

Cultural Diversity and the Politics of Recognition in International Organizations

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Because cultural diversity tends to fall within the purview of the state and related scholarly discussions about multiculturalism, its international relevance has largely been sidelined. However, a plethora of actors are making national, religious, and ethnic claims within international organizations, and new institutions have even been created to address some of these concerns. Building upon Nancy Fraser's recognition framework, we assess the extent to which international organizations, whose mandate is not cultural per se, find diversity claims on their agendas. We sample how three organizations from different issue areas—the World Intellectual Property Organization (WIPO), the World Health Organization (WHO), and the International Criminal Court (ICC)—are confronted with and respond to claims for cultural recognition. In conclusion, we highlight general insights from variation in the politics of recognition that should guide further comparative analysis.

Introduction

Cultural issues are increasingly on the global policy agenda. Formerly within the purview of states, if cultural issues garnered attention at the global level, it was likely at the UN's Education, Science and Cultural Organization (UNESCO). Over time, more and more parts of the UN's system have incorporated cultural dimensions, including within development programs and, notably, as an aspect of the rights of indigenous peoples (e.g., Office of the High Commissioner of Human Rights 2017). Recently, international initiatives with a *directly* cultural mandate have also proliferated. These include the Alliance of Civilizations, which “works toward a more peaceful, more socially inclusive world, by building mutual respect among peoples of different cultural and religious identities, and highlighting the will of the world's majority to reject extremism and embrace diversity” (Alliance of Civilizations 2017). And in the Permanent Forum on Indigenous Issues, culture is one of six mandated areas to acknowledge indigenous people's “rich sets of knowledge about the natural world, health, technologies and techniques, rites and rituals and other cultural expressions” (2017).

Less apparent within this general trend, international organizations (IOs) whose mandates are not specifically cultural increasingly find cultural claims on their agendas. This second development is our focus here, because it raises questions about whether IOs that have a noncultural focus can (or should) respond effectively to such claims. What constrains or enables IOs' positive response? While the global governance literature increasingly acknowledges cultural concerns (e.g., Reus-Smit 2017 at the macro-level and Lightfoot 2016 on the evolution of indigenous claims), thus far the frameworks offered, which concentrate on contestation over cultural claims, do not provide analytical tools for capturing the dynamics we observe in institutional settings without a cultural mandate. For instance, in these noncultural settings, we cannot take for granted that cultural claims-makers will even have a seat at the table.

For analytical guidance, therefore, we turned to Nancy Fraser's conception of recognition politics, which led us to ask, “*Who* exactly is entitled to participate on a par *with*

whom in which social interactions?” (Fraser 2009c, 61; emphasis in original). Specifically, we inductively examine instances of cultural claims-making within three noncultural IOs: the World Intellectual Property Organization (WIPO), the World Health Organization (WHO), and the International Criminal Court (ICC). In each case, we noted that stakeholders seek cultural recognition from the IO in varying degrees. What claims or claimants are IOs willing or able to recognize? What are the limits or obstacles of recognition?

These three IOs represent a sampling, drawn from political economy, social policy, and human rights, respectively. None contain cultural rights in their mandates, yet all do find cultural recognition claims on their agendas, to varying degrees. Most notably, indigenous groups have directly engaged with WIPO to contest the organization’s understanding of intellectual property. However, we found scant evidence of similarly direct claims-making at the WHO or the ICC, despite significant debates over traditional medicine and alternative forms of transitional justice, respectively. Across the cases, universalist mandates and state-centric organizational structures appear to limit cultural claims, an inference that merits further comparative assessment.

The Politics of Recognition

Global-level recognition can empower cultural groups, especially those whose rights have not been adequately championed at the national level. Yet the rich theoretical literature on recognition politics, developed with special attention to the national level over the last twenty-five years, gives scant attention to the global level (Burns and Thompson 2013, 2). Not even those theorists who have acknowledged global justice concerns explore IOs as key sites for recognition claims (Fraser 2009b; Fraser and Honneth 2003; Honneth 1996). To some extent, this gap may reflect the relative newness of international initiatives, such as the Alliance of Civilizations, the 2007 UN Declaration on the Rights of Indigenous People, and the Permanent Forum on Indigenous Issues, which make relations with or between cultural groups their specific mandate.

IOs whose mandate is not cultural *per se* also increasingly find cultural claims on their agendas, in myriad forms. Therefore, we applied this lens of recognition politics to examine institutional willingness and ability to accommodate cultural difference. However, we did not assume that extending recognition is necessarily desirable, because the extensive domestic level literature highlights potential pitfalls. Crucially, recognition of a group’s distinctiveness can reify culture. It can also have cross-cutting negative effects on claims grounded in gender or economic status. Furthermore, cultural rights at the international level may be at odds with the universal human rights regime.

A leading voice among those who have theorized the multicultural dimensions of liberalism, Fraser equated justice with “parity of participation,” which “requires social arrangements that permit all to participate as peers in social life” (2009b, 16). Obstacles can take multiple forms; she noted justice claims in three “idioms” (2009a, 2). The *redistributive* dimension conceptualizes just outcomes in terms of “the fair allocation of divisible goods, typically economic in nature” (2009a, 3). A second dimension addresses cultural injustice by focusing on *recognition* as a way to grant appropriate standing, and *representation* seeks to rectify exclusion from the very act of claims-making (2000, 117; 2009b, 16).

Together, these three dimensions comprise “the ‘what’ of justice: redistribution or recognition or representation?” (Fraser 2009a, 5). They can overlap and interact; depending on the situation, one may recede while another comes to the fore. We acknowledged, therefore, the possibility of multiple simultaneous justice claims and that what appears at first glance to be a recognition issue may actually be more complex.

Institutions—broadly defined to include formal law, government policies, administrative or professional codes, associational patterns, customs or social practices—serve as both potential sources of and remedies for injustice (Fraser 2000, 114). In terms of political practices, these concerns pertain to whether procedures and decisions give equal voice to all members. Fraser noted that appropriate remedies can take a variety of forms: “In some cases, they [groups]

may need to be unburdened of excessive ascribed or constructed distinctiveness; in others, to have hitherto under-acknowledged distinctiveness taken into account” (2000, 115). She thereby avoids some well-known criticisms of multiculturalism, such as reification of identities, while she also acknowledges others, such as tensions over women’s rights (Fraser 2000, 108; Okin 1997).

More deeply, these concerns highlight “the boundary-setting aspect of the political,” which determines who is “authorized” to participate (Fraser 2009b, 19). As Fraser explained, “What is at issue here is inclusion in, or exclusion from, the community of those entitled to make justice claims on one another” (2009b, 17). Because “institutionalized patterns of cultural value,” including the possibility of “parity-impeding cultural norms,” affect relative standing, recognition would be “aimed not at valorizing group identity but rather at overcoming subordination” (Fraser 2000, 113–4). Notably, Fraser’s framework figures prominently in literature beyond multiculturalism debates, for example in disability studies (Danermark and Coniavitis Gellerstedt 2004) and in social work (Webb 2010).

This focus on “institutionalized patterns” readily translates to the analysis of cultural claims-making in IOs. As Fraser herself noted, justice claims are no longer restricted to a domestic frame, because globalization has created new relationships, actors, and forums, including IOs (2009b, 12–14). The concept of recognition has also long been used in international relations, albeit with a more limited state-centric meaning (Claude 1966; Bartelson 2013). For example, a prolific research program analyzed the effects of recognition on interstate and intrastate conflicts (Lebow 2010; Lindemann 2010; Strömbom 2014; Wolf 2011). While we acknowledge the significance of such state-centric recognition politics, the analysis of cultural claims calls for the inclusion of a wider range of actors. In particular, following Fraser, we explore whether participatory parity for claims-making groups is sought, accorded, or withheld at IOs.

Of course liberal democratic societies, with citizens as stakeholders, do differ from IOs, which are typically created by states, with states as the primary (if not the only) members. Yet understandings of global stakeholders have evolved far beyond earlier views of powerful states. IOs as well as nongovernmental organizations (NGOs) can be autonomous actors whose legitimacy hinges at least partially on the degree to which they serve a wider range of stakeholders (Abbott, Genschel, Snidal, and Zangl 2015). For example, when the UN created the Permanent Forum on Indigenous Issues, it went beyond the interests of its member states to recognize justice claims of indigenous peoples (Niezen 2003).

Thus Fraser’s “parity of participation” provides a pertinent metric. Each IO can be assessed on whether recognized stakeholders enjoy equal participation and, if they do not, whether their subordinate status is attributable to “institutionalized patterns of cultural value.” As the following three sections detail, we found that IOs tread in cultural diversity waters to varying degrees: Indigenous groups have challenged WIPO’s conceptualization of intellectual property, with some success, and WHO accommodates traditional medicine, within limits, whereas the ICC’s direct engagement with non-retributive justice mechanisms remains minimal.

The World Intellectual Property Organization

Established in 1970, the World Intellectual Property Organization (WIPO) replaced the United International Bureaus for the Protection of Intellectual Property. With ideas and knowledge at the heart of the information economy, WIPO is now a central institution of global economic governance, administering twenty-six treaties related to intellectual property (IP) on behalf of its 191 member states. Core activities include helping to develop policies, structures, skills and laws related to IP; overseeing global registration systems for trademark, industrial design, appellations of origin, and patent protection; delivering dispute resolution services; and providing a forum for debate and exchange of expertise.

Indigenous groups have criticized WIPO’s IP framework, which defines ideas in terms of commercial value, for its inconsistency with their understanding of traditional knowledge (TK) and traditional cultural expression (TCE). These claims for cultural recognition, made

primarily through WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), have been heard but with limited effect. Thus far, the global IP framework has not significantly accommodated an alternative indigenous understanding of knowledge.

The Knowledge and Culture Nexus

Conventional commercial notions of intellectual property protections, such as patents and copyrights, have time limits. Once they expire, the idea or work transfers into the public domain. Moreover, to register an idea for intellectual property protections at WIPO, a work must be novel, with an identifiable inventor. In contrast, for many indigenous groups, ideas are not commodities to be owned or sold by individuals. Rather, communities and elders, who can only transfer it under certain circumstances, collectively hold knowledge; some stewards of knowledge may never be authorized to share it (Drahos and Frankel 2012; Frankel 2015).

An understanding of TK as “a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity” (WIPO 2015, 13) maps poorly onto time-limited IP commercial protections, which are designed to provide a temporary monopoly as compensation (and incentive) to innovators. Customary practices might specify, for example, that the exchange of proprietary songs takes place through intermarriage (WIPO 2001, 60), something the conventional IP system is not built to accommodate. Furthermore, written records required to take advantage of the IP system may not exist or be desirable for some forms of TK.

Although the WIPO framework cannot provide protections to many forms of traditional and local knowledge, some areas do align sufficiently with the IP system for modifications to be conceivable. Therefore, indigenous peoples do not necessarily reject the IP system completely. For example, indigenous groups demand prior and informed consent when people from outside of their communities seek to patent traditional knowledge, traditional cultural expressions, or genetic resources. And where the subsequent sale or use of TK and TCE generates legitimate commercial gain, they ask for fair and equitable benefit sharing. At a minimum, there is room to raise awareness about TK and to facilitate access to existing IP protections (WIPO 2001, 81).

Nonetheless, indigenous groups have also advocated for their distinctive concerns within and beyond WIPO's regulatory framework. Their claims have been on WIPO's agenda in various forms since the 1960s, and in its latest incarnation, since the late 1990s. When these issues were not included in negotiations over the WIPO Patent Law Treaty, despite support from some member states, a compromise created an ad hoc committee to study how the IP system might accommodate TK, TCE, and genetic resources. That committee evolved into the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), whose work aims to reach a viable legal instrument (possibly a formal treaty). As one prominent participant in this negotiating process put it, indigenous peoples “might choose to restrict its use, to share or even to commercialize it, but they should not have the present IP system imposed on them as it basically provides them with inadequate control over their own culture” (Ahren 2009, 54).

Convened first in 2001, the IGC has met approximately twice yearly since then. The process stalled briefly after the 28th session in July 2014 but soon accelerated with multiple sessions in recent years. Since its goal is ostensibly to protect TK, TCE, and genetic resources, the IGC shifted to a text-based negotiating process in 2009. Efforts include sharing experiences and mapping the preferences of stakeholders spanning local, traditional, and indigenous communities, as well as industry, all of whom are accredited to the meetings. The committee has produced a number of formal working documents, including Draft Provisions for the protection of TK and TCE. To ascertain where new protections might be required, it generated an extensive gap analysis of existing national and international laws for the protection of TK and TCE. The WIPO Secre-

tariat has supplemented these activities with extensive data-gathering and analysis, including scores of fact-finding missions to indigenous and traditional communities around the world. Its web site provides an extensive database of existing practices, and accredited groups may post written statements about pending issues.

Indigenous representatives contribute directly in the IGC. Since 2004, panels of indigenous and traditional communities open the sessions, allowing their concerns and experiences to set the tone. Participation in these panels has been funded by WIPO, and representatives of the UN Permanent Forum on Indigenous Issues have been formally invited to take part in IGC deliberations. At IGC sessions, time on the meeting program is also set aside for indigenous group side events. As the secretariat affirmed, “These presentations are a rich source of information on the experiences, concerns and aspirations of indigenous and local communities” (WIPO 2015, 47).

Limits to Parity of Participation at WIPO

WIPO has generally been receptive to indigenous claims, including recognition through the IGC process. And the secretariat staff in the Traditional Knowledge division, where these issues reside, have worked hard to understand indigenous concerns. Furthermore, to facilitate indigenous participation in the IGC process, they have mounted capacity-building events for groups unfamiliar with the IP system. WIPO had also established a fund to defray the costs for indigenous representatives who would like to be present at IGC meetings.

In light of such institutional efforts to counter cultural subordination, why does the IP framework not accommodate indigenous knowledge more extensively? Some member states are reticent, to say the least, about indigenous demands, thereby constraining other members’ or the secretariat’s commitment to change. Member states have lined up in groups on these issues, with Group B encompassing developed countries including the U.S., Canada, Australia, New Zealand, the EU, and Japan. Critics view Group B participation in the IGC process as obstructive. In past IGC meetings, for example, these countries have not always put forth constructive proposals, asking instead for more research into suitable types of laws and regulations. Not surprisingly, the largest patent holders in the world belong to Group B, suggesting an incentive to resist altering a regulatory framework that serves their commercial interests (Abdel-Latif 2017).

In addition, the nature of any change is uncharted territory. There is no single indigenous perspective or proposal. Many indigenous groups are calling for a *sui generis* system. If adopted, a whole new series of IP rights holders would be created. Others are calling for local customary law to be recognized beyond domestic environments. Both of these options would be difficult to implement, leading some analysts to suggest that the outcome of negotiations should be a framework document that creates parameters within which states respect the interests of indigenous and local communities. Such a framework document, recognizing the distinctiveness of traditional knowledge, would make WIPO a more inclusive organization and set indigenous peoples on a path to fuller participation in the international IP regulatory framework.

Although the policy outcomes of recognition politics at WIPO remain in flux, clearly indigenous communities have successfully challenged the dominant commercial IP framework enough for their own views on traditional knowledge and traditional cultural expression to play out in institutional channels. By Fraser’s standard, indigenous groups have achieved a notable level of participation, though not parity with state members. While the IGC process has not produced a binding outcome, indigenous participation “has become an important feature of the IGC’s dynamics” (Abdel-Latif 2014, 26). The influence of powerful member states, as well as WIPO’s structural preference for a certain understanding of IP, means that meaningful protections of TK and TCE may not emerge from the IGC process. Nonetheless, “never before have such in-depth discussions on these issues taken place in an intergovernmental setting” (Abdel-Latif 2017, 27), raising awareness and deepening understanding. Neither WHO nor the

ICC manifests comparable levels of parity of participation and direct claims-making by groups demanding a seat at the table. Regardless, cultural issues are on their respective agendas.

The World Health Organization

Established in 1948 as a specialized agency of the UN, WHO envisions its role broadly to be the support of health as a “state of complete physical, mental and social well-being and not merely the absence of disease or infirmity” (WHO 2017; Youde 2012; Gostin 2014). Led by a director-general, its reach currently extends to more than 150 countries, with six regional offices, governed through the World Health Assembly, comprised of delegates from member states, and an executive board. Based on collaborative partnerships, its activities include establishing health norms and standards (with monitoring of supporting data), articulating policy options, providing technical support, and promoting research (WHO 2017d).

WHO seems a natural fit for cultural claims, because many people understand health—from conceptions of illness and wellness to the practice of interventions upon the body—as intimately connected to traditions and beliefs. In addition, the benefit derived from the recognition of cultural specificity in the implementation of health interventions is well documented and widely acknowledged (Airhihenbuwa, Ford, and Iwelunmor 2014; Allegranzi, Memish, Donaldson, and Pittet 2009; Huffman and Galloway 2010). We highlight significant examples of WHO-driven engagement with culture, primarily traditional medicine and its relationship with WHO’s universal mandate; engagement appears most likely when consistent with this mandate, and to support the viability of organizational endeavors. In spite of these efforts, we found important limits to full parity of participation, particularly with respect to decision-making processes. We suggest several structural and ideational factors that might explain this dynamic.

The Health and Culture Nexus

Culture and health intersect most prominently in WHO discourse on traditional medicine (TM). Broad in scope, its Traditional Medicine Strategy (2,014–23) aims to “support Member States in: 1) harnessing the potential contribution of TM to health, wellness and people-centered health care; and 2) promoting the safe and effective use of TM by regulating, researching and integrating TM products, practitioners and practice into health systems, where appropriate” (WHO 2013, 11). This acknowledgement of complementary or alternative treatments as potentially beneficial for health and overall wellness demonstrates how traditional medicine’s legitimacy has expanded beyond the communities in which it is historically practiced. The reality that many communities continue to rely on traditional medical practitioners reinforces such recognition.

Yet tensions remain, because the strategy document supports the medicalization of TM through the use of various regulatory measures, clinical training, quality and risk assessment, and evidence-based approaches for deciding to support or reject specific practices. The WHO plan encourages regulatory and legal mechanisms at the national level to ensure safety and efficacy of such therapies. Critics claim that the goal of integrating traditional communities into mainstream health systems appears to be control, not recognition, since TM experts may not derive clear benefits from incorporation of their techniques (Arowolo 2011, 2). Ironically, TM regulatory frameworks might even undermine recognition by subordinating cultural practice through a lens outside of its community of origin.

One venue where critics have pushed back against such subordination is the Pan American Health Organization (PAHO), which has been proactive on matters related to indigenous health (PAHO 2004; PAHO 2006). Statistics clearly demonstrate how indigenous communities suffer ill-health, due largely to unequal resources and access (PAHO 2006, 3–4). Cultural disconnect can also preclude indigenous engagement with so-called mainstream health systems. This gap is aggravated, critics argue, by perceived disrespect for indigenous cultural rights as a legacy of colonization and the politics of intervention (King, Smith, and Gracey 2009).

PAHO documents recognize cultural difference as one contributing factor that might prevent indigenous people from accessing health services; a history of discrimination may also lead to self-exclusion (PAHO 2004, 4 and 8). Discussions of the role of culture are embedded in the (re-) articulation of the social, economic, and environmental determinants of health, by which indigenous communities are likely to be impacted. Recommendations include the establishment of offices and divisions in national health ministries designed specifically to support indigenous health, the integration of intercultural and multilingual approaches into medical practice and training, and the development of strategic alliances with key stakeholders in indigenous communities (PAHO 2004).

Additional initiatives to address the relationship between culture and health are evident in WHO's European Regional Office, notably an Expert Group that met in 2015 to explore how cultural context affects the understanding and measurement of health (WHO Regional Office for Europe 2015, IV). The group seeks to provide advice specifically on how to measure wellness, as well as facilitating a broader discussion of "cultural enhancers" and "cultural obstacles" for health (WHO 2015c, IV).

Notably *Public Health Panorama*, the journal of the WHO Regional Office for Europe (Volume 3, Issue 1, 2017) recently devoted an entire issue to the intersection of culture and health. Articles and editorials highlight the anticipated contributions of the ongoing Cultural Contexts of Health (CCH) project and the advancement of collaboration between WHO and UNESCO.

In order to support WHO objectives of universal access to healthcare, a Multilingualism Plan of Action (approved in 2008) called for the use of languages beyond the six officially acknowledged by the UN. The plan called for the explicit allocation of resources toward expanding the languages in which WHO materials, including archival information, are printed. It also placed responsibility for translation and dissemination of information on WHO, rather than individual states.

Calls for the deeper consideration of culture and context appear increasingly in WHO materials, particularly as related to the communication of risk in public health emergencies (see *Communicating Risk in Public Health Emergencies: A WHO guideline for emergency risk communication (ERC) policy and practice*). On a related note, the WHO Community Engagement Framework for Quality, People-Centered and Resilient Health Services (2017c) highlighted "how culture and context shape not only the relationships between people, but also how the outcomes of these relationships and human interactions influence the way that health services and health care are organized, delivered and experienced" (22). Both reflect on the fallout from the 2014 Ebola outbreak in West Africa as motivating factors for a more active consideration of culture in pursuit of organizational objectives.

Limits to Parity of Participation at WHO

Given the aforementioned efforts by WHO to contend with culture, what are the limits to full parity of participation? Engagement with culture, regardless of the presence or absence of demands from cultural groups, is driven by concerns that failure to do so will subvert programmatic goals or broader institutional mandates, such as "health for all." In essence, WHO balances between acknowledging cultural distinctiveness and minimizing its potential impact. Cultural sensitivity is thus employed, when present, from the top down; processes of decision-making continue to undermine full parity of participation. Factors related to the institutional structure of WHO help explain this outcome, particularly, state centrism, regional fragmentation, substantive complexity across issue areas, and the proliferation of alternative health-related organizations. And again, the very nature of WHO's objectives—pursuit of "health for all," with an embrace of evidence-based approaches—minimizes individual or group characteristics in favor of a more universal and objective orientation.

The degree to which states continue to dominate agenda-setting and decision-making processes at WHO is debatable. In addition, there is a growing dependence on extra-budgetary funding for targeted projects, the details of which are subject to specification by a given donor

state rather than organization-wide debate on allocation (Youde 2012, 34–35). There has been some limited success of some health-related non-state actors in engaging with WHO policy design and programming also challenges presumptions of state-centricity (McInnes and Lee 2012, 122–3).

However, the prioritization of state preferences in organizational design, including procedures at the World Health Assembly, clearly limits access to a diverse set of actors. This includes groups who might demand more nuanced organizational engagement with culture in program and process design. WHO's 2015 Framework for Engagement with Non-State Actors (the finalization of which is ongoing) takes seriously demands of health-oriented NGOs for inclusion in policy-prescriptive conversations, but they remain less integrated in agenda-setting. Moreover, entering into official relations is a burdensome process (Gostin 2014, 117).

Subject to a review process designed to ensure compliance with regulations set forth in the framework, NGOs rely on states for inclusion in any given discussion and, therefore, have an incentive to restrict the breadth and depth of their demands. Furthermore, affiliated NGOs are subject to charges of elitism, as Battams (2014, 812) described in her comparison of the EU and WHO engagement with civil society; benefits of formal association with WHO create incentives to ingratiate themselves with states.

As described above, the regional nature of the WHO structure offers additional (potential) access points for advocates (Hanrieder 2014, 216), especially those demanding mechanisms for managing specific cultural practices. Yet such decentralization simultaneously undermines any overarching approach, leading to wide variation in health management (Hanrieder 2014, 216). And some substantive areas (such as domestic violence, circumcision, or hand-washing) may be more likely to provoke demands for cultural sensitivity than others, complicating WHO's ability (if willing) to establish formal channels of recognition. In this decentralized environment, the proliferation of global health organizations may provide preferable avenues (Youde 2012, 45).

Finally, the universality of the WHO's mission has traditionally relegated considerations of culture to the ways in which ignoring cultural context may frustrate institutional objectives. Beginning with the 1978 Declaration of Alma-Ata, WHO has promoted systems that support health for all, and the organization has advocated for the state's responsibility to ensure primary care across populations. Increased attention on the social, environmental, and economic determinants of health has emphasized equal access to care, while a global shift toward evidence-based approaches has sought to standardize the collection, dissemination, and analysis of health information (Adams 2013, 56). In this way, the desire to obtain positive health outcomes can be prioritized over cultural sensitivity. Where the two come into conflict, WHO appears to incorporate culture to the extent that it advances primary objectives.

Policy priorities and prescriptions, determined by top-down funneling of information to country-level policy-makers, reproduce existing power relationships potentially subordinating local solutions. Whether recent reform efforts, aimed at increasing accountability to stakeholders, can succeed remains to be seen (WHO 2015a, 2015b). Similarly, state-centric institutional structures and a universalist mandate constrain cultural claims-making and parity of participation at the ICC.

The International Criminal Court

Since the 1990s, prosecution of individuals for international crimes against humanity, genocide, and war crimes has increased, notably through two UN-initiated criminal tribunals, special hybrid courts, and domestic proceedings based on universal jurisdiction (Sikkink 2011). Established in 1998 as the first permanent international criminal court, the International Criminal Court (ICC) aspires to end impunity by prosecuting alleged perpetrators of mass atrocities. Based on the notion of retributive justice, the ICC process of trial and punishment ideally ensures accountability for past actions and deters future crimes (Jo and Simmons 2016; Broache 2016; Cronin-Furman 2013; Hillebrecht 2016; Appel 2016).

The idea of culturally contingent notions of justice has gained some traction in discussions of international courts. For example, forms of restorative justice include community driven processes in which victims are central to determining guilt with the goal of improving societal relations rather than punishing individuals. When applying Fraser's parity of participation standard, we note that the ICC privileges a certain type of (retributive) justice that states agreed to during the Rome Conference. In addition to its universal mandate, state-centrism and its commitment to the legalism principle makes it unlikely for the court to consider culturally-specific claims. Still, diversity concerns can enter a courtroom when lawyers invoke cultural defenses or local leaders call for the inclusion of restorative justice mechanisms.

The Rights and Culture Nexus

International criminal interventions assume that prosecutions of individuals benefit local communities affected by conflict. Defendants can invoke cultural claims, perhaps justifying their actions through engrained culture or to highlight a mismatch between local practices and international law (Renteln 2011, 274). At the ICC, however, such arguments would have to be used in the context of other defenses that fit within the Rome Statute, such as duress. Thus the court's first judgment in the *Lubanga* case focused on whether child soldiers joined the rebel group voluntarily. The arrest of Dominic Ongwen, a former brigade commander in the Lord's Resistance Army in Uganda, also spurred debate about a possible cultural defense, since he had been abducted at the age of ten and was exposed to spiritual indoctrination (Nakandha 2016; Roestenburg-Morgan 2015).

So far, criminal courts mainly view cultural diversity as a linguistic concern, as evident in procedures and trainings for staffers dealing with various languages in trials, especially the work of translators (Almquist 2006; Karton 2008). For example, the International Criminal Tribunal for Rwanda's *Akayesu* case acknowledged problems with translation of witness testimonies from Kinyarwanda into French or English and other "cultural factors which might affect an understanding of the evidence presented" (1998, 67). Consequently, the tribunal relied on the testimony of a linguistics expert to offer insights into the local language, which had several words for "rape," a crucial charge.

For translation of documents, the ICC relies on the Language Services Unit, which serves the Office of the Prosecutor, and the Court Interpretation and Translation Section, which serves the Registry, Chambers, and Presidency. In addition, prosecutions for rape, especially, have prompted broader cultural sensitivity training. For instance, the Victims and Witnesses Unit's procedures underscore "respect to victims' and witnesses' security, integrity and dignity" and the need for staff expertise in "[g]ender and cultural diversity" (ICC 2013, 7–8).

The complementarity principle provides a third avenue through which cultural claims may impact the ICC. At heart a compromise between sovereignty and international jurisdiction, the Rome Statute allows states to challenge ICC proceedings when the state itself is already conducting genuine domestic proceedings of the alleged crimes. This has come to be understood as meaning that the ICC will only intervene when a state is unable or unwilling to investigate crimes that occurred on its territory, such as shielding defendants from investigation or engaging in undue delays (Sriram and Brown 2012; Bjork and Goebertus 2011). Two premises underlie this complementarity principle: prosecuting only those deemed most responsible leaves the majority of perpetrators to be tried domestically, and valuing local proceedings allows victims to see justice happening.

Although societies arguably understand justice and its administration in culturally specific ways (Eriksson 2011, 517), the ICC does not automatically accept all domestic proceedings as genuine. For example, restorative justice mechanisms include amnesty laws for perpetrators and truth commissions. While the Rome Statute is silent on the question of amnesties, because the treaty only regulates the conduct of the ICC and state relations with it, complementarity

can discourage the use of amnesties for fear of international prosecution or even out of respect for the ICC's anti-impunity principle (Nouwen 2013, 42).

The ICC's intervention in Uganda, where it privileged trials over communal reconciliation, highlighted these tensions (Kamari Clarke 2009, 119). Local religious and cultural leaders started a campaign against the ICC, based on their fears of trials' adverse impacts on the security of Northern Ugandans and on their frustrations that the ICC failed to address socioeconomic recovery or to restore societal relationships (Nouwen 2013, 143). The alternative traditional practice of *matu oput* (Acholi for drinking the bitter root) has received special attention as a local justice mechanism, widely supported and institutionalized by governmental and nongovernmental organizations. In *matu oput*, two clans restore peace after an intentional or accidental killing following a period of separation, mediation, and negotiation led by elders (Kamari Clarke 2009, 127). Others, however, warn against celebrating traditional justice mechanisms when many victims want prosecution alongside reconciliation (Allen 2006, 140–46).

Finally, diversity concerns have most recently reached the ICC through its mandate to prosecute the destruction of cultural property as a war crime. According to the Rome Statute's Art 8, 2(e)(iv), "[i]ntentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected" are war crimes "provided they are not military objectives." The ICC's Office of the Prosecutor opened its first cultural property case in September 2015, when it accused (now convicted) Ahmad al-Faqi al-Mahdi of directing the destruction of nine mausoleums and the Sidi Yahia mosque in Timbuktu, Mali (ICC 2017). While proceedings of the International Criminal Tribunal for the Former Yugoslavia did include destruction of cultural heritage (e.g., the Mostar bridge), the ICC case represented the first time cultural heritage formed the main allegation (Lostal 2015).

Limits to Parity of Participation at ICC

Considering these multiple ways in which the ICC engages with cultural recognition indirectly—through potential cultural defenses, as a linguistic concern, through the complementarity principle, and as subject-matter jurisdiction over destruction of cultural heritage—we cannot claim parity of participation by cultural claimants due to the ICC's institutionalized form of retributive justice, as well as its universal mandate, its state-centric nature, and its reliance on the legalism principle. Although parity of participation may not be necessary at the ICC to produce a legitimate and just outcome, it may be desirable to achieve cognate goals, like community reconciliation.

Because the ICC seeks to ensure accountability for international crimes worldwide and its jurisdiction covers crimes of an international nature—so horrific that they become a concern for all of humanity—the Rome Statute speaks to a universal morality and sets up specific standards of criminal justice that subordinate local justice traditions that are focused on alternative aims such as communal reconciliation (Roach 2006). In Uganda, for example, proponents of international criminal justice have argued that local practices cannot substitute for the ICC. A Ugandan ICC judge stated: "You cannot expect someone who caused the death of 100 people to be tried in a traditional court if you are looking for justice to be done. . . . You must convince the international community that justice was done and that the punishment is appropriate with the crime" (Nouwen 2013, 152).

In addition, the ICC is state-centric in structure, despite being an independent judicial institution. As a treaty-based organization, its basis, the Rome Statute, can be changed by the Assembly of the State Parties, comprised of representatives of the member states. This assembly decides on the budget and selects the judges as well as the prosecutors. Thus there is no institutional channel through which cultural groups can make direct claims. While NGOs can lobby and participate in assembly discussions, they cannot vote. However, any individual or group with evidence of a crime that they believe the ICC should investigate can bring their allegations to the court's attention via communications that may then be used for an investigation.

The court's discourse of apolitical legalism, heightening in the face of criticisms over the preponderance of African cases, further forecloses claims-making. Charges of bias damage the ICC's legitimacy and create the impression that political considerations impact prosecutorial strategies (Bosco 2014; Struett 2009; Tiemessen 2014). Being receptive to local claims by groups would likely contribute to perceptions of undue politicization. Consequently, the only institutional avenue for cultural claims-making at this point seems to be victims themselves. Since the ICC can only prosecute a handful of perpetrators, other perpetrators can be held accountable through alternative justice mechanisms closer to the place of the crime, providing victims with a potentially more immediate sense of justice.

Conclusion

Our analysis of WIPO, WHO, and ICC demonstrated that extending Fraser's focus on recognition to the global level provides a viable framework for analyzing claims within IOs. These three case studies reveal distinctive approaches to cultural diversity: direct engagement with recognition claims in WIPO, and acknowledgement of culturally-sensitive claims in WHO, but subordination in the ICC. Drawing on social movement theory, we highlighted IOs' universalizing mandates as dominant discourses that circumscribe agenda-setting (Benford and Snow 2000, 618–19). The other overarching commonality is state-centric designs, which channel any possibilities for influence by non-state stakeholders (Benford and Snow 2000, 629).

Given the malleability of the term "culture," both politically and analytically, we are not surprised that this evidence underscored the absence of any agreement on collective principles for governing cultural diversity at the global level. A broader sampling would probably show even more definitions. For example, indigeneity gained significant traction in the International Labor Organization, whose conventions served as precursors to the 2007 UN Declaration on the Rights of Indigenous Peoples (Anaya 1991; Niezen 2003; Lightfoot 2016). Advocacy based on ethnic, linguistic, or religious diversities may be most salient in other IOs. Yet contestation over what counts as culture does not explain this variation. Instead, Fraser's framework helps by suggesting two key avenues of inquiry.

Can cultural claims-makers secure a just outcome (understood as parity of participation) in the absence of recognition by the IO in question? For local and indigenous communities at WIPO, the answer to this question appears to be no. The likelihood that misappropriation of traditional knowledge will continue is high without concerted action at the global level and by WIPO in particular. In contrast, practitioners of traditional medicine can continue to do so without limitation despite a lack of formal recognition by WHO. Similarly, victims of mass atrocities can see their perpetrators held accountable at the ICC, even if the process to do so does not reflect local justice traditions.

In according recognition to a cultural claimant, can the IO remain true to its original mandate and serve the interests of its member states? WHO and ICC do not reach this second stage, whereas WIPO's recognition process founders here. WIPO created a forum to hear claims about traditional knowledge protection. To a degree, then, indigenous and local communities achieved a procedural parity of participation. Nonetheless, the IGC process has so far fallen short in accommodating the distinct needs of TK holders due to conflicting interests with those who are well-served by the prevailing system.

Elements of this variation suggest directions for extending the comparative scope of research on IO responses to cultural diversity. Additional cases might include the UN High Commissioner for Refugees (UNHCR) and International Organization for Migration, which, on a daily basis, deal with issues of cultural diversity in the delivery of assistance through NGO intermediaries (Martin 2014). Focused comparison between the ICC and UNHCR, both operating at the intersection of security and human rights, could provide leverage on how organizational structure may impact claims. And in the sphere of social policy, possibilities include the Food and Agriculture Organization, which resembles WHO in its emphasis on technical knowledge.

Organizational theory might offer additional nuance on how state-centric institutions could most effectively or fairly accommodate non-state claims-makers.

One final observation warrants mention. IOs are not culturally neutral although there is sometimes a temptation to see them as such. WIPO enshrines a specific understanding of individual property ownership, WHO has a commitment to science and Western medicine, and the ICC is founded on notions of retributive justice involving trials and judicial proceedings. While WIPO's principles may lead to unjust outcomes for indigenous peoples, thus making greater recognition of cultural diversity desirable, WHO's and ICC's very legitimacy may be anchored in its limited response to narrower, non-universal claims.

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