.barrierreef.org/uploads/GRB5162-Fact-Sheet-3-AW4.pdf> (accessed 17/04/2022); See also Bamangka Kaban 'Newsletter of the Jabalbina Talanji Aboriginal Corporation' (December 2020) <http://jabalbina.com.au/application/files/1816/0859/7408/Bamangka_Kaban_DECEMBER.pdf> (accessed 17/04/2022).

traditionally grounded in economics and individual liberty, to instead embrace alternative relations grounded in health, community and Indigenous sovereignty.

This speaks to an important side of the human rights discourse, namely the way that rights-framing has opened up space for the re-imagining, and re-telling of social and environmental justice struggles by grassroots movements. Here, drawing on *rights*, as a widely recognised concept which the public can understand the basic tenets of, and relate to, provides a platform for further public mobilization and discussion, where these concepts can be teased out and re-thought.[189] This corresponds with calls for changing the way we understand rights as pre-existing "naturalised" norms, with Honig for instance arguing that this 'chrono-logical' understanding of rights encloses and constrains us from imagining new relations and realities grounded in openness and a plurality of perspectives and experiences, capable of responding to unpredictable unjust trajectories.[190] This aims to counter the depoliticisation of rights discourse, which has had the effect of detaching and distracting debate from the fact that ultimately the claim, protection and realisation of rights is intricately tied to political ideology and socio-economic ordering of space, people and things. Within the CBD, the reluctance of States to embrace, and draw on terminology from UNDRIP, is perhaps indicative of the potential power such frameworks hold for such re-tellings, where the very idea of State sovereignty effectively gets challenged by Indigenous claims of rights to self-determination, amongst others.[191]

In this sense, drawing on these alternative framings of human rights[192] and/or their associated concepts (like land and food systems), that challenge existing power structures and demand attention to plural appreciations of local realities and onto-epistemologies, within the CBD, may invoke what Philippopoulos-Mihalopoulos calls *ruptures* and *withdrawals*. These have the potential of challenging suppressive atmospherics and enabling a *reorientation* of the lawscapes by forcing participants to question things otherwise taken for granted. That they also often directly challenge hegemonic structures which underpin so much of how we understand the world – state sovereignty, individual property/land rights, individual entitlements – can help brings to the fore current inadequacies of our decision-making spaces and legal processes, and make other possibilities visible. In this sense, the debate on rights-framings and their associated concepts also ties in with questions of transformation change, which have been reflected on throughout this thesis. The *transformative change* called for by IPBES demands new human-nature relations, and alternatives to current practices and frameworks, with the discussion above offering us some insights into what that may look like. Unfortunately, due to the inherent limitations of this PhD thesis, I cannot discuss this in

[189] Fladvad et al., *Struggling against land loss* (2020), 86-7.
[190] See Bonnie Honig, 'Emerging Politics: Paradox, Law, Democracy (Princeton University Press, 2009), 53.
[191] Indeed, the continuous insistence and rigorous protection of Sovereign rights by States at international meetings is sometimes striking. I was told during an interview of an instance at negotiations under a different international legal regime that a country had refused to begin discussions until a miniature flag flown by the Indigenous caucus, brought by an Indigenous activist who was set to speak at the time, was taken off their table. Authors notes, Interview G.
[192] Fladvad et al., *Struggling against land loss* (2020).

greater depth here, yet I invite for more research to build on already exciting work in this field,[193] in the hopes that it will continue to influence and support observer groups engaging with these discussions within the CBD and beyond.

From a participatory perspective, it is clear from the above discussion that human rights discourse does hold potential in terms of re-adjusting relations within the CBD lawscapes, and prompting new, important questions regarding the very foundations of state sovereignty, human-nature relations and responsibilities vis-à-vis each other and our surrounding ecologies. Whether or not recognised by States, decisions taken by them at the CBD can have profound impact on a multitude of peoples' wellbeing and enable activities posing risks to individual and collective rights with regards to territories, means of subsistence and cultural expression, having profound knock-on effects on lives of peoples and ecologies. Certainly, invoking human rights discourse is not a panacea solution, and brings to the fore institutional and systemic inequalities and onto-epistemological hierarchies which risk making the act a constraining, rather than emancipatory one.[194] That said, if done in a way that challenges the subordination of `alternative` onto-epistemologies and common conceptions of what is "just" and "right", instead invoking new ways of seeing, understanding and doing, the language of rights may hold the capacity to subvert such hegemonic structures and concepts. This would make them capable of prompting epistemic *withdrawals* and *ruptures* in the sense that they may undermine suppressive *atmospherics* by addressing *tilts* in the lawscapes. For instance, a deeper recognition of collective rights within international biodiversity law, such as those associated with Indigenous rights to self-determination and customary territories, should not only mean permitting these groups access to decision-making spaces, but prompt fundamental shifts in the relations between sovereign Indigenous Nations and colonial States. This would involve bringing to the fore important questions of dynamics within international and domestic law-making, as well as strengthen opportunities for similar claims globally.

[193] Within academic debates, see for instance Stuart-Richard, 'Contestation of Space (2018); Sharon Toi, '*Mana Wahine*: Decolonising Governance' in Hendry et al. (eds) *Indigenous Justice* (2018); Miriam Jorgensen, 'Contemporary First National Law-making: New Spaces for Aboriginal Justice' in Hendry et al. (eds) *Indigenous Justice* (2018). There are also important initiatives for "decolonising" conservation and land management, such as the Conservation through Reconciliation Partnership which is an Indigenous-led conservation movement in Canada in the spirit of reconciliation and decolonisation, pursuing a model centring Indigenous leadership, mutual respect, reciprocity, shared relationships and a deep concern for the worlds current conditions. See for instance Conservation through Reconciliation Partnership website <https://conservation-reconciliation.ca> (accessed 17/04/2022), along with a report following their *Indigenous Circle of Experts* <https://static1.squarespace.com/static/57e007452e69cf9a7af0a033/t/5ab94aca6d2a7338ecb1d05e/1522092766605/PA234-ICE_Report_2018_Mar_22_web.pdf> (accessed 17/04/2022). For work looking at alternatives to rights-based framings in conflict resolution, see Hendry and Tatum, *Human Rights, Indigenous Peoples and the Pursuit of Justice* (2016).

[194] For instance, Coulthard writes in his book *Red Skin, White Masks* that '[Canada has over the past forty years] recognised a host of rights specific to Aboriginal communities, including most importantly to land and self-government […] Canada has always used this recognition, however, as evidence of its ultimately just relationship with Indigenous communities, even though this recognition continues to be structured with colonial power interests in mind'. See Coulthard, *Red Skin, White Masks* (2014), 155.

Bringing this into conversation with the participatory discourses mentioned earlier, the participatory rights stemming from Principle 10 of the Rio Declaration largely correlate with the idea of *democratic pluralism*, which sees the presence of non-state actors as increasing input legitimacy through procedural values, such as enhancing transparency, representation, inclusion, and accountability. Under this designation `civil society`, especially local grassroots groups, should hold a more central role within decision-making spaces compared to the designations explored in the earlier two subsections. Yet, in reflecting on critical human rights scholarship, as well as keeping in mind the critical participatory scholarship explored earlier in this thesis, we have good reason to question the efficacy and transformative potential of invoking ideas such as transparency, representation and accountability, not to mention overarching input/output legitimacy of participatory processes more broadly, given the way that this often gets reduced to tick-box exercise. For instance, with regards to Indigenous rights, what attention to some of the substantive aspects of, say, the right to self-determination, holds is the potential of shifting participatory discourse from one of input/output legitimacy, to one grounded in the necessity of upholding sovereign rights, yet in a way that reimagines what that means and aims to revert colonial trajectories.

5.5 Conclusion

This chapter has sought to understand the ways that actors get "cast" within the CBD processes, what this tells us about the values underpinning these processes, as well as the ways that participants are positioned, and can contribute, as a result of this. Doing this through the spatial in/justice lens has meant going beyond just looking at the actors themselves, to asking questions as to what their inclusion signifies with regards to overarching values, discourses, ideologies and the onto-epistemological conditions setting the stage for how decision-making is framed, and performed therein. Throughout, I have shown the *atmospherics* that risk undermining deeper forms of recognition, and providing space for diversity and difference within negotiating process.

Following an introduction of my theoretical framework, I provided a cautionary tale of some of the risks associated with the term `civil society` as a catch-all phrase when referring to non-state actors engaged in negotiations. I highlighted how its use risks overshadowing the unique and diverse characteristics of any given group, and the particularities of their messages and demands, instead offering a simplistic and homogenous imagery of those battling ecological harm and systemic oppression. We can for instance see this in the common practice of equating `civil society` or public `participation` with representation by global NGOs. This does a huge disservice to the grassroots movements carrying the burden of combatting inequality, marginalisation and violence at the "front lines" of global struggles. This is made all the worse by the phenomena called NGO-isation, signifying the de-politicisation, and settling of managerial and technocratic logic across conservation practice, undermining important calls for transformative change which requires onto-epistemological diversity and bottom-up structures of decision-making. For this part of the chapter, my

contribution is primarily the linking up of literatures across disciplines, and addressing a blind spot in traditional legal research which is ill-equipped to deal with the consequences of such dominant discourses and the impact they may have on the inclusiveness of a process.

The final section explored the overarching narratives and discourses framing dominant understandings and practices of public participation within the international environmental law and politics. I drew parallels between the framings of neocorporatism, functionalism and democratic pluralism and the "casting" of actors within the CBD negotiations. I looked closer at the terminologies employed to position non-state actors within the CBD processes and debates; *stakeholder*, *knowledge-holder* and *right-holder*. Here, I signal towards lawyers and practitioners to be more wary of the terminology used in every-day speak. I found that the former two, seen as aligned with the designation of actors as *stakeholders* and *knowledge-holders,* are ill equipped for addressing issues of *executive multilateralism*, which signifies what many see as a democratic deficit within these processes due to their state-centric, elite driven and technocratic nature. I show how their reference risks enabling and re-embedding *oppressive atmospherics* which undermine the ability of the CBD lawscapes to hold space for nuance, diversity, contention and innovation. This is mainly because the framings risk reducing the idea of participation and inclusivity to being a matter of managerial and technocratic ideals of efficiency and expertise. The identities prescribed to certain groups can also delimit their own ability to engage with process in certain ways, which may affect how they feel able to represent their constituents. Bringing this to light within the CBD, and offering clear examples of it, is significant precisely because it shows us that the current dominant approaches to participation are failing to address the very issues that they set out to deal with in the first place (*executive multilateralism).* My work therefore highlights a need for institutions and dominant actors to consider the inadequacies of current methods and practices, and be prepared to embrace new and innovative ways for how to structure space and discussion, and how local actors may engage therein.

As an alternative to the above, several actors have begun proposing the use of human rights discourses in order to address current inadequacies in both the procedural and substantive aspects of environmental law, from a social justice perspective. In my discussion and analysis, I point out that although this does hold potential for re-adjusting relations within the CBD lawscapes, and biodiversity law and governance more broadly, there are also risks with such approaches. These risks are associated with the embeddedness of neoliberal and onto-epistemological hegemonies within some dominant approaches to human rights interpretation and practice. Equally, its connection with state sovereignty, especially with regards to rights to land and access to resources makes their invocation sometimes a more constraining and emancipatory endeavour. Yet, I identify some instances where rights discourses ca, and has been used to challenge the subordination of diverse onto-epistemes, and instead enable new ways of seeing, understanding doing to emerge. This means also committing to a deeper reckoning with certain concepts which underpin existing relations within international law-making. For instance, recognising collective rights, such as those associated with the right

to self-determination and customary territories, should not simply mean access to decision-making spaces, but a fundamental shift in the power dynamics between actors therein. This ties in closely with the overarching onto-epistemic conditions underpinning discussion at the CBD, especially with regards to the institutional structure and decision-making power that actors hold therein. It also relates to the ways that current dominant ontologies and epistemologies are constraining the emergence of onto-epistemic justice and diversity in terms of what worldviews and knowledges shape, and inform decision-making. Both these issues will be explored in the next (and final) chapter.

Chapter 6: Pre-scripting and prescribing biodiversity law

Knowledge diversity and onto-epistemic in/justice across CBD negotiations and biodiversity governance

6.1 Introduction

During COP-14 in Egypt, and WG8J-11 and SBSTTA-23 in Montreal, halls were alight with talk of *transformative change*. Defined within the IPBES Global Assessment report, the term refers to "a fundamental, system-wide reorganisation across technological, economic and social factors, including paradigms, goals and values".[1] Multiple times, the report noted that it is only through *transformative change* that countries will achieve the 2030 and 2050 global goals for conserving and sustainably "using" nature. On the face of it simple and straightforward, the term lends itself well to being added to the repertoire of terminology politicians and other powerful actors can draw on to maintain a show of hard work. Yet, these necessary shifts in paradigms, goals and values bring to the fore complex relations, tensions and incompatibilities within the very CBD structure itself, demanding a deep reckoning with the onto-epistemological hierarchies underpinning discussions across its lawscapes. This will require asking important questions as to how nature is perceived, valued, lived alongside, protected, from/by whom, and to what end. Whether these questions get posed at all, and indeed how they are subsequently answered, will depend upon the very world-framings (ontologies) that dominate those spaces, and what knowledges and knowledge systems (epistemologies) are deemed capable of providing the answers. This chapter thus aims to explore the ways that current onto-epistemic hierarchies and hegemonies materialise within the CBD negotiations, and how this enables or constrains the emergence of ontological and epistemic diversity within `biodiversity` law and governance.

Critical scholars across disciplines have long highlighted the ways in which decision-making related to environmental protection, especially that of biodiversity conservation, has long held scientific, technocratic and managerial logic at its core, which has brought with it positivist, [cartesian]dualistic and reductionist thinking into knowledge-production, policy and practice.[2] And this to the exclusion of those whose lives and livelihoods not only stand to be directly impacted by these decisions and actions, but also whose knowledges may hold the key for more appropriate and suitable planning and practice. Indeed, drawing on the previous chapters, a shift in understanding, perceiving, and prioritising relations in society should help prompt a change in inter-human and intra-human relations. Here, the bringing in of multiple ways of perceiving societal organising, and the strengthening of community safeguards to

[1] IPBES, *Summary for Policymakers* (2019). Notably, the term "transformative change" began gaining traction at COP-14, following early release of a draft of the report for comments and feedback.

[2] See for instance work by scholars such as Arun Agrawal, Arturo Escobar, Dilys Rose, Dan Brockington, Bram Büscher, Rosaleen Duffy. For critical perspectives of international law more broadly see Andreas Philippopoulos-Mihalopoulos, Anna Grear, Karen Morrow, Balakrishnan Rajagopal, Olivier De Shutter, Ntina Tzouvala, Daniel Matthews, Sheila Jasanoff, George Manuel, Michael Posluns, Mark Mazower.

traditional lands and land practices, would have knock-on effects in how ecosystems are co-habited.[3] Having this shift occur on the international level is crucial precisely because of the ways that international law-making filters into policies on the regional, domestic and local levels, influencing funding opportunities and institutional agendas, therefore laying the groundwork for action "on the ground".[4] Therefore, although shifting dynamics in decision-making on the domestic and local level is crucial from a social justice and policy-making perspective, bringing in actors, and opening up space for diverse onto-epistemes within international negotiation spaces is crucial precisely because these set the tone for cross-scalar influences. Although some previous work has looked at this, there still exists a gap in understanding the ways that onto-epistemological hegemony, and thus injustice, materialises across the CBD spaces, be it in explicit, or more nuanced forms.

With this as the backdrop, the aim of this chapter is to look more closely at the onto-epistemological hierarchies inscribed within the CBD negotiating lawscapes, and the ways that this hinders or enables the emergence of spatial in/justice with regards to the participation of local actors, and onto-epistemological diversity, within these spaces. The previous chapters of this thesis have looked at the ways in which aspects of the negotiations hinder meaningful access to its spaces from a participatory angle. This has included the spatial conditions and configurations of the spaces themselves, their procedural customs and cultures of practices, engagement, and the language and terminology employed in the designation and casting of actors. My piece here draws on that work and its elements, yet goes further into exploring the ways that particular worldviews and knowledge systems dominate these spaces, often to the exclusion of others through the settling of *oppressive atmospherics*.

I will begin the chapter with introducing an overview of the theoretical debates surrounding onto-epistemological in/justice, and connecting this in turn to the idea of spatial in/justice drawn on and engaged with throughout this thesis. The following section looks closer at the idea of *onto-epistemic in/justice* within international environmental law and governance debates, connecting this closer to the critical scholarship on international environmental law introduced in my theoretical chapter. I will then delve into an exploration of the ways in which onto-epistemic injustice materialises across the CBD negotiations, doing so by analysing the ways that certain terminology carries with them particular historical, cultural and onto-epistemological connotations, and signalling for how biodiversity conservation is conceived and framed. Yet ultimately the terminologies highlighted are signifiers for the atmospherics – at times oppressive – that *settle* onto-epistemological *tilts* across CBD negotiations, having an exclusionary effect on participation, and blocking important progress towards enabling a plurality of worldviews and knowledge systems, aspects necessary for the achievement of

[3] See Forest Peoples Programme et al., Local Biodiversity Outlooks 2 (2020). See also Mika Schroder, 'Governments fail to meet the Aichi Biodiversity Targets – do they have a pathway towards "transformative change"?' (September 2020) *No. 16 SCELG Policy Brief.*

[4] See for instance Blomley et al, *The Legal Geographies Reader* (2001); Mark Goodale, 'Locating Rights, envisioning law between the global and the local' in Goodale and Sally Engle Merry (eds) *The Practice of Human Rights* (CUP, 2007).

transformative change. I will end the chapter with a short reflective section on the significance of the upcoming discussions on what comes next following the completion of the WG8J mandate. Given the unique place that the WG8J provides in terms of shifting, and challenging onto-epistemological hegemonic conditions within the CBD framework, my argument here is that Parties will have to step up in order to have any hopes to achieve that which they set out to do in the Convention.

6.2 Theory: Onto-Epistemic in/justice as Spatial in/justice

> *Existence is not an individual affair. Individuals do not pre-exist their interactions; rather, individuals merge through and as part of their entangled intra-relating. Which is not to say that emergence happens once and for all, as an event or as a process that takes place according to some external measure of space and of time, but rather that time and space, like matter and meaning, come into existence, are iteratively reconfigured through each intra-action, thereby making it impossible to differentiate in any absolute sense between creation and renewal, beginning and returning, continuity and discontinuity, here and there, past and future.*[5]

Karen Barad begins her book *Meeting the University Halfway*, with a simple, yet consequential statement; that "matter and meaning are not separate elements". When stating that "mattering is simultaneously a matter of substance and significance",[6] what she is getting at is that we cannot have knowledge without matter, and we cannot have matter without knowledge. In this sense, epistemology, as the assigning of meaning and understanding – in short, creating knowledge – of our material surroundings, is inexplicably interwoven, and entangled with ontology, as the understanding of us *being* in this world, as part our surrounding materialities – in short, subscribing to a particular worldview.[7] In other words, the way knowledge is understood, created, cherished, and used flows directly from the ways in which we see the world, and our relationship to it. In turn, our worldviews are sustained and reinforced through the knowledges that inform us of our worlds and the relationships we form/have with them.[8] Barad's agential realism proposes an epistemological-ontological-ethical framework for understanding the roles (and relations) of "the human *and* nonhuman, material *and* discursive, and natural *and* cultural factors in scientific and other social-material practices", prompting shifts away from supposedly binary notions in society, in turn asking for a fundamental

[5] Karen Barad, *Meeting the Universe Half-way: Quantum Physics and the Entanglement of Matter and Meaning* (Duke University Press, 2007), *Preface*.
[6] Ibid, 3.
[7] Ibid. Boaventura de Sousa Santos argues that "the very action of knowing […] is an intervention in the world, which places us within it as active contributors to its making. Difference modes of knowing, being irremediably partial and situated, will have different consequences and effects on the world". See Boaventura de Sousa Santos, *Another Knowledge Is Possible: Beyond Norther Epistemologies* (Verso, 2007), xxxi; de Sousa Santos, *Epistemological of the South* (2016), 196.
[8] Veena Das 'Knowledge' in Veena Das and Dider Fassin (eds) *Words and Worlds: A Lexicon for Dark Times* (Duke University Press, 2021).

rethinking ideas of agency, discourse, power, objectivity, space and time.[9] This includes the need for an erosion between nature-culture dichotomies, which remains embedded within the current dominant worldly imaginaries and problem-solution projections explored within this thesis.[10]

This is to say that for this chapter, and throughout this thesis, when speaking of epistemic in/justice, the issue of ontology is always present.[11] As will be shown, this has direct consequences for the topics discussed at the CBD. This is especially true in relation to the recognition of particular knowledges and knowledge systems within decision-making spaces pertaining to biodiversity loss, as well as the `participation` of *knowledge-holders* whose expertise falls outside the purview of the dominant techno-scientific, and capitalist paradigms. I will return to this below when introducing the link between onto-epistemic in/justice and spatial justice, including how this features within environmental law and governance.

In turning now to onto-epistemic in/justice; in its broadest sense, this concerns how the epistemic foundations of practices and institutions across society enact and structure spaces and relations in ways that privilege certain epistemic values and framings, while simultaneously prompting unjust conditions for certain knowers and knowledges.[12] This can, for instance mean having one's experiences, perspectives or knowledges, denied, rejected or undermined. Scholarship as early as the 1980s brought to light institutional suppression and silencing of Black women's ideas and perspectives through epistemic violence and interpretive silence, stemming from men's constrained imaginations and the 'cognitive authority' within institutions in how issues are framed and social life and subjects are projected, which (as explored in the previous chapter) sets limits on what counts as meaningful and important.[13] Epistemic injustice can also mean not being able to speak for oneself. Gayatri Chakravorty Spivak uses *epistemic violence to describe* scenarios in which mainstream understanding of *subaltern* peoples' interests does not make space for *their own* formulations and knowledge-claims regarding their own interests.[14] Spivak's work ties in with wider (post-)colonial studies, further discussed below, which illustrates the way in which colonialism relied upon epistemic violence

[9] Ibid, 26.

[10] Ibid, 35. Notably, this is a long-standing critique, for instance among eco-feminist scholars. Regardless, the core issues addressed by it remains applicable to powerful geo-political and mainstream environmentalist discourses such as the CBD. See discussion in Chapter 2 Section 2.2 and Chapter 5 Section 5.4.2.2.

[11] So, moving forward I will refer to "onto-epistemic in/justice" as opposed to "epistemic in/justice" as is common across disciplines.

[12] See generally Gaile Pohlhaus, Jr., 'Varieties of Epistemic Injustice' in Ian James Kidd, José Medina, Gaile Pohlhause, Jr. (eds) *Routledge Handbook of Epistemic Injustice* (Routledge, 2017).

[13] Vivian M. May, 'Speaking into the Void? Intersectionality Critiques and Epistemic Backlash' (2014) 29:1 *Intersticesː Inheriting Women of Color Feminist Philosophy,* 65-8. Importantly, May draws on the work of Anna Julia Cooper, Sojourner Truth and many other early black feminist scholars and rights activists, reminding us that resistance to oppression has existed for as long as oppression itself.

[14] Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?' in C. Nelson and L. Grossberg (eds) *A Marxism ant he Interpretation of Culture* (University of Illinois Press, 1988). This has also been called hermeneutical in/justice, where "hermeneutics" refers to agency of interpretation. Miranda Fricker has defined it as the 'injustice of having some significant area of one's social experience obscured from collective understanding'. See Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (OUP, 2007).

to create the uncivilised *Other* in order to justify their oppression, subjugation and the appropriation of foreign assets.[15]

In this sense, onto-epistemic in/justice also illustrates the ways in which systems of dominance and oppression, embedded within social structures and public values, such as racism, patriarchy and capitalism, establishes hierarchies of persons and sub-persons. Alongside this, it also creates epistemic hierarchies of knowers, and sub-knowers, where the sub-knower is deemed incapable of intellectual achievement and progress, with their knowledges seen, as a consequence, as *lesser*.[16] This has been explored and witnessed in traditional and contemporary legal processes with regards to who is able to bear testimony, as well as across societal institutions where onto-epistemic conditions and hierarchies have led to the systematic dismissal, rejection, or undermining of, for instance, women, Black peoples, Indigenous Peoples, migrants, or [insert other identity other than the affluent, rational, white male] as persons capable of providing reliable, or even useful information and perspectives to decision-making spaces, further reinforcing their subjugation as sub-persons.[17]

An example of this, relevant to my own fieldwork, is the ways that women continue to face historical exclusion from accessing land and resources, and the decision-making pertaining to their management. Here, onto-epistemic injustice is seen in the ways that the knowledges and practices traditionally associated with women's labour, including agroecological expertise linked to crop resilience, nutrition and the cultural significance of landscapes, are undervalued when placed alongside capitalist priorities of high crop yields and greater commercial gain.[18] When seen through the lens of onto-epistemic injustice, it becomes clear that women's increased access to, and *equality* within decision-making spaces won't necessarily prompt change unless those spaces themselves adopt a substantial shift towards more relational and diverse onto-epistemologies in terms of how priorities are identified, and solutions forged. Countless similar examples of onto-epistemological injustice can be witnessed across biodiversity conservation policymaking and practice, some of which will be introduced and discussed in the next section. First, I will connect the concept of onto-epistemic in/justice with that of spatial in/justice.

While Philippopoulos-Mihalopoulos does not explicitly engage with onto-epistemic in/justice in this theory on spatial justice, it seems to flow throughout his reasoning and examination of the *tilts, ruptures, atmospheres* and *withdrawals* within the *lawscapes*. Indeed, his concept of lawscapes, and legal geography more broadly, carries onto-epistemic consequences for legal

[15] See Ian James Kidd, José Medina, Gaile Pohlhause, Jr., 'Introduction to the Routledge Handbook of Epistemic Injustice' in Kidd, et al., *Epistemic Injustice* (2017).

[16] See for instance Charles W. Mills, *The Racial Contract* (Cornell University Press, 1997), at 16-17 and 44-46; Lorraine Code, *What Can She Know? Feminist Theory and the Construction of Knowledge* (Cornell University Press, 1991); Nancy Tuana, 'The Speculum of Ignorance: The Women's Health Movement and Epistemologies of Ignorance' (2006) 21:3 *Hypathia*.

[17] Ibid. Kidd et al, *Introduction* (2017), 17.

[18] Christine Brautigam, Verona Collantes, Sylvia Hordosch, Nicole van Huyssteen, Sharon Taylor and Hanna Paulose, 'Research Paper: Towards a Gender-Responsive Implementation of the Convention on Biological Diversity' (UN Women, 2019), 2-5.

and political practitioners in that it demands a rejection of silos, disciplinary and sectoral divides, by arguing that these are merely socially, or culturally constructed categories. Rather, the topics and practices within them are inseparable, intertwined in a continuum, a flurry of activity which has material effects on how we understand each other. From the outset, when seeing lawscapes as emerging from the way in which the *ontological tautology between law and space unfolds as difference,*[19] Philippopoulos-Mihalopoulos highlights from the outset the significance, and consequence of the ways in which the (ontological) in/visibilisation of law, has impacts on our ways of perceiving, understanding, and relating to our own worlds.[20]

From an epistemological perspective, Philippopoulos-Mihalopoulos also emphasises how space and law are inextricably linked by the ways that each operates as a means for better understanding the other. As explained in my theory chapter,[21] focusing on the spatial helps us visualise law's materiality,[22] the ways that it creates societal "truths" and perspectives through its narratives, and the ways it seeks to "manage" power struggles within a given setting. At the same time, law provides us with values, means of measurements and prescribes identifies and relations for understanding and perceiving space, with its concepts, principles, and rules becoming reference points for understanding our own existence and surroundings. In other words, law and space, as conceived through the lawscapes (which are all around us) play a fundamental role in shaping, and dictating the dominant ways that we perceive ourselves and others, our surroundings, and the relations there between.

When Philippopoulos-Mihalopoulos then speaks of *tilts* in the lawscape, he seems to be speaking of what we introduced above as onto-epistemic injustices. *Tilts* refer unequal power relations between bodies, meaning that some are in more favourable positions to, say, reinforce their own positionality, agendas, knowledges/expertise, perspectives, or interests, while pushing those of others to the margins.[23] It is essentially the unequal footing through which people engage with each other within a given setting. The nature of these tilts are legal-spatial-temporal, and their sources onto-epistemic; law demarcates and distributes land, territory, resources, rights, offers protection or avenues for redress, identifies morally good/wrong acts and rewards/punishes accordingly. This is done on the back of particular dominant ontologies, with accompanied dominant epistemologies acting so to reinforce their very existence.[24] This corresponds with what I introduced above with regards to onto-epistemic in/justice. Here, *the atmosphere,* and *atmospheric conditions* within the lawscape are settled *tilts* that have become visibly – although not actually – detached from their ontological

[19] Philippopoulos-Mihalopoulos, *Spatial Justice* (2015), 4.
[20] Here, "in/visibilisation" is the ontological conditions of the lawscape. Philippopoulos-Mihalopoulos uses the contrasting examples of a no-smoking sign in a public space as the visibilisation of law, with the "free, open space of an art gallery" doing the opposite. In the former, the space is obviously regulated and has ceded priority to the law, whereas in the latter, the space "retains a façade of ambling and seemingly unconstrained movement free from legal presence". Ibid.
[21] See Chapter 2 Section 2.3.1.
[22] Davies, *Law Unlimited* (2017), 9-10.
[23] Philippopoulos-Mihalopoulos, *Spatial Justice* (2015).
[24] See Chapter 2 Section 2.3.3.

foundations.[25] A key consequence of this is the normalisation of *ways of being, and doing*; these are no longer grounded in explicit rules or politics, they are simply "the ways we live, and do things [now]", inevitable, necessary, impossible (or too onerous) to change.[26] These suppress visions of innovation, revolt, paradigmatic shifts and transformative change. In this sense, *oppressive atmospherics* constitute particularly dangerous forms of onto-epistemic injustice, because it is within these conditions that opposition or protest begins to feel futile, and onto-epistemological paradigmatic shifts unnecessary or simply impossible.

Given that *tilts and atmospherics* are onto-epistemic in nature, and that Philippopoulos-Mihalopoulos argues that, in order to disrupt the *tilts* underpinning oppressive *atmospherics,* these must effectively reorientate the lawscape by destabilising the foundations upon which inequality rests, I am drawing the conclusion that these acts must be of an onto-epistemic nature too. In other words, for us to disrupt *spatial injustice*, which as I have shown above is grounded in *onto-epistemic injustice*, we need to see changes in the ways that dominant ontological and epistemological frameworks influence, and materialise at negotiations. This means paying careful attention to the in/exclusion of particular groups and their associated knowledges, perspectives, worldviews and interests. I began illustrating this in my last chapter on the casting of actors within the CBD negotiations, showing how the *way* that groups were identified and positioned in terms of contributing to the formulation of international environmental policy, has significant material implications for the ways that they are permitted to engage in that process, and possibly hindering meaningful participation.

Putting this into perspective for my own project, it is also important to recall that onto-epistemic justice traverses scales.[27] Spatial In/justice, and its concept of the continuum of lawscapes tells us this too; these spaces do not exist, or operate in a vacuum.[28] This is true both for temporal, geographic and political-institutional meanings of 'scales', with the onto-epistemic conditions which have justified the oppression, marginalisation and violence committed against certain groups within a certain structures, permeating into others. This has a number of consequences. For one, violent practices of the past are carried into the future through

[25] See Philippopoulos-Mihalopoulos, *Law's Spatial Turn* (2010) 187-202.

[26] Rhetorical question; how often have you heard the phrase "that is just how things are done" or "that is just the world we live in" when talking about alternative futures with friends, family and colleagues?

[27] See for instance Nancy Tuana, 'Feminist Epistemology: The Subject of Knowledge' in Kidd, et al *Epistemic Injustice* (2017); Philippopoulos-Mihalopoulos, *Spatial Justice* (2015), 7-9; Jasanoff and Martello, *Earthly Politics* (2004), 18. Here, the idea of 'scale', and the subsequent practice of identifying and demarcating between scales, is itself an onto-epistemological exercise. Scales are not inherent aspects of social organising, nor are they static, bounded, exclusive or stand-alone, but rather fluid and constantly evolving, as the "things" they seemingly contain. Their identification and categorisation is itself grounded in political, cultural, geographical, ontological and epistemological reasoning, and can have significant effects on how society is projected and perceived, and thus how laws are elaborated in reinforcing such organising. See for instance Anne Griffiths review of Susan Drummonds book *Mapping Marriage Law in Spanish Gitano Communities* (UBC Press, Vancouver and Toronto; 2006): Anne Griffiths, 'Law, Space, and Place: Reframing Comparative Law and Legal Anthropology' (2009) 34:2 *Law & Social Inquiry*.

[28] Ibid. See Chapter 2 Section 2.3.2.

bodies, with trauma passed on from generations;[29] Native lands remaining in the hand of settlers,[30] chemicals from oil spills continuing to poison generations of humans and more-than-human-beings,[31] the racialised and patriarchal logics within public knowledge,[32] underwritten in laws, courts and enforcement officials, written into the minds of legal professionals, as well as the public, uttered on the streets or across social media.[33] Given the permeating and stubborn persistence, and in many ways *invisible* presence, of *oppressive atmospherics*, distrust on behalf of peoples and groups that have faced marginalisation, exploitation and/or violence at the hands of any given institutions, is warranted, and denying this is denying spatial and onto-epistemic injustice. The same goes for the misappropriation of Indigenous knowledges, or merely disingenuous efforts at `participation` of marginalised groups for "social licenses to operate".[34] This goes for governments, corporations, UN institutions, NGOs, as well as the academic and scientific community. Thus, looking away from, or seeking to undermine the warranted distrust felt on behalf of particular groups that have faced historical oppression or violence on behalf of certain institutions can itself constitutes a form of onto-epistemic injustice.[35] It also risks missing a key point of "transformative change", since only by reckoning with the past, and enabling changes in the onto-epistemological foundations of these powerful bodies and their decision-making spaces, can they, as global forces begin to envisage, and embrace socio-ecologically sound futures.

---

[29] See for instance Anna Motz et al., *Invisible Trauma: Women, Difference and the Criminal Justice System* (Routledge, 2020); Arielle Humphries, 'Black Lives Matter: Reparations Policy Agenda' (2016) 9:5 *Africology: The Journal of Pan African Studies*; Kalinda Griffith et al., 'How colonisation determines social justice and Indigenous health – a review of the literature' (2016) 33 *Journal of Population Research.*

[30] See for instance the pan-american Indigenous-led decolonising *Land Back* Movement, which demands land restitution to Indigenous peoples. NDN Collective, 'LANDBACK Manifesto' <https://landback.org/manifesto/> (accessed 29/12/2021).

[31] There are countless examples of this. Take for instance Mirjana Masha, 'The Dangers of Oil Pipelines in Indigenous Territories' (August 2020) Storymaps <https://storymaps.arcgis.com/stories/a19da5375bb24b7bb1bcbf29d2d0bb0d> (accessed 29/12/2021); Michael E. Jonasson et al., 'Oil Pipelines and food sovereignty: threats to health equity for Indigenous communities' (2019) 40 Journal of Public Health Policy; and Ranjan Datta and Margot A. Huribert, 'Pipeline Spills and Indigenous Energy Justice' (2020) 12:1 *Sustainability*.

[32] See for instance Åsa Malmberg, 'How the Sámi were affected by research in "racial biology"' (December 2021) Umeå University blog post <https://www.uu.se/en/news/article/?id=17908&typ=artikel> (accessed 29/12/2021).

[33] This is experienced by individuals and collectives through every-day racism, sexism, ableism, xenophobia and other "isms", through loud, blatant utterances or underhand comments, aka. micro-aggressions. In a most simple example, a Sámi colleague, while walking into a store in her home town, was confronted by an elderly man who expressed that he knew she was Sámi "because of the shape of her head". Although *meaning* no harm, the logic underpinning this statement is the work of racial biologists, who carried out, up until the 1970s, anatomical measurements of Sámi peoples skulls so to distinguish them as a "lesser" race. For my colleague, it was a triggering experience, one bringing to the fore historical violence and institutional racism and degrading treatment committed against an entire population with effects still reverberating today. See footnote directly above. For dramatization of this period in Swedish history, see Sameblod (2016) Directed by Amanda Kemell, Produced by Lars Lindström.

[34] See for instance de Sousa Santos, *Epistemologies of the South (2014),* 122-3.

[35] Heidi Grasswick, 'Epistemic Injustice in Science' in Kidd, et al *Epistemic Injustice* (2017).

Finally, notwithstanding the absolutely central role of local-level action in enabling transformative, radial and meaningful change, the importance granted international environmental law and governance structures, means that they have a significant role in the shaping and legitimising of narratives, and onto-epistemic framing, that ultimately set the scenes for work "on the ground".[36] As such their spaces play a significant part in enabling/rejecting the *tilts* within the lawscapes and the settling/countering of *oppressive atmospherics*, which filter down into regional, domestic and local policies. This corresponds with those arguing that environmental governance scholarship should move away from "conservation education" local peoples (as per top-down development practices) to high-level political power bases.[37] As critical scholars before me have shown, confronting onto-epistemic, and spatial injustice within global *and* local biodiversity governance means reckoning with the onto-epistemic hegemony of capitalism, neoliberalism, cultural imperialism, and techno-scientific logics which currently drive forth global framings of ecological problems and solutions, which also places other peoples, ideas and ways-of-doing, at the margins.[38] I will spend the following section introducing the scholarship exploring these and their current place within environmental law and governance.

6.3 Onto-Epistemic Displacement within International Environmental Law and Governance

As introduced in my theoretical chapter, critical scholars have long held that particular cultural, political and economic hegemonies sit at the heart of international relations and rule-making.[39] Underpinning much of this critique is the lasting heritage, and continuum of effects stemming from European colonialism, encapsulated in ideas such as `modernity` and `development`, which in many ways continue to support and foundations of Western imperialism and expansionism.[40] Mignolo's *colonial matrix of powers* highlights the ways that coloniality remains embedded across society and within peoples' minds. He puts forward the thesis that this occurs through dominant narratives which reinforce the hegemonies of political, scientific and cultural Western superiority. For instance, as discussed in Chapter 4,[41] the idea

[36] Within the context of decolonisation and Indigenous resurgence, Glen Sean Coulthard, Yellowknives Dene scholar, notes that although the ideas of "resurgence are at their core rooted in land and place", he quotes Leanne Betasamosake Simpson in recognising that we are also "intrinsically linked to and [are] influencing global phenomena; indeed, our systems of ethics require us to consider these influences and relationships in all our decision making". See Glen Sean Coulthard, 'Introduction: A Fourth World Resurgent' in George Manuel and Michael Posluns, *The Fourth World: An Indian Reality* (Minnesota University Press, 2019). See also Leanne Betasamosake Simpson, *As We Have Always Done: Indigenous Freedom through Radical Resistance* (Minnesota University Press, 2019).

[37] See Chapter 3. See also Mathew Bukhi Mabele, Laila Sanfroni, Y Ariadne Collins and June Rubis, 'What do we mean by decolonizing conservation? A response to Lanjouw 2021' Conviva Blog (7 October 2021) <https://conviva-research.com/what-do-we-mean-by-decolonizing-conservation-a-response-to-lanjouw-2021/> (accessed 30/12/2021); in response to Annette Lanjouw, 'De-colonizing conservation in a global world' (2021) 83:4 *American Journal of Primatology*.

[38] Santos, *Epistemologies of the South* (2014), 28; Morrow, *Perspectives on environmental law: a continuing role for ecofeminism* (2011); Grear, *Foregrounding vulnerability* (2017).

[39] See Chapter 2 Section 2.2

[40] Ibid. Especially Mignolo and Walsh, *On Decoloniality* (2018), 105-110.

[41] See Chapter 4 Section 4.2.1.

of modernity operates as a form of *oppressive atmospheric*, where societal "progress" is measured according to particular dominant cultural, economic and political visions, which in turn set the conditions for discussions and action, and relations within a given *lawscape*. As discussed above, *atmospherics* emerge from onto-epistemic injustice, which in the case of modernity stems from an amalgamation of particular discourses which Mignolo and several others identify as grounded in ideas of scientific and economic "progress", political and cultural imperialism, and globalisation.

In turn, within international law, what paved the way for expansionist territorialisation (taking of lands) and political-cultural imperialism, was the idea of *sovereignty* which distinguished between the *un/civilised*. As discussed in Chapter 2 and Chapter 4, this corresponded with the instrumentalisation, and commodification of nature and land, providing new ways for valuing, perceiving and organising society and nature, in turn grounded in Cartesian dualism – the inherent separation between man and nature – which strengthened ideals of objectivity and rationality, marking the emergence of "enlightenment" and the coming-of-age of scientific methodological hegemony.[42] Across the colonies, "claiming" territory required the discrediting and rejecting of alternative associations, worldviews and ways of knowing, relating to land and nature, paving the way for cultural and social disenfranchisement and violence against colonised peoples. It was precisely through this *Othering* of local peoples, making them "*lesser than"*, European settlers, and the equating of property and territorial sovereignty with economic rationality; harnessing and maximising 'nature's productive capacity', that ultimately justified the dispossession of peoples from their lands, and forcing cultural and social assimilation.[43]

In this regard, Rebecca Tsosie sees the history between Indigenous peoples, and settler communities and colonialism as one of *epistemic imperialism*, channelled through the legal system; (epistemic) values of efficiency, instrumentalism, and dominion of nature came to stand for what was "true", privileging science and technology as objective and therefore 'value-free'.[44] It is important for us to remember that, during this period, the scientific method was used extensively, *in order to* justify the marginalisation, and violence committed against Indigenous peoples, with studies in racial biology "proving" the inferiority of colonised peoples.[45] What more, from an onto-epistemic, and spatial justice perspective, the above also marked the consolidation of Western legal structures, and European ideas of modernity, as not only favourable, but as *the only way forward.* In other words, as Heather Davis and Zoe

[42] Here, it is worth saying that *pockets* of the natural and social scientific disciplines have come a long way in rejecting traditional, dualistic, and siloed approaches to understanding society and socio-ecological entanglements, and embracing alternative onto-epistemologies, breaking down barriers and embracing more interconnected and complex thinking. See for instance Anna Tsing et al. (eds), *Arts of Living on a Damaged Planet: Ghosts and Monsters of the Anthropocene* (University of Minnesota Press, 2017); Marisol de la Cadena and Mario Blaser, A World of Many Worlds (Duke University Press, 2018); and Max Liboiron, *Pollution is Colonialism* (Duke University Press, 2021).

[43] See Chapter 2 Section 2.2, and Chapter 5 Section 5.4.2.3.

[44] See generally Tsosie, *Indigenous Peoples and Epistemic Injustice* (2017).

[45] See footnote 22-23 above.

Todd have argued, 'the ecocidal logics that now govern our world are not inevitable or "human nature", but are the results of decisions that have their origins and reverberations in colonisation',[46] to which I would also add coloniality as the continuation of these dynamics and logics, as per the works of Mignolo discussed above and earlier in this thesis.

Reflecting on this in relation to international environmental law in particular, Usha Natarajan and Kishan Khoday contend that the economic and instrumentalist logic underpinning land/property/territory, and state sovereignty, has creeped into the ways that 'nature' and 'environment' is framed and understood within international environmental law regimes.[47] To them, the commodification of land, and the construction of nature as `resource`, along with the doctrine of permanent sovereignty *over those resources*, has meant that international environmental law is unable, or perhaps even unwilling, to observe ecological limits (in favour of continued economic growth) and thus paves the way for widespread ecological harm.[48] Indeed, Kuehls argues that the authors of the Brundtland report – today largely considered a founding document for the principle of sustainable `development` – in failing to think beyond the sovereign discourse of space, politics and "progress", and its inadequacy in addressing the inherent trans-territorial flow of environmental harms, further entrenched the idea of territory in its framing of sustainable `development`.[49] With regards to onto-epistemic conditioning within international legal negotiations, this means that the concept of state sovereignty is not merely a legal principle drawn on by states in international politics to assert their independence and control over geographies, peoples and `resources`. Rather, it is a doctrine of onto-epistemic consequence which puts forward a particular way of understanding the world, and effects our relations with space and with one another by establishing perimeters determining "worthy" use of land and citizenship, putting emphasis on "ownership" of land and ecologies.

These historical contingencies and narratives, their discourses and biases – embodying onto-epistemic conditions and hierarchies – permeate, and reverberate throughout the very core of international law and across its "systems", significantly shaping the way that environmental law is conceived, and negotiated.[50] It has led to the formulations of new units and concepts which shape the international response to climate change, largely driven by techno-managerial and industrial logics,[51] raising alarms amongst critical scholars of "hyper-Cartesian

[46] Heather Davis and Zoe Todd, 'On the Importance of a Date, or, Decolonizing the Anthropocene' (2017) 16:4 *ACME: An International Journal for Critical Geographies*, 763.
[47] Natarajan and Khoday, *Locating Nature* (2014), 585. See also Graham, *Lawscapes* (2011).
[48] Ibid.
[49] Kuehls, *Beyond Sovereign Territory* (1996), 31; Coyle and Morrow, *The Philosophical Foundations of Environmental Law* (2004).
[50] Natarajan and Khoday, *Locating Nature* (2014); Tzouvala, *How to Run an Empire* (2021).
[51] See for instance Julia Dehm on the construction of the unit 'tonne of carbon dioxide equivalent' (tCO2e) which lays the foundations of negotiations under the Koyoto Protocol and the Paris Agreement, with the governmentality and terra-forming mindset accompanying it giving rise to geoengineering now being seriously considered as a solution to the climate crisis, and gaining significant attention from funders and scholars alike. See Julia Dehm, 'One Tonne of Carbon Dioxide Equivalent (1tCO2e)' in Jessie Hohmann and Daniel Joyce (eds),

apparatus[‘] of mastery and possession” and a form of “hypermodernity”[52] as the way out of the socio-ecologies crises facing the planet. Equally, the World Bank and IMF Structural Adjustment Programs show how `modernity` thinking has underpinned value chains and agricultural policy, aligning this with economic growth thinking as opposed to centring biodiversity, human rights and welfare concerns. These reinscribed colonial priorities by promoting export-oriented, rather than native or subsistence crops, thus marginalising smallholder concerns and undermining domestic food security and sovereignty.[53] Yolanda Ariadne Collins and her colleagues highlight the entrenchment of `development` thinking within international conservation law and policy, stressing that this doesn’t just happen in relations between countries who share colonial histories.[54] In other words, coloniality does not require a continuity of geographic-actor relations within a given context, but rather refers to the ‘institutionalised power dynamic which travel time, space and context by virtue of the universalization of Eurocentrism in the globalised world’.[55] This means that coloniality is expressed, and exists, as an underpinning condition within any given space, and is not something exclusively relevant to, say, the UK and its former colonial territories, but also includes the relations between UK and all countries commonly designated anything other than `developed`.

The UNFCCC’s flagship programme for Reducing Emissions from Deforestation and Forest Degradation (REDD+), a market-based mechanism bringing together elements of the international response to climate change and conservation efforts, has experienced furious backlash from scholars and activists, and significant criticism for the reasons explored above.[56] As Collins points out, the programme is premised on notions of instrumentalisation and rationality, in its methods of study (calculations, statistics, and science) as well as in the way it perceives actors; as rational whose actions can be made “appropriate” through financial incentives.[57] Through her observations of its implementation in Nigeria, Guyana and Suriname, she traces neoliberal thought underpinning the capitalist-`modern` approach to conservation and

International Law’s Objects (OUP, 2018) 305-318; Sheila Jasanoff, ‘Technologies of Humility’ (2007) 450 *Nature,* 33; and Sheila Jasanoff ‘Humility in the Anthropocene’ (2021) *Globalizations*.

[52] Frédéric Neyrat, *The Unconstructable Earth: An Ecology of Separation* (Fordham University Press, 2018, trans. Drew S. Burk), 5-7 and 25-70.

[53] Samuel Asuming-Brempong, *Economic and Agricultural Policy Reforms and their Effects on the Role of Agriculture in Ghana* (FAO, 2003).

[54] Yolanda Ariadne Collins et al, *Plotting the coloniality of conservation* (2021)*,* 13.

[55] Ibid. In this regard, they also reference the work of Nelson Maldonado-Torres, ‘On the Coloniality of Being: Contributions to the development of a concept’ (2007) 21:2-3 *Cultural Studies*.

[56] There is particularly strong backlash amongst critical conservation scholars who vehemently oppose what they see as neo-colonial market-based conservation initiatives, including militarised conservation, ecosystem services, and renewed targets and promises of increasing protected area coverage without ensuring protection of Indigenous and local Peoples’ rights to lands, culture, livelihoods and so on. See for instance Fairhead and Leach, *Reframing deforestation* (1998); Jim Igoe and Dan Brockington, ‘Neoliberal conservation: a brief introduction’ (2007) 5:4 *Conservation and Society*; James Fairhead, et al., ‘Green grabbing: A new approach to nature?’ (2012) 39:2 *Journal of Peasant Studies*; Melissa Leach and Ian Scoones (eds) *Carbon Conflicts and Forest Landscapes in Africa* (Routledge, 2015); Rosemary-Claire Collard et al., ‘A Manifesto for Abundant futures’ (2015) 105:2 *Annals of the Association of American Geographers*.

[57] Collins et al, *Plotting the coloniality of conservation* (2021); Yolanda Ariadne Collins, ‘Colonial Residue: REDD+, territorialisation and the racialized subject in Guyana and Suriname’ (2019) 106 *Geoforum*.

climate change mitigation, coupled with the same racialised knowledge politics that paved the way for 'scientific' forestry which not only led to more deforestation of natural growth forests, but also increased dispossession of local peoples from their traditional lands.[58]

This highlights a greater trend within `sustainable development` discourse and international environmental law and policy, including the: instrumentalization of science in service of capital;[59] the commodification and marketisation of nature;[60] the favouring of reductionist scientific methods and studies for the standardisation and simplification of complex ecosystems;[61] and the underlying racialised differentiation of peoples and cultures.[62] The embeddedness of such logics pose serious challenges to onto-epistemic diversity within decision-making, and skew negotiations in favour of certain world- and solution-framings, pushing others to the margins. This is especially dangerous in the case of `participation` and knowledge diversity, which as we've seen in previous chapters, is not as straightforward as putting more people around the table, and whose projection is often reduced to a tick-box exercise.

6.4 Pre-scripting and Prescribing Biodiversity Law and Governance

The remainder of this chapter explores the way that epistemic injustice emerges within the CBD negotiation spaces, drawing on the authors observations, interviews, dialogues and readings of the CBD texts themselves. As explored in chapter 4, these spaces hold a paradoxical nature in that they enable the simultaneous in/visibilisation, inclusion/rejection of local actors, their rights, knowledges and worldviews, within the sphere of biodiversity conservation. Equally, CBD texts, alongside the setting in which they are negotiated, have the capacity of calling-for-yet-undermining knowledge pluralism in decision-making, precisely because of their onto-epistemic foundations. To emphasise this, I will begin my discussion below by juxtaposing instances of onto-epistemic hegemony at the negotiations, with calls and examples of where onto-epistemological pluralism is offered in tangible form. The ensuing piece explores wider-ranging, yet interconnected topics of discussion, showing throughout that onto-epistemic injustice, and thus spatial injustice, is experienced at the negotiations in more/less subtle ways, with consequences felt across scales. I will end this section with a short

[58] Ibid.
[59] Ralph Clement Bryant, *The political ecology of forestry in Burma* (C Hurst; 1997); James Fairhead and Melissa Leach, 'Shaping socio-ecological and historical knowledge of deforestation in Sierra Leone, Liberia and Togo' in Reginald Cline-Cole and Clare Madge (eds) *Contesting Forestry in West Africa* (Ashgate, 2000); Megan C Evans, 'Re-conceptualizing the role(s) of science in biodiversity conservation' (2021) 48:3 *Environmental Conservation*.
[60] Madhav Gadgil and Ramachandra Guha, *This Fissured Land: An Ecological History of India* (OUP, 1992); William Beinart and Lotte Hughes, *Environment and Empire* (OUP, 2007).
[61] James Scott, *Seeing Like a State* (Yale University Press, 1998); Tsing et al (eds), *Arts of Living on a Damaged Planet* (2017).
[62] Bryant, *Political Ecology of Forestry in Burma* (1997); Tanya Li, *The Will to Improve: Governmentality, development and the practice of politics (*Duke University Press, 2007); and Tsosie, *Indigenous Peoples and Epistemic Injustice* (2017).

subsection exploring the particularities between the CBD spaces, and the consequences of ongoing uncertainties and talks of the future work of the WG8J.

6.4.1 Pre-scripting Biodiversity Governance

During a Plenary stocktake in the midst of CBD COP-14 in Sharm-el-Sheikh, the Brazilian delegation challenged a proposed definition of `traditional knowledge` in a draft decision, arguing that the proposed texts expanded the term's original meaning under the convention in a way that they feared would have legal consequences and undermine state sovereignty.[63] A year later, at the very last in-person CBD meeting pre-COVID, in a Contact Group of the WG8J, one delegate opposed the use of the term "territories" in reference to lands belonging to Indigenous Peoples, arguing that this term is linked to "the very essence of a state". Instead, they suggested wording along the lines of "lands and waters occupied by Indigenous Peoples and local communities". More than a year on, during discussions at the 8th Plenary session of IPBES, "lengthy discussions" ensued over whether a text should include reference to paragraph 59 of the 2030 Agenda for `Sustainable Development`. The relevant paragraph stresses the importance of different approaches for achieving `sustainable development`, including the use of terminology such as "Mother Earth" when referring to the environment.[64] Months later, at the third CBD Open-ended Working Group (OEWG) on the Global Biodiversity Framework (GBF), some state delegations were adamant that the term Nature-Based Solutions (NBS) feature in the text, in spite of previously not being able to offer a clear definition of the term, nor differentiate between it and the *ecosystem-based approach,* already negotiated and called for extensively upon within the CBD framework.[65]

Seen separately, these may be conceived by traditional positivist legal scholars of as independent incidents, separable and only telling of different State's position regarding three separate issues: rules under Article 8(j), the elaboration of IPBES guidelines for the drafting of their reports, and the finalising of targets and implementation measures of the GBF. Equally, it may seem to many that the points of contention themselves are minimal. On the face of it, whether lands of Indigenous peoples be referred to as *territories* or as lands that they *occupy,* may actually not seem to make much of a difference. Equally, whether IPBES reports incorporate references to "Mother Earth" could equally seem trivial in the grand scheme of things. So, may be the question of whether or not the new CBD GBF includes reference to NBS; if anything, "more" solutions are better, right?

[63] Their point was that the proposed phrasing could be interpreted as `traditional knowledge` being linked to matters *other than* `natural resources`, which is recognised under the Convention as ultimately a matter of state sovereignty (Article 15). If `traditional knowledge` was recognised to influence and impact on, say, rights to territories traditionally held by communities prior to colonization, this would pose a risk to state sovereignty vis-a-vis those lands. Authors notes, Observations at COP-14.

[64] See IISD ENB *Summary of the Eight Session of the Plenary of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services*, 31:57 (2021), 8.

[65] Authors notes, Observations at OEWG-3.

Yet, viewed together, they give insights into the ways that States perceive the world, how they see change happening, to what ends, by what means, and with whom. It also tells us where tensions lie, and, more importantly, of changes being resisted. Here, resistance against certain terminology can be significant, precisely because of what they signify ontologically and epistemologically, telling us of the worldviews, values, and interests that shape negotiations. Regardless of the final adopted text, proposed textual additions and edits also bring to the fore historical and contemporary tensions between worldviews and knowledge systems held by a variety of actors.

Indeed, as I will show below, some of these phrases are onto-epistemologically charged, requiring us to look deeper and further back into the histories, knowledges, discourses and actors embroiled in their emergence and use. Their use today brings these to the fore, conjuring up, or reinstating particular power dynamics and centring associated worldviews, which need to be unpacked, and explicitly addressed in order to tackle the reproduction of injustice associated with them. The rest of this section will aim to do just that; picking up connections between debates, and show that when viewed together, we can gleam overarching trends and atmospherics which considerable effect the substance of negotiations, and as a consequence, the space held for local actors therein.

Knowing Nature and Owning Knowledge

At a side event during COP, organised by the Indigenous Women's Biodiversity Network, Indigenous representative and scholar Tatiana Degai from the Itelmen Nation told us that the idea of "biodiversity" does not exist in her native language. Going further, she found that it fails to capture her own relationship with her homelands and surroundings, and worried that such a linguistic disconnect risks impoverishing society in relating and connecting to earth. In poetic prose, she offered the audience `alternative` reflections on relations and associations between ourselves and plants, land- and waterscapes, seasons, non-human beings, along the way illustrating the deeply entwined life we live together which goes unnoticed within the technical term of *biodiversity*.[66] Along a similar vein, Indigenous youth delegate Josefa Cariño Tauli, Kankanaey-Ibaloi Igorot from the Cordillera Region in the Philippines, gave a captivating speech during WG8J-11 where she introduced participants to a word of the Kankanaey peoples, *ili*. Through conversations with family members, she'd come to realise that this three-letter word captured the idea that people and nature are indistinguishable; it encapsulates community values and practices, invites for a reverence of forefathers, and centres the connection between generations in passing on knowledges and traditions. To Josefa, this very word illustrated the power of diverse knowledges, including those held and nourished by Indigenous peoples and cultures. She showed us that cultural diversity, and the appreciation of knowledges and worldviews beyond those currently centred within international biodiversity discourse, is crucial for us to address socio-ecological degradation as well as adapt to changes already taking place. Both hers and Tatiana's presentation illustrated,

[66] Authors notes, Observations at COP-14. For an inspiring project in this regard, see Robert MacFarlane and Jackie Morris, *The Lost Words* (Hamish Hamilton, 2017).

and reminded us, of the significance of onto-epistemic diversity in providing ways for us to reimagine human-nature relations.

The scientific discourse of *biodiversity*, and its associated techno-capitalist-managerial concepts of *natural resources* and *ecosystem services*,[67] remains far-removed from the type of ecological relations described by Tatiana and Josefa in their presentation. In fact, the prescripted ways that these terms signal for us to understand and relate to "nature", struggles to align themselves with `alternative` worldviews and knowledge systems more broadly. Within the CBD, these are often symbolically encapsulated in the term *Mother Earth*, a term associated with *Pachamama*, the Indigenous Andean earth-goddess at the heart of countless diverse worldviews across Indigenous and rural-peasant communities living across the Andean regions, and has inspired several emerging world-framings across the world, including the movements for recognising the rights to nature. Since its introduction into international environmental law discourse, it has been positioned in strict opposition to colonialist and capitalist social, geographic and ecological relations, offering `alternative` ways-of-being-and-doing in the world.[68] As hinted above, it has become a symbolism for the integration of diverse (especially Indigenous) worldviews and knowledge systems into environmental decision-making and knowledge-production, often demanding shifts away from the current structures which tend to centre scientific, market and technocratic logics and their associated onto-epistemes.[69]

Along this vein, the CBD has long been accused of furthering "green developmentalism"[70] and for its centring of technical and scientific debate in ways that enables the "domination and precondition for the neoliberal imposition of the industrialised countries" and their visions of conservation and `modernity` [as development] within its spaces.[71] Seven years after its adoption into force, Arturo Escobar warned that the global biodiversity discourse had arisen – or perhaps rather shifted into – an "institutional apparatus that systematically organises the production of forms of knowledge and types of people, linking one to the other through concrete strategies and programs".[72] In essence, as discussed throughout this thesis,

---

[67] Arturo Escobar, *Encountering Development* (1995); James Fairhead and Melissa Leach, *Reframing deforestation: Global analyses and local realities* (Routledge, 1998); Sheila Jasanoff and Marybeth Martello (eds) *Earthly Politics: Local and Global in Environmental Governance* (MIT Press, 2004); Vadrot, *The Politics of Knowledge and Global Biodiversity* (2014); Anna Grear, 'Anthropocene, Capitalocene, Chthulucene': Re-encountering environmental law and its 'subject' with Haraway and New Materialism' in Louis Kotzé (ed) *Re-imagining Environmental Law and Governance for the Anthropocene* (Hart Publishing, 2017).

[68] Miriam Tola, 'Between Pachamama and Mother Earth: gender, political ontology and the rights of nature in contemporary Bolivia' (2018) 118:1 *Feminist Review*, 26.

[69] Arturo Escobar, 'Más allá del desarollo: postdesarrollo y transciciones hacia el pluriverso' (2012) 21 *Revista de Antropologia Social*, 47.

[70] McAfee, *Selling Nature to save It?* (1999).

[71] Alice Vadrot quoting Arturo Escobar. See Vadrot, *The Politics of Knowledge and Global Biodiversity* (2014), 23; and Arturo Escobar, 'Whose Knowledge, Whose Nature? Biodiversity, Conservation, and the Political Ecology of Social Movements' (1998) 5 *Journal of Political Ecology*, 58. Similar arguments have been made within the field of ecofeminism. See for instance Morrow, *Perspectives on environmental law: a continuing role for ecofeminism* (2011).

[72] Ibid (Escobar), 56.

international law played a significant role in legitimising, and re-inscribing these relations and perspectives across its lawscapes, negotiations and texts.

For instance, from the outset *biodiversity* is a techno-scientific discourse, deeply rooted in a disciplinary obsession with modelling and mapping, objectifying and organising, theorising and strategizing.[73] Seen this way, it becomes clear that rather than existing in an absolute sense[74] the *biodiversity* discourse has given rise to a network of actors, practices and parameters for understanding issues and solutions.[75] Despite the significant changes that have taken place across conservation narratives and discourses over the years,[76] the more traditional scientific values and framings of the environment have continued to dominate these spaces, and scientific approaches remain deeply entrenched within mainstream conservation efforts.[77] The CBD in turn codifies these values and knowledge-power relations by offering particular representations of "threats to biodiversity" and offering pre-scripted scenarios and solutions for the conservation and sustainable use of resources across levels, presenting "appropriate mechanisms" for biodiversity management.[78]

A key way for addressing this discrepancy of disciplinary dominance within decision-making affecting biodiversity, is to ensure a better diversity of knowledges and input from a wider array of groups informing processes of decision-making, including negotiations. Given that IPBES is tasked with improving the "interface between science and policy on issues" pertaining to biodiversity, this would be a good place to start. Alice Vadrot, who carried out extensive research of the negotiations leading to the creation of IPBES, has together with colleagues highlighted the ways that these negotiations, and indeed IPBES as a result, came to incorporate and reproduce *epistemic selectivities*, which essentially refers to *onto-epistemic injustice*, as "patterns of selectivity leading to the domination of specific forms of knowledge, perceptions of problems, and narratives over others".[79] According to Vadrot, the establishment of IPBES came to essentially substantiate, and reinforce the commodification approach to understanding nature, at the expense of non-commercial views,[80] as well as entrenched a

[73] Vadrot, *The Politics of Knowledge and Global Biodiversity* (2014), Introduction and Chapter 1; Unai Pascual et al., *Biodiversity and the challenge of pluralism* (2021); and Brett Matulis and Jessica Moyer, 'Beyond Inclusive Conservation: The Value of Pluralism, the Need for Agonism and the Case for Social Instrumentalism' (2017) 10:3 *Conservation Letters*. Matulis and Moyer especially highlight research by international institutes, such as The Economics of Ecosystem & Biodiversity (TEEB), whose research aims to mainstream "the economics of ecosystems and biodiversity", working on the premise that "we can't manage what we can't measure". See Matulis and Moyer above, 282.

[74] Escobar makes this really clear by asking: "Is there a discrete reality of "biodiversity" different from the infinity of living beings, including plants, animals, microorganisms, homo sapiens, and their interactions, attractions, and repulsions, co-creations and destructions?" Escobar, *Whose Knowledge, Whose Nature?* (1998), 55.

[75] Ibid, 55-8.

[76] Such as the enhance attention paid to social justice concerns, as well as interdisciplinary approaches seeking to break down categorisations and binaries established under early scientific thought. See footnote 42 above.

[77] Evans, *Re-conceptualising the role(s) of science in biodiversity conservation* (2021), 151; Louser and Wyborn, *Biodiversity narratives* (2020).

[78] Escobar, *Whose Knowledge, Whose Nature?* (1998), 57.

[79] Brand and Vadrot, *Epistemic Selectivities* (2013), 207.

[80] Ibid, 214.

disciplinary favouritism towards scientific knowledge at the expense of knowledge systems rooted in alternative worldviews.[81]

From reports of the negotiations on the creation of IPBES, including its early days of work, we know that the question of worldviews that were to inform its work was a topic of deep contention and tension. These materialised, for instance, in lengthy discussions as to the appropriateness of the term *ecosystem services* precisely because of the marketized logic underpinnings the concept, as well as the inclusion of references to the rights of *Mother Nature* within its conceptual framework.[82] Although ultimately featuring in the text, its role is marginal compared to *ecosystem services* which features in the very name of the body itself. Additionally, that the debates were lengthy and "time-consuming",[83] like those mentioned above at the eight Plenary of IPBES concerning largely the same issue, gives insight into a continuum of onto-epistemic contention at the heart of the work under IPBES. And this despite strengthened recognition of the need for the inclusion of diverse knowledges systems within biodiversity governance, a matter often supported by the very same actors who then inadvertently challenged it at IPBES 8th Plenary.[84]

What this tells us is that *Mother Earth* – as a concept symbolising efforts for enabling more diverse knowledges to inform global decision-making and policy – remains contentious, and as such so does that which it stands for. As discussed further below, without clearer, and stronger signalling from States within international negotiations, powerful actors at the heart of decision-making will struggle committing to the shifts required for achieving *transformative change*, which inadvertently demands ontological and epistemic shifts in the ways that decisions are made, including the knowledges that feeds into those processes.

In returning to the CBD, although the idea of *biodiversity management* may seem a broad topic (and in many ways it is), it is also significantly narrowed from an onto-epistemological perspective within the CBD. For instance, on the international level, biodiversity governance and conservation ultimately gets framed as a matter of "*resource* management". Under the CBD, this is tied to three distinct discourses: conservation science, sustainable development and benefit sharing.[85] Equally, in spite of the growing attention paid to the importance of protecting, and recognising Indigenous knowledges within conservation practice, the conventional scientific disciplines continue to dominate, as well as provide the lens through which other knowledges are viewed, and assessed, received and drawn on,[86] as will be discussed further below.

---

[81] Hannah Hughes and Vadrot, 'Weighting the World: IPBES and the Struggle over Biocultural Diversity' (2019) 19:2 *Global Environmental Politics*. The conceptual framework of IPBES also clearly prioritises the scientific community, simply lumping alternative knowledges as "other". See Decision IPBES-2/4 *Annex.*

[82] IISD ENB Report, 29 January 2013, Vol. 31 No. 6 *Summary of the First Plenary Meetings of the IPBES: 21-26 January 2013.*

[83] Hughes and Vadrot, *Weighting the World* (2013), 214.

[84] Authors notes, Observations at IPBES-8 which I attended as an ENB-reporter.

[85] CBD Objectives, Article 1. See also Escobar, *Whose Knowledge, Whose Nature?* (1998), 58.

[86] Ibid (Escobar); Collins et al, *Plotting the coloniality of conservation* (2021).

Linked to this, equating biodiversity, and indeed nature herself, with natural resources, highlights the onto-epistemic centring of economic-rationales across society in how we perceive, and relate to our environments. It also provides the springboard from which politicians and other powerful actors whose decisions have terra-altering potential, will frame their positions. For instance, Vadrot has pointed out that new concepts over the years, have changed the landscape of biodiversity knowledge, placing more/less emphasis on cultural, scientific and economic dimensions.[87] Terms and concepts, such as *biodiversity*, *natural resources* and *ecosystem services*, all now household names within the Convention, provide the foundation and basis upon which discussions and negotiations are carried out. Meanwhile, they also carry with them ways to frame the world, providing representation and referents for the general public, as well as promises solutions to policymakers and other powerful decision-makers in relation to resource conflicts and (seemingly acceptable) trade-offs. This is done by portraying the environment as made up of components of measurable values,[88] to be used, governed and managed in pursuit of human well-being, as understood within the overarching framing of modernity.

In turn, these concepts, and their associated onto-epistemes, set the benchmark for what may be deemed relevant to conservation across scales, including procedural standards. For instance, across environmental law and governance, scientific evidence and methods, often characterised as neutral and objective, have become key criterions for assessing the legitimacy and reliability of biodiversity knowledge,[89] thus feeding into processes of how citizens may hold their governments to account, as well as the way we may be able to understand and track local-to-global patterns of environmental harm and activities to counter it. Equally, the ability of these concepts – new, old or emerging – and their associated actors and knowledges to prove themselves "useful" and "relevant" to policymakers and other powerful actors, becomes the marker for their significance. This often requires reducing them to be adjusted and fitted within pre-existing structures and value-systems for tracking progress.[90] Looking at this from an onto-epistemic injustice perspective, this sort of structure risks producing a form of self-legitimising, re-articulation and re-inscription of knowledge-power dynamics explored in the previous chapters, for instance through a 'systemic favouritism towards the traditional Western understanding of science and the creation of research funding opportunities', as well as the production of knowledge itself.[91]

The apparent disciplinary and onto-epistemic dominance across conservation, and within the CBD, has a direct impact on restricting and blocking pathways between knowledge and

[87] Vadrot, *The Politics of Knowledge and Global Biodiversity* (2014), 2.
[88] Ibid.
[89] Ibid.
[90] See for instance Andrea Pitts in how this applies to the idea of decoloniality, modernity and development within Westphalian frameworks. Andrea J. Pitts, 'Decolonial Praxis and Epistemic Injustice' in Kidd, et al *Epistemic Injustice* (2017).
[91] Vadrot *The Politics of Knowledge and Global Biodiversity* (2014), 4.

action,[92] as well as produces barriers for enabling diverse actors to contribute to debate.[93] For instance, because of the obsession with positive *data, theorisation and re-applicability* without Westphalian knowledge institutions, the fact that Indigenous and local knowledge systems do not readily lend themselves to these frameworks and structures – of being written down, categorised, codified, reproduced and transplanted – means that scientists, unless adopting appropriate shifts in their own onto-epistemic frameworks, will fail to adequately consider Indigenous and `alternative` knowledge systems, perhaps instead deeming them irrelevant or unreliable, or indeed engage with them in inappropriate or harmful ways.[94]

This came up in a discussion with Preston Hardison, policy advisor of the Tulalip Tribes in Washington State and elected representative within the Indigenous Peoples and Local Communities Caucus.[95] He argued that, with regards to Indigenous and local knowledges and knowledge systems within the CBD, politicians, scientist and corporations are taking knowledges, consciousness, and understandings of the world, and "forcing" them into a framework that ultimately does violence to them. He pointed out that much of the discourse surrounding Indigenous knowledges within the CBD is similar to that found in mining, speaking of these knowledges as something capable of being extracted, taken out of their situated locations and cultures, and "applies" elsewhere.[96] In discussions, he heavily criticised the use of the term "traditional" to describe Indigenous knowledges – and an almost blanket rejected by States to alter the terminology – stating that this effectively ignores that these are living forms of knowledges, transforming and emerging through time and place. As he explained, across cultures, these knowledges come to people in their dreams, they are received by the heart, the mind, the body, during journeys through lands and waterscapes over time, passed on through generations through careful ceremony and process. In this discussion, as well as others with Indigenous representatives, I was reminded that in several cultures, knowledges are harboured and cared for by elders, who safeguard it, ensuring that future holders have the right mind, heart and motivations, in order to ensure that they will not use it in ways that go against community values and interests. To Preston, and many within the Indigenous Peoples caucus and amongst critical scholars, this is largely disregarded within the current CBD structure and texts, where reference to Indigenous knowledges is often accompanied with logics of extraction, ownership, categorisation, storage and use.[97] Rebecca Tsosie, writing on

[92] See for instance Megan C Evans et al., 'Embrace complexity to improve conservation decisions (2017) 1:1588 *Nature Ecology & Evolution*; Anne Toomey et al., 'Navigating the space between research and implementation in conservation: Research-implementation spaces' (2017) 10:5 *Conservation Letters*.

[93] See Chapter 4 Section 4.4.

[94] See footnote 101 below.

[95] Authors notes, Dialogues at WG8J-11 and SBSTTA-23 and Interview E.

[96] This echoes sentiments and debates across Indigenous and critical scholars who make similar claims as to the extractive logics which surround the recognition of Indigenous knowledges across disciplines. See discussion further below.

[97] Indeed, a big concern with regards to the recognition of Indigenous Knowledges is precisely the lack of strong safeguards to protect communities from activities akin to biopiracy, which especially relates to the Nagoya Protocol. See for instance Vandana Shiva, *Monocultures of the Mind, Perspectives on Biodiversity and Biotechnology* (Zed Books, 1993); Vandana Shiva, *Protect or Plunder? Understanding Intellectual Property Rights* (Zed Books,

epistemic injustice, links this with paternalism and hermeneutical "othering", arguing that the belief today, that policy makers and scientists can simply "use" and interpret Indigenous knowledges in their work, without the participation of Indigenous Peoples, sits within a long disciplinary history – particularly amongst anthropology and other scientific disciplines – of dispossessing Indigenous peoples from their cultures and surroundings, including agency over the understandings of their own knowledges.[98]

This positivist and often reductionist understanding of knowledges dominating Westphalian knowledge systems – especially at the science-policy interface – coupled with the marketised logic within the CBD, such as in debates where Indigenous knowledges are associated with genetic and natural resources, has effectively meant that these, within the Convention, are conceived as resources themselves; something capable of being *extracted, owned, broken down,* and *categorised,*[99] applied outside of the scenarios, understandings and cultures from whence they emerged and live. What this has meant, from an onto-epistemic justice perspective, is that the current dominant thought driving forth the framings of knowledges (as resources), nature (as biodiversity) and solutions (as market-based and technocratic), not only fail to deal with the onto-epistemic plurality and diversity which they profess to aspire to; but they also put *at risk* the very knowledges being brought into these processes.[100] Under the CBD frameworks, Indigenous, along with other locally-based knowledges risk either being left ignored or in the event of being used, will be forced to take on a different form in order to "fit" existing dominant knowledge frameworks, going against community ethics and values. This can have serious repercussions, harming the knowledges and by extension the communities themselves, undermining community cohesion and inter-generational relations,[101] all the while benefitting those "recognising", extracting and using that knowledge.

So, not only is Indigenous knowledges *not* on an "equal footing" to other knowledges within biodiversity negotiations, but the processes which underpin their use within biodiversity conservation can also be perceived as exploitative and damaging in themselves. Although it may be true that the Nagoya Protocol raised the bar in terms of calling for culturally sensitive processes for knowledge sharing,[102] it can still be argued that these aren't strong enough to ensure respect and integrity of Indigenous epistemes, and that existing structures expose their

2001); Florina Rabitz, 'Biopiracy after the Nagoya Protocol: Problem Structure, Regime Design and Implementation Challenges' (2015) 9:2 *Brazilian Political Science Review.*

[98] Tsosie, *Indigenous Peoples and Epistemic Injustice* (2017), 364-5.

[99] This act of categorisation, as Preston puts it, usually happens by way of codifying Indigenous knowledges, and placing them into registries with pre-defined categories and signifiers. Authors notes, Interview E.

[100] Notably, see the Local Biodiversity Outlooks for exceptions to this, with the stories therein highlighting the importance of power, ethics and questions of access (to land, resources and processes), when knowledge and experience is shared across cultures and ontologies.

[101] See for instance Linda Tuhiwai Smith et al., *Indigenous Knowledge, Methodology and Mayhem* (2016), 130; Nordin Jonsson, *Ethical Guidelines for árbediehtu* (2011).

[102] See for instance Elisa Morgera, *Under the radar* (2019).

holders and communities to exploitation.[103] What also causes some frustration amongst participants and observers are the legal status of existing, more progressive texts which stem from the WG8J process and had significant input from Indigenous Peoples representatives during their elaboration.[104] Although signifying incredibly important progress in terms of shifting debates towards more inclusive consideration of diverse worldviews and perspectives, these are still categorised as "voluntary" or "best practice".[105] When speaking with Indigenous representatives, to them these texts represent the bare minimum of what should take place in order for decision-making to recognise, value and respect diverse knowledges along with their associated cultures and worldviews.[106] In other words, to them it should be mandatory for such guidelines to be followed, with the fact that they aren't, illustrating clearly the power imbalances between participants and knowledges within the context of the CBD.

In returning to the issue of onto-epistemic hegemony in the *identification, selection and use* of knowledges at negotiations themselves, an Indigenous representative told me of instances at expert meetings, where "a lot of scientists look to scientific references […] and they point to these existing sciences or research [projects and findings] as that which matters [in biodiversity decision-making]".[107] What's more, onto-epistemic injustice doesn't always materialise through explicit or deliberate exclusion by powerful actors, but also through an atmospheric in which people holding certain knowledges are made to feel unwelcome, or unable to contribute to discussions, emerging form a sense of onto-epistemic inferiority, [108] stemming from public discourse and narratives, as well as actions by state delegations. In this sense, onto-epistemic diversity within these spaces requires difficult and challenging discussions on what knowledge *looks like*, and how it is presented. For instance, an Indigenous representative at the negotiations, explained that because Indigenous knowledges may often be oral, living and situated, as opposed to codified, static and supposedly universal, accommodating for these knowledges during negotiations in respectful ways that pay homage to their unique, diverse and complex natures, requires having what caucus members call "friendly" chairs, politicians and scientists at the negotiations table, since otherwise these aspects are quickly dismissed or side-lined during discussions.[109] This ties in with what is discussed in Chapter 4. A seasoned researcher also recalled to me an instance where a Chair during a Contact Group

[103] Saskia Vermeylen, 'The Nagoya Protocol and Customary Law: The Paradox of Narratives in the Law' (2013) 9:2 *LEAD;* Brand and Vadrot, *Epistemic Selectivities* (2013); Suiseeya, *Negotiating the Nagoya Protocol* (2014). Importantly, this perspective was also voiced in several interviews.

[104] This itself largely comes down to the procedural mechanisms seeking to enhance the participation of Indigenous Peoples and local community representatives within its spaces. See Chapter 4 Section 4.3.

[105] See for instance Akwé: Kon Guidelines; Voluntary Funding Mechanism to facilitate participation of Indigenous Peoples and local communities; Tharihwaié:ri Code of Ethical Conduct; Mo'otz Kuxtal Voluntary Guidelines; and The Rutzolijirasixik Voluntary Guidelines (footnote 23 in Chapter 4).

[106] This was expressed multiple times in interviews and discussions, with people emphasising the importance of respecting community protocols and that projects are community-led. Authors notes, Interview H, I and F.

[107] Ibid.

[108] See for instance work by Franz Fanon writing about the ways in which the self of subaltern individuals communities is interrupted, influenced and distorted by the strength of the white gaze, constituting a form of continual, internalised coloniality. Franz Fanon, *Black Skin, White Masks* (Grove, 1967).

[109] Authors notes, Interview H.

on Indigenous knowledge made both dismissive and legally inaccurate comments on Indigenous issues, setting a tone which was unsympathetic, unwelcoming and hostile for Indigenous representatives present.[110] This brings to the fore the fact that in many ways, the very set-up of the negotiating spaces themselves can have profound – some would say wholly disproportionate – impact on the efforts of increasing the adequacy of these spaces in terms of accommodating onto-epistemic pluralism, and indeed engender inclusive and participatory atmospherics in line with spatial justice ideals.

Other ways that disciplinary hegemony materialises explicitly can be through underhand comments by States, for instance using the term "real knowledge" when speaking of science, or referring to the need for "scientifically sound" knowledge in decision-making.[111] Instances like these can feed into more subtle forms of exclusion. For instance, the above, coupled with the highly formal, official-like and managerial nature of these spaces, have prompted some participants to feel a sense of intimidation, and insufficiency to speak during negotiations, with several saying that they feel "out of place".[112] In one interview, a participant, recalled instances of feeling uncertain about their attendance because of their confusion about the process, as well as occasionally feeling insecure in how their positioning, and their farmer-related knowledge would be received given their lack of university education.[113] This is a symptom of *epistemic selectivities* within the CBD and the 'hegemonic element inherent in the production and re-production of knowledge, problem perception, and narratives'.[114] In this sense, the very designation and 'recognition' of what constitutes *relevant, real* or *scientifically-sound* knowledge constitutes instances of *epistemic closure*, limiting the types of knowledges granted importance, as well as which actors can make – or even feel welcomed to make – knowledge claims therein. This is exacerbated by the seemingly universalisation of northern-western scientific knowledge within institutions, universities and research and policy centres across the Global South,[115] as well as the continual emphasis on seemingly 'neutral' scientific and technological progress indicators which ultimately mask the political, ideological and onto-epistemic struggles that shape these discussions.

This also gets reproduced under particular discourses and concepts streamlined across the work of the Convention, where particular actors are positioned as those driving forth necessary efforts for biodiversity conservation. For instance, as Island delegates pointed out during CBD talks on the idea of *connectivity* between ecosystems and peoples,[116] such thinking has indeed been around for a long time, enshrined in Indigenous and local cultures stemming from long-established cultural and spiritual practice. Yet, within spaces like the CBD and other

[110] See Chapter 4 Section 4.3.3. Authors notes, Dialogues with a colleague after COP-14.
[111] Authors notes, Observations. See also Vadrot, *The Politics of Knowledge and Global Biodiversity* (2014), 175.
[112] Authors notes, Dialogues at COP-14, SBSTTA-23.
[113] Authors notes, Interview G.
[114] Brand and Vadrot, *Epistemic Selectivities* (2013) 208.
[115] Hughes and Vadrot, *Weighting the World* (2019); Sarah Radcliffe and Isabella Radhuber, 'The Political Geographies of D/decolonization: Variegation and decolonial challenges of /in geography (2020) 78 *Political Geography*; Vadrot, *Multilateralism as a 'site' of struggle* (2020).
[116] See Vadrot, *Multilateralism as a 'site' of struggle* (2020), 6-7.

conventions like the Convention on Migratory Species,[117] it is a term "being developed" by scientists, used to map, measure, and make sense of ecological phenomena in order to justify their protection.[118] This brings up questions of what, and whose, knowledge matters. I have heard similar sentiments expressed amongst local caucus members. In one discussion[119] on the term *Nature-based solutions* (NBS - further discussed below),[120] someone pointed out that from an Indigenous perspective, the ways in which new concepts such as *NBS* and the *ecosystem approach* emerge, is discouraging as it wilfully ignores the value systems and practices that many Indigenous and rural communities have been carrying out for generations. To them this signified that only by framing such practices and values in technical language, can they gain strength and importance within these processes. This is ultimately telling of onto-epistemic injustice/tilts of the conditions within these spaces, and an unequal recognition accorded to diverse knowledge systems within the CBD, in spite of the widespread acceptance across the Convention of the importance in recognising, respecting, and incorporating Indigenous knowledge systems within biodiversity policy.

Here, a spatial in/justice perspective helps illustrate that `participation`, inclusion and recognition goes beyond words written on a page; onto-epistemic justice, as part and parcel of spatial justice, demands attention to the values and perspectives which are in many ways institutionally (pre)scripted within the walls of a given negotiating space. Occasionally, these are made explicit by parties, with some States known to being either openly or passively hostile towards Indigenous representatives during negotiations.[121] As recent as during COP-14, a senior country delegate in a Contact Group used incredibly derogatory language when suggesting that local groups, especially Indigenous peoples, were incapable of contributing to the given debate due to its 'technical nature', ultimately questioning their seat at the table.[122] While only one person – who was challenged by other state delegations at the time – this gives insight to the opinions held by a senior official, within a geopolitically powerful government generally known for its repression and denial of Indigenous rights.[123] In fact, even within those governments who show a friendly face at negotiations, there are stories of violence or

[117] See for instance the concept of "ecological connectivity", for which a definition was adopted at COP13 in February 2020. IISD ENB, Summary of the Thirteenth Meeting of the CMS COPS: 15-22 February 2020' (IISD ENB 2020).

[118] Vadrot, *Multilateralism as a 'site' of struggle* (2020).

[119] The following reflects discussions from a dialogue amongst members of the CBD Women's caucus part of the organisation *Women4Biodiversity*, held in May 2020. I was asked to write a reflection piece based on the dialogue, and I have received the permission of the organiser and facilitator to share the discussion herein. See Mika Schroder, 'Framing Biodiversity Policy for post-2020: W4B reflections on Nature-based solutions', *Women4Biodiversity Blog* (May 23 2020) <https://www.women4biodiversity.org/framing-biodiversity-policy-for-post-2020-w4b-reflections-on-nature-based-solutions/> (accessed 28/12/2021).

[120] The term is largely self-explanatory, yet its legal definition vague. What is important is that ultimately, the idea of living alongside nature, which the term purports, is nothing new when we look to Indigenous customary practices and onto-epistemes across the world. See discussion below.

[121] See Chapter 4 Section 4.4.2.

[122] Authors note, Observations at COP-14.

[123] The "closed door" nature of contact room negotiations, where participants are strictly forbidden to quote, take pictures, tweet or otherwise record details of party positions therein, restricts me from saying which country delegation held this position.

discrimination perpetuated against Indigenous peoples and rural communities within their own borders.[124] I bring this up to highlight the fact that, even in scenarios when participation is provided for in legal texts and policies (like CBD provisions), as well as institutional cultures (like CBD negotiations), the barriers that participants face in attempting to have their contributions recognising within these spaces, takes a multitude of forms, including outright hostility and contempt on behalf of powerful actors, who lean into harmful stereotypes, conjuring forth racist-colonial narratives, practices and logics. Although rare, such blatant disrespectful behaviour illustrates the persistence of such perspectives and values within these spaces, and indeed across government bodies, sat at the helm of international and domestic law- and policymaking, which have far-ranging consequences on the environment, as well as economic structuring, distribution of land, and access to resources.

As discussed above, the material effects of *oppressive atmospherics* come forth in ways that are more/less hidden, in/out of plain sight. Early on, I illustrated how they can materialise, and be expressed, through the subtle shift in terminology where onto-epistemological foundations have become normalised due to their embeddedness in day-to-day discourse. On the other hand, as shown directly above, *oppressive atmospherics* are at times more explicit. In fact, several interviewees and colleagues confirmed a growing visible hostility towards Indigenous Peoples representatives emerging within CBD negotiations, with several saying that they feel there is a need to "protect" the space they currently hold.[125] It is important to situate this amongst a wider societal context. For instance, this is happening alongside growing violence facing Indigenous rights, land and environmental defenders across the world, as well as greater polarisation between right/left wing politics across much of the world, with a bolstering of far-right and xenophobic discourses terminology making its way into everyday discourse.[126] At the same time, within the CBD, it is also happening alongside growing and strengthened support from a number of powerful negotiating countries, as well as an increase in collaboration between parties and the Indigenous Peoples and local communities caucus, especially within WG8J. An example of this is the work on indicators for assessing progress on work associated with land use and tenure, trends in the practice of traditional occupations, trends in the respect, integration and safeguarding of Indigenous knowledges, as well as

[124] For instance, both Canada and Australia are generally, at the moment, considered "friendly" nations to the Indigenous caucus. However, in both, Indigenous peoples experience high degrees of discrimination across society, poorer living and wellbeing standards than the rest of the settler population, not to mention ongoing cases of land rights abuses and controversies, often involving extractive operations occurring on Country and First Nations land.

[125] Authors notes, Dialogues at cOP-14, WG8J-11, SBSTTA-23, and Interview H.

[126] See for instance Global Witness, 'Last Line of Defence: The Industries causing the climate crisis and attacks against land and environmental defenders' (September 2021) <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/> (accessed 28/12/2021); Steven Grattan, 'Environmental defenders killed in record numbers in 2020: Report' Aljazeera News, 13 September 2021 <https://www.aljazeera.com/news/2021/9/13/environmental-defenders-killed-in-record-numbers-in-2020-report> (accessed 28/12/2021).

Indigenous participation in national implementation.[127] Yet, even this support is contingent upon the relevant topic and space in question, as is discussed below.

Ideological Natures; Powers of Choice and Solutions

As discussed in Chapter Four, despite the persistent denials by party delegations attending the intersessional meetings, their actions therein expose these spaces, and the discussions themselves, as deeply political. We can gleam evidence of this throughout the meetings, for instance by looking at the subtle shifts in terminology that states propose, which when unpacked lays bare the ideological underpinnings of the priorities of States. These bring to light the fact that the CBD constitutes a space of not just legal-negotiations for biodiversity conservation, but also for the negotiation/contestation over ideologies, worldviews and knowledge-production/recognition. This section aims to illustrate the complications posed by such revelations, especially when considering the overlapping nature of international law, and the unforeseen risks that emerge when concepts from one seemingly bounded regime cross constructed institutional remits, either for the strengthening of rights, or the elaboration of "new" solutions. Also, subtle changes to terminology proposed by States can carry profound political and legal consequences, which become clear only when we consider the historical trajectory of these terms, what underlying logics and values they carry, and what this tells us about the potential future direction of international law. I will return to this final topic at the end of this section.

Returning to the political nature of negotiations, a consequence of this is the inherent unreliability of State delegations in when they may provide support to local caucus suggestions. During COP, local representatives also discussed how some agenda items brought about strange shifts in alliances and relationships; typically "friendly" delegations began suggesting terminology which undermined caucus aims, while those usually not relied upon for support were there to offer it. An example of this is the sudden efforts by Sweden – usually an "ally" – during Working Group negotiations on "mainstreaming biodiversity across sectors", to undermine the inclusion of Indigenous rights associated with FPIC. They did this through a subtle, to some seemingly inconsequential edit to a text that read "in order to obtain FPIC" to instead read "with a view to obtain FPIC". In not mandating that a project, in order to go ahead, be based on the obtainment of FPIC, but merely an *attempt* to obtain it, they

[127] Given that so much policy work is based on the existence of indicators (e.g., measuring the rate of biodiversity loss, use of resources, land use and so on), a key issue has been that these have been developed with Westphalian methodologies, and dominant political-economic trends in mind. They therefore reflect imbalances in onto-epistemological hierarchies within the traditional conservation and sustainable development paradigms. As stated by an interviewee, when elaborated within a community, indicators articulate, *make visible*, Indigenous Peoples and local community experiences, values and efforts in addressing biodiversity loss. Here we must also question underlying assumptions regarding ideas such as "data" in order to recognise and centre the work of Indigenous Peoples. Interview G. Work on the elaboration, and use of indicators based on diverse onto-epistemes and methodologies within the CBD definitely deserves increased attention across disciplines, including from the perspective of onto-epistemic in/justice. Unfortunately, that is beyond my capabilities within this thesis. For more on this topic, see for instance Sally Engle Merry, 'Expertise and Quantification in Global Institutions' in Niezen and Sapignoli (eds), *Palaces of Hope* (2017).

effectively deny the "right to say no" which many argue is enshrined within the right.[128] These moments in time bring to the fore the ways that human-nature relations within these spaces ultimately become made into a matter of *state-territorial sovereignty* and control over *natural resources*, which are in turn often framed and spoken of in economic-growth, and modernity [as development] terms. The above also illustrate the inherent uncertainty and challenging conditions that local representatives face when participating in a process where their ability to contribute to debate and prompt change is wholly dependent on the unpredictable actions by States, whose interests are framed in ways that are often incompatible with the wellbeing of particular communities and their worldviews.

Understanding the above requires attention, and appreciation of the political-social-cultural and legal tensions embroiled within these debates, and what is on the line, for whom, when the "right to say no" is denied when speaking of FPIC. That such an act can lead to dispossession, and loss of access to lands, ecosystems and resources crucial for the livelihoods and wellbeing of entire communities, is concealed, hidden, made invisible, through the careful wordsmithery of actors familiar with international biodiversity law, so much so that it passes many by without notice. The seemingly neutral tone of international biodiversity law deceives, and detracts from the deeply political, social, cultural, and ethical questions that arise when speaking of these issues. Oftentimes, the mere mention of FPIC within CBD provisions is often seen as a positive thing, as it signifies an increased recognition, and protection of the relevance of Indigenous Peoples rights within biodiversity law.

Yet, the above illustrates the ways that States may do the exact opposite by undermining the interpretation of these rights in significant ways, which, given that the topic up for discussion was the mainstreaming of biodiversity across sectors, can have effects going well beyond biodiversity conservation. The example above is also telling of an atmospheric which treats as normal the prioritisation of opportunities for infrastructure, extractives and other industry-related projects in favour of domestic economic growth, over the rights of Indigenous Peoples. And as such, we can see here the *tilts* between actors, grounded in onto-epistemic conditions and where the ideological vision of the achievement, or continuity of development and technical and technological advances, in the name of modernity ideals,[129] and the protection of state sovereignty, as a matter of utmost importance, even if done at the expense of certain groups in society.

Another example which brings to the fore the ideological decisions taken at the negotiations, as well as the concerns, frustrations and issues associated with onto-epistemic hegemony within the CBD spaces, is the ongoing debate on NBS, especially featuring in the negotiations on the GBF. As with the long contested approach of *ecosystem services*, NBS constitutes a

[128] Authors notes, Observations and Dialogues and COP-14. See Special Edition of the *International Journal on Minority and Group Rights* (2020) entitled 'Free, Prior and Informed Consent: Between Legal Ambiguity and Political Agency', edited by Martin Papillon, Jean Leclair, Dominique Leydet.

[129] This has emerged throughout the CBD GBF discussions, where the targets related to any form of economic activity were subject to textual amendments where States continually sought out to bring in the significance of development and technological advances. Authors notes, Observations at OEWG-3.

"natural capital" approach, long critiqued for their entrenched dualistic reasoning and understanding of "nature", not as a holistic, interconnected and bounded whole with intrinsic value, but rather as something made up of a collection of capital, resources and services, at our human disposal.[130] Under these approaches, streams, forests, coasts, symbiotic and other interactional phenomena between species and spaces are broken down, made into separable pieces, with human-nature relations becoming grounded on utilitarian and transactional perspectives and values. They are often heralded within MEA's as providing good tools for policy-makers to aid in implementation and mainstreaming environmental concerns across sectors, as well as offering more palpable ways for communicating to the general public ways that "nature" contributes to their wellbeing.[131] Yet, critics on the other hand argue that the very premise upon which these approaches are based upon promote false solutions, reproduces and entrenches uneven power dynamics and provides pathways for the greenwashing of harmful activities.[132] Also, as highlighted by the various local caucus groups contributing to the CBD negotiations, activities often falling under the natural capital, and marketisation approaches to environmental protection, continue to be associated with human rights abuses, not to mention paternalistic and top-down governance structures where impacted local peoples and communities have little say.[133]

Having first emerged from several years of discussions at the UNEP and become a key discourse within the UN Framework Convention on Climate Change (UNFCCC), NBS is growing in popularity amongst policy-makers, corporate actors and global NGOs.[134] Within the UNFCCC, it has primarily become associated with carbon storing and capture, with public discourse often associating it with forestry initiatives claiming to reduce land degradation while capturing and storing carbon, "offsetting" carbon released into the atmosphere elsewhere.[135] The idea of "offsetting" itself is grounded in a dualistic ontology, where nature, ecosystems and their processes are made up of `resources` and "services", viewed in isolation and capable of being substituted by one another and conceived of as replaceable. The emerging concerns voiced by grassroots activists regarding NBS is also linked to the carbon and biodiversity

[130] See for instance Bram Büscher et al., 'Towards a Synthesized Critique of Neoliberal Biodiversity Conservation' (2012) 23:2 *Capitalism Nature Socialism*; Michael Sandel, *What Money Can't Buy: The Moral Limits of Markets* (Penguin, 2012); John Vidal, 'Conservationists split over 'biodiversity offsetting' plans' *The Guardian*, 3 June 2014 <https://www.theguardian.com/environment/2014/jun/03/conservationists-split-over-biodiversity-offsetting-plans> (accessed 28/12/2021); Martine Maron et al., 'Conservation: Stop Misuse of Biodiversity Offset' (2015) 523 *Nature;* For a broader discussion see Martin, 'Just Conservation: Biodiversity, Wellbeing and Sustainability (Routledge, 2017), Chapter 8.

[131] Ibid (Martin, 2017).

[132] See discussion in Chapter 2 Section 2.2.

[133] See discussion in Chapter 5 Section 5.3.

[134] UNEP Website, 'The UN Environment Programme and nature-based solutions' (September 2019) <https://www.unep.org/unga/our-position/unep-and-nature-based-solutions> (accessed 17/12/2021); Natalie Seddon, 'Evidence Brief – How effective are Nature-based Solutions to climate change adaptation?', *Nature-based Solutions Initiative*, August 2018.

[135] See for instance Jutta Kill, 'New Name for old distraction: Nature-Based Solutions is the new *REDD'* (January 2020) *Bulletin 247, World Rainforest Movement <https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/new-name-for-old-distraction-nature-based-solutions-is-the-new-redd/>* (accessed 17/12/2021).

offsetting and net-zero pledges increasingly made by States regarding environmental degradation.[136] Here, critics argue that such efforts divert attention away from the need for urgent action to combat the driving forces behind these crises in the first place, which as highlighted in the IPBES report demands attention to economic structures, cultures, and societal values and behaviours such as patterns of production and consumption.[137] Offsetting projects elsewhere have also notably been critiqued for deepening societal inequalities associated with distribution, access, governance and decision-making regarding land and resources, with proponents ignoring the fact that even the act of tree planting is a social and political act, not simply an ecological one.[138] Taken together, activists and organisers are wary of what they see as the corporate capture of climate and biodiversity spaces, negotiations and policy, fearing also that the incorporation of its discourses and narratives within implementation will cause rifts amongst their own communities on appropriate responses and actions.[139]

On the back of this, some countries pushing for the adoption of NBS terminology have failed to explain how it differs from the ecosystem approach, and have also denied commenting on whether they see the idea of biodiversity offsetting as being included within its remit under the CBD framework.[140] This is significant precisely because of the fact that language, especially legal language, is not only ontologically and epistemologically significant, but can also be ab/used to open up space for un/intended consequences that go far beyond what people may see as an inconsequential shift in terminology. In fact, there is a concern that some States may even push for NBS to *not* be clearly defined within the GBF, with the risk being that it may legitimise actions currently not falling under the remit of permitted approaches and activities within the CBD.[141]

For instance, with regards to the difference between NBS and the ecosystem approach, and the offsetting debate, CBD Decision 5/6, which provides principles of the Ecosystem approach, adopted in 2000, explicitly states that ecosystem-management programmes should reduce "market distortions" that adversely affect biodiversity. The rationale here is that "the

---

[136] See for instance report on the UNFCCC COP26 World Leaders Summit, at IISD ENB, 'Glasgow Climate Change Conference: Tuesday, 2 November 2021', Vol.12 No.784 (3 November 2021). See also proposals by the UK Government to make *net zero* a driving force behind environmental law within the UK, UK Government, 'Net Zero Strategy: Build Back Greener' (October 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033990/net-zero-strategy-beis.pdf> (accessed 26/12/2021); UK Government Press Release 'Landmark Environment Bill strengthened to halt biodiversity loss by 2030' (August 2021) <https://www.gov.uk/government/news/landmark-environment-bill-strengthened-to-halt-biodiversity-loss-by-2030> (accessed 26/12/2021).

[137] See IPBES, *Summary for Policymakers* (2019), 12.

[138] Rose Pritchard, 'Politics, Power and Planting Trees' (2021) *Nature Sustainability*.

[139] Global Forest Coalition, 'Corporate Contagion: How the private sector is capturing the UN Food, Biodiversity and Climate Summits' (May 2021) <https://globalforestcoalition.org/corporate-contagion/> (accessed 26/12/2021); 2012 Joint Civil Society Statement 'Ending corporate capture of the United Nations', signed by, amongst others, Friends of the Earth International, La Via Campesina, Peace and Justice in Latin America /SERP AJ-AL, the Transnational Institute, Third World Network and World Mark of Women <https://www.foei.org/wp-content/uploads/2012/06/Statement-on-UN-Corporate-Capture-EN.pdf> (accessed 26/12/2021).

[140] Authors notes, Dialogues with colleagues in between the OEWG meetings, and Observations at OEWG-3.

[141] Authors notes, Dialogues with colleagues leading up to OEWG-3.

greatest threat to biological diversity lies in its *replacement by* `alternative` *systems of land use*" [emphasis added] often arising "through market distortions, which undervalue natural systems and populations and provide perverse incentives and subsidies to favour the conversion of land to less diverse systems".[142] To put it more simply, actions to offset biodiversity loss is currently explicitly excluded from the remit of CBD "solutions" for remedying biodiversity loss. So, if NBS is adopted without a clear definition, and be associated with, yet understood as something separate from the ecosystem approach, States and corporate actors could legally bring offsetting projects under the remit of the CBD, and thus be counted as part of their efforts in implementing the Convention, and combatting biodiversity loss.

It is clear that the decision of rejecting or accepting offsetting and net-zero, as appropriate mechanisms for combatting biodiversity loss, even though framed as a matter of following "sound" science, is ultimately an onto-epistemological, and ideological one. Both these approaches require a commitment to a dualistic framing of the world, and to techno-scientific methodologies in weighing, valuing, and ultimately compensating biodiversity loss/gain with that lost/gained elsewhere. The *epistemic selectivity*, and as a consequence potential *closure,* accompanying the NBS approach can be seen in the way that actors affiliated with the CBD have gone on the record across relevant international fora to emphasise the significance of planetary science data in supporting implementation of NBS,[143] which is often far-removed from the local knowledge and value systems accompanying Indigenous and local onto-epistemes.[144] Also, that the debate on "market distortions" has been around since the CBD's adoption in 1992 signals awareness and ongoing debate on the topic. In this sense, CBD Decision 5/6 does more than define the Ecosystem approach; it also gives us insights into an earlier ontological and epistemological contention, *rift* within past CBD negotiations, as to how far the dualistic, and technocratic logic underpinning solutions within the CBD could be taken. In the years leading up to 2000, the idea of offsetting, and net-zero were clearly seen as going too far, and thus deemed unacceptable. Yet, here they are again, 20 years on, with it now emerging as a sound activity for combatting biodiversity loss.[145]

Therefore, not only would the incorporation of NBS into CBD provisions and debates indicate a significant shift towards a deepened onto-epistemic dominance on behalf of natural capital and technocratic approaches within the CBD, but this debate itself also highlights and reiterates the temporal aspect of the challenges facing local groups seeking to combat socio-environmental injustice and power asymmetries within the CBD and biodiversity law and policy. Despite offsetting effectively being explicitly excluded in 2000, these ideas have clearly

[142] CBD COP5 Decision 5/6*,* Principle 4(a) and Rationale.

[143] See for instance the participation of CBD Executive Secretary Elizabeth Maruma Mrema at GEOWeek 2021, where she stressed the significance of "high quality geospatial data" to provide a "better understanding of ecosystem function" critical for NBS and for monitoring GBF targets and goals. IISD ENB, GEO Bulletin, 'GEO Week 2021: 22-26 November 2021'.

[144] Carina Wyborn and Megan C. Evans, 'Conservation needs to break free from global priority mapping' (2021) 5 *Nature Ecology and Evolution*; Pascual et al, *Biodiversity and the challenge of pluralism* (2021).

[145] More than this, it could well become the dominant way that countries claim to be addressing biodiversity loss, as we have seen with offsetting discourse within the UNFCCC.

remained, with their re-emergence now telling of a shift in the onto-epistemic foundations driving biodiversity law and policy. Here, spatial in/justice helps to shine light on the spatial and temporal discontinuity of justice, or rather the temporally contingency of *more/less* just conditions within decision-making spaces.

The above also brings forth an interesting point with regards to the obscurity of legal language, and the clarity/flexibility that parties often ask for so to account for inherent uncertainties, be it potential future technological advances, or domestic and/or regional particularities. [146] This illustrates the opportunities and risks of the strategic ab/use of linguistics and terminology within international legal negotiations, which is especially true with regards to emerging principles encapsulating that which certain actors wish to see feature more/less within biodiversity policy. In the previous chapter I wrote of this with regards to the incorporation of rights-based framings across CBD provisions. Now, I bring up the example of NBS and the strengthening of market-based and natural capital logics within CBD discussions. Indeed, proponents of NBS are trying to stem its critics by adding rights-based terminology alongside its features in CBD provisions. Indeed, this may address, to a small extent, concerns that projects may violate human rights standards or the rights of Indigenous Peoples. However, it simultaneously diverts attention away from the fact that, in many ways, the values, ontological and epistemological foundations of some practices falling under the NBS approach are ultimately incompatible with "other" approaches to biodiversity management and governance, and pose fundamental challenges to the aims of onto-epistemic pluralism called for within the CBD. By doing so it also undermines calls for transformative change, which requires paradigmatic shifts in not only how decisions are made and who makes them, but about *how* nature is perceived, and valued within those spaces.

This brings us back to the question of nature-framings, and overarching structures of decision-making which, from an international as well as domestic/local perspective, relates to the question of sovereignty. I will end this section by exploring instances where States infer state sovereignty, bringing to the fore socio-ecological and historical injustices, and how certain acts by states lay bare the ways in which coloniality remains embedded within the lawscapes of the CBD. This will be followed by a final, short reflection on what this means for the in/capability of the CBD lawscapes to provide the conditions necessary to envision and elaborate pathways towards transformative change.

[146] Indeed, as has been discussed with CBD experts, vagueness itself is sometimes seen as a virtue by lawyers precisely because of the way it leaves room for interpretation based on domestic and regional particularities. We can see this, for instance, when actions be "in accordance with domestic legislation", often placed alongside mentions of Indigenous Peoples rights. Here, positivist lawyers argue that this permits states to implement rules in accordance with their own relations vis-à-vis Indigenous peoples and histories. Yet, the flip side of this is that such terminology also ultimately upholds hierarchical structures that run counter to ideals of legal pluralism that the very structures themselves purport to support.

Land as Territory and Coloniality as Future

As a way of wrapping up this section, I will end with a short discussion[147] on the inference of colonial land relations within CBD negotiations through ideas such as *territory*. As discussed earlier in the thesis, the emergence of *territory* as an idea and legal concept, was intricately tied to the sovereignty of Western-European States, as well as to the colonial project of imperial, economic and cultural expansionism.[148] Throughout colonisation, Indigenous ontologies and epistemologies which shaped relations and understandings of land- and seascapes, were denied, excluded or outright rejected, in favour of economic rationales of utilising and harnessing the environment. This transformation, and dispossession of lands – spatially, culturally, socially, ontologically, epistemologically – that took places, continues to dominate today through a continuity of coloniality and an embeddedness of onto-epistemic conditions which underpinned European colonialism and expansionism.[149] In other words, the term *territory*, when viewed from a historical and legal perspective, is ontologically charged, carrying with it a certain way of understanding the world, and has a fraught history given its role in the shaping of politics, lands, and peoples' connection to it. The term is also entangled with recent-historical and current institutional structures and power dynamics introduced and discussed throughout this thesis.[150]

With this in mind, and as discussed in the previous chapter, it is unsurprising that the term, and processes associated with the very idea of claiming *territory,* gives rise to tension within Indigenous and rural grassroots movements.[151] One the one hand, for some the path towards *decoloniality* lies in rejecting these frameworks all together, denying their categories, terminology, and the ideologies underpinning them.[152] Denying them is to deny their relevance, their appropriateness for understanding and organising the world, and rejecting the powers at the helm of its institutions and processes. On the other hand, potential also lies in reverting, reclaiming, and re-imagining these concepts, to instead encapsulate a pluralism of onto-epistemologies and land relations.[153] If done within structures deeply embroiled with these origins and power dynamics, like international legal negotiations, the hope is that this can enable a shift towards strengthening the base of Indigenous self-determination by questioning core

[147] This subsection is shorter and more concise than those above, partly because it builds on discussions throughout the thesis, but also because of its inherent spatial limitations.
[148] See mainly Chapter 5 Section 5.4.2.3.
[149] See Stuart Elden, *The Birth of Territory* (University of Chicago Press, 2013); Collins et al, *Plotting the coloniality of conservation* (2021); Bluwstein, *Colonizing landscapes/landscaping colonies* (2021).
[150] See for instance Chapter 2 section 2.2, Chapter 4 section 4.2.1 and Chapter 5 section 5.3 and 5.4.2.3.
[151] See discussion in Chapter 5 Section 5.4.2.3 See also Ian Kara Ellasante, 'Radical sovereignty, rhetorical borders, and the everyday decolonial praxis of Indigenous peoplehood and Two-Spirit reclamation' (2021) 44:9 *Ethnic and Racial Studies.*
[152] Ibid. Coulthard for instance has written that "land-claims constitutes a crucial vehicle for the "domestication" of Indigenous claims to nationhood. See Coulthard, *Red Skin White Masks* (2014); Irene Watson, *Raw Law* (2015); Margaret Mutu, 'Mana Māori Motuhake: Māori concepts and practices of sovereignty' in Brendan Hokowhit et al (eds) *Routledge Handbook of Critical Indigenous Studies* (Routledge, 2021); and Robert J. Miller, 'American Indian sovereignty versus the United States' in Hokowhitu et al (above).
[153] Ibid.

ideas of what sovereignty means; how it emerges and is sustained, [154] who – and what – it protects. If taken far enough, this, to some, would *contribute* to the strengthening of Indigenous Sovereignty vis-à-vis colonial settler powers, on the international level.

From this perspective, we can gleam a renewed appreciation of the ontological significance of a State delegation trying to stress the historical, and indeed deeply colonial understanding of *territory*, as retold at the beginning of this section. Ultimately, this was a re-inscription of *colonial-settler* State sovereignty, which also constituted an attempt at blocking Indigenous sovereignty and rights to self-determination, deploying a form of "rhetorical imperialism" in how international law defines spaces.[155] Their proposed text makes this even clearer; not only would Indigenous land and the right to self-determination exist *within* the hierarchical structure of a state's ultimate sovereignty over land and resources, but this would also constitute an *occupation* of lands ultimately belonging to the State. This can thus be seen as a gesture of symbolic, and material appropriation and exclusion of land structures and relations whose existence preceded, and indeed today runs alongside, and often in spite of, colonial-settler land regimes.[156] As discussed earlier, the process of state-creation not only required claiming land, but also making those within the lands into "subject", "objectors" or "things" capable of being ruled, governed, and managed under the sovereign.[157] In other words, accompanying, and indeed underpinning the very idea of *territory* as proposed above, are the dualistic onto-epistemologies which have paved the way for inequalities, tilts-in-process, injustices, and disciplinary hegemonies experienced across the CBD processes. We saw this also with the insistence of Brazil that the idea of `traditional knowledge` only be construed as associated with natural resources, and thus subject to rules of state sovereignty. Another consequence of this is the external imposition of epistemological framings of what constitutes knowledge; how it is understood, framed, and used in relation to biodiversity conservation, bringing to the fore my discussion above on onto-epistemic injustice within debates.

At negotiations, the choice of terminology is deliberately, and in this instance clearly held consequences – political, legal, and/or otherwise symbolic – for people within that room, in signalling how we, the wider public, as well as actors within the field of conservation, should see Indigenous lands, as well as our relations vis-à-vis the settler State with whom the lands overlap, and the consequences this may have with regards to access, and decision-making concerning them. It shows the ways in which actors make symbolic gestures of power – with material effects – through linguistic wordsmithery, by drawing on terminology that is both ontologically, and epistemologically charged. Finally, it also illustrates the onto-epistemological conditions of colonial-territorial-sovereignty logics held within these spaces, with local

[154] For instance, according to Locke, physical control, occupation and economic use was tantamount to retaining sovereign rights to lands. Kuehls, *Beyond Sovereign Territory* (1996).
[155] Ian Khara Ellasante uses the term "rhetorical imperialism" when speaking of the ways that colonial powers have exercised their power through language, connotation and categorisation to dismantle Indigenous cultural systems. Ellasante, *Radical sovereignty* (2021).
[156] Kuehls, *Beyond Sovereign Territory* (1996); Bluwstein, *Colonizing landscapes/landscaping colonies* (2021).
[157] Ibid.

representatives confronted not only with their associated histories, but also with a reminder that these are perpetuated by powerful actors capable of blocking/enabling certain nature-framings to make its way into negotiated text, and thus international biodiversity law.

6.4.2 Prescribing Biodiversity Law

I would like to dedicate the very last part of this chapter to recalling the distinctiveness of the CBD negotiating spaces, and engage in a short reflection on the spatial, and institutional ramifications of the issues of onto-epistemological injustice across the multiplicity of spaces that make up CBD negotiations. As explored and discussed extensively in Chapter 4 on the Staging of Biodiversity Law, the CBD negotiating spaces differ significantly from one another, with a key reason for this being the distinct onto-epistemological foundations and logics driving forth the work within each space. Their distinctiveness stems from the conditions and reasoning behind their creation, their assignments, and the positioning of actors therein. Therefore, each space holds varying roles and opportunities for upholding or challenging onto-epistemological hegemony within international biodiversity negotiations. That said, as ultimately part of the wider setting of international legal institutions and settings, there are limits to the ways that these spaces to differ, posing the questions as to the inherent in/capability of these, and the CBD as a whole in prompting the changes necessary for transformative change to be achieved on a global scale. This latter topic is unfortunately beyond the scope of this piece; while I believe that it is a question of utmost important and one requiring more attention, this is simply not possible within the inherent limitations posed by the process of my doctoral research. So I will remain focused on what sets these spaces apart, and bring to light an important juncture that is on the CBD horizon; namely what next for WG8J. The remaining section is a dedication to this, with my argument being that if Parties are serious about transformative change, and dedicated to onto-epistemic pluralism and questions of justice, they must work towards ensuring a strengthened, permanent position for the body within the CBD lawscape.

I feel that few things symbolise the difference between COP, SBSSTA and WG8J, as well as their opening ceremonies. I introduce these in Chapter 4: COP-14 was opened with a grand theatrical performance touting the host country's "leading work" on combatting biodiversity loss; WG8J-11 began with a ritual of physical and spiritual cleansing, carried out by a Mohawk Elder, in preparing participants for the negotiations; and SBSTTA's opening was unceremonious, with the chair simply welcoming participants, and reiterated the importance of "scientific and technological knowledge".[158] The atmosphere amongst the spaces were different too: COP and SBSSTA struck me as distinctly corporate, with an air of formalism woven throughout its spaces, in the way people spoke, dressed, and interacted with one another; WG8J was wholly different, more informal, suits were abandoned in favour of jeans, even amongst some state delegates. Although taking place in the same *place*, the physical, material *space* of

[158] See Chapter 4 Section 4.4.1.

SBSTTA and WG8J were different too; during the WG8J the biggest meeting room was designated to the Indigenous Peoples and local community caucus, who once SBSTTA began was moved up to the top floor where their "room" was shared with the other local caucus groups, with simple free-standing shutters demarcating the separation between them.[159] There is also the fact that the *space* at SBSTTA itself grew, the halls literally expanding to accommodate more people, suggesting the topics under it being of a heightened priority for States.

Their processes are also different, with WG8J openly and loudly being *for the purpose* of enhancing the participation of Indigenous Peoples and local community representatives, something seen in its organisational structure, where the Indigenous Peoples and local community caucus have unique access to discuss issues as they emerge, as well as co-chair sessions.[160] There are also symbolic gestures by "friendly" States throughout WG8J meetings, where they pause inter-state discussions to invite Indigenous representatives to express their positions, something that is extremely rare during COP and SBSTTA, when Indigenous and other local representatives do not get a chance to speak at all.[161] There is also a strange form of isolation between the meeting spaces. Like I mentioned in Chapter 4, SBSTTA-23, which began just days after WG8J-11, was almost entirely devoid of references stressing the significance of Indigenous knowledges, which rang and echoed throughout the WG8J halls, despite clear overlaps in topics at SBSTTA.[162]

From an onto-epistemic in/justice perspective, work under WG8J has been at the forefront of international legal progress towards integrating non-dominant worldviews and knowledge frameworks into biodiversity conservation, and environmental policy more broadly, notwithstanding its own limitations, and the challenges that this work poses. Indeed, the "legal" status of the texts emerging from WG8J is indicative of this: to States they constitute best-practice, voluntary commitments; to Indigenous peoples they represent the bare minimum of what should be done to uphold their rights, including for enhancing inclusive participation and incorporating Indigenous knowledges and worldviews into conservation

[159] Ibid.

[160] This has in turn led to a strengthened positioning of other local actors, most notably the Womens and Youth caucus, reflecting the overlapping nature of identities, and the alliances that flow between empathetic movements grounded in socio-ecological justice.

[161] See Chapter 4 Section 4.4.2. This is not to say that WG8J is without its own challenge, including incorporating non-dominant worldviews and knowledge frameworks into its methods of work. A lot of these stem from the onto-epistemologies hegemonies explored in this chapter. For instance, the example above regarding Indigenous lands and "territories" took place at a WG8J session.

[162] Notably, there are important exceptions to this, Carolina Behe's presentation on Alaskan traditional management practices, presented during SBSTTA-23 being an important once, which also gained a lot of interest from delegates. Yet, reflecting on the significant disconnect between the interest shown here, and the very rare occasion when Parties will, self-prompted, reference Indigenous knowledge, suggests a tendency of Parties needing to be *spoon fed* examples of instances when Indigenous worldviews and knowledges may be relevant, rather than appreciating, from the outset, that these are *always* relevant. Compare this with how the natural sciences, and technological advances have become the go-to for states in considering ways for understanding, and addressing, biodiversity loss. For Carolina's presentation, please watch minutes 46.00 to 56.55 <https://www.youtube.com/watch?v=OtT0TGo6i_A&list=PL4yoXk7tzMgB6MTWPnT8iFoW_rtXxIsXp&index=7> (accessed 29/12/2021).

management and governance. This suggests a disjuncture in how progress is defined within this field, across groups, with States and other powerful actors still having a long way to go towards understanding the steps needed to envisage, and enable truly transformative change in how society is organised, nature valued and understood, in order for socio-ecological justice to begin to emerge on a global, as well as domestic and local level.

In this regard, WG8J provides a unique meeting place, with slightly re-shuffled spatial and onto-epistemic configurations, for participants to explore, experiment and test the limits as to what can be achieved within the confines of international law, including the shifting of onto-epistemological hegemonies currently inhibiting necessary efforts to stem biodiversity loss. For this very reason it is crucial that actors prioritise next steps for adopting a more permanent arrangement, following the completion of its mandate at COP-14. As mentioned in Chapter 4, and above, there are efforts to undermine, and stop such progress, illustrating the fact that even the space currently held by local groups within negotiations, cannot, and should not be taken for granted. Even a lesser form of the current structure of WG8J would undermine important progress in this field, and indeed risk reinforcing existing onto-epistemic hegemonies experienced across the rest of the CBD lawscapes. Indeed, given the aim for *transformative change* touted by State delegates at CBD meetings, it could even be argued that its realisation under the Post-2020 Global Biodiversity Framework, is wholly contingent upon a body like the WG8J being continued, and indeed strengthened. Yet, this may be – as Parties would say – premature, and prejudging the ambitions of some Parties for combatting biodiversity loss…

6.5 Conclusion

The aim of this chapter was to illustrate the ways in which onto-epistemological *tilts*, or hegemonies, and thus injustices, feature and manifest across CBD negotiations, and the consequences this has for the `participation` of local actors within its processes, and the incorporation of onto-epistemic pluralism within biodiversity law and governance more broadly. I began by introducing onto-epistemological in/justice, situating it amongst work on spatial in/justice. Here, my point was to show that the premise of spatial in/justice is inextricably linked to onto-epistemic in/justice, with the former thus suitable in providing avenues and tools through which we can understand, and *frame* how onto-epistemic injustice materialises within decision-making spaces.

Guided by previous work across multi- and transdisciplinary critical scholarship introduced earlier in the thesis, I then introduced the onto-epistemic hegemonies that have sat at the heart of dominant projections of international relations and rulemaking. My point here was that the idea of `modernity`, encapsulated within dominant discourses such as `sustainable`, and `international development`, remains grounded in scientific, technocratic, and market-based Eurocentric/Westphalian perspectives, which can in turn be traced back to European colonialism and imperial expansionism. Relics of this form of thinking can be seen

throughout international environmental law, including biodiversity legal institutions and provisions.

For illustrating this within the context of the CBD, I drew on my own experiences of the negotiations (observations, interviews, dialogues) and the CBD texts themselves. I grounded my discussion around particular terminology and the debates surrounding them; these include `biodiversity`, `natural resources`, Mother Nature, territory, `traditional knowledge` and NBS. Teasing out their histories and the ways they are used, along with the debates surrounding them, offered a lot of insight into the onto-epistemological conditions of international biodiversity negotiations. From a spatial in/justice perspective, the fact that some are seemingly non-contentious, while others give rise to lengthy debate, itself highlights that certain thinking and logic has become embedded within every-day Convention parlance, signifying settled onto-epistemic tilts, i.e., *atmospherics*. It also illustrates the constant, unfolding, processual nature of ontological and epistemological discord, or 'struggles over environmental knowledge' within the CBD lawscapes. My argument here to lawyers, negotiating delegations and practitioners alike, is that committing to onto-epistemic pluralism and justice *demands* questioning the terminology we employ to describe, organise, and regulate society, including socio-cultural-ecological interactions and relations. Within the CBD, this is especially true for how we conceive of nature, formulate the stressors placed upon her, and the ways we may go about addressing them. Words have a powerful role in signalling, and signifying the relevance of worldviews and knowledges, as well as the people (human or otherwise) permitted into a space of decision-making.

Within the context of the CBD procedures, onto-epistemological injustice has several significant consequences within the context of this thesis. First, I showed that it contributes in direct ways to the barriers restricting meaningful `participation` of local actors. This is experienced in several ways, including actual exclusion from debates and decision-making processes, instances of hostility by State delegations, as well as the emergence of an *atmosphere* in which individuals and groups whose background is not in economics or natural sciences, have their place within debates questioned. Second, and connected to my point above, the onto-epistemological hegemonies seen and experienced across the CBD lawscapes pose a threat to the ability of work under the Convention to interrogate and reimagine global conservation endeavours by accommodating and embracing local perspectives and experiences. This in itself undermines the supposed aim of Parties to enable *transformative change*, which lies at the heart of the upcoming Post-2020 GBF. Given the lip service paid to participatory governance, and rights-based approaches across biodiversity governance and policy, and the fact that *transformative change* itself requires paradigmatic – i.e., ontological and epistemological – shifts to decision-making, this is a significant weak point as to whether the Parties to the Convention will be able to deliver the very aims they set themselves.

In this sense, this chapter has brought to the fore tensions and incompatibilities within the CBD structure itself, and posed serious questions as to the adequacy of current measures and processes for prompting the shifts necessary for enabling *transformative change*. For this final

point I ended the chapter with a short reflection, drawing on work in earlier Chapters, to highlight the significance of the WG8J in providing a unique meeting place that permits strengthened participation, and opportunity for onto-epistemic pluralism to make its way into the work of the convention. Notwithstanding the inherent limitations placed upon the body by virtue of its mere existence within the wider setting/lawscape of international environmental law, my final points is that Parties need to take its role seriously, and ensure its continued existence – preferably in permanent form – during negotiations at COP-16.

Chapter 7: Discussion and Conclusion

Over the years of this project, the CBD negotiations have been within the public spotlight more than ever before.[1] This has led to not only more calls for transparency and accountability of its processes and outcomes, but also greater public interest and participation within the CBD processes themselves.[2] With this we have also seen stronger, and more frequent calls for social justice dimensions to make it into debates pertaining to biodiversity law and governance.[3] These changes are significant. Especially given the status of the CBD as a "global" treaty,[4] along with the fact that its provisions set the stage for the elaboration of domestic policy as well as endeavours of international organisations and institutions, its negotiations constitute a significant "entry point" for such perspectives to affect policy, action, and support across the regional, domestic and local levels. However, in order to understand, appreciate and channel the potential that these changes bring, it is also important to understand their context, as well as the histories from whence the CBD processes and debates themselves have emerged. This will help us understand better, not only international and national laws as they are currently formulated, but also grasp where challenges and barriers may arise (or perhaps, already exist) for pursuing greater progress towards socio-ecologically just futures. In order for countries to achieve their ambitions on *transformative change*,[5] as called for in the IPBES Global Assessment, we need to see a transformation in the decisions taken by governments across scales (at the CBD as well as on the domestic level), especially in terms of recognising and acting on the interconnectedness between the forces shaping our environments and relations, underpinned by socio-political and economic organising across society. Yet, what this research has unearthed is also the need for greater attention to be paid to those very processes themselves. In fact, a key argument emerging from this research has been that without deeper interrogation as to how decisions are made, and greater sensitivity and critical thought as to the positioning of actors and their knowledges and worldviews, within those processes, their very ability of addressing biodiversity loss is undermined. This comes down to the onto-epistemic foundations driving forward particular framings of societal ills and solutions, including the ways that these *shape* the conditions enabling or restricting access to certain groups. Here, spatial in/justice has been key for highlighting the very

[1] See for instance The Guardian news series "The Road to Kunming" which specifically focuses on issues pertaining to the upcoming discussions at the CBD COP-15 set to be held in Kunming. See The Guardian, *The Road to Kunming* <https://www.theguardian.com/environment/series/the-road-to-kunming> (accessed 26/04/2022).

[2] We can see this simply in the stark increase in participation of the CBD meetings (noted by Chairs in the meetings themselves), as well as the growing number of people joining the various CBD local caucus groups. Authors notes, Observations at SBI-3, SBSSTA-24 and OEWG-3. Likewise, there is growing familiarity with concerns facing biodiversity across the world and the ways this intersects with other issues including climate change and social injustice, as seen in mass mobilisations, including Extinction Rebellion.

[3] Although these calls have long been made within the CBD lawscapes by local actors, we've seen a surge in attention paid to these issues thanks to the efforts of popular movements shared on the news and through social media, including the Fridays for Future school strikes, the Water is Life Indigenous movement.

[4] See Chapter 1 footnote 21 on CBD membership.

[5] See Chapter 6 discussing the idea of "transformative change" in more depth.

embeddedness of such conditions within the legal-spatio-temporal organising of the CBD, including within its very own provisions.

In setting out to understand the meaning and practice of `participation` of local actors within the CBD, this inevitably also became about exploring the potential that this provides in terms of having discussions embrace `alternative` narratives, discourses, and ways-of-being/doing, which can offer new ways of addressing the triple planetary crises, including biodiversity loss. Given the immensity and urgency of these crises, and their connection with global-and-local inequality, it is more important than ever to ensure that powerful actors show willingness to interrogate the ways that existing rules, practices and processes fall short of providing necessary solutions.[6] In this regard, given the violence and injustice experienced by certain groups with regards to the governance and use of our shared environments – be it through fortress conservation, exploitation of Indigenous and local knowledges, the loss of livelihoods and enhanced labour exploitation through the industrialisation of sectors such as fishing and agriculture[7] – it is especially important to ensure more socio-ecologically sound decision-making, which align with principles of social justice, and responds *directly* to the concerns of historically marginalised groups.[8]

As argued in throughout the thesis, this demands renewed attention to process, and questioning whether current participatory mechanisms within the highest level of decision-making actually enable such interrogation and reimagining of global endeavours. Here, my theoretical approach, and methods for engaging with the CBD processes, has provided unique insight, and analysis into where we might find the barriers for such efforts, and helped highlight some avenues for change. It has meant going beyond the mere texts of international biodiversity law, to the processes and conditions of their emergence, including the actors, discourses and onto-epistemological hierarchies embedded therein, which as I have shown, can have profound impact on outcomes. In this final chapter, I will discuss these aspects, bringing together the many strands of my research, showing you the original findings from my chapters and

[6] This aligns with work for "studying up" powerful actors and institutions, and focusing on the ways that their in/actions restrict more just processes and outcomes to emerge. See Chapter 2 Section 3.2.

[7] For reports on biopiracy, including exploitation of Indigenous and local knowledges, see for instance Patrick Greenfield, 'Biopiracy row at UN talks in Geneva threatens global deal to save nature', *The Guardian*, 30 March 2022, available at <https://www.theguardian.com/environment/2022/mar/30/cop15-faces-copenhagen-moment-genetic-data-dispute-aoe> (accessed 27/04/2022). Regarding fortress conservation see for instance David Hill, 'Rights not 'fortress conservation' key to save planet, says UN expert', *The Guardian*, 16 July 2018, available at <https://www.theguardian.com/environment/andes-to-the-amazon/2018/jul/16/rights-not-fortress-conservation-key-to-save-planet-says-un-expert> (accessed 27/04/2022). On industrial farming, see for instance La Via Campesina working internationally and through national chapters on the rights of peasants and small-scale farmers. See <https://viacampesina.org/en/> (accessed 26/04/2022). For industrial fishing see Human Rights Watch, 'Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry' (HRW, 2018) available at <https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry> (accessed 27/04/2022); Chris Armstrong, 'Fishing industry must do more to tackle human rights abuses – here's where to start', *The Conversation*, 23 November 2020, available at <https://theconversation.com/fishing-industry-must-do-more-to-tackle-human-rights-abuses-heres-where-to-start-149762> (accessed 27/04/2022).

[8] Carina Wyborn et al, 'Research and action agenda for sustaining diverse and just futures for life on Earth: Biodiversity Revisited' (2020) 25 *Conservation Biology*.

reflect on their implications for policy across the CBD and domestic level of decision-making, as well as areas needing more scholarly (or diplomatic) attention.

7.1 Unearthing spatial in/justice at CBD Negotiations

7.1.1 Key Insights from Theory and Methodology

The theoretical framework driving this research forward was introduced in Chapter 2, bringing together thinking from critical legal theory, decolonial thought, legal geography and legal anthropology. My choice of literature reflects the endeavours and ambitions of this work. Critical legal theory has pushed me to consider the ways in which traditional understandings and approaches to environmental law and legal research have struggled to address their own shortcomings in terms of helping to address biodiversity loss. Decolonial thought helped me position this work within the broader context of historical trajectories and experiences across the globe, as well as opened my mind to looking beyond dominant narratives and framings of my discipline. Legal geography provided me with the inspiration to look at international law-making spaces through a different lens, showing for instance the ways that law and space co-emerge and produce the conditions for how we understand our worlds, as well as the decisions that are taken in how we may engage within them. Finally legal anthropology has helped broaden perspectives of what constitutes law, which when brought into discussion with legal geography, has brought more nuance, and in light of the diversity of legal cultures around the world, greater respect and honesty to my understanding of law and legal interactions within the CBD negotiations, as a lawscape amongst many lawscapes.

Bringing these together enabled me to develop a novel theoretical framework, which from the outset confronts and challenges the assumptions underpinning traditional approaches to understanding and studying international environmental law and governance. With regards to biodiversity governance in particular, I began by drawing attention to the inequitable practices that have been enabled and sometimes encouraged through legal frameworks. Here, existing literature across disciplines have brought to light some of the uncomfortable relationships between law and colonial practices, with some showing ways in which the logics and values underpinning these have remained embedded within contemporary legal provisions and institutions. Here, my reliance on legal geography, and spatial in/justice in particular, helped bring light to the ways that law and space intermingle and are co-produced/constructed to also reinforce such unequal conditions. This materialises as *tilts* in the lawscapes, affecting and benefitting some actors and their perspectives, while pushing others to the margins. My aim here has been to acknowledge, and unsettle the assumptions about law/space which normalise unjust societal conditions. Within this project, that has meant honing in on the ways that power relations between peoples, beings and our environments, have emerged, are sustained and embedded therein.

Spatial in/justice offered an important lens and tools for unpacking this further, helping me see the in/tangible challenges facing certain actors within the CBD negotiations in terms of

access and influence. By looking especially at how law is made more/less in/visible across various spaces, Philippopoulos-Mihalopoulos' theory brings into sharp focus the way that this influences dynamics, and the normalisation – *settling* – of certain conditions (and thinking) that drives forward particular narratives and discourses. I found that the idea of *atmosphere* is incredibly powerful in helping articulate and highlight the ways that things-taken-for-granted become just that. This is a significant contribution to understanding and providing a starting point for tackling inequalities that are not obvious at first glance. A legal text may subscribe apparently "equal" footing to actors in a process. Yet, it is not until you begin to unpack the manifestation of those texts, and explore the *logic*, *values* and *knowledges* underpinning their elaboration and implementation, that we can begin to understand how and why actors still continue to be positioned in ways that favour some over others.

My theoretical framework also brought to the fore the inherently subjective experience of society, and how power and privilege comes into play: one's experienced freedom and liberties may be another's oppression. In this sense, Butler's idea of performativity helped inspire thinking around the ways that the *atmospherics* influence people's experiences by prescribing actors with identities, expectations and prescribed roles which influence the ways that they can act and engage with a given space or discussion. The concept of *tilts* also provided an apt descriptor for imbalances felt across the lawscapes, be it in the power discrepancies between actors in enacting certain change, the direction to a given discussion, or the relevance and importance attached to a given set of knowledges and insights. I will return to these again below when discussing the significance of my findings across the substantive chapters of the thesis, and how this can drive forward positive institutional and policy change.

To me, the theoretical framework in several ways demanded empirical methods in order for me to unpack some of the ways that spatial in/justice emerges within the CBD processes. Without empirical, and emic insights, I fear that the theory would have remained too abstract, too difficult to grasp, picture, imagine, or be used for "seeing" the barriers that materialise at the negotiations. In this sense, my immersion into the CBD lawscapes was crucial for my own understanding of the potentials and challenges posed in drawing on the theory of spatial in/justice in my analysis. Although I was convinced by its potential in helping me assess the participatory processes of the CBD, I still needed to work out how best to communicate it to an audience. The additional benefit therefore of adopting empirical methods was that I was swept into the processes, having to adjust my own language, temporality, positioning, and thinking in order to understand the process from an *emic* perspective. Here, I too was confronted with *some of* the realities facing those seeking to participate and influence its processes, which helped deepen my understanding of spatial in/justice as an experiential phenomenon, and its analysis an immersive experience.

Equally, when arriving at the negotiations I quickly realised the immensity of the task at hand, and the difficult I would face in terms where I may be able to take the theory in light of challenges with obtaining in-depth interviews with colleagues. This meant re-arranging my own expectations of the project, by focusing more on the materiality of spatial injustice as opposed

to exploring how we can move onto more just conditions within the CBD lawscapes. This primarily stems from my reluctance in doing the academic "thing" of offering solutions for the sake of it.[9] In reality, I believe that the necessary solutions for the environmental crises won't come from technocrats or bureaucrats, but are to be found within the individuals and collectives whose engagement within these processes have been hampered by the *oppressive atmospherics* of the CBD lawscapes. These *oppressive atmospherics* – as the conditions through which *tilts* become normalised and accepted – include the linguistic and temporal conditions explored in chapter 4. It also refers to the power held by governments by virtue of the overarching concept of state sovereignty, along with the ways that it has come to be interpreted and operationalised within diplomatic culture and practice, and the ways that this can be used to suppress dissent and critique. It also included the homogenising approach to "local" and "public" representation, as well as the settling and dominance of *neocorporatist* and *functionalist* logics for framing `participation` within the CBD, explored in chapter 5, as seen in the terminology used for "casting" actors, along with the onto-epistemic hegemonies explored in chapter 6.

The fact that the constraints of this project and my field sites meant that my collaborations with colleagues were in some ways limited, has meant that my analysis looks closer at the idea of *spatial injustice*, its *tilts* and *atmospherics*, as opposed to the *ruptures* and *withdrawals* necessary for spatial justice to emerge. From a more practical perspective, this meant learning to deepen my observations and consider the various options for bringing peoples' experiences and perspectives into the project (e.g., through Dialogues), both in order to understand the experiential aspect of the atmosphere, but also "filling" the gaps in what I could and could not observe or experience.

It was then through empiricism, combined with the spatial injustice lens, that I gained a better grasp of how I may go about understanding the process of international law and international law-making differently from previous work in the field. While I certainly do not believe that all lawyers need to become ethnographers in order to "understand" the law, I do believe that we need to move beyond having our experiences of "law-in-action" feature as mere "anecdotes" in our thinking. Spatial in/justice invites us to see these not as stand-alone events, but rather as part of the bigger picture. A racist comment by a country representative,[10] the assertion of "expert" knowledge in process,[11] the exclusion of certain groups from discussions "in order to get the job done",[12] or the allowance of lies uttered for the sake of diplomatic

[9] This aligns with those who point out that critical scholarship is not always, from the outset, solutions-driven. Instead, "critical theory invites us to be bothered and affords language to critique" in ways that helps prompt renewed engagement and destabilisation of current norms and dominant discourses, by offering space to "flip the script". See Jason G. Garvey et al. 'Performing Critical Work: The Challenges of Emancipatory Scholarship in the Academic Marketplace' (2017) 8:2 *Critical Questions in Education*; Charles Phillips, 'Difference, Disagreement and Thinking of Queerness' (2009) 8 *Borderlands*.

[10] See Chapter 6 Section 6.4.1 under *Knowing nature and owning knowledge.*

[11] Ibid. See also Chapter 4.4.1 and 4.4.2.

[12] See Chapter 4 Section 4.3.3.

relations,[13] are all part of how *tilts* and *atmospherics* materialise and are experienced within a given space, contributing to the formulation of decisions and relations therein. What my research has shown is that we shouldn't see these just as individually insightful, but also as collectively significant. In this sense, spatial in/justice when brought together with empirical methods, has given me the lens, and vocabulary for seeing the "bigger picture" of international decision-making processes, and the importance of *ruptures* for disrupting the dominance of certain discourses. Given the nature of *tilts* and *oppressive atmospherics*, spatial in/justice helps highlighting that change doesn't just come through revolutionary acts (although these are important too), but rather in the form of "small', every-day objections to the sustenance of those conditions.

7.1.2 Spatial In/Justice at the CBD Negotiations

The findings of my substantive chapters offer significant new insights for deepening our understanding of participation of local actors within the international law-making processes of the CBD, which carry a number of implications on both the process and substance of international and domestic policy elaboration and implementation, and well as very institutional make-up of the CBD itself.

To begin, my research has shown how important it is that lawyers (practitioners and researchers alike) look more critically, and in a far more nuanced way, at the idea of participation in process. This PhD is not prescriptive in the sense that it seeks to provide *one* single reason for why participation should occur, or what it should look like, as this will depend on the particularities of each given process. That said, this research has made it clear that we must regardless be ready to ask and confront harder questions about *why* participation is an aspiration in the first place, as this will set the benchmark for how it may then best be put into practice. Here, my analysis and discussion in Chapter 4 and 5 sends particularly important messages to practitioners and researchers alike in terms of appreciating the significance of how we frame participation in process, as well as thinking more deeply about how those ambitions can be achieved in a way that doesn't undermine the agency of actors, and the legitimacy of a process and its outcomes.

Framing Participation

The former point, as discussed in my analysis in chapter 5, brings into sharp focus the significance of terminology in the "casting" of roles and descriptors to actors. My research has shown that, unless we are mindful of this, we risk reinforcing power imbalances between groups and knowledge systems, reinscribing dominant discourses. This can be particularly helpful to consider in light of discussions surrounding the idea of *transformative change*, where it is recognised that we need a change in priorities and understanding of human-nature relations across society.[14] Here, it is not enough to merely "recognise" the significant role that

[13] See Chapter 4 Section 4.4.1.

[14] See IPBES, *Summary for Policymakers* (2019); Vissera-Hamakers et al., *Transformative Governance of Biodiversity* (2021).

historically marginalised actors can play in this regard. As shown in my discussion under chapter 5, the ways that a process refers to these groups and their role will have an impact on the ways that they are able to contribute to debates, and the power that they may hold in enacting and pushing for certain changes. Here, I used terminology (i.e., the identities used to describe actors) as signifiers for the positioning of actors at negotiations, reflecting the spatio-legal conditions and re/inscription of certain values underpinning the decision-making process. This provided insight into the *tilts* and *atmospherics* within the participatory spaces of the CBD, showing how certain values become normalised and visually withdrawn, yet omnipresent. Their materiality nonetheless comes through in the resulting positioning of actors and the ways that certain terminology/values benefits or privileges certain actors over overs, or unduly restricts the ways that certain actors can participate in light of accompanying expectations and assumptions.

To show this, I began by problematising the use of the concept of `civil society` as a catch-all phrase for non-state actors and groups engaging in public mobilisation. I focused especially on how the term's use has a homogenising effect on the idea of "local" engagement in bureaucratic processes, hiding from view the immense diversity of insights, perspectives and experiences held across groups and identities. Given this, and the accompanied depoliticisation, managerial and technocratic logic flowing throughout environmental law and practice,[15] I found that the terms currently in popular use risks creating scenarios that privilege already powerful organisations and actors with greater access to resources, whose work aligns better with prescribed understanding of "expertise", and who are ultimately far removed from the communities and environments they claim to be protecting. From a practical perspective, actors engaged in these processes are reminded of the importance of recognising and accounting for difference within international movements.[16] Likewise, my findings here calls on researchers across disciplines to be mindful in how they identify, and refer to these collectives' movements, so to not reproduce and reinscribe inequalities within the processes that they study.

In my ensuing discussion on the terminology adopted at negotiations for identifying relevant actors within biodiversity law and policy, I made it clear that the idea of `stakeholder` is inadequate for addressing procedural shortcomings, and may indeed act to worsen conditions from a spatial in/justice perspective, given its strong associations with corporate-market discourse, and the way that its use may reinforce the engagement of already powerful actors. I also highlighted risks associated with the term *knowledge-holders*, questioning its potential

[15] See Chapter 5 Section 5.3.1, as well as Kamat, *The Privatization of Public Interest* (2004) and Smith, *The Revolution will Not Be Funded* (2007).

[16] This was in fact brought up during a presentation by Stephen Stec (Scientific and Technological Community Major Group representative) at the 5th session of the UN Environment Assembly, who highlighted that the current structure of the Major Groups constituencies within the UNEP framework is insufficient to uphold and give due respect to the diversity of people and collectives represented therein, noting especially that the ways they are often forced to "speak in one voice" is problematic. See IISD ENB Summary Report fifth resumed sessions of the Open-ended Committee of Permanent Representatives and the United Nations Environment Assembly and the Commemoration of UNEP@50' (March 2022) Vol.16 N. 166, 16.

for enabling shifts in power dynamics between actors, given the overarching onto-epistemic imbalance seen within the CBD, as illustrated in chapter 6. As a result, it risks making diverse knowledge systems, and those carrying the knowledges, vulnerable to exploitation and inappropriate initiatives for "collecting/extracting" and "using" these within conservation and related endeavours, creating further harm. My discussion on the idea of *rights-holders* highlighted the potential that this term may carry for enabling a shift in the *tilts* experienced by certain actors across biodiversity law and governance. I stressed the significance of ensuring that the relevant rights, in their operationalisation, are responsive to the ontological diversity reflected across communities, in order to address historic injustices. Given the relatively new and swiftly emerging nature of these discussions within the CBD, I believe that this is an important area of further work, for practitioners, researchers and groups engaged in public mobilisation alike. Here, it is important for practitioners and researchers to make themselves humble in their interactions with other groups and be open for learning about the un/expected and un/seen consequences that words carry, and how supposedly "global" principles may in fact undermine emancipatory struggles. With regards to transformative change, this forms part of actions required in confronting and addressing power dynamics and onto-epistemological hierarchies within decision-making spaces (and research processes), including the destabilisation of pre-conceived notions and concepts, including that of "rights", "knowledge", "land" and "sovereignty", and how these are interrelated and entwined.

Materialising/Spatialising Participation

In returning to my argument above, my research has also called for a deeper consideration of how participatory processes can achieve their ambitions in ways that doesn't undermine the agency of actors, and the legitimacy of a process and its outcomes. This featured throughout the analysis in my substantive chapters. Chapter 4 examined the CBD negotiating process, and offered novel insights with regards to the barriers and *tilts* experienced when actors seek to engage in the drafting of international biodiversity law. In this sense it helped set the scene for the ensuing chapters, yet also provides important contributions in its own right. To begin, my observations and analysis brought new insights into the ways that ceremonial/ritual occurrences, as well as the every-day procedural culture of the CBD shape the negotiating space in ways that clearly favoured, and embraced certain narratives and discourses for how international law is to be negotiated and decided upon. I revealed that these, collectively, illustrate an *atmospheric* where, for instance, the idea of state sovereignty is perceived as an inevitability, and supreme principle used to undermine constructive dialogue, as opposed to a deliberate discourse pursued by certain powerful groups. This has knock-on effects on the relationships that emerges between actors, nurturing a form of dependency vis-à-vis non-state actors who then face difficult decisions regarding their own agency, and that of the communities they represent, in how they should act, and what changes they should pursue. Here too, the "formal" imagery and corporate-like aesthetics of the negotiations felt far-removed from the environments whose protection was up for discussion, and reinforced a particular form of engagement between actors. In this regard, the difference across the CBD lawscapes

helped illustrate the significance of looking across the different negotiating spaces of the Convention. For instance, the WG8J stood out as a unique, "different" space which offered some opportunities for an emergence of cultural, temporal and spiritual relativity within the CBD lawscapes. I showed this by engaging with its ceremonies, in the procedures for participation as well as avenues for redress when Indigenous representatives felt that expectations and established standards had not been met. Even the relationship between local actors and state delegates, including the temporal assignment of *when* actors got to speak, changed in favour of Indigenous and other local representatives. Yet, it is important here to appreciate the WG8J's situatedness as a "lawscape among lawscapes", with the space itself constrained simply by the fact that it still operates within the wider institutional context of the CBD. One clear example of this is the fact that what takes place therein seldom seems to influence discussions and decision-making across the other negotiating spaces, bar for the obvious references occasionally made to its outcome documents as per traditional doctrinal analysis.[17] That said, we must not underestimate the WG8J as probably the most promising space for enabling shifts in process and substance in terms of allowing spatial justice to begin emerging for local participation at the CBD. I will return to this point further below.

Some more important *tilts* uncovered in chapter 4 related to the issue of time, language and the ways that these materialise, and are organised during negotiations. This includes for instance the simultaneous nature of negotiations once Contact Groups begin, meaning that larger delegations benefit as they have the ability to assign people across all sessions. That this comes down to a question of resources means that it is an issue felt across state and non-state actors alike, and creates a significant imbalance in the drafting process of international legal texts. Given the significance of CBD outcomes in setting the stage for global-to-local approaches and support for biodiversity governance, such an imbalance in who can contribute and when, to textual negotiations, is a significant procedural shortcoming. An interconnected issue also arose in this regard, related to the fact that the lack of languages across negotiating spaces creates significant barriers for participation, and engagement throughout. Here, the CBD Secretariat is not living up to its own standards in terms of ensuring that documents are translated ahead, or even during, meetings. Similarly, surely the fact that Contact groups do not have interpretation needs to be reconsidered, especially given that this is where the finer details in legal texts get discussed in depth. Granted, these are complicated issues, with the CBD parties seeking to address some by for instance offering funding support to both parties and observers alike in order to enhance the size of delegations.[18] That said, I think that more can, and should be done to address these issues, so to ensure high standards of procedure, and not undermine the legitimacy of process and outcome. This too, therefore is an area that I believes requires more attention from within the CBD Secretariat itself, as well amongst the CBD Parties.

[17] See discussion in Chapter 4 Section 4.4.1.

[18] Still, in Chapter 4 I also illustrate the limitations of these solutions, given that may of the barriers sometimes also come down to institutional or bureaucratic barriers.

The timings for when, and for how long, observers are permitted to speak poses a serious challenge to their active, and meaningful engagement in discussions. Being invited to take the floor only after parties have completed their discussions on a given topic (sometimes hours before) is simply not good enough when we are talking about the inclusion of different perspectives and knowledges within a process. To begin, this confirms the suspicion by critical scholars that the idea of participation is, in certain instances, manipulated in ways that ultimately legitimises undemocratic processes. Reflecting on what was said above with regards to state sovereignty, this also illustrates in a really clear way how the idea, and its interpretation shapes negotiations in ways that wholly undermines contributions by impact groups, and interactive discussions with actors who have so much to bring to debates. Here, I also unveiled the volatile, and uncertainty of process which often comes down to who is acting as Chair. During the virtual meetings, I witnessed at least two instances where Chairs simply denied observers the right to contribute to discussions. When the issue was later raised, concerns were swiftly brushed aside, along with the justification that it was "within the power of the Chair to make that call". Again, from a purely legal doctrinal perspective this may well be the case. However, through a spatial in/justice lens we can quickly identify the issues with such practices in terms of their inability for enabling new perspectives and knowledges to inform decision-making, as well as what it tells us of the priorities of process, and the values inscribed within the rules themselves. Here, my empirical findings have confirmed current critical literature highlighting onto-epistemological hierarchies (primarily grounded in market-capitalist, Western imperialism technocracy) within the CBD,[19] but also gone further to illustrate the ways that this materialises within the negotiations themselves, as well as impacts this has on the participation of local actors therein.

These insights carry important implications from an institutional/organisational perspective. To begin, in order to be seen as taking participation seriously, the CBD Secretariat and parties alike need to reconsider current practices. This means not just looking at how participation can be enhanced and strengthened within the WG8J, but also across the other CBD negotiating spaces. This is especially important given that transformative change requires onto-epistemic diversity across *all* aspects of societal organisation and governance. Equally, lawyers and other professionals engaging with these processes also need to take greater responsibility, and be more conscious of the ways that they describe, and refer to these processes, and the actors therein. Here, mentioning in passing that a process is "participatory" simply because it allows some groups a number of seats around the table, risks undermining participation itself, cheapening it and its potential, by granting legitimacy to undemocratic processes. By treating it as acceptable, and perfectly in line with procedural ideals – which must be recognised as distinct from written rules – we risk reinforcing, and supporting *oppressive atmospherics* (like those mentioned above), which inhibit rather than enable difference and inclusivity within the CBD negotiations.

[19] See especially my discussion on this in Chapter 6.

Distinguishing between procedural ideals and written rules is important for a number of reasons. First, there is the way that decisions are made within the CBD. Consensus decision-making, albeit carrying its own weight with regards to international law-making,[20] is often characterised as a form of "meeting in the middle" when it comes to the elaboration of environmental policy.[21] What this research has also shown is that the process will also be heavily skewed by virtue of the actors involved, and the onto-epistemological conditions shaping process and discussions.[22] In Chapter 6 I explored some of the consequences of this with regards to the outcomes of WG8J, noting that although the outcomes are categorised by states as "best practice", to many of the Indigenous representatives they constitute the bare minimum, and thus do not vocalise ambitious ideals to aspire to.[23] Second, although there are only few written rules pertaining to the `participation` of local actors (explored in Chapter 4), many of which are purely procedural, my research has shown that even when they are lived up to, they still fall short of basic democratic ideals.[24] For these reasons I believe it important to not equate procedural ideals with written rules.

Connected to this, chapter 6 looked closer at the onto-epistemological hierarchies inscribed within the CBD negotiating lawscapes, and explored how this enables or hinders the emergence of spatial in/justice with regards to the `participation` of local actors in terms of onto-epistemic pluralism and diversity, within these spaces. It drew on the previous chapters, delving deeper into the ways that particular worldviews and knowledge systems dominate the negotiations, often to the exclusion of others through the settling of oppressive *atmospherics*. The idea of *onto-epistemic* injustice concerns the inherent interlinkage between worldviews and the recognition and appreciation of diverse knowledges and knowledge systems. It is used in the chapter to explore the ways that any given processual space may privilege certain onto-epistemic values and framings, while simultaneously prompting unjust conditions for certain knowers and knowledges (e.g., by prioritising scientific knowledge or market-based approaches for valuing the environment). Although scholars have in the past explored epistemological hegemonies and imbalances within the CBD negotiations,[25] my study is the first to do so from the lens of onto-epistemic injustice, including how this influences the inclusion of diverse groups in negotiations. For exploring how this materialised at the CBD, I treated language/terminology as signifiers for the stabilisation of *atmospherics* which settle onto-epistemic *tilts* across the relevant negotiations. I looked at the ways that certain terminology carries with them particular historical, cultural and onto-epistemological connotations, for instance by signalling how biodiversity is best conceived, understood, framed, and protected. I found that some of these, in part by virtue of them having such a central role in the very framing of discussions, as well as the way they do/not make space for `alternative`

[20] See discussion in Chapter 1 Section 1.1 and Chapter 4 Section
[21] See discussion in Chapter 4 Section 4.3.2.
[22] Ibid.
[23] See discussion in Chapter 6 Section 6.4.1 under *Knowing nature and owning knowledge.*
[24] See Chapter 4 Section 4.3.2.
[25] See for instance Brand and Vadrot, *Epistemic Selectivities* (2013); Reimerson, *Between Nature and Culture* (2013); Suiseeya, *Negotiating the Nagoya Protocol* (2014).

framings, risk having an exclusionary effect by blocking progress for enabling a plurality of worldviews and knowledge systems.

An example of this is my discussion on the term `natural resources`, pervasive in its use to describe our shared environments, signifying economic-capitalist rationales for how we are to perceive and relate to the spaces, beings and "things" around us. It signifies common parlance at the CBD negotiations, its use largely non-contentious, compared to the term *Mother Nature*, which participants will usually face an uphill battle when attempting to have included in negotiating texts. This highlights the ways that economic and market logic is embedded within every-day Convention speak, materialising in onto-epistemic *tilts,* and oppressive *atmospherics* that undermining efforts for diverse worldviews to gain meaningful recognition in biodiversity law and governance.

That market rationales underpin much of the CBD negotiations (and international law more broadly) has already been amply criticised within existing literature.[26] The contribution of my research here lies in exploring the consequences of such onto-epistemic hegemony with regards to the engagement of local actors within processes and the constricting effect of this in terms of onto-epistemic diversity emerging. Not only should this make us question the legitimacy of the *participatory* nature of the CBD processes, but also consider the consequences this may have on the ability of its negotiations in actually providing adequate solutions for addressing biodiversity loss. When seen in light of current debates on the need for transformative change, my insights here bring into question whether parties will actually be able to achieve this, given that the very path towards transformative change *demands* a plurality of knowledge systems and worldviews/paradigms of human-nature relations in decision-making and societal organising.[27] Indeed, the current embeddedness, and persistence of market-capitalist and technocratic logics within ongoing discussions, coupled with the barriers facing groups seeking to engage in the talks, will make it hard for Parties to get past business-as-usual approaches, and embrace the `alternatives` already offering place-based, localised solutions grounded in different ways of perceiving, and relating to our environments, as well as new ways for organising governance and management of shared spaces.[28]

This has a few different connotations in terms of future work. To begin, more public and political pressure needs to be put on Governments, internationally and nationally, to take more seriously the onto-epistemic justice demands that come with *transformative change* claims. In this regard, more research should look into ways that onto-epistemic injustice features

[26] See for instance McAfee, *Selling Nature to save It?* (1999); Vermeylen, *Environmental Justice and Epistemic Justice* (2019); Collins et al, *Plotting the coloniality of conservation* (2021).
[27] Lavínia Pereira and Olivia Bina, *The IPBES Conceptual Framework: Enhancing the Space for Plurality of Knowledge Systems and Paradigms* in Joana Castro Pereira and André Saramago (eds) *Non-Human Nature in World Politics* (Springer, 2020).
[28] Kate Massarella et al., Transformation Beyond Conservation: how critical social science can contribute to a radical new agenda in biodiversity conservation' (2021) 49 *Current Opinion in Environmental Sustainability*; Eduardo S. Brondizio et al., Making place-based sustainability initiatives visible in the Brazilian Amazon (2021) 49 *Current Opinion on Environmental Sustainability*.

within policy- and law-making, as well as explore avenues for integrating more diverse onto-epistemologies within these processes. This includes work by international lawyers, scholars and practitioners alike, in needing to consider seriously where, and to whom they look to in terms of understanding the concept. There could be devastating risks in taking for granted that what emerges from CBD negotiations actually constitutes the *transformation* we need in societal organising, and labelling it as such. This may be uncomfortable for doctrinal scholars: it questions, and destabilises the underlying taken-for-granted case where outcomes of international negotiations become designated "global" benchmarks for principles and the elaboration of policies for best practice. If the idea of *transformative change*, as it emerges and is operationalised within the CBD and across other MEAs, falls short of fulfilling the necessary aspects identified by IPBES, and along the way fails to address questions of power, justice and onto-epistemic diversity, we must look to different processes (and to different actors) for understanding the challenges and solutions moving forward. This is an area deserving more attention in research as well, with legal researchers needing to engage more in the interdisciplinary scholarship on transformative change in order to account for the blind spots in our traditional doctrinal scholarship. This would help equip us with the vocabulary and tools necessary for understanding the limitations and possibilities of legal research, and open up opportunities for cross-disciplinary collaborations. From my own experience, ongoing discussions on transformative change would benefit from the input of international legal scholars precisely because of our deep understanding of the nuances in legal language. Equally, we have a lot to learn from colleagues across disciplines as to the challenges that emerge from political, social and cultural standpoints, especially with regards to understanding and addressing power imbalances between actors and onto-epistemologies.

As discussed in my final substantive chapter, epistemological discord and hierarchy emerges in a constant unfolding manner, with participants facing daily challenges in having their knowledges recognised in areas going beyond aspects found in Article 8(j). Here, I found that the logics underpinning the "recognition" of diverse knowledges is hugely important as onto-epistemic justice also demands attention to the ways that knowledge is understood, appreciated, treated and used. I also found that the technocratic approach to decision-making, coupled with the market logic embedded within the CBD, threatens the integrity of diverse knowledge systems, and risks harming the places and communities from whence they come. I agree with colleagues across the caucus groups in terms of not accepting existing CBD policies on this as *best practice*. Here, opinions may differ as to whether they can amount to *bare minimum* standards and expectations for what countries and actors should be doing in terms of protecting diverse knowledge systems and their communities. The verdict is still out on this, with the key question being whether the implementation of CBD provisions can be done in ways that respects and protects the cultures, knowledges and people who may be invited to engage in projects. If not, even endorsing the provisions as the minimum baseline for activity would be dangerous. Importantly here, answers will depend on a given scenario, with those doing research needing to be attentive to the materialisation of power dynamics in

processes, and pay due respect to cultural protocols and appreciating the many forms that onto-epistemic injustice may take (including in their own work).

Spatialising negotiations

This also brings to the fore the importance of institutional arrangements across the CBD. I ended my final chapter with reflections on the significance of the WG8J in providing a unique space within the CBD, notwithstanding its own limitations as existing within the wider conditions of international environmental law. I would like to extend that discussion to my final concluding thoughts for this thesis. The Working Group has over the years enabled the emergence of a strengthened form of participation,[29] and opportunities for onto-epistemic pluralism to make its way into the work of the convention,[30] with its outcomes having been some of the most significant in bringing together aspects of ecological harm and social justice into international legal discourse.[31] Within its halls, local participants are positioned differently, their words weighted heavier, and the temporal conditions of their interventions mean that they can actually engage in discussions, as opposed to only coming in to speak at the end. In several ways it destabilises ideas of who gets designated as "expert", flipping the traditional script for how environmental decision-making should take place, and who should be included. This is a significant, and in many ways a basic first step for enabling transformative change across governance structures, and has the potential for addressing historical injustices related to land, resource, rights and the use of diverse knowledges.

With this in mind, and given that the future of WG8J remains uncertain[32], it is now all the more important for researchers and practitioners alike, who support calls for more inclusive law-making processes, to supports efforts for ensuring its continuation, preferably in strengthened form. Existing options on the table were compiled in an information document ahead of COP-14,[33] which laid out the options as follows: (a) establishing a subsidiary body on Article 8(j) with the mandate to provide advice to COP-MOP, and the other subsidiary bodies, on matters that are relevant to Indigenous Peoples and local communities and within the scope of the Convention; (b) renewing the *Open-ended* Working Group with a revised mandate within the framework of the post-2020 GBF; and (c) applying the enhanced participation mechanisms used by the WG8J for the participation of Indigenous Peoples and local community representatives, as appropriate, when addressing matters of direct relevance to them in the subsidiary bodies. The discussions for this have been delayed until COP-16, expected to be held in 2024.

I can see a handful of issues arising with regards to the final option, especially linked to the question of what is of "direct relevant" to Indigenous Peoples and local communities. As

[29] See Chapter 4 Section 4.3.2 and 4.3.3.
[30] See Chapter 4 Section 4.4.1 and 4.4.2; and Chapter 6 Section 6.4.1.
[31] See Chapter 6 Section 6.4.2.
[32] Ibid.
[33] CBD/WG8J/11/INF/11, para 2. See also CBD/COP/14/INF/5/Rev.1 for a compilation of views by parties and observer groups.

discussed in chapter 4, I witnessed several instances at the meetings where certain parties push back on what certain groups should have an input on. If approaching it from a holistic matter, all agenda items can have a "direct" impact on Indigenous Peoples rights, be it in relation to access to lands, resources, wellbeing, or ability to provide engage in decision-making processes and processes related to governance. There is then also the *atmospherics* to consider of each of the spaces. As discussed throughout my thesis, SBSTTA, SBI and WG8J are wholly different, with delegates adjusting their language, dress, and the very content of their statements and positions on issues, there between. The question of traditional knowledge, in ways that considered their onto-epistemic diversity, was discussed in depth throughout WG8J, whereas at SBSTTA, when the question of relevant knowledges came up, there was little, if any mention of it. There is thus also a risk that the third option above would constitute yet another instance where traditional knowledge is merely "added" to existing processes and knowledge structures, in ways that risks undermining the very integrity of the knowledge itself. For these reasons, I hesitate to consider this an appropriate option.

The two other options need further consideration. Judging from my discussion and insights on WG8J, although it is a unique space, just renewing it would arguably not be enough to address procedural shortcomings, and the way this impacts the substance of discussions. For this reason, the first option is far more promising with regards to the emergence of onto-epistemic diversity in discussions, and addressing injustices in this regard. It would be a significant gesture of symbolic as well as tangible importance, showing that the topics and discussions that have emerged under Article 8(j), along with the participation of relevant actors, now have a strong and secure footing within the CBD negotiations. This may be enough to ensure greater interaction between the bodies, where the findings and discussions of the new WG8J body would influence processes and substantive input in SBSTTA and SBI. However, that is speculative, and will likely also depend upon the extent to which *transformative change*, as operationalised within the Post-2020 GBF, engages with aspects of onto-epistemic diversity.

This highlights the interconnectedness of CBD discussions and processes, with the outcomes of the Post-2020 GBF negotiations, set to be adopted at COP-15, determining what options Parties may consider in terms of the future of WG8J, and the potentials that the final decision holds in terms of ensuring strengthened participation of local actors within biodiversity negotiations. It is also worth highlighting that the operationalisation and implementation of *transformative change* under the auspice of the CBD will have big implications beyond the work of the Convention. It is likely to feed into work under other MEA's including other biodiversity conventions (especially CMS and Ramsar), as well as the UNFCCC. This is primarily because of the inherent interconnectedness between the ongoing environmental crises, in ways already inscripted into the CBD by virtue of climate change and other MEA-related topics being stand-alone agenda items under the Convention.[34] Here, a new area of collaborative

[34] See CBD Website, *Thematic Programmes and Cross-Cutting Issues* <https://www.cbd.int/programmes/> (accessed 28/04/2022).

research worth exploring is how States can overcome the current paralysis that plagues discussions on these agenda items (especially on climate change). During the negotiations I attended, hours were spent on back-and-forths between States quibbling about the "overstepping of mandates" when interconnected topics were brought up across the Conventions, hindering rather than furthering progress on addressing the environmental crises in an integrated manner.[35] This could be a key area of focus for international lawyers familiar with the relationship between MEA's, with interdisciplinary work helping us bridge, or rather break down the divides constructed between these topics and areas of work. Equally, cross-disciplinary research may help highlight other means for addressing these interconnectivities in ways that go beyond the international legal sphere, given that progress across the MEA's just may be too slow (or indeed, moving in the wrong direction). In this regard, *transformative change* will also influence the elaboration of domestic and regional policy, domestic societal-political organising, collaborations and decisions pertaining to the governance of economies across sectors and public/private realms. This provides ample areas of further enquiry by public bodies, independent organisations, and academic researchers alike, for ensuring ways that environmental governance is not only adequate in tackling the key drivers of biodiversity loss, but also for making sure that the way this is done is equitable and inclusive.

I will end with highlighting a proposal shared with me by some of the Indigenous representatives within the Indigenous Peoples and local communities caucus, [36] namely that the caucus itself to be party to decision-making within the relevant WG8J body, in that they would also have a role in the process for consensus-making. This is truly *transformative* – some would even say *radical* – and would go a long way in addressing the power discrepancies between participants at the negotiations identified in this research. It brings to the fore a range of new questions regarding process, institutional arrangements and ensuring democratic integrity of such a group, not to mention really challenges the traditional conceptions and rules related to international law-making. *How would this be facilitated within the CBD? Who may speak for whom? Could it enable us to rethink how state sovereignty is currently being understood and operationalised within international law-making processes (which in its materiality is prompting oppressive atmospherics to emerge)? Can it help push the boundaries of what states may conceive of as appropriate responses and actions in the process of decolonisation and reconciliation, as a way of addressing continued coloniality on Indigenous lands across the world?* These are just a few relevant questions, which provide important food for thought on the adequacy of current structures of international law-making. And for this very reason it is a proposal worth taking seriously. So, although I have not been able to engage with it in my research due to the inherent spatial limitations posed by a PhD thesis, along with the fact that

[35] Authors notes, Observations at COP-14 and SBSTTA-24.

[36] To my knowledge this is not the official proposal by the caucus. Authors notes, Dialogues at COP-14, and WG8J-11.

my colleagues in the Indigenous caucus had different priorities at the time of my work,[37] I would propose this topic, and the questions posed above, as a new area of enquiry amongst scholars and practitioners alike. Such work should be inter- and transdisciplinary, and be led by the actors within the Indigenous peoples and local communities caucus, so to ensure that such enquiries themselves respect the agency and pay due regard to the expertise that these actors bring to the process. Even if not achieved, the act of paying attention to a proposal in changes to the institutional rules for voting can have an important symbolic impact by signifying a recognition of the current inadequacy of process in terms of enabling a stronger and more meaningful form of `participation` to emerge. It does, after all, offer new creative, and *transformative* solutions for addressing so many of the issues presented in this thesis pertaining to the engagement of local actors in decision-making, and thus help us the tackle the very crisis of biodiversity loss itself.

[37] Given that a decision on the future of WG8J has been deferred to COP-16, expected to be held 2024, most colleagues are not looking at this just now, but rather focusing their efforts on the negotiations for the post-2020 GBF.

Annex: Overview of Observations, Dialogues and Interviews

Table 1. CBD Negotiations attended[1]

Meetings	Location & Date	# in attendance	My role
Fourteenth Conference of the Parties to the Convention on Biological Diversity (CBD COP14)	Sharm el Sheik, Egypt 17-29th November 2018	According to ENB summary report, approx. 3,800	PhD research, carrying out institutional ethnography
Eleventh meeting of the Working Group on Article 8(j) (WG8J-11)	Montreal, Canada 20-22nd November 2019	According to ENB summary report, approx. 600[2]	PhD research, carrying out institutional ethnography
Twenty-third meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA-23)	Montreal, Canada 25-29th November 2019	According to ENB summary report, approx. 600	PhD research, carrying out institutional ethnography
Informal Session for the Third meeting of the Subsidiary Body on Implementation (SBI-3)	Virtual, 8-14th March 2021	According to ENB summary report, over 2,00 registered	IISD ENB reporter
Twenty-fourth meeting of the SBSTTA (SBSTTA-24)	Virtual, 3rd May – 9th June 2021	According to ENB summary report, over 1,400 registered	IISD ENB reporter
Third meeting of the Open-ended Working Group on the Post-2020 Global Biodiversity Framework (OEWG-3)	Virtual, 23rd August – 3rd September 2021	According to ENB summary report, over 1,680 registered	IISD ENB reporter

[1] This is notwithstanding the preparatory meetings for each organised by the Secretariat, which for the virtual meetings usually run in the weeks leading up to the meeting.

[2] The CBD Secretariat has stopped providing official numbers, and participant lists, so I am using ENB reports. In the case of WG8J and SBSTTA, these are reported on together, with the final summary stating that approximately 600 participated. However, from my own observations, there were significantly fewer people in attendance during WG8J-11, with me being unable to ascertain whether the 600 refers to this meeting or SBSTTA-23.

Table 2. Summary of digital notes/files (describe in thesis and feed this into analysis talk)

Relevant meeting	Type	Number of digital notes/files
CBD COP14	Negotiations (Observations)	15
	Side Events (Observations)	10
	Caucus Meetings (Observations)	8
	Dialogues/In the Corridors[3]	15
WG8J-11 and SBSTTA-23	Negotiations (Observations)	10
	Side Events (Observations)	4
	Caucus Meetings (Observations)	1
	Dialogues/In the Corridors	8
	Statements by Caucus groups	4
Informal Session for SBI-3, SBSTTA-24 and OEWG-3	I took different styled notes as per ENB work, which I relied on none-theless in my analysis to complement my digital notes listed above.	
N/A	Interviews	10 instances of interviews, with 21 interviewees in total, spanning all UN-recognised regions, 15 women and 6 men.

[3] These files tended to reflect an accumulation of dialogues and discussions from the entire day, thus containing summaries and reflections on chats with multiple people, sometimes up to 20. In other words, my Dialogues reflect discussions with over 100 people.

Bibliography

Academic Journal Articles and Books

William M **Adams**, 'Nature and the Colonial Mind' in William M **Adams** and Martin **Mulligan**, *Decolonising Nature: Strategies for Conservation in a Post-colonial Era* (Earthscan, 2003)

Bill **Adams**, *Green Development: Environment and Sustainability in a Developing World* (Routledge, 4th edition, 2019)

Arun **Agrawal**, 'Dismantling the Divide Between Indigenous and Scientific Knowledge' (1995) 26:3 *Development and Change*

Arun **Agrawal**, *Environmentality: Technologies of Government and the Making of Subjects* (Duke University Press, 2005)

Rebecca **Alder-Nissen** and Alena **Drieschova**, 'Track-Change Diplomacy: Technology, Affordance and the Practice of International Negotiations' (2019) 63 *International Studies Quarterly*

Kirsten **Anker**, 'Law in the Present Tense: Traditional and Cultural Continuity in *Members of the Yorta Aboriginal Community v Victoria* (2004) 28:1 *Melbourne Law Review*

Denis **Alland**, Vincent **Chetail**, Olivier de **Froucille** and Jorge E. **Viñuales**, *Unity and Diversity of International Law* (Brill, 2014)

Tess **Altman** and Cris **Shore**, 'Paradoxes of 'public diplomacy': Ethnographic perspectives on the European Union delegations in the antipodes' (2014) 25:3 *Australian Journal of Anthropology*

Lina **Álvarez** and Brendan **Coolsaet**, 'Decolonizing Environmental Justice Studies: A Latin American Perspective' (2020) 31:2 *Capitalism Nature Socialism*

Kim **Anderson**, *A Recognition of Being* (Women's Press, 2nd edition, 2016)

Antony **Anghie**, *Imperialism, Sovereignty and the Making of International Law* (CUP, 2005)

Alberto **Arce** and Norman **Long**, 'Reconfiguring Modernity and Development From an Anthropological Perspective' in Alberto **Arce** and Normal **Long** (eds) *Anthropology, Development and Modernities* (Routledge, 2000).

Samuel **Asuming-Brempong**, *Economic and Agricultural Policy Reforms and their Effects on the Role of Agriculture in Ghana* (FAO, 2003)

Paul **Atkinson**, *Thinking Ethnographically* (Sage, 2017)

Carol **Baachi**, *Analysing Policy: What's the Problem to be?* (Pearson, 2009)

Carol **Baachi**, 'Why Study Problematisations? Making Politics Visible' (2012) 2:1 *Open Journal of Political Science*

Jack **Balkin**, 'The Promise of Legal Semiotics' (1991) 69 *Texas Law Review*

Stuart **Banner**, 'Why Terra Nullius? Anthropology and Property Law in Early Australia' (2005) 29 *Law and History Review*

Karen **Barad**, *Meeting the Universe Half-way: Quantum Physics and the Entanglement of Matter and Meaning* (Duke University Press, 2007)

John **Barry** and Kerri **Woods**, 'The Environment' in Michael Goodhart (ed), *Human Rights: Politics and Practice* (OUP, 2009)

Kabir **Bavikatte**, *Stewarding the Earth: Rethinking Property and the Emergence of Biocultural Rights* (OUP, 2014)

Kabir **Bavikatte**, Daniel **Robinson** and Maria **Olivia**, 'Biocultural Community Protocols: Dialogues on the Space Within' (2015) 1:2 *IK: Other Ways of Knowing*

William **Beinart** and Lotte **Hughes**, *Environment and Empire* (OUP, 2007)

Laura **Benton**, 'Colonizing Hawai'I and Colonizing Elsewhere: Toward a History of US Imperial Law' (2004) 38:4 *Law and Society Review*

Leanne **Betasamosake Simpson**, *As We Have Always Done: Indigenous Freedom through Radical Resistance* (Minnesota University Press, 2019)

Niloshree **Bhattacharya** and Vinod **K. Jairath**, 'Social Movements, 'Popular' Spaces, and Participation: A Review' (2012) 61:2 *Sociological Bulletin, Indian Sociological Society*

Patricia **Birnie**, Alan Boyle and Catherine Redgwell, *International Law and the Environment* (OUP, 2009)

Corneliu **Bjola** and Marcus **Holmes** (eds) *Digital Diplomacy: Theory and Practice* (Routledge, 2015)

Nicholas **Blomley**, *Law, Space and the Geographies of Power* (Guilford Press, 1994)

Nicholas **Blomley**, David **Delaney** and Richard T. **Ford** (eds) *The Legal Geographies Reader: Law, Power and Space* (Blackwell Publishing, 2001)

Jevgeniy **Bluwstein**, Adeniyi P. **Asiyanbi**, Anwesha **Dutta**, Amber **Huff**, Jens **Friis Lund**, Salvatore **Paolo De Rosa** and Julia **Steinberger**, 'Commentary: Underestimating the Challenges of Avoiding a Ghastly Future' (2021) *Frontiers in Conservation Science*

Jevgeniy **Bluwstein**, 'Colonizing landscapes/landscaping colonies' (2021) 28:1 *Journal of Political Ecology*

Valérie **Boisvert** and Armelle **Caron**, 'The Convention on Biological Diversity: An Institutionalist Perspective of the Debates' (2002) 36:1 *Journal of Economic Issues*

Valérie **Boisvert** and Franch-Domonique **Vivien**, 'Towards a political economy approach to the Convention on Biological Diversity' (2012) 36 *Cambridge Journal of Economics*

Judith **Bopp** and Anna Lena **Bercht**, 'Considering time in Climate Justice' (2021) 76 *Geographica Helvetica*

John **Borrows**, 'Aboriginal Title and Private Property' (2015) 71 *The Supreme Court Law* Review

Michael **Bowman**, Peter **Davies** and Catherine **Redgwell**, *Lyster's International Wildlife Law* (CUP, 2nd edition, 2010),

Susan B. **Boyd**, 'Corporatism and Legal Education in Canada' 14:2 *Social & Legal Studies*

Alan **Boyle** and Christine **Chinkin**, 'The Making of International Law' (OUP, 2007)

Sarah **Bracking**, Aurora Fredriksen, Sian **Sullivan** and Philip **Woodhouse** (eds) *Valuing Development, Environment and Conservation: Creating Values that Matter* (Routledge, 2018)

Ulrich **Brand** and Alice B. M. **Vadrot**, 'Epistemic Selectivities and the Valorisation of Nature: The Case of the Nagoya Protocol and the Intergovernmental Science-Policy Platform of Biodiversity and Ecosystem Services (IPBES)' (2013) 9:2 *Law, Environment and Development Journal*

Rebecca **Bratspies**, 'Do We Need a Human Right to a Healthy Environment?' (2015) 13 *Santa Clara Journal of International Law*

Irus **Braverman**, Nicholas **Blomley**, David **Delaney** and Alexandre **Kedar**, *The Expanding Spaces of Law: A Timely Legal Geography* (Stanford University Press, 2014)

Dan **Brockington**, *Fortress Conservation: The Preservation of the Mkomazi Game Reserve* (James Currey, 2002)

Dan **Brockington**, Rosaleen **Duffy** and Jim **Igoe**, *Nature Unbound: Conservation, Capitalism and the Future of Protected Areas* (Earthscan, 2008)

Jan **Broekman** and Larry **Catà Backer**, *Signs in Law* (Springer 2015)

Eduardo S. **Brondizio**, Krister **Andersson**, Fábio **de Castro**, Célia **Futemma**, Carl **Salk**, Maria **Tengö**, Marina **Londres**, Daiana **Tourne**, Taís **Gonzalez**, Adriana **Molina-Garzón**, Gabriela Russo **Lopes**, Sacha **Siani**, Making place-based sustainability initiatives visible in the Brazilian Amazon (2021) 49 *Current Opinion on Environmental Sustainability*

Wendy **Brown**, '"The Most We Can Hope For …": Human Rights and the Politics of Fatalism' (2004) 103 *The South Atlantic Quarterly*

Wendy **Brown**, 'Suffering Rights as Paradoxes' (2000) 7 *Constellations*

Tanja **Brühl**, 'Representing the People? NGOs in International Negotiations' in Jens **Steffek** and Kristina **Hahn** (eds), *Evaluating Transnational NGOs Legitimacy, Accountability, Representation* (Palgrave Macmillan, 2010)

Christoph **Brumann**, 'The Best of the Best: Positioning, Measuring and Sensing Value in the UNESCO World Heritage Site' in **Niezen** and **Sapignoli** (eds) *Palaces of Hope* (2017)

Ralph Clement **Bryant**, *The political ecology of forestry in Burma* (C Hurst, 1997)

Tove **Bull**, 'Kunskapspolitikk, forskningsetikk og det samiske samfunnet', in *Samisk Forskning og Forskningsteknikk* (Oslo, De nasjonale forksninsetiske komitéer 2002)

Bram **Büscher**, Sian **Sullivan**, Katja **Neves**, Jim **Igoe** and Dan **Brockington**, 'Towards a Synthesized Critique of Neoliberal Biodiversity Conservation' (2012) 23:2 *Capitalism Nature Socialism*

Judith **Butler**, 'Performative Acts and Gender Constitution: An Essay in Phenomenology and Feminist Theory' (1988) *Theatre Journal*

Judith **Butler**, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge, 1990)

Judith **Butler**, *Bodies and Matter* (Routledge, 1993)

Judith **Butler**, Ernesto **Laclau** and Slavoj **Žižek**, *Contingency, Hegemony, Universality: Contemporary Dialogues on the Left* (Verso, 2000)

Judith **Butler** and Gayatri **Chakravorty Spivak**, *Who sings the Nation-State? Language, Politics, Belonging* (Seagull Books, 2007)

Judith **Butler**, 'Performative Agency' (2010) 3:2 *Journal of Cultural Economics*

Judith **Butler** and Athena **Athanasiou**, *Dispossession: The Performative in the Political* (Polity Press, 2013)

Judith **Butler**, *Notes Toward a Performative Theory of Assembly* (Harvard University Press, 2015)

Gaile **Cannella** and Yvonna **Lincoln**, 'Predatory vs. dialogic ethics: Construction an illusion or ethical practice as the core of research methods' (2007) 13 *Qualitative Inquiry*

Fritjof **Capra** and Ugo **Mattei**, *The Ecology of Law: Toward a Legal System in Tune with Nature and Community* (BK Publishers, 2015)

Kathy **Chamaz**, 'Grounded theory methods in social justice research' in Norman **Denzin** and Yvonna **Lincoln**, *The SAGE Handbook on qualitative research* (Thousand Oaks, 2011)

Robert **Chambers**, *Rural Development: Putting the Last First* (Longman Press, 1983)

Robert **Chambers**, *Whose Reality Counts? Putting the First Last* (ITDG Publishing, 1997)

Gayatri **Chakravorty Spivak**, 'The Rani of Sirmur: an essay in reading the archives' (1985) 24:3 *History and Theory*

Gayatri **Chakravorty Spivak**, 'Can the Subaltern Speak?' in Nelson and Grossberg (eds) *Marxism and the Interpretation of Culture* (MacMillan Education, 1988)

Masaji **Chiba**, 'Other Phases of Legal Pluralism in the Contemporary World' (1998) 11:3 *Ratio Juris*

Lim Li **Ching** 'Corporate capture of agricultural biodiversity threatens the future we want', in Civil Society Reflection Group on the 2030 Agenda for Sustainable Development, *Spotlight on Sustainable Development: Reclaiming policies for the public: Privatisation, partnerships, corporate capture, and their impact on sustainability and inequality – assessments and alternatives* (2017)

Bhupinder S. **Chimni**, *International Law and World Order* (CUP, 2004)

Aziz **Choudry** and Dip **Kapoor** (eds) *Learning from the Ground Up* (Palgrave, 2010)

Aziz **Choudry**, 'Global Justice? Contesting NGOization: Knowledge Politics and Containment in Antiglobalization Networks' in **Choudry** and **Kapoor** (eds) *Learning from the Ground Up* (2010)

Aziz **Choudry** and Dip **Kapoor**, (eds), *NGOization: Complicity Contradictions and Prospects* (Zed Books, 2013)

Brian **Christensen** and Paul **Speer**, 'Tyranny/Transformation: Power and Paradox in Participatory Development' (2006) 22:7:2 *Forum: Qualitative Social Research*

Priscilla **Claeys**, *Human Rights and the Food Sovereignty Movement* (Routledge, 2015).

Priscilla **Claeys** and Jessica **Duncan**, 'Food sovereignty and Convergence Space' (2019) 75 *Political Geography*

Lorraine **Code**, *What Can She Know? Feminist Theory and the Construction of Knowledge* (Cornell University Press, 1991)

Rosemary-Claire **Collard**, Jessica **Dempsey** and Juanita **Sundberg**, 'A Manifesto for Abundant futures' (2015) 105:2 *Annals of the Association of American Geographers*

Richard **Collier**, 'The Law School, the Legal Academy and the "Global Knowledge Economy – Reflections on a Growing Debate: Introduction' (2005) 14:2 *Social & Legal Studies*

Yolanda Ariadne **Collins**, 'Colonial Residue: REDD+, territorialisation and the racialized subject in Guyana and Suriname' (2019) 106 *Geoforum*

Yolanda Ariadne **Collins**, Victoria A. **Maguire-Rajpaul**, Judith E. **Krauss**, Adeniui P. **Asiyanbi**, Andrea **Jiménez**, Matthew **Bukhi Mabele** and Mya **Alexander-Owen**, 'Plotting the coloniality of conservation' (2021) 28 *Journal of Political Ecology*

Brian **Cooke** and Uma **Kothari** (eds) *Participation: The New Tyranny* (Zed Books, 2001)

Brendan **Coolsaet** (ed) *Environmental Justice: Key Issues* (Routledge, 2020)

Beth A. **Conklin** and Laura R. **Graham**, 'The Shifting Middle Ground: Amazonian Indians and Eco-Politics' (1995) 97:4 *American Anthropologist*

Erik M. **Conway** and Naomi **Oreskes**, *Merchants of Doubt* (Bloomsbury Press, 2010)

Andrea **Cornwall**, 'Making spaces, Changing Places: Situating Participation in Development' (2002) *Institute of Development Studies Working Paper*

Andrea **Cornwall**, 'Whose Voices? Whose Choices? Reflections on Gender and Participatory Development' (2003) 31:8 *World Development*

Andrea **Cornwall** and Karen **Brock**, 'What do buzz words do for development policy? A critical look at 'participation', 'empowerment' and 'poverty reduction'' (2005) 26 *Third World Quarterly*

Jennifer **Corpuz**, Onel **Masardule** and Mikhael **Todyshev**, (2010) 'Indigenous Peoples' Free, Prior and Informed Consent in the *Convention Biological Diversity*: An Overview' in Sam **Grey** (ed) *Indigenous Peoples' Contributions to COP-8 of the Convention on Biological Diversity* (IIFB 2006)

Catherine **Corson**, Lisa M. **Campbell** and Kenneth I. **MacDonald**, 'Capturing the Personal in Politics: Ethnographies of Global Environmental Governance' (2014) 14:3 *Global Environmental Politics*

Lorenzo **Cotula**, 'Between Hope and Critique: Human Rights, Social Justice and Re-Imagining International Law from the Bottom Up' (2020) 48 *Georgia Journal of International and Comparative Law*

Glen **Coulthard**, 'Subjects of Empire: Indigenous Peoples and the 'Politics of Recognition' in Canada' (2007) 6 *Contemporary Political Theory*

Glen **Coulthard**, *Red Skin, White Masks* (Minnesota University Press, 2014)

Glen Sean **Coulthard**, 'Introduction: A Fourth World Resurgent' in George **Manuel** and Michael **Posluns**, *The Fourth World: An Indian Reality* (Minnesota University Press, Minneapolis; 2019)

Sean **Coyle** and Karen **Morrow**, *The Philosophical Foundations of Environmental Law: Property, Rights and Nature'* (Hart Publishing, 2004)

Jane K. **Cowan**, 'The Universal Periodic Review as a public audit ritual: An anthropological perspective on emerging practices in the global governance of human rights' in Hilary **Charlesworth** and Emma **Larking** (eds) *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (CUP, 2015)

Sara **Danius** and Stefan **Jonsson**, 'An Interview with Gayatri Chakravorty Spivak (1993) 20:2 *Boundary2*

Eve **Darian-Smith**, 'The crisis of legal education: embracing ethnographic approaches to law' (2016) 7:2 *Transnational Legal Theory*

Veena **Das** 'Knowledge' in Veena **Das** and Dider **Fassin** (eds) *Words and Worlds: A Lexicon for Dark Times* (Duke University Press, 2021)

Ranjan **Datta** and Margot A. **Huribert**, 'Pipeline Spills and Indigenous Energy Justice' (2020) 12:1 *Sustainability*

Margaret **Davies**, *Delimiting the Law: Postmodernism and the Politics of Law* (Pluto Press, 1996)

Margaret **Davies**, *Asking the law question* (Routledge, Fourth edition 2017),

Margaret **Davies**, *Law Unlimited: Materialisms, Pluralism and Legal Theory* (Routledge 2017)

Kevin **Davis**, Angelina **Fisher**, Benedict **Kingsbury** and Sally **Engle Merry**, *Governance by Indicators: Global Power Through Quantification and Rankings* (OUP, 2012)

Heather **Davis** and Zoe **Todd**, 'On the Importance of a Date, or, Decolonizing the Anthropocene' (2017) 16:4 *ACME: An International Journal for Critical Geographies*

Kevin **Davis**, Angela **Fisher**, Benedict **Kingsbury**, and Sally **Engle Merry**, *Governance by Indicators: Global Power Through Quantification and Rankings* (OUP, 2012)

Marisol **de la Cadena** and Mario **Blaser**, A World of Many Worlds (Duke University Press, 2018)

Boaventura **de Sousa Santos**, *Epistemologies of the South: Justice Against Epistemicide* (Paradigm Publishers, 2014)

Boaventura **de Sousa Santos**, *Another Knowledge Is Possible: Beyond Norther Epistemologies* (Verso, 2007)

Boaventura **de Sousa Santos***, The End of Cognitive Empire: The Coming of Age of Epistemologies of the South* (Duke University Press, 2018)

Boaventura **de Sousa Santos**, *Toward a New Legal Common Sense* (COP, 3rd edition, 2020)

Carl **Death**, Summit Theatre: exemplary governmentality and environmental diplomacy in Johannesburg and Copenhagen (2011) 20:1 *Environmental Policies*

Julia **Dehm**, 'One Tonne of Carbon Dioxide Equivalent (1tCO2e)' in Jessie **Hohmann** and Daniel **Joyce** (eds), *International Law's Objects* (OUP, 2018)

David **Delaney**, *The Spatial, The Legal and the Pragmatics of World-Making* (Routledge, 2010)

Donatella **della Porta** and Michael **Keating**, *Approaches and Methodologies in the Social Sciences* (Cambridge University Press, 2008)

Norman **Denzin**, *The Research Act: A Theoretical Introduction to Sociological Methods* (2017)

Norman **Denzin** , Yvonna **Lincoln** and Linda **Tuhiwai Smith** (eds) *Handbook on Critical and Indigenous Methodologies* (Sage, 2008)

René **Descartes**, *Discourse de la method* (1637)

Annette Aurélie **Desmarais**, 'The Vía Campesina: Consolidating an International Peasant and Farm Movement' (2002) 29 *Journal of Peasant Studies*

Barnabas **Dickson** and Jon **Hutton**, *Endangered Species, Threatened* Convention (Routledge, 2000)

Michael **Dodson**, 'The end of the beginning: Re(de)finding Aboriginality' in Michele Grossman (ed) *Blacklines: Contemporary critical writing by Indigenous Australians* (Melbourne University Press, 2003);

Kirstie **Dotson**, ''Thinking familiar with the interstitial': An introduction' (2014) 29:1 *Hypatia*

Mark **Dowie**, *Conservation Refugees: The Hundred-Year Conflict Between Global Conservation and Native Peoples* (MIT Press, 2011)

Common Sense: Law Globalization and Emancipation (COP, 3rd edition, 2020)

Woldfram **Dressler**, Bram **Büscher**, Michael **Schoon** and Dan **Brockington**, 'From Hope to Crisis and Back Again? A Critical History of the Global CBNRM Narrative' (2010) 37:1 *Environmental Conservation*

Anna-Lill **Drugge** (ed) *Ethics in Indigenous Research: Past Experiences – Future Challenges* (Vaartoe – Centre for Sami Research, Umeå 2016)

Rosaleen **Duffy**, 'Waging a War to Save Biodiversity: The Rise of Militarised Conservation' (2014) 90:4 *International Affairs*

Rosaleen **Duffy**, Francis **Massé**, Emile **Smidt**, Esther **Marijnen**, Bram **Büscher**, Judith **Verweijen Maano Ramutsindela**, Trishant **Simlai**, Laure **Joanny**, Elizabeth **Lunstrum**, 'Why we must question the militarisation of conservation' (2019) 232 *Biological Conservation*

Sébastian **Duych**, Sébastian **Jodoin** and Alyssa **Johl** (eds) *Routledge Handbook on Human Rights and Climate Governance* (Routledge 2018)

Leslie Anne **Duvic Paoli**, 'The Status of the Right to Public Participation in International Environmental Law: An Analysis of the Jurisprudence' (2012) 83 *Yearbook of International Environmental Law*

Jonas **Ebbesson**, 'The Notion of Public Participation in International Environmental Law' (1997) 8:1 *Yearbook of International Environmental Law*

Florence **Ebila** and Aili **Mari Tripp**, 'Naked Transgressions: Gendered Symbolism in Ugandan Land Protests' (2017) 5:1 *Politics, Groups and Identities*

Stuart **Elden**, *The Birth of Territory* (University of Chicago Press, 2013); Collins et al, *Plotting the coloniality of conservation* (2021)

Ian Kara **Ellasante**, 'Radical sovereignty, rhetorical borders, and the everyday decolonial praxis of Indigenous peoplehood and Two-Spirit reclamation' (2021) 44:9 *Ethnic and Racial Studies*

David **Engel**, "Law in the Domains of Everyday Life: The Construction of Community and Difference" in Austin Sarat and Thomas Kearns (eds), *Law in Everyday Life* (University of Michigan Press, 1993)

Sally **Engle Merry**, 'Law and Colonialism' (1991) 25:4 *Law and Society Review*

Sally **Engle Merry**, 'New Legal Realism and the Ethnography of Transnational Law' (2006) 31:4 *Law and Social Enquiry*

Sally **Engel Merry**, 'Measuring the World: Indicators, Human Rights, and Global Governance' in Damani Partride, Marina **Welker** and Rebecca **Hardin** (eds) *Corporate Lives: New Perspectives on the Social Life of the Corporate Form* (Wenner-Gren Symposium Series *Current Anthropology*, Vol. 52*:3,* 2016)

Sally **Engle Merry**, 'Changing rights, changing culture' in Jane K. **Cowan**, Marie-Bénédicte **Dembour**, and Richard A. **Wilson** (eds) *Culture and Rights: Anthropological Perspectives* (CUP, 1997)

Sally **Engle Merry**, 'Expertise and Quantification in Global Institutions' in **Niezen** and **Sapignoli** (eds) *Palaces of Hope* (2017)

Arturo **Escobar**, 'Imagining a post-development era? Critical thought, development and social movements' (1992) 32: *Third World and Post-Colonial Issues*

Arturo **Escobar**, 'Whose Knowledge, Whose Nature? Biodiversity, Conservation, and the Political Ecology of Social Movements' (1998) 5 *Journal of Political Ecology*

Arturo **Escobar**, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press, 2007)

Arturo **Escobar**, 'Más allá del desarollo: postdesarrollo y transciciones hacia el pluriverso' (2012) 21 *Revista de Antropologia Social*

Gustavo **Esteva** and Madhu **Prakash**, *Grassroots Post-modernism: Remaking the Soil of Cultures* (Zed Books, 1998, 2014)

Megan C **Evans**, Federico **Davila**, Anne **Toomey**, Carina **Wyborn**, 'Embrace complexity to improve conservation decisions (2017) 1:1588 *Nature Ecology & Evolution*

Megan C **Evans**, 'Re-conceptualizing the role(s) of science in biodiversity conservation' (2021) 48:3 *Environmental Conservation*

James **Fairhead** and Melissa **Leach**, *Reframing deforestation: Global analyses and local realities* (Routledge, 1998)

James **Fairhead** and Melissa **Leach**, 'Shaping socio-ecological and historical knowledge of deforestation in Sierra Leone, Liberia and Togo' in Reginald **Cline-Cole** and Clare **Madge** (eds) *Contesting Forestry in West Africa* (Ashgate, 2000)

James **Fairhead**, M **Leach** and Ian **Scoones**, 'Green grabbing: A new approach to nature?' (2012) 39:2 *Journal of Peasant Studies*

Michael **Fakhir**, 'Third World Sovereignty, Indigenous sovereignty, and food sovereignty: living with sovereignty despite the map' (2018) 9:3-4 *Transnational Legal Theory*

Orlando **Fals-Borda** and Muhammad **Rahman**, *Action and Knowledge: Breaking the Monopoly with Participatory Action Research* (Apex Press, 1991)

Sally **Falk Moore**, 'Law and Anthropology' (1969) 6 *Biennial Review of Anthropology*

Sally **Falk Moore**, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study' (1973) 7:4 *Law and Society Review*

Franz **Fanon**, *Black Skin, White Masks* (Grove, 1967)

Gregory **Feldman**, 'Development in Theory: Essential Crisis: A Performative Approach to Migrants, Minorities and the European Nation State' (2005) 78 *Anthropological Quarterly*

Peter **Fitzpatrick**, 'Marxism and Legal Pluralism' (1983) 1 *Australian Journal of Law and Society*

Peter **Fitzpatrick**, 'Law, Plurality and Underdevelopment' in David Sugarman (ed) *Legality, Ideology and the State* (Academic Press, 1983)

Peter **Fitzpatrick**, 'Law and Societies' (1984) 22 *Osgoode Hall Law Journal*

Benno **Fladvad**, Silja **Klepp** and Florian **Dünckmann**, 'Struggling against land loss: Environmental (in)justice and the geography of emerging rights' (2021) 117 *Geoforum*

Wesley **Flannery** and Geraint **Ellis**, 'Exploring the Winners and Losers of Marine Environmental Governance' (2018) 17:1 *Planning Theory and Practice*

Lorenza **Fontana** and Jean **Grugel**, 'The Politics of Indigenous Participation Through "Free Prior Informed Consent": Reflections from the Bolivian Case' (2015) 77 *World Development*

Timothy **Forsyth**, *Critical Political Ecology: The Politics of Environmental* Science (Routledge, 2003)

Michel **Foucault**, *Discipline and Punishment: The Birth of the Prison* (Allen Lane, London 1975)

Michel **Foucault**, *The History of Sexuality* (Penguin, 1976)

Nancy **Fraser**, 'Rethinking Recognition' (2000) 3 *New Left Review*

Nany **Fraser**, 'Recognition without ethics?' (2001) 18 *Theory, Culture & Society*

Paul **Francis**, 'Participatory Development at the World Bank: the Primacy of Process' in Cooke and Kothari, *The New Tyranny* (2001)

Bronwyn **Fredericks**, 'Epistemology that maintains white race privilege, power and control of Indigenous studies and Indigenous people's participation in universities (2009) 5 *Australian Critical Race and Whiteness Studies Association e-Journal*

Bronwyn **Fredericks**, ''We don't leave our identities at the city limits': Aboriginal and Torres Strait Islanders living in urban localities' (2013) *Australian Aboriginal Studies*

Paulo **Freire**, *Pedagogy of the Oppressed* (Seabury Press, 1970)

Miranda **Fricker**, *Epistemic Injustice: Power and the Ethics of Knowing* (OUP, 2007)

Madhav **Gadgil** and Ramachandra **Guha**, *This Fissured Land: An Ecological History of India* (OUP, 1992)

Deleuze **Gilles** and Felix **Guattari**, *A Thousand Plateaus* (Bloomsburg, 2013)

James **Glover**, 'Soul of the Wilderness: Can we Stop Trying to Control Nature?' (2000) 6:1 *International Journal of Wilderness*

Bikrum **Gill**, 'Beyond the premise of conquest: Indigenous and Black earth-worlds in the Anthropocene debates' (2021) 18:6 *Globalizations*

Mark **Goodale**, 'Locating Rights, envisioning law between the global and the local' in Goodale and Sally Engle Merry (eds) *The Practice of Human Rights* (CUP, 2007)

Allison **Graham**, *Essence of Decision* (Brown and Company 1971)

Nicole **Graham**, *Lawscape: Property, Environment, Law* (Routledge, 2011)

Nicole **Graham**, Margaret **Davies** and Lee **Godden**, 'Broadening Law's Context: materiality in socio-legal research' (2018) *Griffith Law Review*

Anna **Grear**, 'Foregrounding vulnerability: materiality's porous affectability as a methodological platform' in **Philippopoulos-Mihalopoulos** and Victoria **Brooks**, *Research Methods in Environmental* Law (Elgar, 2017)

Heidi **Grasswick**, 'Epistemic Injustice in Science' in Kidd, et al *Epistemic Injustice* (2017)

Anna **Grear**, 'Anthropocene, Capitalocene, Chthulucene': Re-encountering environmental law and its 'subject' with Haraway and New Materialism' in Louis **Kotzé** (ed) *Re-imagining Environmental Law and Governance for the Anthropocene* (Hart Publishing, 2017)

Anne **Griffiths**, 'Law, Space and Place: Reframing Comparative Law and Legal Anthropology' (2009) 34:2 *Law & Social Inquiry*

John **Griffiths**, 'What is legal pluralism?' (1986) 24 *Journal of Legal Pluralism*

Kalinda **Griffiths**, Clare **Coleman**, Vanessa **Lee** and Richard **Madden**, 'How colonisation determines social justice and Indigenous health – a review of the literature' (2016) 33 *Journal of Population Research*

Ramachandra **Guha**, *The Unquiet Woods: Ecological Change and Peasant Resistance in the Himalaya* (Oxford University Press 1989)

Irene **Guijt** and Meera **Kaul Shah***, The Myth of Community: Gender issues in participatory development* (IT Publications, 1998)

Mia **Halme-Tuomisaari**, 'Toward a Lasting Anthropology of International Law/Governance' (2016) 27:1 *The European Journal of International Law*

Miia **Halme-Tuomisaari**, 'Meeting "The World" at the Palais Wilson: Embodied Universalism at the UN Human Rights Committee' in Niezen and Sapignoli (eds) *Palaces of Hope* (2016)

Miia **Halme-Tuomisaari**, 'Guarding Utopia: Law, Vulnerability and Frustration at the UN Human Rights Committee' (2020) 28:1 *Historical Geography*

Stuart **Harrop** and Diana **Pritchard**, 'A Hard Instrument Goes Soft: The Implications of the Convention on Biological Diversity's Current Trajectory' (2011) 21 *Global Environmental Change*

Minu **Hemmati**, *Multi-stakeholder Processes for Governance and Sustainability: Beyond Deadlock and Conflict* (Routledge, 2002)

Jennifer **Hendry** and Melissa **Tatum**, 'Human Rights, Indigenous Peoples and the Pursuit of Justice' (2016) 34 *Yale Law & Policy Review*

Jennifer **Hendry**, Melissa L. **Tatum**, Miriam **Jorgensen** and Deirdre **Howard-Wagner**, *Indigenous Justice: New Tools, Approaches and Spaces* (Palgrave, 2018)

Samuel **Hickey** and Giles **Mohan**, *Participation: From Tyranny to Transformation?* (Zed Books, 2004)

Juha **Hiedanpää**, Joni **Saijets**, Pekka **Jounela**, Mikko **Jokinen**, Simo **Sarkki**, 'Beliefs in Conflict: The Management of Teno Atlantic Salmon in the Sámi Homeland in Finland' (2020) 66 *Environmental Management*

Nicholas **Hildyard**, Pandurang **Hegde**, Paul **Wolvenkamp** and Somasekhare **Reddy**, 'Pluralism, Participation and Power: Joint Forest Management in India' in Cooke and Kothari (eds) *The New Tyranny* (2001)

Colin **Hoag**, 'Assembling Partial Perspectives: Thoughts on the Anthropology of Bureaucracy' (2011) 34:1 *Political and Legal Anthropology Review*

Brian **Hocking** and Jan **Melissen**, *Diplomacy in the Digital Age* (Clingendael, 2015)

Brendan **Hokowhitu**, Aileen **Moreton-Robinson**, Linda **Tuhiwai-Smith**, Chris **Andersen** and Steve **Larkin** (eds) *Routledge Handbook of Critical Indigenous Studies* (Routledge, Oxon; 2021)

Jane **Holder** and Carolyn **Harrison** (eds) *Law and Geography: Current Legal Issues, Volume 5* (OUP, 2003)

Jane **Holder** and Carolyn **Harrison**, 'Introduction', in Jane **Holder** and Carolyn **Harrison** (eds) *Law and Geography: Current Legal Issues, Volume 5* (OUP, 2003)

Bonnie **Honig**, 'Emerging Politics: Paradox, Law, Democracy (Princeton University Press, 2009)

Alex **Honneth**, *The Struggle for Recognition* (Polity Press, 1996)

Hannah **Hughes** and Alice **Vadrot**, 'Weighting the World: IPBES and the Struggle over Biocultural Diversity' (2019) 19:2 *Global Environmental Politics*

Hannah **Hughes**, Alice **Vadrot**, Jen Iris **Allen**, Tracy **Bach**, Jennifer **Bansard**, Pamelsa **Chasek**, Noella **Gray**, Arne **Langlet**, Timo **Leiter**, Kimberley Marion **Suiseeya**, Beth **Martin**, Matthew **Paterson**, Silvia Carolina **Ruiz-Rodríguez**, Ina **Tessnow-von Wysocki**, Valerie **Tolis**, Harriet **Thew**, Marcela **Vecchione Gonçalves**, Yulia **Yamineva**, 'Global Environmental Decision-making: Upping the Methodological and Ethical Stakes of Studying Negotiations' (2021) 10 *Earth Systems Governance*

Arielle **Humphries**, 'Black Lives Matter: Reparations Policy Agenda' (2016) 9:5 *Africology: The Journal of Pan African Studies*

Jon **Hutton**, William M **Adams** and James C **Murombedzi,** 'Back to Barriers? Changing Narratives in Biodiversity Conservation' (2005) 2 *Forum for Development Studies*

Jim **Igoe** and Dan **Brockington**, 'Neoliberal conservation: a brief introduction' (2007) 5:4 *Conservation and Society*

Pekka **Isaksson**, 'Kumma kuvajainen. Rasismi rotutukimuksessa, rotuteorioiden saamelaiset ja suomalainen fuusinen antropologia' in *Pohjoisen historiat 1. Kustannus Puntsi* (Gummerus kirjapaino Oy, 2001)

Miriam **Jorgensen**, 'Contemporary First Nationl Lawmaking: New Spaces for Aboriginal Justice' in **Hendry** et al. (eds) *Indigenous Justice* (2018)

Sheila **Jasanoff** and Marybeth **Martello** (eds) *Earthly Politics: Local and Global in Environmental Governance* (MIT Press, 2004)

Sheila **Jasanoff**, 'Heaven and Earth: The Politics of Environmental Images' in **Jasanoff** and Marybeth **Long Martello** (eds) *Earthly Politics: Local and Global in Environmental Governance* (MIT Press, 2004)

Sheila **Jasanoff**, 'Technologies of Humility' (2007) 450 *Nature*

Sheila **Jasanoff** 'Humility in the Anthropocene' (2021) *Globalizations*

Sébastien **Jodoin**, Sébastien **Duyk** and Katherine **Lofts**, 'Public Participation and Climate Governance: An Introduction' (2015) 24:2 *RECEIL*

Noor **Johnson** and David **Rojas**, 'Contrasting Values of Forests and Ice in the Making of a Global Climate Agreement' in Niezen and Sapignoli, *Palaces of Hope* (2017)

Michael E. **Jonasson**, Samuel J. **Spiegel**, Sarah **Thomas**, Annalee **Yassi**, Hannah **Wittman**, Tim **Takaro**, Reza **Afshari**, Michael **Markwick** and Jerry M. **Spiegel**, 'Oil Pipelines and food sovereignty: threats to health equity for Indigenous communities' (2019) 40 *Journal of Public Health Policy*

Sangeeta **Kamat**, 'The Privatization of Public Interest: Theorizing NGO discourse in a neoliberal era' (2004) 11:1 *Review of International Political Economy*

Prakash **Kashwan**, Rosaleen **Duffy**, Francis **Massé**, Adeniyi **Asiyanbi**, and Estern **Marijnen**, 'From Racialized Neo-colonial Global Conservation to an Inclusive and Regenerative Conservation' (2021) 63:4 *Environment: Science and Policy for Sustainable Development*

Mike **Kesby**, 'Retheorizing Empowerment-through-Participation as a Performance of Space: Beyond Tyranny to Transformation' (2005) 30:4 *Signs: Journal of Women in Culture and Society*

Mike **Kesby** 'Spatialising participatory approaches: the contribution of geography to a mature debate' (2007) 39 *Environment and Planning A*

Ian James **Kidd**, José **Medina**, Gaile **Pohlhause**, Jr., 'Introduction to the Routledge Handbook of Epistemic Injustice' in **Kidd**, et al., *Epistemic Injustice* (2017)

Kevin **Kolben**, 'Labor rights as human rights?' (2008) 50:2 *Virginia Journal of International Law*

Uma **Kothari**, 'Power, Knowledge and Social Control in Participatory Development' in **Cooke** and **Kothari**, *The New Tyranny* (Zed Books, 2001);

Margaret Elizabeth **Kovach**, *Indigenous Methodologies: Characteristics, Conversations and Contexts* (University of Toronto Press, 2009)

Thom **Kuehls**, *Beyond Sovereign Territory* (Minnesota University Press, 1996)

Rauna **Kuokkanen**, 'From research as colonialism to reclaiming autonomy: Toward a research ethics framework in Sápmi' Report from Seminar: *Sáme- ja álgoálbmotdutkama etihkka. Seminára raporta, Kárášjohka 23-24 November 2006.* Kautokeino: Sámi Instituhtta

Rauna **Kuokkanen** 'The Responsibility of the Academy: A Call for Doing Homework' (2007) *Journal of Curriculum Theorizing*

David **Landy**, 'Talking human rights: How social movement activists are constructed and constrained by human rights discourse' (2013) 28:4 *International Sociology*

John **Langshaw Austin**, *How to do things with words* (Harvard University Press, 1962)

Emma **LaRocque**, *When the Other is Me: Native Resistance Discourse, 1850-1990* (University of Manitoba Press, 2010)

John **Law**, *After Method: Mess in Social Science Research* (Routledge, 2004)

Melissa **Leach** and Ian **Scoones** (eds) *Carbon Conflicts and Forest Landscapes in Africa* (Routledge, 2015)

Henri **Lefebvre**, *The Production of Space* (Blackwell, 1991)

Sharachchandra **Lele**, 'From wildlife-ism to ecosystem-service-ism to a broader environmentalism' (2020) 48:1 *Environmental Conservation*

Tanya **Li**, *The Will to Improve: Governmentality, development and the practice of politics (*Duke University Press, 2007)

Terri **Libesman**, 'Human Rights and Neoliberal Wrongs in the Indigenous Child Welfare Space' in **Hendry** et al (eds) *Indigenous Justice* (2018)

Max **Liboiron**, *Pollution is Colonialism* (Duke University Press, 2021)

John **Locke**, *Second Treatise of Civil Government* (1690)

Elena **Louser** and Carina **Wyborn**, 'Biodiversity narratives: stories of the evolving conservation landscape' (2020) *Environmental Conservation*

Vaugha **Lowe**, 'The Politics of Law-making: Are the Method and Character of Norm Creation Changing?' in Michael Byers (ed) *The Role of Law in International Politics* (Oxford University Press 2000)

Erik **Löfmarck** and Rolf **Lidskog**, 'Bumping against boundary: IPBES and the knowledge divide' (2017) 69 *Environmental Science and Policy*

Robert **MacFarlane** and Jackie **Morris**, *The Lost Words* (Hamish Hamilton, 2017)

Van **Maanen**, *Tales from the field* (University of Chicago Press, 2nd edition, 2011)

Nelson **Maldonado-Torres**, 'On the Coloniality of Being: Contributions to the development of a concept' (2007) 21:2-3 *Cultural Studies*

Kate **Massarella**, Anja **Nygren**, Robert **Fletcher**, Bram **Büscher**, Wilhelm A **Kiwango**, Sanna **Komi**, Judith **Krauss**, Mathew **Mabele**, Alex **McInturff**, Laila **Sandroni**, Peter **Alagona**, Dan **Brockington**, Robert **Coates**, Rosaleen **Duffy**, Katia **Ferraz**, Stasja **Koot**, Silvio **Marchini**, Alexandre **Percequillo**, Transformation Beyond Conservation: how critical social science can contribute to a radical new agenda in biodiversity conservation' (2021) 49 *Current Opinion in Environmental Sustainability*

Francis **Massé**, 'Anti-poaching's politics of (in)visibility: Representing nature and conservation amidst a poaching crisis' (2018) *Geoforum*

Doreen **Massey**, 'Politics and Space/Time' (1992) 196 *New Left Review*

Doreen **Massey**, *For Space* (Sage, 2005)

Martine **Maron**, Ascelin **Gordon**, Brendan G. **Mackey**, and James E. M. **Watson** 'Conservation: Stop Misuse of Biodiversity Offset' (2015) 523 *Nature*

Adrian **Martin**, Shawn **McGuire** and Sian **Sullivan**, 'Global Environmental Justice and Biodiversity Conservation' (2013) 179:2 *The Geographical Journal*

Karen **Martin** and Booran **Mirraboopa**, 'Ways of Knowing, being and doing: A theoretical framework and methods for indigenous and indigenist re-search' (2009) 27 *Journal of Australian Studies*

Anna-Maria **Marshall** and Scott **Barclay**, 'In Their Own Words: How Ordinary People Construct the Legal World' (2003) 28 *Law and Social Enquiry*

Daniel **Matthews**, 'Law in the Anthropocene: Climate Change, Environmental Activism & Law' in Illan rua Wall, Freya Middleton, Sahar Shah and CLAW (eds) *Critical Legal Pocketbook* (Counterpress, 2021)

Brett **Matulis** and Jessica **Moyer**, 'Beyond Inclusive Conservation: The Value of Pluralism, the Need for Agonism and the Case for Social Instrumentalism' (2017) 10:3 *Conservation Letters*

Vivian M. **May**, 'Speaking into the Void? Intersectionality Critiques and Epistemic Backlash' (2014) 29:1 *Intersticesː Inheriting Women of Color Feminist Philosophy*

Mark **Mazower**, *No Enchanted Place: The End of Empire and the Ideological Origins of the United Nations* (Princeton University Press 2009)

Kathleen **McAfee**, 'Selling Nature to save It? Biodiversity and Green Developmentalism' (1999) 17 *Environment and Planning D: Society and Space*

Mike **McConville** and Wing **Hong Chui**, 'Introduction and Overview' in Mike McConville and Wing Hong Chui (eds) *Research Methods for Law* (Edinburgh University Press, 2007)

Nora **McKeon** *The United Nations and Civil Society: Legitimating Global Governance – Whose Voice?* (ZED Books, 2009)

Evandro **Menezes de Carvalho**, *Semiotics of International Law: Trade and Translation* (Springer, 2011),

Werner **Menski**, *Comparative Law in a Global Context* (CUP, 2006)

Carolyn **Merchant**, *Science and Nature: Past, Present and Future* (Routledge, 2018)

Carolyn **Merchant**, *The Death of Nature: Women, Ecology and the Scientific Revolution* (Harper, 3rd edition, 2020).

Walter **Mignolo**, *The Darker Side of Western Modernity: Global Futures and Decolonial Options* (Duke University Press, 2011)

Walter **Mignolo**, *Local Histories/Global Designs: Coloniality, Subaltern Knowledges and Border Thinking* (Princeton University Press, 2011)

Walter D. **Mignolo** and Catherine E. **Walsh**, *On Decoloniality: Concepts, Analytics, Praxis* (Duke University Press, 2018)

Robert J. **Miller**, 'American Indian sovereignty versus the United States' in **Hokowhitu** et al., (eds) *Routledge Handbook of Critical Indigenous Studies* (Routledge, 2021)

Charles W. **Mills**, *The Racial Contract* (Cornell University Press, 1997)

Giles **Mohan** and Samuel **Hickey**, 'Relocating Participation within a Radical Politics of Development: Critical Modernism and Citizenship' (2005) 36:2 *Development and Change*

Sally **Moore** and Barbara **Myerhoff** (eds) *Secular Ritual* (Assen, 1977)

Elisa **Morgera** 'Against All Odds: The Contribution of the Convention on Biological Diversity to International Human Rights Law' in Denis **Alland** et al (eds), *Unity and Diversity of International Law* (Brill, 2014)

Elisa **Morgera**, 'Under the Radar: the role of fair and equitable benefit-sharing in protecting and realising human rights connected to natural resources' (2019) 23:7 *The International Journal of Human Rights*

Elisa **Morgera**, 'Dawn of a New Day? The Evolving Relationship between the CBD and International Human Rights Law' (2019) 54 *Wake Forest Law Review*

Karen **Morrow**, 'Perspectives on Environmental Law and the Law Relating to Sustainability: A continuing role for ecofeminism?' in **Philippopoulos-Mihalopoulos** (ed), *Law and Ecology. New Environmental Foundations* (Routledge, 2011)

David **Mosse**, 'Authority, Gender and Knowledge: Theoretical Reflections on the Practice of Participatory Rural Appraisal' (1994) 25 *Development and Change*

David **Mosse**, '"People's Knowledge", Participation and patronage: Operations and Representations in Rural Development' in Cooke and Kothari (eds) *The New Tyranny* (2001)

Anna **Motz**, Maxine **Dennis** and Anne **Aiyegbusi**, *Invisible Trauma: Women, Difference and the Criminal Justice System* (Routledge, 2020)

Amrita **Mukherjee**, 'Customary Law and Land Rights: The Cautionary Tale of India, Jharkhand, and the Chotanagpur Tenancy Act in Hendry et al. (eds) *Indigenous Justice* (2018)

Birgit **Müller** (ed) *The Gloss of Harmony: The Politics of Policy-Making in Multilateral Organisations* (Pluto Press, 2013)

Birgit **Müller**, 'Lifting the Veil of Harmony: Anthropologists approach International Organisations' in Birgit Müller (ed), *The Gloss of Harmony. The Politics of Policy Making in Multilateral Organisations* (Pluto Press, 2013)

Margaret **Mutu**, 'Mana Māori Motuhake: Māori concepts and practices of sovereignty' in Brendan **Hokowhit** et al (eds) *Routledge Handbook of Critical Indigenous Studies* (Routledge, 2021)

Laura **Nader**, 'Up the Anthropologist: Perspectives Gained From Studying Up', in Dell Hymes (ed) *Reinventing Anthropology* (Pantheon 1972)

Neils **Nagelhus Schia**, 'Horseshoe and Catwalk: Power, Complexity and Consensus-Making in the United Nations Security Council' in Neizen and Sapignoli (eds) *Palaces of Hope* (2016)

Naghmeh **Nasirtousi**, Matthias **Hjerpe** and Karin **Bäckstrand**, 'Normative arguments for non-state actor participation in international policymaking processes' (2015) *European Journal of International Relations*

Usha **Natarajan** and Kishan **Khoday**, 'Locating Nature: Making and Unmaking International Law' (2014) 27 *Leiden Journal of International Law*

Astrida **Neimanis** 'Alongside the Right to Water, a Posthumanist Feminist Imaginary' (2014) 5:1 *Journal of Human Rights and the Environment*

David **Nelken** (ed) *Using Legal Culture* (Wildly Simmonds & Hart Publishing 2012)

Nici **Nelson** and Susan **Wright**, *Power and Participatory Development: Theory and Practice* (IT Publications, 1995)

Frédéric **Neyrat**, *The Unconstructable Earth: An Ecology of Separation* (Fordham University Press, 2018, trans. Drew S. Burk)

Ronald **Niezen** and Maria **Sapignoli** (eds) *Palaces of Hope: An Anthropology of Global Organizations* (CUP, 2017)

Ronald **Niezen** 'The Anthropology *by* Organizations: Legal Knowledge and the UN's Ethnographical Imagination' in Niezen and Sapignoli (eds) *Palaces of Hope* (2017)

Gurdial Singh **Nijar**, 'Traditional Knowledge Systems, International Law and National Challenges: Marginalization or Emancipation? (2013) 24:4 *European Journal of International Law*

André **Nollkaemper**, 'Framing Elephant Extinction (2014) 3:6 European Society of International Law

Åsa **Nordin Jonsson**, 'Ethical Guidelines for the documentation of árbediehtu, Sami traditional knowledge' in *Working with Traditional Knowledge: Communities, Institutions, Information Systems, Law and Ethics. Writings from the Árbediehtu Piilot Project on Documentation and Protection of Sami Traditional Knowledge* (Sámi allaskuvla/Sámi University College 2011)

Maria **Ntona** and Mika **Schroder**, *Regulating Oceanic Imaginaries: The legal constitution of space, identities, relations, and epistemological hierarchies within marine spatial planning* (2020) 19 *Maritime Studies*

Paul **O'Connell**, 'On the Human Rights Question' (2018) 40 *Human Rights Quarterly*

Martin **Papillon** and Thierry **Rodon**, 'Proponent-Indigenous Agreements and the Implementation of the Right to Free, Prior and Informed Consent in Canada' (2017) 62 *Environmental Impact Assessment Review*

Louisa **Parks**, 'Spaces for Local Voices? A discourse analysis of the decisions of the Convention on Biological Diversity' (2018) 9:2 *Journal of Human Rights and the Environment*

Louisa **Parks**, *Benefit Sharing in Environmental Governance: Local Experiences of a Global Concept* (Routledge, 2020)

Louisa **Parks** and Mika **Schroder**, 'What we talk about when we talk about 'local' participation in International Biodiversity Law. The Changing Scope of Indigenous Peoples and local communities ' participation under the Convention on Biological Diversity' (2018) 11:3 *Partecipazione & Conflitto.*

Unai **Pascual**, Williams M. **Adams**, Sandra **Díaz**, Sharachchandra **Lele**, Georgina M. **Mace**, and Esther **Turnout**, 'Biodiversity and the challenge of pluralism' (2021) *Nature Sustainability*

Rachel **Pain** and Sara **Kindon**, 'Guest Editorial: Participatory Geographies' (2007) 39 *Environment and Planning*

Susan **Pedersen**, 'Back to the League of Nations' (2007) 112 *American Historical Review*

Lavínia **Pereira** and Olivia **Bina**, *The IPBES Conceptual Framework: Enhancing the Space for Plurality of Knowledge Systems and Paradigms* in Joana Castro **Pereira** and André **Saramago** (eds) *Non-Human Nature in World Politics* (Springer, 2020)

Andreas **Philippopoulos-Mihalopoulos**, 'Law's Spatial Turn Geography, Justice and a Certain Fear of Space' (2010) 7:2 *Law, Culture and the Humanities*

Andreas **Philippopoulos-Mihalopoulos** (ed), *Law and Ecology: New Environmental Foundations* (Routledge, 2011)

Andreas **Philippopoulos-Mihalopoulos**, 'Atmospheres of law: Senses, affects, lawscapes' (2013) 7 *Emotions, Space and Society*

Andreas **Philippopoulos-Mihalopoulos**, *Spatial Justice: Body, Lawscape, Atmosphere* (Routledge, 2015)

Andrea J. **Pitts**, 'Decolonial Praxis and Epistemic Injustice' in **Kidd** et al., *Epistemic Injustice* (2017)

Robert **Poirier** and David **Ostergren**, 'Evicting People From Nature: Indigenous Land Rights and National Parks in Australia, Russia and the United States' (2002) 42:2 *Natural Resources Journal*

Gaile **Pohlhaus**, Jr., 'Varieties of Epistemic Injustice' in Ian James **Kidd**, José **Medina**, Gaile **Pohlhause**, Jr. (eds) *Routledge Handbook of Epistemic Injustice* (Routledge, 2017)

Jelena **Porsanger**, 'An Essay about Indigenous Methodology' (2004) 15 *Nordlit*

Val **Plumwood**, *Feminism and the Mastery of Nature* (Routledge, 1993)

Rose **Pritchard**, 'Politics, Power and Planting Trees' (2021) *Nature Sustainability*

Diane-Michele **Prindeville**, 'The Role of Gender, Race/Ethnicity, and Class in Activists' Perceptions of Environmental Justice' in Rachel **Stein** (ed) *New Perspectives of Environmental justice: Gender, Sexuality and Activism* (Rutgers University Press, 2004);

María **Puig de la Bellacasa** (ed), *Matters of Care: Speculative Ethics in More Than Human Worlds* (Minnesota University Press, 2017)

Florina **Rabitz**, 'Biopiracy after the Nagoya Protocol: Problem Structure, Regime Design and Implementation Challenges' (2015) 9:2 *Brazilian Political Science Review*

Renee **Racette**, 'Tsilhquot'in Nation: Aboriginal Title in the Modern Era' in Hendry et al. (eds) *Indigenous Justice* (2018)

Sarah **Radcliffe** and Isabella **Radhuber**, 'The Political Geographies of D/decolonization: Variegation and decolonial challenges of /in geography (2020) 78 *Political Geography*

Majid **Rahnema**, 'Participation' in Wolfgang Sachs (ed) *The Development Dictionary* (Orient Longman, 1997)

Balakrishnan **Rajagopal**, *International Law from Below: Development, Social movements, and Third World Resistance* (CUP, 2003)

Shalini **Randeria**, 'Cunning States and Unaccountable International Institutes: Legal Plurality, Social Movements and Rights of Local Communities to Common Property Reds' (2003) XLIV:1 *Arch. Europ. Social*

Kent H **Redford**, 'The Ecologically Noble Savage' (1991) 15:1 *Cultural Survival Quarterly*

Elsa **Reimerson**, 'Between Nature and Culture: Exploring Space for Indigenous Agency in the Convention on Biological Diversity' (2013) 22:6 *Environmental Politics*

Benjamin **Richardson** *Time and Environmental Law: Telling Nature's Time* (CUP, 2017)

Lisa Ann **Richey**, 'White People and the Animals they Love' (2021) *Conservation and Society*

Lester-Irabinna **Rigney**, 'A First Perspective of Indigenous Australian Participation in science: Framing Indigenous research towards Indigenous Australian Intellectual Sovereignty' (2001) 7 *Kaurna Higher Education Journal*

Annalise **Riles**, 'Models and Documents: Artefacts of International Legal Knowledge' (1999) 48 *International and Comparative Law Quarterly*

Annalise **Riles**, *The Network Inside Out* (University of Michigan Press, 2001)

Kerry **Rittich**, 'Theorizing International Law and Development' in Anne **Orford** and Florian **Hoffman** (eds) *The Oxford Handbook of the Theory of International Law* (OUP 2016)

Paul **Robbins**, *Political Ecology: A Critical Introduction* (Wiley-Blackwell 2004)

Simon **Roberts**, "Against Legal Pluralism: Some Reflections on the Contemporary Enlargement of the Legal Domain" (1998) *Journal of Legal Pluralism and Unofficial Law*

Gabrielle **Russel-Mundine**, 'Reflexivity in Indigenous Research: Reframing and Decolonising Research' (2012) 19 *Journal of Hospitality and Tourism Management*

Melina **Sakiyama** and Christian **Schwarzer**, *CBD in a Nutshell* (Global Youth Biodiversity Network, 2nd Edition, 2014)

Maria **Sapignoli**, 'A Kaleidoscopic Institutional Form: Expertise and Transformation in the UN Permanent Forum on Indigenous Issues' in Niezen and Sapignoli (eds) *Palaces of Hope* (2016).

Austin **Sarat**, ""...The Law is All Over": Power, Resistance, and the Legal Consciousness of the Welfare Poor"(1990) 2 *Yale Journal of Law and the Humanities*

Austin **Sarat** and Thomas **Kerns** (eds) *Law in Everyday Life* (University of Michigan Press 1995)

Ziauddin **Sardar**, *Postmodernism and the Other: The New Imperialism of Western Culture* (Pluto Press, 1998)

Vanadana **Shiva**, *Monocultures of the Mind, Perspectives on Biodiversity and Biotechnology* (Zed Books, 1993)

Vandana **Shiva**, *Protect or Plunder? Understanding Intellectual Property Rights* (Zed Books, 2001)

David **Schlosberg**, *Environmental Justice and the New Pluralism: The Challenge of Difference for Environmentalism* (OUP, 2002)

David **Schlosberg**, *Defining Environmental Justice: Theories, Movements, and Nature* (OUP, 2007)

Umberto **Sconfienza**, 'Narrative of Public Participation in Environmental Governance and its Normative Presuppositions' (2015) 24:2 *Review of European Community & International Environmental Law*

James **Scott**, *Seeing Like a State: How certain schemes to improve the human condition have failed* (Yale University Press, 1998)

Danya Nadine **Scott**, 'Environmental Justice and the hesitant embrace of human rights' in James **May** and Erin **Daly** (eds) *Human Rights and the Environment: Legality, Indivisibility, dignity and geography* (Edward Elgar, 2019)

Nikolas **Sellheim**, 'The Evolution of Local Involvement in International Conservation Law' (2018) 29:1 *Yearbook of International Environmental Law*

Joshua M. **Sharfstein**, 'Banishing "Stakeholders"' (2016) 94:3 *The Milbank Quarterly*

Dinah **Shelton**, 'What Happened in Rio to Human Rights?' (1992) 3:1 *Yearbook of International environmental Law*.

Vandana **Shiva**, *Protect or Plunder? Understanding Intellectual Property Rights* (Zed Books, 2001)

Raka **Shome**, 'Space Matters: The Power and Practice of Space, Communication Theory' (2003) 13:1 *Communication Theory*

Andrea **Smith**, Introduction: The Revolution will not be funded, INCITE!' in **Smith** (ed) *The Revolution will Not be Funded: Beyond the Non-Profit Industrial Complex* (Duke University Press, 2007).

Edward **Soja** 'The Spatiality of Social Life: Towards a Transformative Retheorization" in Derek Gregory and John Urry (eds) *Social Relations and Spatial Structures* (Palgrave, 1985)

Baruch **Spinoza**, *Treatise on the Emendation of the Intellect* (Originally published 1677; translated Dodo Press 2009)

Gayatri Chakravorty **Spivak**, 'Can the Subaltern Speak?' in C. Nelson and L. Grossberg (eds) *A Marxism ant he Interpretation of Culture* (University of Illinois Press, 1988)

Jens **Steffek** and Maria Paola **Ferretti**, 'Accountability or "Good Decisions"? The Competing Goals of Civil Society Participation in International Governance (200) 23:1 *Global Society*

Gina D. **Stuart-Richard**, 'Contestation of Space: Developing a Twenty-First Century Indigenous Cartographic Practices' in Hendry et al. (eds) *Indigenous Justice* (2018)

Kimberly Marion **Suiseeya** and Susan **Caplow**, 'In Pursuit of Procedural Justice: Lessons from an analysis of 56 forest carbon project designs' (2013) 23 *Global Environmental Change*

Kimberly R. Marion **Suiseeya**, 'Negotiating the Nagoya Protocol: Indigenous Demands for Justice' (2014) 14:3 *Global Environmental Politics*

Raja **Swamy**, 'Disaster Relief, NGO'-led Humanitarianism and the Reconfiguration of Spatial Relations in Tamil Nadu' in **Choudry** and **Kapoor** (eds), *NGOization* (2013)

Constanza **Tabbush**, 'Civil Society in UN Conferences: A Literature Review', Programme Paper #17, UN Research Institute for Social Development

Tanya **Talaga**, *All Our Relations: Indigenous Trauma in the Shadow of Colonialism* (Scribe, 2020)

Brian **Tamanaha**, *Realistic Socio-Legal Theory: Pragmatism and a Social Theory of Law* (Oxford Clarendon Press 1997)

Brian **Tamanaha**, *A Realistic Theory of Law* (CUP 2017)

Gunther **Teubner**, *Constitutional Fragments: Societal Constitutionalism and Globalization* (Oxford University Press, 2014).

Harroet **Thew**, Lucie **Middlemiss** and Jouni **Paavola**, '"Youth is not a political position": Exploring Justice Claims-Making in the UN Climate Change Negotiations' (2020) 61 *Global Environmental Change*

Simon **Thompson** and Majid **Yar** (eds) '*The Politics of Misrecognition* (Ashgate, 2011)

Sharon **Toi**, '*Mana Wahine*: Decolonising Governance' in Hendry et al. (eds) *Indigenous Justice* (2018)

Miriam **Tola**, 'Between Pachamama and Mother Earth: gender, political ontology and the rights of nature in contemporary Bolivia' (2018) 118:1 *Feminist Review*

Anne **Toomey**, Andrew T **Knight** and Jos **Barlow**, 'Navigating the space between research and implementation in conservation: Research-implementation spaces' (2017) 10:5 *Conservation Letters*

Anna **Tsing**, Nils **Budbandt**, Elaine **Gan** and Heather Anne **Swanson** (eds) *Arts of Living on a Damaged Planet: Ghosts and Monsters of the Anthropocene* (University of Minnesota Press, 2017)

Rebecca **Tsosie**, 'Indigenous Peoples, Anthropology and the Legacy for Epistemic Injustice' in Ian James Kidd, José Medina and Gaile Pohlhause (eds) *The Routledge Handbook of Epistemic Injustice* (2017)

Nancy **Tuana**, 'The Speculum of Ignorance: The Women's Health Movement and Epistemologies of Ignorance' (2006) 21:3 *Hypathia*

Nancy **Tuana**, 'Feminist Epistemology: The Subject of Knowledge' in Kidd, et al *Epistemic Injustice* (2017)

Linda **Tuhiwai Smith**, 'Researching the Native Māori' in Denzin and Lincoln, *The SAGE Handbook of Qualitative Research* (Sage, 2005)

Linda **Tuhiwai Smith**, *Decolonizing Methodologies: Research and Indigenous Peoples* (Zed Books, 2nd edition, 2012)

Linda **Tuhiwai Smith**, Te Kahautu **Maxwell**, Haupai **Puke** and Pou **Temara**, 'Indigenous Knowledge, Methodology and Mayhem: What is the Role of Methodology in Producing Indigenous Insights? A Discussion from Mātauranga Māori' (2016) 4:3 *Knowledge Cultures*

William **Twining**, *Globalisation and Legal Theory* (Butterworths 2000)

Nina **Tzouvala**, *Capitalism as Civilisation: A History of International Law* (CUP, 2020).

Nina **Tzouvala**, 'The Spectre of Eurocentrism in International Legal History' (2021) 2 *Yale Journal of Law and the Humanities*

Nina **Tzouvala**, 'How to Run an Empire (Lawfully): Public International Law, International Economic Law' in Illan rua **Wall**, Freya **Middleton**, Sahar **Shah** and CLAW (eds) *Critical Legal Pocketbook* (Counterpress, 2021)

John **Urry**, "Work, Production and Social Relations" (1990) 4 *Work, Employment and Society*

Alice **Vadrot**, *The Politics of Knowledge and Global Biodiversity* (Routledge, 2014)

Alice **Vadrot** 'Multilateralism as a 'site' of struggle over environmental knowledge: the North-South divide' (2020) *Critical Policy Studies*

Mariana **Valverde**, 'Seeing Like a City: Dialectic of Modern and Premodern Ways of Seeing in Urban Governance' (2011) 45:2 *Law & Society Review*

Saskia **Vermeylen**, 'The Nagoya Protocol and Customary Law: The Paradox of Narratives in the Law' (2013) 9:2 *LEAD*

Saskia **Vermeylen** and Gordon **Clark**, 'An alternative ethics for research: Levinas and the unheard voices and unseen faces' (2016) *International Journal of Social Research Methodology*

Saskia **Vermeylen**, 'Special Issue: Environmental Justice and Epistemic Violence' (2019) 24:2 *Local Environment*

John **Vidal**, "Armed ecoguards funded by WWF 'beat up Congo tribespeople'", The Guardian, 7th February 2020 <https://www.theguardian.com/global-development/2020/feb/07/armed-ecoguards-funded-by-wwf-beat-up-congo-tribespeople>

Ingrid J. **Visseren-Hamakers**, Jona **Razzaque**, Pamela **McElwee**, Esther **Turnhout**, Eszter **Kelemen**, Graciela M. **Rusch**, Álvaro **Fernández-Llamazares**, Ivis **Chan**, Michelle **Lim**, Mine **Islar**, Ambika P. **Gautam**, Meryl **Williams**, Eric **Mungatana**, Md **Saiful Karim**, Roldan **Muradian**, Leah R. **Gerber**, Gabriel **Lui**, Jinlong **Liu**, Joachim H. **Spangenberg**, Dara Zaleski, 'Transformative Governance of Biodiversity: Insights for Sustainable Development (2021) 53 *Current Opinion in Environmental Sustainability*

Franz **Von Benda-Beckmann**, Keebet **Von Benda-Beckmann** and Anne **Griffiths** (eds) *Mobile Peoples, Mobile Law: Expanding Legal Relations in a Contracting World* (Ashgate Publishing 2005)

Franz **Von Benda-Beckmann**, Keebet **Von Benda-Beckmann** and Anne **Griffiths**, *Spatialising Law: An Anthological Geography of Law in Society* (Ashgate, 2009)

Franz **von Benda Beckman**, 'Riding or Killing the Centaur? Reflects on the Identities of Legal Anthropology' in Michael Freeman and David Napier (eds) *Law and Anthropology: Current Legal Issues Volume 12* (OUP 2009)

Linda **Wallbot** and Andrea **Schapper**, 'Negotiating By Own Standards? The Use and Validity of Human Rights Norms in UN Climate Negotiations' (2017) 17:2 *International Environmental Agreements: Politics, Law and Economics*

Irene **Watson**, *Raw Law: Aboriginal Peoples, Colonialism and International Law* (Routledge, 2015)

Michael **Watts**, 'Development and Governmentality' (2003) 24:1 *Singapore Journal of Tropical Geography*

Peter **Willetts**, 'The Cardoso Report on the UN and Civil Society: Functionalism, Global Corporatism, or Global Democracy? (2006) 12:3 *Global Governance: A Review of Multilateralism and International Organisations*

Peter **Willetts**, *Non-governmental Organisations in World Politics. The Construction of Global Governance* (Routledge, 2011)

Rebecca **Witter**, Kimberly R. Marion **Suiseeya**, Rebecca L. **Gruby,** Sarah **Hitchner**, Edward M. **Maclin**, Maggie **Bourque**, and Peter **Brosius**, 'Moments of Influence in global environmental governance' (2015) 24:6 *Environmental Politics*

Margery **Wolf**, *A Thrice-Told Tale: Feminism, Postmodernism and Ethnographic Responsibility* (Stanford University Press 1992)

Carina **Wyborn**, J **Montana**, N **Kalas**, F. **Davila Cisneros**, C. **Clement**, S. **Izquierdo Tort**, N. **Knowles**, E. **Louder**, M. **Balan**, J.M. **Chambers**, L. **Christel**, A. **Deplazes-Zemp**, T. **Forsyth**, G. **Henderson**, M. Lim**.,** M.J. **Martinez Harms**, J. **Merçon**, E. **Nuesiri**, L. **Pereira**, V. **Pilbeam**,
'Research and action agenda for sustaining diverse and just futures for life on Earth: Biodiversity Revisited' (2020) 35:4 *Conservation Biology*

Carina **Wyborn** and Megan C. **Evans**, 'Conservation needs to break free from global priority mapping' (2021) 5 *Nature Ecology and Evolution*;

Leehi **Yona**, Marc **Dixon**, Richard **Howarth**, Anne **Kapuscinski** and Ross **Virginia**, 'Applying a leverage points framework to the United Nations climate negotiations: The (dis)empowerment of youth participants' (2020) 8:36 *Elem Sci Anth*.

Iris Marion **Young**, *Justice and the Politics of Difference* (Princeton University Press, 1990)

Michael **Zürn**, 'Global Governance and Legitimacy Problems' (2004) 39:2 *Government and Opposition*

<u>Reports by Organisations, Governments and International Institutions</u>

Bamangka Kaban 'Newsletter of the Jabalbina Talanji Aboriginal Corporation' (December 2020) <http://jabalbina.com.au/application/files/1816/0859/7408/Bamangka_Kaban_DECEMBER.pdf>

CBD Secretariat, *Global Biodiversity Outlook 5* (2020)

CBD Alliance Open Letter <http://cbd-alliance.org/en/2020/open-letter-post-2020-and-peer-review-process>

Forest Peoples Programme, International Indigenous Forum on Biodiversity, Indigenous Women's Biodiversity Network, Centres of Distinction on Indigenous and Local Knowledge and Secretariat of the Convention on Biological Diversity (2020) *Local Biodiversity Outlooks 2: The contributions of indigenous peoples and local communities to the implementation of the Strategic Plan for Biodiversity 2011–2020 and to renewing nature and cultures. A complement to the fifth edition of Global Biodiversity Outlook*. https://lbo2.localbi-odiversityoutlooks.net

IISD ENB Report *CBD COP10 Highlights: Thursday, 28 October 2010,* Vol.9 No. 543

IISD ENB Summary Report of CBD COP-10 (October 2010) Vol. 9 No. 544

IISD ENB Summary Report First Plenary Meetings of IPBES (January 2013) Vol. 31 No.6

IISD ENB Summary Report CMS COP-13 (February 2020) Vol.18 No.83

IISD ENB Summary Report SBSSTA-24 (June 2021) Vol.9 N.756

IISD ENB Summary Report IPBES-8 (June 2021) Vol.31 N.57

IISD ENB Summary Report UNFCCC COP-26 World Leaders Summit (November 2021) Vol.13 No.784

IISD ENB Summary Report Geneva Biodiversity Conference (April 2022) Vol. 9 N.775

International Resource Panel, 'Global Resource Outlook 2019: Natural Resources for the future we want' (UNEP 2019)

IPBES, 'Summary for Policymakers of the IPBES Global Assessment Report on Biodiversity and Ecosystem Services' (IPBES, 2019)

IPBES, 'Information on the Scoping for the methodological assessment regarding the diverse conceptualisation of multiple values of nature and its benefits, including biodiversity and ecosystem services', IPBES/6/INF/9

FAO Voluntary Guidelines on the Governance of Tenure (Rome 2012)

Global Forest Coalition, 'Corporate Contagion: How the private sector is capturing the UN Food, Biodiversity and Climate Summits', May 2021 <https://globalforestcoalition.org/wp-content/uploads/2021/05/UN-corporate-capture-EN.pdf>

Global Witness, Campaign website, *Environmental Defenders* <https://www.globalwitness.org/en/campaigns/environmental-activists/numbers-lethal-attacks-against-defenders-2012/>

Global Witness Report, 'Pandering to the Loggers' (July 2011) <https://cdn.globalwitness.org/archive/files/pdfs/pandering_to_the_loggers.pdf>

Global Witness, 'Last Line of Defence: The Industries causing the climate crisis and attacks against land and environmental defenders' (September 2021) <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>

Svenska Kyrkan, 'The Church of Sweden and the Sami – results from a White Paper Project' (2017) <https://www.svenskakyrkan.se/forskning/the-sami---a-white-paper-project->

UK Government Press Release 'Landmark Environment Bill strengthened to halt biodiversity loss by 2030' (August 2021) <https://www.gov.uk/government/news/landmark-environment-bill-strengthened-to-halt-biodiversity-loss-by-2030>

UK Government, 'Net Zero Strategy: Build Back Greener' (October 2021) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033990/net-zero-strategy-beis.pdf>

UN Women, *Research Paper: Towards a Gender-Responsive Implementation of the Convention on Biological Diversity* (UN Women, 2018), 3. < https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2018/towards-a-gender-responsive-implementation-of-the-convention-on-biological-diversity-en.pdf?la=en&vs=4802>

UNEP, MEA Negotiator's Handbook (2007) <https://leap.unep.org/content/e-learning-material/mea-negotiators-handbook>

UNFCCC, 'Joint Statement between UNFCCC and some Observer Organizations', available at < https://unfccc.int/news/joint-statement-between-the-unfccc-and-some-observer-organizations>

UN Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz, Report on the Rights of Indigenous Peoples (2016) UN Doc. A/71/229, 29 July 2016

UN Special Rapporteur on Human Rights and the Environment John Knox, Report on Human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment (2018) UN Doc. A/73/188

WWF, 'Embedding Human Rights in Nature Conservation: From Intent to Action: *Report of the Independent Panel of Experts of the Independent Review of Allegations raised in the Media regarding Human Rights Violations in the context of WWF's conservation work',* 17th November 2020

<https://wwfint.awsassets.panda.org/downloads/independent_review___independent_panel_of_experts__final_report_24_nov_2020.pdf>

WWF-UK Annual Report Summary 2019-2020 <https://www.wwf.org.uk/annual-reports>

Online sources

Alex **Baldwin** and Paul **Paz y Miño**, 'Chevron is refusing to pay for the 'Amazon Chernobyl' – we can fight back with citizen action', The Guardian, 17th September 2020 <https://www.theguardian.com/commentisfree/2020/sep/17/chevron-amazon-oil-toxic-waste-dump-ecuador-boycott>

Alice **Bell**, 'Sixty years of climate change warnings: the signs that were missed (and ignored), The Guardian 5 July 2020 <https://www.theguardian.com/science/2021/jul/05/sixty-years-of-climate-change-warnings-the-signs-that-were-missed-and-ignored>

Magnus **Davison**, How to 'rethink remote' and put resources at the centre' (6 April 2022) *John O'Groats Journal and Caithness Courier* <https://www.johnogroat-journal.co.uk/news/magnus-davidson-how-to-rethink-remote-and-put-resources-a-271167/>

Tom **Goldtooth**, Karin **Nansen**, Nnimmo **Bassey**, and Daiara **Tukano**, '"Shame!" Indigenous Leaders & Delegates from Global South Stage Dramatic Protest at COP25 in Madrid', Democracy Now!, December 2019 <https://www.democracynow.org/2019/12/11/cop25_walkout_indigenous_leaders_global_south>

Chrissy **Grant**, Leah **Talbot** and Liz **Wren**, 'Fact Sheet 3: The Strong Peoples-Strong Country Framework', the Australian Government <https://www.barrierreef.org/uploads/GRB5162-Fact-Sheet-3-AW4.pdf>

Steven **Grattan**, 'Environmental defenders killed in record numbers in 2020: Report' Aljazeera News, 13 September 2021 <https://www.aljazeera.com/news/2021/9/13/environmental-defenders-killed-in-record-numbers-in-2020-report>

Fiona **Harvey**, 'Activists protest at 'side-lining of social justice' at UN climate talks, The Guardian, December 2019, available at <https://www.theguardian.com/environment/2019/dec/12/activists-protest-un-climate-talks>

Karin Louise **Hermes**, 'Why I Quit Being A Climate Activist' VICE News Motherboard, 6 February 2020. Available at <https://www.vice.com/en_ca/article/g5x5ny/why-i-quit-being-a-climate-activist?utm_source=vicetwitterus>

Jutta **Kill**, 'New Name for old distraction: Nature-Based Solutions is the new *REDD'* (January 2020) *Bulletin 247, World Rainforest Movement <https://wrm.org.uy/articles-from-the-wrm-bulletin/section1/new-name-for-old-distraction-nature-based-solutions-is-the-new-redd/>*

Ashish **Kothari**, 'The 'net-zero' greenwash', Wall Street Journal, 13 July 2021 <https://wsimag.com/economy-and-politics/66356-the-net-zero-greenwash>

Mathew Bukhi **Mabele**, Laila **Sanfroni**, Y Ariadne **Collins** and June **Rubis**, 'What do we mean by decolonizing conservation? A response to Lanjouw 2021' Conviva Blog (7 October 2021) <https://conviva-research.com/what-do-we-mean-by-decolonizing-conservation-a-response-to-lanjouw-2021/>

Fergus **MacKay**, 'A Guide to Indigenous Peoples' Rights in the ILO' the Forest Peoples Programme (2010) <https://www.forestpeoples.org/sites/default/files/publication/2010/09/iloguideiprightsjul02eng.pdf>

Åsa **Malmberg**, 'How the Sámi were affected by research in "racial biology"' (December 2021) Umeå University blog post <https://www.uu.se/en/news/article/?id=17908&typ=artikel>

Mirjana **Masha**, 'The Dangers of Oil Pipelines in Indigenous Territories' (August 2020) Storymaps <https://storymaps.arcgis.com/stories/a19da5375bb24b7bb1bcbf29d2d0bb0d>

Simone **Lovera**, 'SDG 15: Trends in the Privatization and corporate capture of biodiversity' and Lim Li **Ching** 'Corporate capture of agricultural biodiversity threatens the future we want', in Civil Society Reflection Group on the 2030 Agenda for Sustainable Development, *Spotlight on Sustainable Development: Reclaiming policies for the public* (2030 Spotlight, 2017)

Mika **Schroder**, 'Framing Biodiversity Policy for post-2020: W4B reflections on Nature-based solutions', *Women4Biodiversity Blog* (May 23 2020) <https://www.women4biodiversity.org/framing-biodiversity-policy-for-post-2020-w4b-reflections-on-nature-based-solutions/>

Mika **Schroder**, 'Biodiversity Negotiations Should Account for COVID-19 and Ensure Equity' IISD SDG Knowledge Hub (August 2020) <https://sdg.iisd.org/commentary/guest-articles/biodiversity-negotiations-should-account-for-covid-19-and-ensure-equity/>

Mika **Schroder**, 'Governments fail to meet the Aichi Biodiversity Targets – do they have a pathway towards "transformative change"?' (September 2020) *No. 16 SCELG Policy Brief* <https://www.strath.ac.uk/media/1newwebsite/departmentsubject/law/strathclydecentreforenvironmentallawandgovernance/pdf/policybriefs/SCELG_Policy_Brief_16.pdf>

Ruth **Smith**, 'Women in International Development', The Ecologist, 13 May 2019. Available at <https://theecologist.org/2019/may/13/women-international-development>

University of Westminster, 'Spatial Justice Workshop – Andreas Philippopoulos-Mihalopoulos', 12 April 2011 <https://www.youtube.com/watch?v=tYlfWqbYuVs&t=454s>

Claire **Vergerio**, 'Beyond the Nation State' (27 May 2021) Boston Review <https://bostonreview.net/articles/beyond-the-nation-state/>

John **Vidal**, 'Conservationists split over 'biodiversity offsetting' plans' *The Guardian*, 3 June 2014 <https://www.theguardian.com/environment/2014/jun/03/conservationists-split-over-biodiversity-offsetting-plans>

Stephen **Young**, 'Judith Butler: Performativity' on *Critical Legal Thinking* (posted 14 November 2016) <*https://criticallegalthinking.com/2016/11/14/judith-butlers-performativity/*>

Jena A **Zelezny**, 'Judith Butler: Performativity and Dramaturgy' on *Performance Philosophy* (posted 6 October 2014) <*http://performancephilosophy.ning.com/profiles/blogs/judith-butler-performativity-and-dramaturgy*>

2012 Joint Civil Society Statement 'Ending corporate capture of the United Nations', signed by, amongst others, Friends of the Earth International, La Via Campesina, Peace and Justice in Latin America /SERP AJ-AL, the Transnational Institute, Third World Network and World Mark of Women <https://www.foei.org/wp-content/uploads/2012/06/Statement-on-UN-Corporate-Capture-EN.pdf>

International law

Charter of the United Nations (San Francisco, United States of America, 26 June 1945)

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, Denmark, 25 June 1998)

Rio Declaration on Environment and Development, Doc. A/CONF.151/26 (Rio de Janeiro, Brazil, 14 June 1992)

Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú, Costa Rica, 4 March 2018)

UN Declaration on the Rights of Indigenous Peoples, A/RES/61/295 (New York, United States of America, 13 September 2007) available at <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>

UN Declaration on the Rights of Peasants, A/HRC/RES/39/12 (New York, United States of America, 28 September 2018) available at <https://digitallibrary.un.org/record/1650694?ln=en>

The International Labour Organisation Convention No. 107 (Geneva, Switzerland, 26 June 1957)

The International Labour Organisation Convention No. 169 (Geneva, Switzerland, 27 June 1989)

Relevant CBD Decisions and Documents

CBD Decision 7/16 Article 8(j) and related provisions

CBD Decision 7/18 Incentives Measures (Article 11)

CBD Decision 7/19 Access and benefit-sharing as related to genetic resources (Article 15)

CBD Decision 7/16 XXX - Plan of Action of Retention of traditional knowledge, innovations, and practices

Decision 7/16 Article 8(j) and related provisions - The Akwé: Kon Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments regarding developments proposed to take place on, or which are likely to impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities

CBD Decision 8/5 Article 8(j) and related provisions - The Voluntary Funding Mechanism under the Convention to facilitate the participation of indigenous and local communities in meetings held under the Convention

CBD Decision 8/28 Impact assessment - Voluntary Guidelines on Biodiversity-inclusive Environmental Impact Assessment

CBD Decision 10/2 Strategic Plan for Biodiversity 2011-2020

CBD Decision 10/42 Article 8(j) and related provisions - Tharihwaié:ri Code of Ethical Conduct for Cultural and Intellectual Heritage of Indigenous Peoples and local communities

CBD Decision 13/18 Article 8(j) and related provisions - The Mo'otz Kuxtal Voluntary Guidelines for the development of mechanisms, legislation or appropriate initiatives to ensure the "prior and informed consent", "free prior and informed consent" or "approval and involvement", depending on national circumstances, of indigenous peoples and local communities for accessing their knowledge, innovations and practice, for fair and equitable benefit sharing of benefits arising from the use of their knowledge, innovations and practices relevant for the conservation and sustainable use of biological diversity, and for reporting and preventing unlawful appropriation of traditional knowledge

Decision 14/5 Biodiversity and Climate Change - Voluntary Guidelines for the Design and Effective Implementation of Ecosystem-based approaches to Climate Change Adaptation and Disaster Risk Reduction

CBD Decision 14/12 Article 8(j) and related provisions - The Rutzolijirasixik Voluntary Guidelines for the Repatriation of Traditional Knowledge for the Conservation and Sustainable Use of Biological Diversity

CBD Decision 14/13 Glossary of relevant key terms for Article 8(j)

Decision 14/16 Methodological guidance concerning the contributions of indigenous local communities

CBD Decision 14/34 Comprehensive and participatory process for the preparation of the post-2020 global biodiversity framework

CBD Document, 'First Draft of the Post-2020 Global Biodiversity Framework', Document CBD/WG2020/3/3, *Note by the Co-Chairs.*

CBD Minutes of the Meeting of the Bureau of the COP held in 2007 (see UNEP/CBD/COP/Bur/2007/4/2)

CBD Meeting Report of WG8J-7 held in 2012 (UNEP/CBD/COP/11/7)