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Challenging power asymmetries from the bottom up? Community Protocols and the Convention on Biological Diversity at the global/local crossroads

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Introduction

All globalisations are lived at local levels, and much research has looked at the experience of global processes with universal intentions at the level of local specificity (e.g. Tsing 2004). This is also the case for research into the local experience of global environmental law. In recent years, scholars have focused on, among other things, local cases of global policies such as REDD+[1] (e.g. Bayrak, Tu and Burgers 2013, Wilkinson 2014). Research reflecting on local experiences of benefit-sharing, a central tool for the achievement of the goals of the Convention on Biological Diversity (CBD), has also appeared in recent years (e.g. Adger et al 2001, Vermeylen 2007), along with reflections on how local and indigenous voices may influence CBD decision-making (e.g. Reimerson 2013, Marion Suiseeya 2014). Benefit-sharing may be described 'as the concerted and dialogic process aimed at building partnerships in identifying and allocating economic, socio-cultural and environmental benefits among state and non-state actors, with an emphasis on the vulnerable' (Morgera 2016: 382). Under the CBD, benefit-sharing is a tool that aims to secure an ecosystem approach, including the fair and equitable sharing of benefits from the use of traditional knowledge held by local communities and indigenous peoples. The most developed policies for benefit-sharing rely on the Nagoya Protocol on Access and Benefit-Sharing to the CBD (Nagoya), which focuses on bioprospecting. Thus, where benefits are gained by, for example, pharmaceutical companies that use natural resources stewarded and traditional knowledge held by a certain community to develop a new product, then that company should be obliged to share those benefits with said community. However, neither Nagoya nor the CBD more generally are precise about what exactly the term benefits may include, nor about how they should be shared in fair and equitable ways (Morgera 2016). Efforts by groups representing indigenous peoples and local communities during the negotiation of Nagoya led to the recognition of community protocols. Community protocols record the information a community wishes to convey to external actors that seeks to access any natural resource or knowledge they hold, yet the term also comprises the process that leads to the recording of a protocol.[2] They are thus intended to be used as tools that will allow local groups to define issues around benefit-sharing and related subjects including free prior informed consent among other things (Jonas et al 2010, Bavikatte 2014, see also Morgera and Tsioumani 2011). Inspired by work by, among others, Darrell Posey (e.g. 2004), community protocols seek to help uphold the rights of indigenous peoples and other communities by filling a space at the nexus of international, national and customary law and policy. They are based on processes that aim to allow communities to act both defensively, codifying existing practices and underlining their rights, as well as proactively, by outlining future visions (Jonas et al 2010).[3]

Literature discussing community protocols both from a practitioner viewpoint (e.g. Sibuye et al 2012) and in a wider view on their potential global role (Delgado 2016) is beginning to emerge.[4] Literature in the fields of global environmental politics, political ecology and socio-legal studies in particular also touches on issues of relevance to community protocols: however there has been little work reflecting on the connections between these bodies of work. This article will seek to bring the insights of these various areas into conversation by reflecting on community protocols both as transpositions of global processes into local realities, and as potential shapers of global processes. The potential and

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[1] Reducing emissions from deforestation and forest degradation.

[2] Community Protocols Toolbox, produced by Natural Justice and the Heinrich Boll Stiftung, Cape Town 2016. Available at: http://naturaljustice.org/community-protocols-toolbox/, accessed 30 March 2017.

[3] See www.naturaljustice.org for more details.

[4] Further publications on community protocols can also be found at http://www.community-protocols.org/toolkit/additional-resources/publications/books-booklets accessed 1 December 2016.

limits of community protocols – or more precisely community protocol processes – with regards to global and local situations is understood here by reflecting on how they address power. The relevant literature around global and local environmental policy and politics identifies a number of core discourses in this respect, and suggests that these discourses exert power by shaping global processes that play out in local realities. Power asymmetries between less dominant understandings of the world and those that underpin global processes are seen to play out in environmental policy, in that these policies are developed and applied without sufficient attention or value for the interconnected character of existing local systems for the stewardship of environmental resources. These local systems are complex, and may comprise traditional local knowledge of the environment, along with various cultural and spiritual understandings, and their role is recognised in a range of treaties as crucial to environmental protection (Morgera 2016). Policies based on dominant discourses may therefore threaten the systems they aim to protect.

By considering how community protocols respond to and potentially challenge the power exerted by these discourses, as well as their limitations, the article seeks to link the global and local levels and consider community protocols in both their practical and theoretical implications. The focus at the global level is trained on the CBD due to its recognition of community protocols, but also because it is recognised as the global arena most open to non-governmental voices (e.g. Affolder 2017). The CBD's Ad Hoc Working Group on Article 8(j) is also noted for its inclusion of representatives of indigenous and local groups, and for the direct influence of those groups on the decisions of the working group (CBD 2012, 7). In addition, the CBD has been argued to be a trendsetter on the inclusion of non-governmental actors for other treaty bodies (e.g. Affolder 2017). The discussions of community protocols at the local level are illustrated by drawing on a set of five original and comparative case studies, carried out precisely with the intention of connecting considerations of international law to local societal processes in an interdisciplinary perspective (see Parks and Morgera 2015). These case studies of community protocol processes and discussions around benefit-sharing have guided the discussion by showing where frictions between local and global processes arise, and provide empirical examples that show how community protocols may (or may not) confront power. In this sense, the case studies further discussions underway in the fields of political ecology, global environmental politics and socio-legal studies by making linkages between them and highlighting issues that may benefit from further attention. For example, there is a tendency in literature focusing on global arenas to skate over how issues in local implementation may be approached, while that focusing on local implementation rarely reflects on how international law plays a role in local settings. Work on international law in turn does not often consider questions of deep-seated and longstanding power relations. In this vein, the article also provides suggestions about the potential for community protocols to lend locally specific detail to global environmental law emanating from the CBD by considering their potential to address various powerful discourses and bring dominant and minority views towards dialogue.[5]

In the next section of the article, relevant literature is briefly reviewed with a view to outlining the core dominant discourses identified in scholarship concerned with global environmental governance. This review is intended to reflect on work most directly relevant to community protocols rather than

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[5] While acknowledging the clear importance of national contexts as discussed further below, the chief focus of the article is on the potential ways in which local community protocol processes address powerful discourses expressed in the global arena of the CBD. Nevertheless, examining how global governance plays out in local contexts may also contribute to work on the empowerment of communities within states.

as an exhaustive account. What emerges from this examination of literature from a range of disciplines is their convergence around the identification of dominant discourses at the international level. These discourses are often seen as skewed in favour of worldviews rooted in western views of the environment or nature, of western definitions of capitalist and colonialist development, and of corresponding legal regimes that tend to take a top down form. Nevertheless, some authors (though challenged by others) single out the CBD as a site where small spaces have been opened to allow the expression of other discourses. In a nutshell, the literature reviewed shows that the effects of dominant discourses plays out in the imposition of solutions to environmental problems by external actors, guided in turn by overarching discourses rooted in capitalism and colonialism that result in 'nature' being understood as separate to and at the service of human 'culture'. This necessarily translates into the exclusion of discourses based on other kinds of worldviews, particularly those that place humans and 'nature' or 'the environment' on an equal footing as opposed to the anthropocentric content of dominant discourses (see Vermeylen, 2017).

The discourses identified in this brief review guide the discussion in the following section of the ways in which community protocols, both in their local application and in their role envisioned in Nagoya, address power, as well as the scope available to do this and limitations to their range. In this section, the article draws on insights arising from the aforementioned case studies of five different communities in Greece, South Africa, Namibia, Argentina and Malaysia. The case studies focus on communities engaged in discussions around natural resources, benefit-sharing and community protocols, and are intended to illustrate discussions rather than posited as a representative view of community protocol experiences. A brief overview of the cases, methods employed and the data collected precedes the discussion (see also Parks and Morgera 2015). The discussion aims to cover both theoretical and practical implications of community protocols, and proceeds by taking each powerful discourse identified in the brief literature review as a starting point to consider how community protocols may potentially challenge power asymmetries and where their limitations may lie. In this respect, attention is given to the different levels where community protocols seek to address power relations, notably the local, national and international levels. The conclusions reflect on how far community protocols may be said to confront power asymmetries linked to global processes, and to what end.

Political ecology, global environmental governance and its local effects

The aim of the following discussion is to give an overview of relevant scholarship on global environmental governance and its local effects, and to outline the core dominant discourses this work identifies as driving environmental law and policy. The scholarship reviewed includes the field of political ecology, international environmental law, environmental politics, and work on local environmental governance.

Political ecology seeks to understand the ways in which people and societies interact with natural resources as embedded within fundamentally political, power-laden discourses. The discourses surrounding processes of nature conservation thus exclude some ideas and explanations as a result of promoting others. These dominant discourses can often be read in political economy explanations of practices of the social relations of production with an emphasis on access and control over resources (Svarstad 2004, Ribot and Peluso 2003). The focus of political ecology literature on biodiversity is therefore on the production and power of dominant discourses, and the asymmetrical relations

between dominant and minor discourses. In political ecology, the dominant discourses identified as underpinning many environmental governance instruments are colonialism and capitalism. Adger et al (2001) explore the continued importance of colonial views in environmental governance through their analysis of the CBD's view of bioprospecting as a 'win-win' situation, which trumps an opposing discourse that frames bioprospecting as piracy. Their work also evidences the close link between colonialist discourses and capitalist discourses, often used interchangeably since colonial expansion was driven by the will to further enrich metropoles. Thus, bioprospecting is traced to colonial searches for useful plants and a contemporary rise of European botanic and zoological gardens, with the export of plant material underpinning colonial and economic expansion and continuing in the North-South exchange that characterises much bioprospecting.

The similarities between colonial and capitalist discourses are also discussed in work on the 'valorisation of nature': that is the assigning of monetary values on a range of environmental resources, a concept key to the idea of the 'green economy'. Wilkinson (2014), taking a socio-legal approach, explores payments for ecosystem services through an eco-feminist framework. She argues that a fundamental problem in attaching economic values to natural resources is that the corresponding programmes for environmental protection are driven by a capitalist logic. In many cases, the underlying logics of groups that have protected a natural resource are very different to capitalism, and cannot be captured though these programmes. The capitalist schemes may end up threatening the way of life of the group that produced the environmental protection they seek to foster.[6] In legal scholarship, Mulligan's early consideration of the implications of the CBD's obligations regarding benefit-sharing (1999) in cases of bioprospecting describes access and benefit-sharing (ABS) as firmly rooted in a colonial and capitalist discourse where raw materials from the global South are acquired for processing into expensive products in the global North. The centrality of this discourse is thus established across the relevant literature.

Literature on global policies also underlines problems that arise where a policy is, or is seen as, imposed by a distant actor external to a local reality. These problems often link back to the inability of a global policy to address local specificities. In the literature, problems related to externally imposed solutions are thus investigated in work focusing on local levels. In the socio-legal literature, for example, Vermeylen (2007) examines issues arising following the conclusion of a benefit-sharing agreement on Hoodia and dispersed San communities (2007). The creation of institutions that did not reflect the breadth of this international community, nor traditionally horizontal decision-making, led to various problems, not least the ineffective communication of information about the agreement to all San. Literature focusing on experiences of community-based natural resource management echoes this finding across a range of national cases. In addition, scholarship in this area also makes the link between the external imposition of policy and underlying colonial discourses clear. Models of 'fortress' natural resource management are linked to colonialists equating indigenous peoples with 'wild' nature. By disassociating people from a landscape labelled 'wild', these colonial authorities justified the forced removal of people by framing them as a threat to nature (e.g. Jones 2006). Poor policy decisions are tied to this type of externally imposed policy: though fortress conservation models have increasingly given way to participatory approaches, their origins in this discourse can translate into, for example, corruption and a lack of any real power transfer (ibid). Bixler et al (2015) also provide recent comparative examples of difficulties in local level benefit-sharing and conservation schemes that are seen as externally imposed and, it may be argued, ultimately founded

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[6] Another example here would be intellectual property law, which raises similar questions around the destabilization of systems based on different legal concepts of ownership (e.g. Posey 2004, Tsioumani et al 2016).

on colonialist discourse. In these examples, minority voices were found to be muted or silenced as a result of long histories of marginalisation that translate into power and capacity asymmetries among those implementing policy and those on the receiving end. The findings from work at the local level thus underline the various problems emanating from solutions imposed by external actors with colonial/capitalist understandings of the world that do not take sufficient account of local specificities, including local power and decision-making structures.

Also pertinent to uncovering the dominant discourses identified in existing literature is work considering spaces for local and/or indigenous voices at the global level. Reimerson (2013) considers the echoes of a colonial discourse in the CBD in this line. She argues that the text of the CBD perpetuates some colonial discourses that limit the scope of local and indigenous groups to draw on the treaty in order to protect themselves from threats, particularly to their lands. She notes that a particular element of colonial discourse, which is linked to the 'othering' of local communities and indigenous peoples, is present in the CBD. As mentioned above, colonial forces not only 'othered' nature, allowing nature to be defined as a wilderness to be tamed, but also 'othered' residents, denying their agency in terms of shaping lands and waters. Colonial discourse also includes, therefore, a 'nature-culture dichotomy' linked to the distinction made between nature and the role of man in its management.[7] Although she deems this discourse to be 'less apparent' in the CBD, leaving restricted room for the agency of local communities and indigenous peoples (ibid: 1005), the nature-culture divide read as a consequence of underlying capitalist-colonial discourses and as a force shaping law and policy is a common theme in the literature. Broad observations about the political and thus policy consequences of the definition of what is 'natural' as separate from 'culture' are also advanced, for example, by Uggla (2009) in the field of political ecology. Uggla argues that this divide is perpetuated in the current concept of sustainable development, which ' recognizes the structural character of environmental problems, but it also assumes that the institutions of modern society can deal with them' (ibid: 80). Despite this, Uggla (ibid) also argues that the CBD is unique in its recognition of the intrinsic value of biodiversity and various meanings of nature[8], and has the potential to allow holistic approaches that combine environmental protection and human rights.

The idea that the CBD allows spaces for other worldviews to be expressed is echoed by others, including Escobar (1998) with reference to Article 8(j), and Reimerson (2013). In the socio-legal literature, Jonas et al (2010) and Bavikatte (2014) discuss this idea in detail, and link the possibility to express other worldview with community protocols. Local and indigenous communities, they argue, must contend with bodies of law that reify hegemonic, capitalist discourses, and produce and place Lockean conceptions of private property at the centre of legal regimes. Nevertheless, progress against this dominant discourse has been made. The most prominent indication of the progress is the achievement of the representatives of local communities and indigenous peoples during the negotiation of Nagoya. The latter, Bavikatte argues, creates space for wider or more flexible interpretations of what it means to have rights and interests in property, and is thus a concrete challenge to practices arising from hegemonic discourses (2014). This was achieved through the recognition of community protocols as a means of allowing the recognition of different property regimes based, in turn, on different understandings of the world that often lie outside the nature/culture dichotomy. Community protocols are seen as an opportunity that 'empowers

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[7] Ibid, at 995. A similar dichotomy is also implied or discussed in the other literature discussed here. Given the colonial roots of the discourse, 'man' as opposed to 'humans' is arguably a more appropriate term.
[8] The first paragraph of the preamble to the CBD states that Parties are conscious 'of the intrinsic value of biological diversity and the ecological, genetic, social, economic, scientific, educational, cultural, recreational and aesthetic values of biological diversity and its components.'

communities to challenge the fragmentary nature of state law, and instead to engage with if from a more nuanced and integrated perspective' (ibid 2014: 234). Nevertheless other scholars dispute this more positive view of the CBD as an arena. Marion Suiseeya's (2014) work in the field of global environmental politics is based on a collective ethnography carried out at the negotiations for Nagoya, and suggests that they were in fact dominated by debates over instruments. This is argued to have severely limited space for negotiating the fundamental meanings of nature and culture. Brand and Vadrot (2013) argue that hegemonic discourses such as those explored here impose 'epistemic selectivities' on the CBD, with the result that there are limits related to which arguments are admissible. This, they argue, is the reason for the exclusion of traditional knowledge that is not deemed to contribute to the protection of biodiversity from the remit of the CBD.

This brief review suggests a number of clear themes. The acknowledgement of the power of discourse is a common trait, where dominant discourses are seen to exercise power by shaping worldviews and thus the limits of what may be considered rational solutions to environmental problems. The dominant discourses identified are rooted in capitalism and colonialism. According to this reading, colonial powers in the global North exploited the raw materials of the global South for capitalist gain, and these relations are perpetuated in the present, and can be linked to solutions proposed for global environmental problems. These are described as top down or externally imposed, and as seeking to assign economic value to environmental goods. This demonstrates another consequence of capitalist discourse, an understanding that 'nature' or 'the environment' and 'society' or 'culture' are separable. This dichotomous perspective is not present in the worldviews of many of the indigenous peoples and local communities that have in recent years been recognised as key to environmental protection and conservation (Vermeylen 2017). Because of this mismatch, current policies are argued to threaten the societal systems that produce the goods they aim to protect. Some scholars see the CBD as hosting spaces for resistance, and community protocols as allowing a direct challenge to these discourses from local levels (Bavikatte 2014). This is to some extent confirmed in literature on community based natural resource management (e.g. Nelson 2010), though only if and when effective power is accorded to local levels in inclusive ways. Others challenge this view, seeing little effective space in the global arena of the CBD, albeit without referring to local levels (e.g. Marion Suiseeya 2014).

Community protocols and spaces for local voices

This section will discuss community protocols and their potential and limitations in addressing power imbalances linked to the hegemonic discourses identified in the brief literature review above. The discussion is illustrated with reference to original case studies concerning communities engaged in discussions around access to and management of natural resources, benefit-sharing, and community protocols. The cases were chosen – in addition to practical concerns - to provide variation in terms of national political and legal contexts, stages of discussion around benefit-sharing and community protocols, and the natural resources concerned. In addition, as the CBD has noted lower participation from local communities as distinct from (self-identified) indigenous peoples, the cases also cover both (CBD 2011). The cases are not intended to constitute a representative sample of experiences, but rather to allow exploratory research in an area that has seen little in the way of comparative work. They serve to highlight a series of issues that are common to the discussions around community protocols for the cases concerned, and which may then indicate their importance for other communities. The sites of the case studies are in Greece, South Africa, Argentina, Namibia and Malaysia. The methods employed in each case varied in line with the particular circumstances of each

and the participatory ambitions of the research design (see Parks and Morgera 2014), and included participant observation and individual and group semi-structured interviews with community members, NGO representatives, local, regional and national authority representatives, and academic experts.

In the Greek case study, the focus is on discussions around traditional goat pastoralists and access to land for grazing on the island of Ikaria. Pastoralists have traditionally played an important economic and cultural role on the island, with longstanding access to various types of land (both private and public) considered as the island's commons and free to access for pastoralists in line with arrangements to separate grazing and agricultural land. Access to land is now becoming a contentious issue due to frictions forming against a backdrop of European Union laws that complicate market access for goat meat (which has led to a rise in the goat population, threatening the island's delicate ecosystem), as well as the Greek experience of the global financial crisis. The South African case concerns a group of traditional health practitioners from a range of ethnic and linguistic backgrounds. This group formed the Kukula traditional health practitioners' Association and drafted a community protocol in 2009[9] to highlight their work in communities and threats to biodiversity in the area, adjacent to Kruger national park. The practitioners, who initially came together to discuss ABS isses, (see also Sibuye et al 2012) are currently discussing a range of issues including access to medicinal plants and the preservation of cultural heritage, sustainable management and stewardship of land, and participation in protected area management. The Association are thus discussing how to renew their community protocol to reflect their current status and needs. The Namibian case also concerns cultural reproduction in connection with wildlife management and traditional knowledge among Khwe residents of Bwabwata national park. Historically, this group hunted and gathered food in what is now a core area of the park. Without access, the communities fear that traditional knowledge may disappear. They have begun drafting a community protocol to support their claim to access, also tied to work taking place through involvement in the Kyaramacan Association which aids in park management and distributes hunting concessions (see also Koot et al 2016).

The Argentina case concerns 33 indigenous communities resident around the salt planes of Salinas Grandes and Laguna de Guallatayoc in the Andes. Interest in this indigenous land among mining companies has increased since the discovery of lithium in the salt planes. The 33 communities have built on existing institutions to draft a community protocol[10] detailing consultation and consent procedures, linking these to understandings of the world through Buen Vivir and the natural salt cycle, as well as international law. The Malaysian case focuses on the Kelabit community of Bario, Sarawak, and Bario rice, a unique variety. An aging population, increased social mobility and labour shortages have left cultivation levels critical and Bario rice under threat. An association of Kelabit community members mostly living away from Bario have secured state government subsidies for a tri-partite management deal involving the association, the state government and a commercial farming company, to grow the rice. The scheme has raised questions around traditional and industrial farming techniques, and a possible future community protocol is under discussion.

Capitalist/colonialist discourses

Capitalist and colonial discourses are linked in the literature reviewed, where colonial practices are traced to an underlying capitalist worldview, and investigates how this may provide a key to global

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[9] Available at: http://community-protocols.org/wp-content/uploads/documents/South_Africa-Bushbuckridge_Biocultural_Protocol.pdf. Accessed 18 November 2016.
[10] Available (in Spanish) at http://farn.org.ar/archives/20277. Accessed 18 November 2016.

environmental policies. As discussed, space for alternative discourses is available within the CBD, and community protocols are seen as accessing that space by Bavikatte (2014). The recognition of community protocols was intended by those who advocated for it both to open up an avenue for the expression of a range of minority discourses, and to lend these some of the power of the existing institutional structure of global environmental governance (ibid). Recognition in international law was seen as a potential way to imbue community protocols with legal legitimacy for actors outside the community concerned, as well as provide a path to construct a more plural system at the international level. These possibilities are illustrated by the community protocol in the Argentina case study. In their community protocol, the local communities explicitly frame their claims with reference to international law, regional law, and the national Constitution. These linkages seek to establish the legitimacy of the document. The protocol then informs readers of the communities' position, institutions, history and worldview through detailed procedures for consultation. By setting out these linkages, the community protocol has the potential to infuse an instrument recognised at the global level with local discourses, thus seeking to balance dominant discourses (see also Makagon et al 2016).

The potential of community protocols to address capitalist/colonialist discourses is clear in this view, but also limited in terms of recognition within Nagoya ABS regime - though some evidence that recognition may spread is suggested by the growth of discourses around community-led protected areas in the decisions of the CBD (Jonas 2017). Nevertheless, a clear point of tension arises: ABS is seen as firmly rooted in colonialist North/South relations. The question of how far the recognition of community protocols co-opts these instruments into this discourse is thus raised. Considering this, it should be recalled that benefit-sharing is not a precisely defined legal concept (Morgera 2016). While many accounts dwell on monetary benefit-sharing, depicting payments as scarce recompense for a transaction that may have longstanding and wide-ranging effects, benefits may be defined differently and include a number of non-monetary and monetary benefits. The Argentina case can also be read in this light – the community protocol fleshes out concepts that remain vague at the global level and prone to being filled with meanings based in dominant capitalist/colonialist discourses. In the Namibian case, the meaning of benefit itself was widened as those discussing the protocol underlined the importance of cultural reproduction as the basis of benefits produced from the community's knowledge. In this vein, community protocols could help shape global processes – initially around benefit-sharing but potentially in other areas too, for example by allowing the recognitions of broader conceptions of property as discussed above. Community protocols could, in this reading, imbue imprecisely defined legal concepts and policies with locally specific meanings based on non-dominant discourses.

Another limitation on the scope for such action, however, is the CBD's recognition of state sovereignty over natural resources, which asserts national state governments as a clear source of power. State sovereignty over natural resources can also be read as an earlier attempt by the CBD to address power imbalances, albeit this time between so-called developed and developing states, since acknowledging sovereignty was a key point of the new international economic order (Morgera 2016). Yet recognising state sovereignty over natural resources also contributed to the reluctance of the CBD parties to recognise indigenous peoples, which was contrary to the wishes of many state governments. This reluctance is explicit, for example, in previous avoidance of the term indigenous peoples and in current wording which groups 'indigenous and local communities'. While this implicitly includes local communities in a definition that highlights their marginalisation, a feature generally included in definitions of indigenous peoples (Gausset, Kenrick and Gibb 2011), it simultaneously denies a unique position to indigenous peoples. CBD discussions identify similar criteria for both groups (Jonas, Makagon and Shrumm 2013: 23-24; CBD 2011: 12-13). Another indicator of this trend is

found in the CBD Parties' reluctance to endorse the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) (Morgera and Tsioumani 2011: 20).

This suggests that while community protocols can address global policy arenas, they must also address a range of actors within the national state if they are to upset power asymmetries. The potential for community protocols in this regard necessarily varies between states as well as peoples or communities, and no comprehensive conclusion is possible here, though an important factor is likely to be the economic worth to the state of the natural resource in question (Nelson 2010). Community protocols in the cases studied here also make reference to the global level, referencing for example Nagoya and the International Labour Organisations' Convention 165 on free prior and informed consent. In this sense, community protocols may also seek to wield power at the national level through appeals to the global governance level in line with Keck and Sikkink's classic 'boomerang' model (1998). Another point for consideration is suggested by existing work on community-based management as well as the case studies. This concerns the importance of the *processes* behind community protocols as opportunities both to challenge power relations within communities and to address issues arising from externally imposed uniformity on a supposed community. In the South African case study, for example, the members of the 'community' of the Kukula Association joined together to draft a community protocol on the basis of shared interests and developed their own approach to a knowledge commons, but span different ethnic and language groups, leading to particular attention being paid to consensus building (Sibuye et al 2012). The Kukula are not thus a 'local community' in the sense of cultural homogeneity often ascribed to the term, but formed a community expressly in order to assert their rights in any future ABS scenario. Later developments in their interests have also developed through the community protocol process.

Where a community appears to conform to a more traditional definition, however, longstanding community institutions may also impress their own power asymmetries on a community protocol, albeit involuntarily. This is suggested by the Malaysian case: though no community protocol process is underway, the case shows that even unintentional exclusion can have various consequences. In concluding a tripartite agricultural agreement, the association in the Malaysian case did not consider specific local farming practices and values, leading to a host of issues being raised about farming techniques, their long-term effects, and consultation and response mechanisms. This points to the need to consider the nature of local institutions and their ability to build inclusive consensus. More seriously, though not an issue in any of the cases here, exclusion from negotiations with external actors may point to local level elite capture, where individuals benefit personally in return for providing bogus community consent (see e.g. Nelson 2010). In order for community protocols to address power asymmetries towards external actors – particularly at the national level where ongoing struggles for self-determination may be pressing – particular attention thus needs to be paid to the *process* of community protocols. Processes of drafting that address power relations *within* a community appear more likely to be effective in attempts to address power relations *outside* a community. Such processes will not be uniform, but vary according to local realities.

The nature/culture divide and spaces for other worldviews

The 'nature/culture divide' is framed as a consequence of capitalist and colonialist discourses. Expansion and growth are at the heart of the latter, resulting in a dichotomous understanding of 'nature' as separate from humankind, which can as a consequence dominate nature, placing it in the service of economic production. This line of argument also extends in the view of many scholars to

the consignment of indigenous peoples to 'nature', placing them under the governance of others for the convenience of economic growth. Since dominant discourses are understood to displace others, a consequence of the centrality of this anthropocentric and dichotomous view is the exclusion of more holistic discourses. This is seen to be clear in policies based within a green economy approach. Benefit-sharing where understood by those accessing a natural resource as purely monetary recompense, is one example – clearer still are policies based on payments for ecosystems services (PES) that quite literally put a price tag on nature (see Wilkinson 2014). There are two possible ways of interpreting these policies. In a more pessimistic view, policies that distinguish nature and humans may be argued to face an ontological clash when applied in contexts that do not conform to those worldviews. Thus, the very traditional knowledge and practices that the CBD seeks to protect and reward may be threatened by these approaches, because they may alter their underlying logics of cultural reproduction. In a different view, work on ecosystems approaches sees the valorisation of nature as necessary (though not unproblematic) in order to allow existing policies to accommodate holistic views. By treating ecosystems as a whole, these approaches may at least leave space for the meeting of worldviews (e.g. Sikor 2014), and allow the existing global environmental governance instruments to work better. The green economy in this view is not an approach with a definition that automatically excludes certain solutions, but one that can potentially be infused and changed through the influence of other worldviews (Morgera and Savaresi 2013), moving it away from a purely capitalist discursive construction. Thus, many local and indigenous communities have used PES policies such as REDD+ precisely because of a need for monetary benefits, while others have developed their own REDD+ responses, using the scheme in innovative ways (Garzón 2017). Still others reject these policies, but positive examples exist.

These contrasting interpretations present different scenarios for community protocols and their potential: the more pessimistic scenario foresees nothing more than cultural domination, while the more optimistic one suggests that there may be space to bring worldviews into dialogue, if not to overcome the dominant discourses of global environmental governance. Morgera, for example, notes increasing attention to communities' cultural reproduction (that is the organisation of a community so as to pass on traditional knowledge and values) as crucial for their stewardship roles (2016), and community protocols may allow such points to be expressed and taken into account in any eventual agreement. The case studies suggest that both scenarios are possible, even in the same contexts. The Namibian case provides some illustration of this. First, there is a functioning benefit-sharing agreement in place involving the Khwe residents of Bwabwata national park that has seen positive effects for the community in the form of both monetary and non-monetary forms of benefits (the latter including meat and a range of job opportunities). At the same time, one reason for the community's decision to begin a community protocol process was concern over cultural reproduction – the skills valued for the management of the park are understood to be at risk of disappearing without explicit support to secure their transmission to current and future generations.

In this view, the successes of the benefit-sharing scheme may be finite where they have limited attention beyond monetary payments: where systems of belief, institutions and accompanying ways of life have suffered long histories of marginalisation, this raises questions about how fundamentally policies based in hegemonic worldviews destabilise these systems over time (bearing in mind that these are the systems they acknowledge as crucial to environmental protection). Where monetary benefits can certainly be sought by communities, there may for some groups be a need to consider longer term cultural reproduction that some studies have found to be at risk from PES policies. For example, Bayrak et al (2013) found that the attitudes and wishes of some members of the Vietnamese communities they studied change over time as individuals were socialised into a different worldview

in line with the nature/culture divide, paradoxically placing the environmental protection aims of the policy at risk (e.g. Bayrak et al 2013). This is also indicated to some extent in the Greek case, where those still engaged in pastoralism and resident in Ikaria expressed the opinion that their worldviews adhered to a longstanding tradition, which those that had moved to live elsewhere no longer understood. Longstanding marginalisation may also affect community protocol processes in terms of creating spaces for dialogue between discourses. Many long marginalised community members continue to suffer from structural inequalities such as a lack of access to education, making external support crucial in initial community protocol processes. The community protocol may, in the long term, allow a group to address such structural inequalities, but initial support is often needed – as in many of the cases cited here and elsewhere (see e.g. Delgado 2016). Yet providing this support also brings complications, as discussed in the following section.

What does this mean for the potential of community protocols? Understanding community protocols as a process is again underlined by the types of threats outlined above. A process that sees a community define and effectively communicate the centrality of some form of traditional knowledge or value may allow external actors to understand the importance of supporting its continued existence and evolution. This, again, is a situation with community protocols may provide a locally specific definition of the content of a global environmental governance instrument, and contribute to the creation of spaces where different discourses may enter into dialogue. The difficulties of the processes of community protocols require close attention however. Amongst the cases used to illustrate the discussions here, scenarios closer to the pessimistic interpretation where policies compromise the communities that they seek to protect can be discerned where no community protocol process is underway. Where community protocol processes were underway, however, those involved clarified the importance of cultural reproduction and defined 'benefits' according to local needs. Although these processes were difficult and lengthy and continue at the time of writing, they have served in some way to (re)define communities, their values and aims, and to record information. This points again to the possibility that community protocols will address power relations by creating conditions where policies rooted in different worldviews are applied in locally sensitive ways. The considerations made here also underline the importance of thinking about the *processes* leading to community protocols as equally, if not more, important than any finished 'product'.

External imposition of solutions

The discussions detailed above indicate that delicate balances are involved in community protocol processes. This ties in with a final common theme from the literature reviewed, which posits that the dominant discourses of capitalism and colonialism that continue to underpin global environmental governance place power with actors external to local and indigenous communities, meaning that policies are often viewed as imposed by these external actors. A number of sources that put the potential of community protocols at risk are raised in this line: some have already been touched on above, notably risks attached to assuming the uniformity of a community which may lead to the reproduction of existing power relations at local levels. Other risks remain to be discussed with reference to external imposition and community protocols: although this tool did not emerge directly in global arenas, it was developed by actors that may be regarded as external to communities negotiating protocols. In addition, the very recognition of community protocols in the CBD may contribute to a growing perception of external imposition over time.

Beginning with the latter point, the spaces unlocked by the recognition of community protocols in Nagoya discussed above may be compromised if these instruments come to be imposed rather than promoted as one path among many. Here the tensions of global processes playing out at local levels are clear – the potential of community protocols has been shown to be closely linked to how far they are authentic expressions of local values and practices. This authenticity, in turn, requires that processes be driven by communities themselves: where they are seen as imposed solutions linked to institutions representing a dominant discourse, they are unlikely to be embraced as vehicles for minority discourses. The format of community protocols is also relevant here – written documents may not reflect the ways in which a given community reproduces and develops its practices, values, knowledge and so on. Though protocols may be recorded in various ways, to create dialogues they must be recorded in formats that can be understood by external actors. This may be an insurmountable obstacle for some communities.

Other considerations in this line concern the roles of NGOs or other neutral brokers that are a common feature in community protocol processes. As noted, indigenous peoples and local communities are understood as marginalised groups for the purposes of the recognition of community protocols, and many have been affected by longstanding structural inequalities. Outside assistance for community protocol processes is thus common, with different actors providing information, facilitation and funds. These roles are crucial, particularly for ensuring the translation of protocols into dialogues, for example through links made to international law as described above, but carry the risks of pitfalls associated with the idea of external imposition. Community protocol processes may lead to community empowerment in the long term through external assistance that facilitates rather than directly intervenes in processes. Yet the risk of distorting the views of a community is difficult to eradicate, and may be exacerbated in turn by reliance on funds that are project based and short-term outcome oriented, while community protocol processes are lengthy and may not translate into measurable outcomes. External circumstances can also impose on community protocol processes, which are often begun when a clear threat is perceived (for example a mining company seeks permission to mine in the community as in the Argentina case, or land designations are changed as in the Greek case). Time constraints formed by the proximity of threats may end in community protocols tailored to a specific situation, compromising their long-term relevance. This points again to the importance of considering community protocols as processes, rather than outcomes, and the need for protocols to be able to evolve over time – much as benefit-sharing itself has been conceptualised if it is to be fair and equitable (Morgera 2016).

For a community protocol process to successfully open spaces for dialogue between discourses and address power asymmetries, a range of factors concerning both how processes address power relations within communities and how external actors should balance the recognition of community protocols with respect for local processes comes into play. It is unlikely that the potential of community protocols will be perfectly achieved in every case. Indeed, community protocols may not be the best path in every context: other models of resistance may be in place, such as social movements, that already seek to address power imbalances between the community and external actors. A community protocol process may also be seen as implicit assent to engage with external actors, or as waiving the right to refuse consent.[11] While ideal scenarios never occur in reality, however, the potential for community protocol processes to provide local detail to under-specified global environmental governance solutions is clear if limited, at least in relation to the CBD. Nevertheless, community

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[11] Both points raised during case study research in Argentina.

protocols show how global regimes might conceivably begin to respond more sensitively to local specificities.

Conclusions

Work that considers what global environmental governance might look like were it guided by minority discourses shows the wider importance of considering how community protocols might, in their small way, contribute to shape this level. Johnson (2014) examines how Inuit discourses linked to an ethic of care, affect and emotion affect decision-making forums at the international level. Broadly speaking, Johnson argues, these discourses admit emotion to the realm of rationality (ibid). Though their effects may be small, the urgency of impending environmental disaster and the slow progress of global environmental governance make possibilities to change dominant discourses that value economic gain above all else attractive.

This article sought to bring together different bodies of work relevant to global environmental governance and to systematically discuss the potential and limits of community protocols in view of global, local and to a lesser extent national, levels. The discussion shows that community protocols may inject these fora with minority discourses. Community protocols record the views, values, customary law, traditional practices and other chosen facets of local communities, and have been recognised in the Nagoya protocol on access and benefit-sharing to the Convention on Biological Diversity. They may: imbue existing policies that are not extensively defined with locally specific meaning; expand understandings of benefit-sharing beyond the more short-sighted definitions linked to capitalist and colonial logics which are sometimes assumed to be the sole interest of local groups; and challenge power relations both within and outside communities in order to create spaces for dialogues between discourses. However, numerous issues stemming from how a community is defined and who is considered to be a part of that community may affect these processes and compromise their effects. Where the impetus for community protocol processes comes from and who provides support to the process also carries risks as well as advantages. Risks include local rejection of a process if seen as externally imposed, elite capture, and issues around timing and outcomes tied to funding rules. While community protocols hold potential, attention to processes is paramount: if these potential pitfalls are avoided, they may serve to bridge discursive clashes between local and other worldviews, and empower communities. Nevertheless, a central paradox remains. If a crucial element of community protocols is that they express the will of a community, then global level recognition does not simply strengthen, but simultaneously endangers their potential by threatening that these tools become externally imposed and linked to dominant discourses. Striking a delicate balance between local empowerment and global recognition stopping short of imposition appears key.

At its latest Conference of the Parties, parties to the CBD adopted a number of decisions that speak directly and indirectly to community protocols and their potential role. Decisions on mainstreaming biodiversity into other policies, for example, made reference to the existence of different cosmovisions in the agricultural sector, as well as on 'non-market based approaches' (Morgera 2017a BLOG PART I). These discursive moves may be read as moving towards the creation of a wider discursive space within the CBD. The meeting also adopted the Mo'otz kuxtal guidelines (CBD 2016) on benefit-sharing from the use of traditional knowledge which includes reference to community protocols as follows: "the guidelines should be applied in a manner that is consistent with the national law of the country where the traditional knowledge is being accessed and give due importance to the customary laws, community protocols and practices of indigenous peoples

and local communities." This latest recognition of community protocols underscores the findings of this article in several ways. First, it confirms a continued deference from the global level to national law, and thus the importance that communities engage with this level and the power asymmetries it often comprises. As the guidelines also mention customary law, community protocols can be understood to have added scope for manoeuvre: parties at the latest negotiations remained reluctant to give any ground to legal pluralism, where customary law is recognised alongside national law. Yet this may mean that recognising community protocols is less costly to states, allowing them to engage meaningfully with local communities without the appearance of ceding ground on legal sovereignty. In addition, community protocols may allow communities to develop inclusive positions on issues that have not been subject to any previous customary law. The guidelines also underline the advantages of community protocols as allowing:

> "communities an opportunity to focus on their development aspirations vis-a-vis their rights and to articulate for themselves and for users their understanding of their bio-cultural heritage and therefore on what basis they will engage with a variety of stakeholders. By considering the interconnections of their land rights, current socio-economic situation, environmental concerns, customary laws and traditional knowledge, communities are better placed to determine for themselves how to negotiate with a variety of actors." (CBD 2016, para. 19)

This text, along with a more detailed definition of community protocols, constitutes the most detailed information from the CBD on community protocols to date. By underscoring their use, however, the CBD risks the disadvantages that may accompany the external imposition of protocols on local communities. As states shy away from legal pluralism, community protocols may be imposed, robbing them of their potential as linked to their authenticity as community-driven processes (see also Morgera 2017b BLOG PART II). The delicate balances to be struck if the potential of community protocols is to be unlocked is thus underlined by the latest developments in global environmental governance.

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[12] The use and interpretation of the term "indigenous peoples and local communities" in these Guidelines should refer to decision XII/12 F, paragraph 2 (a), (b) and (c).

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