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# Indigenous youth and international conservation law: Five case studies

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## Abstract

The principle of intergenerational equity plays a fundamental role in international conservation law. In this article, we analyse in how far the principle is applied with regard to indigenous youth. By scrutinizing the Whaling Convention, the Ramsar Convention on Wetlands, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on Conservation of Migratory Species and the Convention on Biological Diversity, we analyse the extent to which key regimes in international conservation law have internalized the principle in relation to a stakeholder group that is not overly prominent. We conclude that there are fundamental differences between the regimes in question. Although the Ramsar Convention and the Biodiversity Convention have either included the principle from the outset or responded to a changing environmental discourse, the others show significant shortcomings in this regard. Therefore, it is important that institutions develop mechanisms to effectively address intergenerational equity, especially with regard to indigenous youth.

## 1 | INTRODUCTION

Ever since the United Nations (UN) Conference on Environment and Development (Rio Summit) in 1992, the role of engaging communities in projects and initiatives relating to environmental protection or species conservation has been internationally recognized.<sup>1</sup> Indigenous participation in environmental and other decision making is also considered a crucial element for success. In fact, indigenous participation in management decisions that would eventually lead to sustainable development is a red thread throughout Agenda 21, the voluntary action plan that was adopted by the Rio Summit to put the Rio Declaration into action. While not legally binding, Agenda 21 and the Rio Declaration have, as a result of the Rio process, led to important

standards for the participation of indigenous communities in decision making. For instance, these standards have been part and parcel of the legally binding Convention on Biological Diversity (CBD).<sup>2</sup> Article 8(j) of the CBD stands out in particular, as it requires states to ‘respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity’.<sup>3</sup>

Apart from the strengthening discourse on indigenous rights, the UN has adopted a ‘system-wide action plan’ on youth (Youth-SWAP),<sup>4</sup> which aims to foster collaboration and cooperation in several areas, including the ‘protection of rights and civic engagement’ as well

<sup>1</sup>See, e.g., Rio Declaration on Environment and Development in UNGA ‘Report of the United Nations Conference on Environment and Development’ UN Doc A/CONF.151/26 (vol I) (12 August 1992) Principles 10 and 22.

<sup>2</sup>Convention on Biological Diversity (adopted 5 June 1992, entered into force 29 December 1993) 1760 UNTS 79 (CBD).

<sup>3</sup>ibid art 8(j).

<sup>4</sup>United Nations (UN), *United Nations System-Wide Action Plan on Youth* (UN 2012).

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as ‘political inclusion’.<sup>5</sup> In other words, two major groups of affected stakeholders, indigenous peoples and youth, are given support with a right to participate in the decision-making process. We will link these rights with the rights of youth with a view to answering the question: How is indigenous youth able to participate as stakeholders in international conservation law? We consider indigenous youth not necessarily because they represent the needs of indigenous peoples, but rather as a way to expose the degree to which international conservation law regimes are flexible enough to include the interests of these stakeholders.

While the question of indigenous participation is an underlying issue for this article, we will focus on the question of in how far international conservation regimes address and consider indigenous youth. This focus enables us to deal with the practical and normative application of the principle of sustainable development and allows us to shed light on the extent to which environmental democracy is implemented. In doing so, we will deal with the current and comparative performance of some international conservation law regimes in terms of access and decision-making procedures rather than with the actual quality of participation in these regimes.

For our purposes, ‘environmental democracy’ is defined as ‘a participatory and ecologically rational form of collective decision-making: it prioritizes judgements based on long-term generalizable interests, facilitated by communicated political procedures and a radicalization of existing liberal rights’.<sup>6</sup> This definition is important because even though individuals do not have a right to decision making in international law—contrary to national democratic systems, in which people can vote—in recent years, particularly in international environmental law, calls for tackling democratic deficits at the international level have arisen, for instance ‘through deliberative and participatory approaches’.<sup>7</sup>

To consider the extent to which environmental democracy is implemented for the purposes of our article, we turn to the principle of intergenerational equity. The principle of intergenerational equity was defined in the 1987 Brundtland Report<sup>8</sup> and further developed by Edith Brown Weiss as part of the UN Advisory Committee on ‘International Law, Common Patrimony and Intergenerational Equity’. According to Brown Weiss, ‘each generation has an obligation to future generations to pass on the natural and cultural resources of the planet in no worse condition than received and to provide reasonable access to the legacy for future generations’.<sup>9</sup> The principle is therefore integral to the achievement of sustainable development and can be interpreted as a principle that justifies the inclusion of younger generations in decision-making processes affecting them.

In light of the rights of indigenous peoples, the principle of intergenerational equity and issues relating to environmental democracy, it

appears reasonable to consider to what degree indigenous youth are addressed and considered in international conservation regimes. After all, the UN remarks that ‘indigenous youth are confronted with the hard choice between maintaining their roots in the indigenous community – or pursuing education and employment in cities far from home’.<sup>10</sup> Consequently, we consider them a vulnerable group of stakeholders whose participation contributes to achieving environmental democracy.<sup>11</sup> Furthermore, they have ‘a profound understanding of their indigenous identity, cultural heritage, sustainable living and connection to their lands and territories’, while they ‘face immense challenges as a result of the intergenerational effects of colonisation and assimilation policies, as well as the continued struggles to ensure their rights and identity as indigenous peoples’.<sup>12</sup> Consequently, involving indigenous youth in one way or another in the decision-making process can offer an important contribution to intergenerational equity.

The 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) also sets out that special attention should be paid to ‘elders, women, youth, children and persons with disabilities when implementing the Declaration and when considering the improvement of economic and social conditions of indigenous peoples’.<sup>13</sup> In other words, also the UNDRIP takes a distinctive approach towards age groups and persons with disabilities.

In the wider context of indigenous rights and listening to the demands of youth for ‘just, equitable, and progressive opportunities and solutions in their societies’,<sup>14</sup> it is therefore reasonable to assume that international conservation regimes may have responded to these concerns in one way or another. This is especially true because intergenerational equity and environmental justice have been fundamental principles in international environmental law and governance. It is consequently also a reasonable assumption that it is *especially* international conservation law that has taken the interests of indigenous youth into account.

To find answers to our questions, we proceed as follows. Section 2 offers some background on indigenous rights and the rights of youth under international law and presents our methodology. Section 3 constitutes the core of our article, because here five international conservation regimes will be analysed: the 1946 International Convention for the Regulation of Whaling (ICRW)<sup>15</sup>; the 1971 Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar Convention)<sup>16</sup>; the 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora

<sup>5</sup>ibid 5.

<sup>6</sup>M Mason, *Environmental Democracy: A Contextual Approach* (Routledge 1999) 1.

<sup>7</sup>G Parola, *Environmental Democracy at the Global Level: Rights and Duties for a New Citizenship* (De Gruyter Poland 2015) 95–96.

<sup>8</sup>World Commission on Environment and Development (WCED), *Our Common Future: Report of the World Commission on Environment and Development* (Oxford University Press 1987).

<sup>9</sup>E Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Transnational Publishers 1989) 37.

<sup>10</sup>UN, ‘Children and Youth’ <[www.un.org/development/desa/indigenouspeoples/mandated-areas/1/children-and-youth.html](http://www.un.org/development/desa/indigenouspeoples/mandated-areas/1/children-and-youth.html)>.

<sup>11</sup>S Kuhn, ‘Expanding Public Participation Is Essential to Environmental Justice and the Democratic Decisionmaking Process’ (1999) 25 *Ecology Law Quarterly* 648.

<sup>12</sup>UN (n 4).

<sup>13</sup>UNGA ‘United Nations Declaration on the Rights of Indigenous Peoples’ UN Doc A/RES/61/295 (3 September 2007) arts 21–22.

<sup>14</sup>UN (n 4) 6.

<sup>15</sup>International Convention for the Regulation of Whaling (adopted 2 December 1946, entered into force 10 November 1948) 161 UNTS 72 (ICRW).

<sup>16</sup>Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (adopted 2 February 1971, entered into force 21 December 1975) 996 UNTS 245 (Ramsar Convention).

(CITES)<sup>17</sup>; the 1979 Convention on the Conservation of Migratory Species of Wild Animals (CMS)<sup>18</sup>; and the CBD. Section 4 discusses our findings, before Section 5 concludes.

## 2 | BACKGROUND AND METHODOLOGY

To examine the degree to which international conservation law considers indigenous youth, we adopt a two-tiered approach. First, we look at the extent to which the regimes under scrutiny take into consideration the rights of indigenous peoples. Generally speaking, compared with other local communities, indigenous peoples experience a higher degree of recognition as stakeholders in international environmental governance. The International Labour Organization (ILO) Convention No. 169 from 1989<sup>19</sup> and the 2007 UNDRIP are commonly referenced instruments in intergovernmental forums, scholarly literature and media. The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNROP) from 2018, on the other hand, has found less state approval and has been significantly less written about in scholarly and media sources.

The second strand of analysis covers the involvement of youth as stakeholders in environmental decision making. Here, we must differentiate between ‘children’ and ‘youth’: Although the UN Convention on the Rights of the Child (CRC)<sup>20</sup> defines a ‘child’ as ‘every human being below the age of eighteen years’, there is no commonly agreed definition of ‘youth’. As a guiding definition for the purposes of this article, we use the UN working definition, which considers ‘youth’ to be persons between 15 and 24 years of age.<sup>21</sup> At least since the Rio Summit, the principle of sustainable development and the associated principle of intergenerational equity play an important role when making environmental decisions. This means that children and youth, even the unborn, are recognized stakeholders towards whom the current generation has a responsibility when taking action.<sup>22</sup> Moreover, under the quasi-universal CRC, the children’s right to participate in decisions that affect them is a right on its own.<sup>23</sup> This would suggest that international conservation law should be rather far advanced in its consideration of youth.

International conservation law comprises a large number of bilateral and multilateral agreements. In this article, we focus on five international conservation regimes, allowing to discuss them in more depth instead of superficially discussing a larger number: the ICRW; Ramsar Convention; CITES; the CMS; and the CBD. These regimes were chosen, because they are widely ratified, such as CITES or the CBD; they are very prominent due to their problems in functionality (ICRW) or

constitute globally spanning initiatives on biodiversity conservation (Ramsar and CMS). Another major biodiversity-related convention, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage,<sup>24</sup> was not included, because it is not exclusively concerned with biodiversity conservation, but includes other elements as well.

To determine the degree to which indigenous youth are considered stakeholders within the these five regimes, using the software Atlas.ti we screened the meeting reports of the conferences of the parties (COPs) as well as resolutions and decisions dealing with indigenous peoples and youth. A coding scheme that focused on the keywords ‘youth’, ‘young’, ‘children’, ‘indigenous’, ‘native’ and ‘aboriginal’ was deductively arrived at to expose, first, whether there is documented recognition of indigenous peoples, youth and indigenous youth, and, second, how frequently these terms—and thereby this group of stakeholders—arise in the documentation. The ‘Word Cruncher’ of Atlas.ti enabled us to place indigenous youth in a wider context of other stakeholders and how their respective participation is considered by the parties. This allowed for an analysis of indigenous youth in initiatives of the regime<sup>25</sup> or in the viewpoints of parties. In addition, each regime was analysed as regards institutional developments by looking at new regime bodies (e.g., working groups or task forces) that were developed in response to emerging involvement of indigenous youth.

For the purposes of our article, we consider ‘participation’ in two ways. The main focus lies on the possibilities of indigenous youth to participate in regular *in-session* meetings, such as COPs or meetings of the subsidiary bodies. Second, we consider the possibilities of indigenous youth to participate in the *intersessional* decision-making, for instance in agenda setting. This means that although we are focusing on the level of participation in the meetings of the parties, this is by no means the only mode of participation that is of relevance, because ‘[i]n the end, participation is about the legitimacy of the process rather than about the screws of the negotiation’.<sup>26</sup>

## 3 | CASE STUDIES

In this section, we present our analysis of the five international conservation regimes. The regimes are ordered based on their year of adoption. Before looking at the role of indigenous youth, for each regime, some brief background is provided to contextualize our findings. We then move on to chronologically trace the reflection of indigenous peoples and youth in the regime, for instance in the meeting reports, in resolutions or decisions, and in bodies that were formed.

<sup>17</sup>Convention on International Trade in Endangered Species of Wild Fauna and Flora (adopted 3 March 1973, entered into force 1 July 1975) 993 UNTS 243 (CITES).

<sup>18</sup>Convention on the Conservation of Migratory Species of Wild Animals (adopted 6 November 1979, entered into force 1 November 1983) 1651 UNTS 67 (CMS).

<sup>19</sup>Indigenous and Tribal Peoples Convention (No. 169) (adopted 27 June 1989, entered into force 5 September 1991) 1650 UNTS 383 (ILO Convention 169).

<sup>20</sup>Convention on the Rights of the Child (adopted 20 November 1989, entered into force 7 March 1990) 1577 UNTS 3 (CRC).

<sup>21</sup>UN, ‘Youth’ <[www.un.org/en/sections/issues-depth/youth-0/](http://www.un.org/en/sections/issues-depth/youth-0/)>; UN (n 4).

<sup>22</sup>T Koivurova, *Introduction to International Environmental Law* (Routledge 2012) 124.

<sup>23</sup>CRC (n 20) arts 9, 23 and 31.

<sup>24</sup>Convention Concerning the Protection of the World Cultural and Natural Heritage (adopted 23 November 1972, entered into force 17 December 1975) 1037 UNTS 151.

<sup>25</sup>For instance in working groups, seminars or outreach activities that are initiated by the respective Secretariat, but endorsed by a decision-making body.

<sup>26</sup>N Kanie, PM Haas and S Andresen, ‘Conclusion: Lessons from Pluralistic Green Governance’ in N Kanie, S Andresen and PM Haas (eds), *Improving Global Environmental Governance: Best Practices for Architecture and Agency* (Routledge 2003) 196, 202.

### 3.1 | International Convention for the Regulation of Whaling

The ICRW was opened for signature on 3 December 1946 and was originally signed and ratified by 15 states. The current membership includes 88 states. With the coming into force of the convention in November 1948, the International Whaling Commission (IWC) took up its work in regulating the world's whaling activities. Over the course of the twentieth century, the IWC has turned from a whaling organization into an organization that effectively bans the commercial hunt for whales since its application of a zero-catch quota for commercial whaling in 1985/1986.<sup>27</sup> Even though this 'moratorium' was to be temporary, it is still in place. This stalemate situation, which has arguably paralysed the organization for decades, prompted one of the most outspoken whaling nations, Japan, to leave the IWC in July 2019.<sup>28</sup>

Under the ICRW, three types of whaling are recognized: commercial whaling, scientific whaling and Aboriginal Subsistence Whaling (ASW; small-scale whaling carried out by aboriginal people in Alaska and Washington States, in Russia's Chukotka, in Greenland and in Bequia in Saint Vincent and the Grenadines).<sup>29</sup> Although the convention itself sets the general scope of the whaling activities carried out under its remit, it is the Schedule, amended by the IWC, which allocates quotas, provides for geographic boundaries or defines hunting methods. To make changes to the Schedule, a three-fourth majority in the Commission is required. Article 10(e) of the Schedule has since 1985/1986 included a zero-catch quota for all commercial whaling. Until now, no such majority has been found to alter this provision.

Aboriginal<sup>30</sup> whalers have been recognized as distinct from commercial whalers from the very early days of the IWC and before, even though the history of ASW has not been without controversy and remains a contentious issue.<sup>31</sup> However, in light of the developments of the late 1970s, when commercial whaling came under international fire and was ultimately banned within the IWC, it was only in 1982 when the ASW resolution was adopted.<sup>32</sup> Recognizing the needs of aboriginal peoples, the resolution states 'that the full participation and co-operation of the affected aboriginal peoples are essential for effective whale management'.<sup>33</sup>

As per the guidelines of the IWC, the state in which aboriginal people wish to conduct whaling is required to present a so-called 'needs statement' on behalf of its aboriginal people. This statement needs to outline what the cultural, social and nutritional needs are that would justify whaling. The Schedule then needs to be amended

accordingly. Until 2018, the respective quota was revised every 6 years. Now, unless states object, there will be an automatic transfer of the quota every 7 years.<sup>34</sup>

In principle, therefore, the interests of indigenous peoples are considered within the IWC. However, there are systemic difficulties when it comes to their inclusion. First, there is no IWC mechanism that ensures the active participation of indigenous peoples in the intersessional decision-making process or at the meetings themselves, for instance in the IWC's Scientific Committee or at the biannual meetings. Second, it is up to member states to make sure indigenous peoples are represented in their delegations (for instance, the Danish and United States' [US] delegations include at least one indigenous delegate). This means that if a state decides not to include indigenous representatives in the country delegation, there is no legal, policy or other instrument under the IWC that requires their inclusion. Third, it is up to states to present the needs of indigenous peoples on the IWC level in the form of a needs statement. If a state refuses to do so, the people wanting to start whaling again will not be heard. While aboriginal organizations can participate in the IWC meetings as observers, the costs of participation are high (including fees, accommodation and travel costs). Moreover, depending on the topic at hand, possible time constraints or various other reasons, the chair may prevent aboriginal observer organizations—as any other observer—from speaking on a specific topic.

Generally, aboriginal participation within the IWC appears not to be strongly supported by its member states. Even though an ASW subcommittee exists, this only has an advisory role and receives input from the IWC Scientific Committee as well as from aboriginal whaling communities. In addition, there is no requirement to have the subcommittee chaired by an aboriginal person.

The IWC annual reports are silent on issues related to indigenous youth and, in fact, youth in general. It has not yet managed to implement the principle of intergenerational equity because it has mainly been concerned with navigating the different interests of its members—that is, preservation of whales versus utilization. In light of this ongoing conflict, it seems fair to say that the IWC has not opened up to the *zeitgeist* of including youth in its modes of operation, while it struggles with an equal inclusion of indigenous peoples in its decision-making process. This, however, is not really surprising. After all, the different battlegrounds concern the utilization of whales and their full protection that the IWC serves as makes it difficult for the commission to act as a negotiation forum in the sense of finding compromise which is acceptable for all parties. Friedheim further suggests that given the majority-based nature of the processes within the IWC, states are forced to comply with issues that they have voted against. Consequently, this means that IWC negotiations resemble more a legislative forum with member states behaving more like political parties rather than equal partners under international legal doctrine.<sup>35</sup> If this

<sup>27</sup>M Fitzmaurice, *Whaling and International Law* (Cambridge University Press 2015) 61.

<sup>28</sup>See, e.g., J Morishita, 'Multiple Analysis of the Whaling Issue: Understanding the Dispute by a Matrix' (2006) 30 *Marine Policy* 802; M Kolmaš, 'International Pressure and Japanese Withdrawal from the International Whaling Commission: When Shaming Fails' (2020) 75 *Australian Journal of International Affairs* 197.

<sup>29</sup>IWC, 'Whaling' <<https://iwc.int/whaling>>.

<sup>30</sup>Although we use the term 'indigenous' in our article, the IWC uses the term 'aboriginal'. For the purposes of this article, the terms are used interchangeably.

<sup>31</sup>RR Reeves, 'The Origins and Character of "Aboriginal Subsistence" Whaling: A Global Review' (2002) 32 *Mammal Review* 2.

<sup>32</sup>IWC, 'Thirty-Third Report of the International Whaling Commission' (IWC Secretariat 1983) 38.

<sup>33</sup>*ibid.*

<sup>34</sup>N Sellheim, 'Quotas, Cultures, and Tensions. Recent Schedule Amendments for Aboriginal Subsistence Whaling under the International Convention for the Regulation of Whaling' (2018) 6 *Current Developments in Arctic Law* 4.

<sup>35</sup>RL Friedheim, 'Negotiating in the IWC Environment' in RL Friedheim (ed), *Towards a Sustainable Whaling Regime* (2001) 200, 207.

is the case, the inclusion of voices and participation of other actors than nation states are difficult to imagine.

### 3.2 | Ramsar Convention

The 1971 Ramsar Convention on Wetlands is one of the oldest multi-lateral biodiversity conventions in the world. It currently has 171 parties. In this convention, the determination and conservation of wetlands rest entirely in the hands of the contracting parties themselves. Where wetlands are of a transboundary nature, the contracting parties are to cooperate and to consult each other to implement the convention.

One of the key elements of the Ramsar Convention is the 'wise use' concept, which is enshrined in Article 3(1). Contracting parties are required to 'promote the conservation of the wetlands ..., and as far as possible the wise use of wetlands in their territory'.<sup>36</sup> Until 1990, however, it was not clear what the concept of 'wise use' really entailed. As a consequence, Recommendation 4.10 was adopted, the Annex of which stipulates that management plans of wetlands are to involve 'local people and take account of their requirements'.<sup>37</sup> Six years later, Recommendation 6.3 was adopted. From this recommendation, several issues stand out. First, contracting parties are called upon to 'encourage active and informed participation of local and indigenous people'.<sup>38</sup> Second, it urges parties 'to consider representation of local and indigenous people on National Ramsar Committees, and, where possible and appropriate, in the national delegations to future meetings of the Conference of the Contracting Parties'.<sup>39</sup> Third, it calls on parties 'to ensure consultation with local and indigenous people with a view to reflecting their needs and values'.<sup>40</sup> This recommendation was further expanded in Resolution VII.8 (1999), which explicitly mentions youth, stipulating that those who facilitate the efforts of engaging local and indigenous people '[e]nsure the involvement of influential individuals in the community and all sectors of the population, and especially the women and youth of the community'.<sup>41</sup>

Over time, these commitments have turned into a full-fledged initiative to engage young people in the management of wetlands. Even though the COP reports are surprisingly silent on 'youth', the Ramsar website has a dedicated page for youth engagement.<sup>42</sup> This includes a link to the Youth Engagement Thematic Group, which was established as part of the so-called Ramsar Culture Network, which saw the light

of day as the Culture Working Group at the 46th meeting of the Ramsar Standing Committee in 2013.<sup>43</sup> The Youth Engagement Group has taken up the task to:

1. collate youth engagement information (including case studies) relating to culture and wetlands;
2. develop 'lessons learned' concerning youth engagement and wetlands, including suggestions on how these could be integrated into the improved implementation of the convention;
3. explore new and enhanced ways of engaging young people in the subject of culture and wetlands.<sup>44</sup>

It is therefore not necessarily the attendance of the meetings of the parties or being part of country delegations, but rather the practical management of wetland management that characterizes youth participation in a Ramsar context. The will to find compromises that guides the convention's activities consequently allows for a broad and engaging mode of youth participation. In the documentation of Ramsar meetings as well as in its resolutions or decisions, no difference is made between indigenous versus non-indigenous youth. Instead, in the context of 'cultural values', the application of traditional knowledge and 'records of former civilizations' is of relevance.<sup>45</sup> In addition, 'interaction with local communities and indigenous peoples'<sup>46</sup> is considered an important element for the proper implementation of the convention.

With the establishment of the Youth Engagement Group, activities in relation to youth took off. The first real surfacing of youth activities occurred at COP13 in Dubai in 2018, where the Youth Engaged in Wetlands faction of the Youth Engagement Group hosted a side-event and workshop to 'discuss youth engagement, bringing knowledge and experience from around the world to start building a common vision for youth in the Convention'.<sup>47</sup> Although not much documentation is available concerning the nature and potential impact of this vision, it suffices to say at this point that the engagement of youth appears to be a welcomed and broadly supported issue.

### 3.3 | CITES

CITES was adopted in 1973 and has been hailed as one of the most groundbreaking international conservation regimes. It has a membership of 182 states as well as the European Union (EU). Due to its scope of protecting plant and animal species through the control of international trade, CITES has gained much prominence since its adoption. CITES works through the listing of specific plant and animal

<sup>36</sup>Ramsar Convention (n 16) art 3(1).

<sup>37</sup>Recommendation 4.10, Guidelines for the Implementation of the Wise Use Concept' (4 July 1990) <[https://www.ramsar.org/sites/default/files/documents/library/key\\_rec\\_4.10e.pdf](https://www.ramsar.org/sites/default/files/documents/library/key_rec_4.10e.pdf)>.

<sup>38</sup>Recommendation 6.3, Involving Local and Indigenous People in the Management of Ramsar Sites' (27 March 1996) <[https://www.ramsar.org/sites/default/files/documents/library/key\\_rec\\_6.03\\_e.pdf](https://www.ramsar.org/sites/default/files/documents/library/key_rec_6.03_e.pdf)> para 9.

<sup>39</sup>ibid para 12.

<sup>40</sup>ibid para 15.

<sup>41</sup>Resolution VII.8, Guidelines for Establishing and Strengthening Local Communities' and Indigenous People's Participation in the Management of Wetlands' (18 May 1999) <[https://www.ramsar.org/sites/default/files/documents/library/key\\_res\\_vii.08e.pdf](https://www.ramsar.org/sites/default/files/documents/library/key_res_vii.08e.pdf)> para 15(d).

<sup>42</sup>Ramsar Convention, 'Youth Engagement' <<https://www.ramsar.org/activities/youth-engagement>>.

<sup>43</sup>Ramsar Convention, 'Decisions of the 46th meeting of the Standing Committee' (2013) <<https://www.ramsar.org/sites/default/files/documents/pdf/sc/46/sc46-decisions-e.pdf>>.

<sup>44</sup>Ramsar Convention (n 16)

<sup>45</sup>Resolution IX.21, Taking into Account the Cultural Values of Wetlands' (15 November 2005) <[https://www.ramsar.org/sites/default/files/documents/pdf/res/key\\_res\\_ix\\_21\\_e.pdf](https://www.ramsar.org/sites/default/files/documents/pdf/res/key_res_ix_21_e.pdf)> para 15(ii).

<sup>46</sup>ibid para 15(iii).

<sup>47</sup>Ramsar Convention, 'Report of Youth Engaged in Wetlands at Ramsar COP13' (2018) <[https://www.ramsar.org/sites/default/files/documents/library/yew\\_cop13\\_e.pdf](https://www.ramsar.org/sites/default/files/documents/library/yew_cop13_e.pdf)> 1.



species on one of its three appendices: Appendix I holds species the trade of which is to be fully prohibited, with some very narrow exceptions; Appendix II lists species the trade in which is to be controlled and monitored; and Appendix III lists species that a party lists as endangered under its national legislation and asks other states to monitor trade.

Similar to the IWC, CITES meetings have become the battleground of diverging interests and worldviews. Particularly, the listing of whales and elephants has stirred the emotions of parties and non-governmental organizations that act as observers to the convention.<sup>48</sup> Yet, it remains questionable in how far CITES has the capacity to tackle species decline through the control of trade, because international trade has never been the sole reason for species to dwindle.<sup>49</sup> In combination with other treaties, organizations or mechanisms, however, CITES can provide important tools for the protection of wildlife.<sup>50</sup>

With these controversies in mind, and given the implications of CITES listings for the livelihoods of people that affect the way communities can use their resources, also in the future, it would appear reasonable to assume that some reflection on youth engagement can be found in the CITES COP reports.<sup>51</sup> However, this is hardly the case, and it appears that CITES has been completely silent on the involvement of youth until COP17 in 2016, when Resolution 17.5 on Youth Engagement was adopted (the resolution was slightly revised at COP18 in 2019). Proposed by South Africa and the United States, the resolution recognizes 'youth' as important future decision makers and as holders of skills that are very different to those of the preceding generations. These skills would also provide them with important tools in the combatting of wildlife crime. Therefore, parties are encouraged and invited to engage youth, collaborate with universities and youth groups, include youth on their delegations, provide long-term interactions between member states and youth, particularly through the annual World Wildlife Day, and ensure long-term youth engagement in the CITES decision-making process.<sup>52</sup>

The link between wildlife conservation, sustainable use and social issues was officially considered already at COP6 in 1987 by Canada's then-Minister of Environment Pauline Browes. Her opening speech reflects a still-standing narrative on the problems related to preservation and sustainable use, particularly when linked to socioeconomic issues that indigenous communities are facing.<sup>53</sup> Although her speech could have left some impact on parties' concerns for indigenous peoples, particularly in light of the ever-growing discourse on sustainable

development and the impending Rio Summit in 1992, the CITES COP reports have been silent on the normative involvement of indigenous peoples. Instead, the cultural importance of some species for indigenous peoples arose on several occasions, for instance when the United States in 2010 and 2013 called for an uplisting of the polar bear from Appendix II to Appendix I (which was ultimately rejected). This would have meant that any international trade in polar bear products would have been prohibited. The *raison d'être* was the changes under the US Endangered Species Act, which, since 2008, considered the polar bear as 'threatened' with respective prohibitions on international trade. During the debates at the CITES COPs, the relevance for the Inuit of utilizing the polar bear was highlighted by several states and organizations. Arguments circling around livelihoods and culture thus contributed to preventing the United States from garnering the necessary two-thirds majority.<sup>54</sup> In how far Inuit youth were in any way considered in the discussions, however, remains unclear as the records do not reflect any discourse on intergenerational equity in this context.

Generally, in the context of CITES and livelihoods, indigenous peoples' rights have played a role.<sup>55</sup> However, even at COP18, where one of us participated in the intra-sessional working group on rural communities, no common ground could be found as to how to involve communities in the CITES processes. Questions arose over their legal standing. For instance, would a proposed Rural Communities Committee have the same standing and function as the Plants, Animals and Standing Committees? Terminology also played a role: Would local communities be referred to as 'rural', 'local', 'indigenous' or 'peasant'?<sup>56</sup> This terminology would have important legal implications, particularly with regard to indigenous peoples. Although most countries in the world have endorsed the UNDRIP, its implementation and the actual recognition of indigenous peoples in domestic decision making are lacking in many countries.<sup>57</sup> In other words, concerning the involvement of indigenous peoples, no long-term, strategic way of involving them or other rural communities has thus far been found. Even though there have been attempts to establish a link between CITES and livelihoods—even on an institutional level in the form of the now disbanded Working Group on CITES and Livelihoods—CITES has yet to find a strategy to reconcile different views on terminology and on the legal standing of indigenous communities within its membership.

It is therefore not surprising that CITES does not consider indigenous youth. For instance, the debates surrounding the Rural Communities Committee demonstrate the difficulties of involving civil society in the decision-making processes of an arena that has for many decades been marked by a long-lasting dispute over sustainable use and preservation. At COP17 in Johannesburg in 2016, however, the

<sup>48</sup>See, e.g., E Couzens, *Whales and Elephants in International Conservation Law and Politics: A Comparative Study* (Routledge 2013).

<sup>49</sup>MA du Plessis, 'CITES and the Causes of Extinction' in J Hutton and B Dickson (eds), *Endangered Species, Threatened Convention: The Past, Present and Future of CITES* (Routledge 2000) 13.

<sup>50</sup>JR Platt, 'The Biggest Issues for Wildlife and Endangered Species in 2019' (Scientific American, 10 January 2019).

<sup>51</sup>R Cooney and M Abensperg-Traun, 'Raising Local Community Voices: CITES, Livelihoods and Sustainable Use' (2013) 22 *Review of European Community and International Environmental Law* 301.

<sup>52</sup>CITES, 'Resolution Conf. 17.5 (Rev. CoP18), Youth Engagement' (2016) <[www.cites.org/sites/default/files/document/E-Res-17-05-R18.pdf](http://www.cites.org/sites/default/files/document/E-Res-17-05-R18.pdf)>.

<sup>53</sup>CITES, 'Opening Speech by the Parliamentary Secretary to the Minister of the Environment, Mrs. Pauline Browes, M.P.' (1987) 21.

<sup>54</sup>N Sellheim, *International Marine Mammal Law* (Springer 2020) 170–171.

<sup>55</sup>Cooney and Abensperg-Traun (n 51).

<sup>56</sup>N Sellheim, 'The Evolution of Local Involvement in International Conservation Law' (2018) 29 *Yearbook of International Environmental Law* 77.

<sup>57</sup>F Lenzerini, 'Implementation of the UNDRIP around the World: Achievements and Future Perspectives. The Outcome of the Work of the ILA Committee on the Implementation of the Rights of Indigenous Peoples' (2019) 23 *International Journal of Human Rights* 51.

mentioned Resolution 17.5 on Youth Engagement<sup>58</sup> was adopted. The resolution:

1. *Encourages* parties to explore opportunities to engage today's youth in CITES and other wildlife conservation issues, for example, through internship or mentoring programmes;
2. *Invites* parties and the CITES secretariat to work with universities, youth groups, and other relevant associations and organizations, to create educated and engaged youth networks that can inform and influence conservation decisions;
3. *Invites* parties and observer organizations to include youth delegates on official delegations and provide learning opportunities at CITES meetings.

This resolution could mark a turning point in the work of CITES. However, although this is certainly a step in the right direction, CITES resolutions are not legally binding, and as we can see, it merely serves as a motivation for the parties to further engage youth. Yet this resolution may be a big step to improve the standards of environmental democracy within CITES given that it allows youth to further engage in the deliberative and participatory processes of the convention.

Indigenous youth as a distinct group of youth is not considered within CITES, and all attempts to include local, rural or indigenous peoples (and youth) are marked by inertia and a lack of consensus. The call by some states to use the recently adopted UNROP as a basis for community involvement at the CITES level was quickly dismissed at COP18, particularly by the United States, which claimed that given the voting result of the declaration (121 in favour, 8 against and 54 abstentions, 10 not participating), it is not a universal declaration and should not serve as a basis for CITES strategies of involving communities.<sup>59</sup>

In conclusion, CITES is a long way away from a strategic or normative participatory mechanism for indigenous youth. It both struggles with youth involvement *and* indigenous involvement. In how far these issues will be part of the agenda of the next meetings remains to be seen.

### 3.4 | Convention on the Conservation of Migratory Species of Wild Animals

The CMS was adopted in 1979 and currently has a membership of 132, excluding conservation-relevant states such as the United States, Japan, China and the Russian Federation. The CMS works through two appendices. Species listed on Appendix I are to be fully protected unless taken for some exceptional purposes. Appendix II-listed species have an unfavourable conservation status and parties are to enter into specific 'agreements' to ensure their continuous protection. These agreements are stand-alone legal instruments and therefore also may hold a different membership than the CMS itself.

The CMS recognizes traditional subsistence users in the convention text. Since COP4 in 1994, the COP reports reflect a steady discourse on indigenous peoples as wardens and users of protected wildlife. Since then, indigenous peoples have constantly been part and parcel of the COP debates. This recognition allows for the preliminary conclusion that indigenous concerns are comparably high on the CMS agenda. The convention is not perceived to be as controversial as the ICRW/IWC or CITES, because it can be considered a comparably 'weak' convention: There are no enforcement mechanisms in place, it is chronically underfunded, and some of the major states of the world are not party to it.<sup>60</sup> It is therefore easier for CMS parties to agree on specific listings of species than for parties to, say, CITES—even though amendments to the appendices require a two-thirds majority, making it potentially a similarly legislative body as the IWC and the CITES COP. Although decision making has been consensus driven, at COP12 in 2017, the first actual vote over the listing of chimpanzees took place,<sup>61</sup> arguably making it a game changer in the long run: Will the convention follow similar paths as the ICRW or CITES in that decision making increasingly relies on votes rather than consensus? Also, at COP13 in 2020, votes took place, which led to debates and exposing the potential for the 'legislative trap' the CMS might walk into.

The CMS does not have any mechanisms in place that ensure the involvement of local communities, and it is therefore up to the state parties to decide to what degree locals can participate in the decision-making process. Although indigenous peoples are commonly mentioned in meeting reports, no subsidiary body or working groups dealing with their concerns exists. The same can be said about youth and particularly indigenous youth. The COP reports do not reflect any discourse on youth until COP13 in 2020, when the EU recognized the potential of a draft resolution which, in the EU's view, included options for 'the explorations of options for the engagement with indigenous peoples, youth groups and local communities'.<sup>62</sup> Indigenous youth are not mentioned as a unique group of stakeholders, and it remains to be seen how many parties respond to this call by the EU.

Despite these shortcomings, the strengths of the CMS system include its capacity-building and outreach programmes. Concerning the former, although this does not mean indigenous youth involvement per se, capacity building occurs through various activities. These aim at taking the voices of stakeholders into account by providing tools and workshops to sharpen the objectives, strategies and activities for specific countries and regions.<sup>63</sup> This inevitably also includes indigenous youth. Concerning the latter, through different campaigns, such as World Migratory Bird Day or Year of the Bat, the plights of species are taken to a wider and a younger audience.<sup>64</sup> In this context, no difference is made between indigenous or non-indigenous youth.

<sup>58</sup>N Sellheim, 'Die Steigerung der Effektivität des Bonner Übereinkommens zur Erhaltung wandernder Tierarten' (fc) Natur und Recht.

<sup>61</sup>CMS, 'Report of the 12th Meeting of the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals' (2017).

<sup>62</sup>CMS, 'Report of the 13th Meeting of the Conference of the Parties to the Convention on the Conservation of Migratory Species of Wild Animals' (2020) 17.

<sup>63</sup>CMS, 'Capacity Building' <<https://www.cms.int/en/education/capacity-building>>.

<sup>64</sup>CMS, 'Campaigns' <<https://www.cms.int/en/campaigns>>.

<sup>58</sup>CITES (n 17).

<sup>59</sup>Sellheim (n 54) 25.



### 3.5 | Convention on Biological Diversity

The CBD is probably the most comprehensive framework convention on the protection of the natural environment. As a direct result of the Rio Summit, the CBD is not a management instrument, but provides for standards for the conservation and sustainable use of biodiversity and for the implementation of sustainable development. In this sense, the CBD is not directly comparable with other international conservation law regimes, as it does not set specific rules or management options. Instead, it provides for a broader approach towards conservation and sustainable use and aims to incorporate the principles developed at the Rio Summit. Apart from the United States and the Holy See, all UN member states are party to the convention. Two separate agreements have thus far been concluded under the CBD's umbrella: the Cartagena Protocol on Biosafety in 2000 and the Nagoya Protocol on Access and Benefit-Sharing in 2010. Both protocols are stand-alone agreements with their own membership, their own meetings and their own rules of procedure. However, thus far, all meetings have been held in conjunction with the CBD COPs.

The CBD aims among others to recognize the needs and knowledge of indigenous peoples. In its Article 8(j), the convention explicitly refers to indigenous and local communities, their knowledge and the close relationship they have to biodiversity. Article 10(c) further considers 'customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements'.<sup>65</sup> Moreover, Article 17(2) refers to the importance of exchange of knowledge, including indigenous knowledge, for the protection of biodiversity. Throughout the convention text, there is continuous reference to sustainable use, which, by definition, holds a future-oriented dimension. However, the convention refers to 'future generations' only on two occasions,<sup>66</sup> without specifying how and if these future generations are to be part of the decision-making process.

The role of indigenous peoples is therefore well-established within the context of the CBD. While that may be so, we must consider the discussions surrounding 'indigenous' and 'local' populations in the CBD. From the outset in the early 1990s, the term 'peoples' was avoided in the convention text because the CBD has maintained strong respect for state sovereignty with regard to the classification of an indigenous group.<sup>67</sup> Instead, the term 'communities' has been placed after 'indigenous' and 'local'. However, in the Annex of Decision XII/12, adopted at COP12 in 2014, the parties decided to use the term 'indigenous peoples and local communities' in any future decisions.<sup>68</sup> This means that even though the convention itself does not use this terminology, it has become standard terminology for the different convention bodies. This has led to a discourse that considers indigenous peoples as distinct stakeholders in conservation and as holders of knowledge that goes beyond Western science. The mere

existence of the 2010 Nagoya Protocol on Access and Benefit-Sharing<sup>69</sup> shows that the rights of indigenous peoples play a fundamental role in the working structure of the CBD. This being said, the Nagoya Protocol 'notes' the UNDRIP in its preamble, pointing to the fact that while neither utilizing the term 'indigenous peoples' nor actively endorsing the UNDRIP, the protocol nevertheless aligns itself to some degree with the UNDRIP's objectives.

At COP4 in 1998, the ad hoc open-ended Working Group on Article 8(j) and Related Provisions was established.<sup>70</sup> One of the main mandates of this working group is to 'provide advice as a priority on the application and development of legal and other appropriate forms of protection for the knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity'.<sup>71</sup> Over time, the working group has become an integral part of the convention. The 2004 Akwé:Kon Guidelines on environmental and social impact assessments<sup>72</sup> and the associated ethical code to ensure respect for indigenous and local knowledge<sup>73</sup> were adopted due to the work carried out by the working group. Both documents call for effective mechanisms to include youth in the decision-making process, as their role is 'paramount in the process of cultural dissemination, which depends upon intergenerational transfer of knowledge, innovations and practice'.<sup>74</sup> The CBD therefore considers youth as part of a community structure, directly impacted by any effects on their community.

As a result, already since 2007 active youth engagement had been on the CBD's agenda. At COP10 in 2010, the Global Youth Biodiversity Network (GYBN) was established. The GYBN has become a strong voice for the conservation of biodiversity vis-à-vis safeguarding and respecting the interests of youth. The GYBN now has a membership of 280 organizations, representing around 664,000 youth from 140 countries,<sup>75</sup> and the network cooperates closely with the CBD secretariat. The resources that are provided on the GYBN's dedicated blog allow youth from all cultural spheres to actively engage in the meetings of the CBD and other international agreements.<sup>76</sup> Youth participation is therefore an integral part of the CBD.

In how far the consideration of indigenous peoples and youth will further advance under the CBD remains to be seen, particularly in light of the post-2020 global biodiversity framework currently under development. While the framework was to be adopted in 2020, due to the ongoing COVID-19 pandemic, it is likely to be only adopted in

<sup>65</sup>CBD (n 2) art 10(c).

<sup>66</sup>ibid preamble and art 2.

<sup>67</sup>A Gillespie, *Conservation, Biodiversity and International Law* (Edward Elgar 2011) 239.

<sup>68</sup>CBD 'Decision XII/12, Article 8 (j) and Related Provisions' UN Doc UNEP/CBD/COP/DEC/XII/12 (13 October 2014).

<sup>69</sup>Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (adopted 29 October 2010, entered into force 12 October 2014) 3008 UNTS 1.

<sup>70</sup>CBD, 'Decision IV/9, Implementation of Article 8(j) and Related Provisions' (1998).

<sup>71</sup>ibid para 1(a).

<sup>72</sup>Secretariat of the CBD, 'Akwé: Kon Voluntary Guidelines for the Conduct of Cultural, Environmental and Social Impact Assessments Regarding Developments Proposed to Take Place on, or Which Are Likely to Impact on, Sacred Sites and on Lands and Waters Traditionally Occupied or Used by Indigenous and Local Communities' (2004).

<sup>73</sup>Secretariat of the CBD, 'Tkarihwaié:ri Code of Ethical Conduct to Ensure Respect for the Cultural and Intellectual Heritage of Indigenous and Local Communities Relevant to the Conservation and Sustainable Use of Biological Diversity' (2011).

<sup>74</sup>ibid 13.

<sup>75</sup>GYBN, 'About us' <<https://www.gybn.org/about-us>>.

<sup>76</sup>GYBN, 'Guides to Youth Participation' <<https://gybninfo.wordpress.com/resources/guides-to-youth-participation/>>.

2022. Concerning youth, the first draft of the global biodiversity framework differs from the Akwé:Kon Guidelines and the ethical code in that it calls for an ‘participatory and inclusive whole-of-society’ approach, including indigenous peoples and local communities as well as youth.<sup>77</sup> The details of how this is to happen still remain unclear, but it appears that youth participation—irrespective of their ethnicity—may become an important element in the future work of the CBD.

## 4 | DISCUSSION

Four of the five conventions discussed in Section 3 predate the 1992 Rio Summit, when important environmental principles such as inter-generational equity were codified. This could mean that until 1992 these conventions would not have had any mechanisms in place that would correspond to these principles. As a consequence, these conventions would have needed to adjust their mechanisms to the Rio principles. The only convention that directly emanated from the Rio Summit is the CBD. Not surprisingly, therefore, the CBD is very well equipped to accommodate the interests of youth in its working procedures through the GYBN. This means that through deliberative and participatory mechanisms, indigenous youth can get involved in the decision-making process as part of the larger group of ‘youth’.

The same can be said about the Ramsar Convention. Although both the CBD and the Ramsar Convention have enabled youth to participate in the deliberative processes, no distinction is being made between indigenous and non-indigenous youth. This is rather surprising because in light of the focus on indigenous peoples in the Ramsar Convention, it would appear reasonable to assume that indigenous youth would be paid at least some attention. This, however, is not the case and Ramsar’s Youth Engagement Group takes a more general approach at engaging youth without differentiating along ethnic lines. Whether this is deliberate or accidental cannot be ascertained. It would, however, be beneficial to make reference to indigenous youth given the prominent role of indigenous peoples within the Ramsar Convention.

This means that none of the regimes under scrutiny has a mechanism in place that recognizes *indigenous* youth as unique and distinct stakeholders. In fact, apart from the CBD’s GYBN and Ramsar’s Youth Engagement Group, none of the regimes consider youth strategically and only very recently the mere idea of involving youth further in the decision-making process (either as stakeholders with a right to voice their opinion or at least as subjects within decision making) has emerged. Indigenous youth, however, are mentioned merely within wider contexts of indigeneity or youth in general.

The ICRW is somewhat different to the other conventions because it does not show any move towards the involvement of youth generally or indigenous youth in particular. It is possible that indigenous youth are not to be encouraged to make further use of

whales in the future since whales play too important a role as an iconic species.<sup>78</sup> Although ASW is a recognized as a legitimate type of whaling under the ICRW, there is still resistance against ASW from many states. In this sense, it appears reasonable to assume that by and large, it is in the interest of anti-whaling states to phase out whaling altogether. At the same time, whaling proponents also might not want to include youth: By being grouped together with non-governmental organizations, they appear to represent a very outspoken and loud voice against whaling. If youth were to be present, the anti-whaling front could be even stronger as it is now, potentially making it more difficult to push for a pro-whaling agenda.

Similar arguments can be made in the context of CITES. The convention has been torn between different interests and different approaches towards stakeholder involvement. It seems that there is political will to engage local communities and youth in the decision-making process, but given the diverging interests and views on species utilization (and conservation), a political compromise has not been found. Different attempts to engage local communities have thus far not come to fruition and there is no consensus regarding the status of prevailing norms under international law, such as UNROP. Therefore, unless the issue of youth involvement is tabled repeatedly, it seems reasonable to assume that youth participation in the decision-making processes will remain difficult. Given that the degree of indigenous involvement is so contentious, a particular focus on indigenous youth also appears unlikely.

Be that as it may, the involvement of youth in some form does not seem impossible. The Ramsar Convention and the CBD, for instance, have evolved to establish forums for youth that are able to make their voices heard and to become important stakeholders in the implementation of the conventions. Even in regimes that do not appear to consider youth—and indigenous youth even less—the establishment of youth councils or youth bodies, such as the GYBN, seems reasonable. Two issues arise here: On the one hand, making conservation regimes attractive forums for youth engagement is likely to have a positive impact on conservation consciousness in the future. Especially in the wake of the Fridays for Future movement spearheaded by Greta Thunberg, youth motivation and youth engagement in international conservation regimes may become easier. Beyond that, attempts by convention bodies, such as the COPs, to enable indigenous youth to participate in the decision-making process would significantly improve the regime’s legitimacy. This holds true especially for the IWC and CITES, which have been accused of colonialism and racism in the past.<sup>79</sup>

The second issue relates to the aforementioned UNROP. Although this declaration does not enjoy the same degree of state approval as the UNDRIP, it is in our view nevertheless an important document that recognizes the rights of rather marginalized people living in rural areas. Youth are explicitly mentioned in its preamble and in

<sup>77</sup>CBD ‘First Draft of The Post-2020 Global Biodiversity Framework’ UN Doc CBD/WG2020/3/3 (5 July 2021) para 15.

<sup>78</sup>See, e.g., C Epstein, *The Power of Words in International Relations. Birth of an Anti-whaling Discourse* (MIT Press 2008).

<sup>79</sup>See, e.g., A Shikongo, ‘Namibia – Discussions with SADC and Possible Threat to Leave CITES’ <<https://africasustainableconservation.com/2019/09/05/namibia-discussions-with-sadc-and-possible-threat-to-leave-cites/>>.

Article 2(2).<sup>80</sup> Therefore, institutions such as the IWC, CITES and CMS would increasingly follow international standards as enshrined in many international documents, such as UNDRIP or UNROP, by making youth part and parcel of their working procedures. Such steps would follow the example of the Ramsar Convention's GYBN or normative standards such as those included in the CBD. Also here, these regimes could demonstrate to a large group of people that their concerns are being taken seriously. Whether there should be a distinction between indigenous and non-indigenous youth would have to depend on the context. In the IWC, for example, an 'aboriginal youth council' within the subcommittee on ASW would appear reasonable.

The question of whether there is an optimal mode of indigenous youth participation in international conservation regimes cannot be answered yet. The only guidance is provided by the ways the convention and convention bodies provide for deliberative and participatory approaches for different stakeholder groups. That said, as Goodwin shows, given the time constraints in the consultation process prior to the COPs, it is often difficult to obtain a view from all stakeholders to form a comprehensive government position. Therefore, 'significant developments take far longer to matter and will have been the subject of work in previous COPs or working groups'.<sup>81</sup> Several issues emerge from Goodwin's point. First, it is not the COPs where government positions are being negotiated, but rather where they are adjusted to find compromise. In other words, prior to the COP, a government position has already been determined. Second, this means that real influence can be exerted prior to the COP within the national government bodies populating the delegations. Third, if the consultation process does not take indigenous youth into account, they should have a possibility to position themselves at a COP to make themselves visible and thus be taken into account in the consultation prior to the subsequent COP. Hence, even though participation in decision making is crucial prior to the COP, participation in the COP—and thus the need for adequate financial resources—is necessary to express a voice as stakeholders that are to be consulted.

With the exception of CITES, the regimes under scrutiny have in some way or another found ways to consider the interests of indigenous peoples either from the outset—that is, already in the text of the convention—or through different mechanisms through which indigenous interests are recognized. For CITES, it is therefore long overdue to do the same on a long-term basis. This could occur through the establishment of the already proposed Rural Communities Committee or through strategic engagement of indigenous peoples. Decision 18.31 on the engagement of indigenous peoples and local communities in the CITES processes,<sup>82</sup> concluded at COP18 in 2019, is certainly a step in the right direction, but would require concrete actions, such as the establishment of an intersessional working group, that would put this decision into practice.

The steps each regime could take concerning indigenous youth vary. Because ASW is a recognized type of whaling, the IWC should start to take into account that ASW also affects young people. Therefore, although it should strengthen the indigenous voice of indigenous peoples in general, it is advisable to invite indigenous youth representatives as speakers to the meetings of the parties. This would enable parties as well as observers to obtain a different view on the cultural role of ASW, especially in light of intergenerational equity. Moreover, the ASW subcommittee could make sure to include at least one indigenous youth representative in its meetings and present her/his view in the plenary as well.

For the other regimes, it is difficult to ascertain whether a distinction between indigenous and non-indigenous youth is necessary or even desirable—especially since the distinction is often blurry. In any case, to foster the principle of intergenerational equity, the regimes could establish intersessional working groups for youth engagement. These working groups could refer to 'traditional resource users' to circumvent potential problems relating to the distinction between indigenous and non-indigenous youth. The findings, recommendations or identified problems coming out of these working groups could be presented at the COPs to make state parties aware of the impacts of their decisions on young resource users.

## 5 | CONCLUSION

International conservation law, exemplified by the five international regimes under scrutiny, is still a long way from developing a streamlined strategy to make youth part of the decision-making process. This holds for indigenous youth in particular. Although, in general, indigenous peoples experience a higher degree of recognition than other rural people under international (conservation) law, in the youth initiatives that have been taken in the regimes examined here, there is hardly any distinction between indigenous and non-indigenous youth.

Even though there have been initiatives under some regimes such as the Ramsar Convention, CMS and CBD, it is particularly those regimes marked by interest struggles—that is, the ICRW/IWC and CITES—that have thus far failed to do so. In the case of the CMS, there is no discernible reason for the lack of youth engagement. Despite the deficits concerning youth engagement, we see that there is indeed some movement in the regimes we scrutinized. Even CITES has issued a resolution on youth engagement, while the Ramsar Convention and CBD have established initiatives for the engagement of youth. This, we contend, is a step in the right direction to ensure that environmental democracy and intergenerational equity are applied in a way that takes into account the stakes of those responsible in and for the future.

In conclusion, we contend that if there is an interest and a standard for showing respect towards indigenous peoples in international conservation law and if there is an interest in promoting environmental democracy and intergenerational equity, there should be a general interest in strengthening the participation of youth with a stronger focus on indigenous youth. But, as the UN affirms, it is the indigenous

<sup>80</sup>UNGA 'United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas' UN Doc A/RES/73/165 (7 December 2018) (UNROP).

<sup>81</sup>E Goodwin, 'State Delegations and the Influence of COP Decisions' (2019) 31 *Journal of Environmental Law* 235, 251.

<sup>82</sup>CITES, 'Decision 18.31, Engagement of Indigenous Peoples and Local Communities' (2019).

youth who face significant challenges regarding their culture, their experiences in a colonized society and their experiences as carriers of indigenous knowledge.<sup>83</sup>

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<sup>83</sup>UN (n 4).