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EDITORIAL

A summer to remember

Introduction

The summer of 2022 was one of the hottest since the beginning of the recordings in the northern hemisphere. In Germany, water levels in rivers and lakes sank to a minimum. All over the world, sinking water levels exposed archaeological remains, lost villages or other relics (e.g. Simauchi, 2022).

While this might be fascinating for archaeologists or relic hunters, sinking water levels may also have contributed to one of the most severe environmental disasters the Oder river between Germany and Poland has seen: a mass die-off of fish of yet unknown origins. The Oder river may take years, if not decades, to recover from this catastrophe.

Inevitably, disasters like this affect the livelihoods of millions. While the example from the Oder is merely one snapshot, it is clear that climatic changes, paired with anthropogenic environmental degradation have implications for the sustainability of ways of life all around the globe. Whether livelihoods can adapt to these changes depends on their resilience, the degree and speed to which these changes occur as well as the numerous social elements, such as human and environmental rights, agency and empowerment that accompany them (Tanner et al., 2015).

This issue

In this issue, it is especially these social elements which play a role. First, we start off with a recent, groundbreaking declaration by the United Nations, which recognises the right to a clean, healthy and sustainable environment as a human right. Especially against the backdrop of ongoing environmental changes, this declaration is highly relevant. While tracing the history of the declaration and briefly outlining its content, we also consider its implications for the upcoming Conference of the Parties (COP) of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in November this year.

The article is followed by a descriptive piece on the Oder fish mass die-off. By summarising publicly available information on this event, we also try to build a bridge to the livelihoods of fishers along the Oder's river banks. Unfortunately, however, only very little information is available, allowing merely for a brief insight into this matter.

The Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), an important international advisory organisation, also shifts into the centre of our attention since it released its advance report on sustainable use of wild species during this summer. Since the divergence between sustainable use and conservation has marked the discourse on how conservation is to occur, the report may provide important food for thought for future meetings of the International Whaling Commission (IWC) and CITES.

The production of plastics and associated global waste problem is the main topic of the German documentary *Die Recyclinglüge* ('The recycling-lie'). As we demonstrate in our review, the narrative of saving the environment by applying a seemingly rigid recycling system must be challenged since also recycling has developed into a million-Euro industry. The film presents data and findings, which call for dissemination and rethinking of the current system.

In light of the still ongoing COVID-19 pandemic, it is imperative to consider its implications for certain species. Especially bats, as suspected hosts of the Sars-CoV-2 virus, may be placed the blame on. In their article, 'Global response of conservationists across mass media likely

constrained bat persecution due to COVID-19', published in *Biological Conservation* (Nanni et al., 2022), Veronica Nanni and others investigate the role of the media and conservationists' voiced in bat conservation in light of COVID-19. In our brief summary, complemented by a short contribution by Veronica Nanni, we present the major findings of the article.

The major bulk of this issue concerns the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, which was adopted in December 2018 by the UN General Assembly. The article is an English version of 'Die UN Erklärung über die Rechte von Kleinbauern: Eine Übersicht', published in *Natur & Recht* (Sellheim, 2022). The extensive article closely follows the history of the declaration and presents a detailed and contextualised account of its provisions.

Finally, a new book entitled *Non-state Actors in the Arctic Region*, edited by Dr Nikolas Sellheim and Dr Dwayne Ryan Menezes is announced. The book will be published by Springer later on this year.

The Digest will be available as an online publication only and can be subscribed to at www.sellheimenvironmental.org. If you wish to contribute to *The Digest*, please send an email to info@sellheimenvironmental.org.

— Dr Nikolas Sellheim

September 2022

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ARTICLE

The UN recognises the right to a clean environment as a human right

Introduction

During its 76th session, on 28 July 2022, the United Nations General Assembly (UNGA) recognised the right to a clean, healthy and sustainable environment as a human right. In its resolution A/RES/76/300, the UNGA confirms a draft resolution by the Human Rights Council (HRC) from 5 October 2021, which means that the link between human rights and the environment has now finally been approved on a UN level (United Nations, 2022a). While that is so, the link between a clean environment and human rights has been recognised for years and in different fora (see e.g. Heinämäki, 2019). Also the United Nations have established this link, albeit in contexts related to the right of indigenous peoples, i.e. the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and related to the rights of peasants, i.e. the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) (see Sellheim, 2022).

In this article we trace the history of the new resolution and present its content. We also consider some of its possible implications for other bodies, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The human right to a clean environment

Discussions surrounding the recognition of a clean environment as a human right are not new. Especially with growing technology and increasing environmental deterioration, the UN General Assembly recognised already in 1968 that technological advances have the potential to threaten human existence. In September of the same year, the United Nations Education, Science, and Culture Organization (UNESCO) arranged for the Intergovernmental Conference of Experts on Scientific Bases for Rational Use and Conservation of the Resources of the Biosphere. The result of that conference were calls for an international research programme on man and the biosphere (Bridgewater, 2016).

Against this backdrop and heavily influenced by the UNESCO conference, the 1972 UN Conference on the Human Environment was held in Stockholm, resulting in the establishment of the UN Environment Programme (UNEP) and the recognition that "[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being […]" (United Nations, 1972, Principle 1). As a result, scholars have started to debate what the term 'environment' entails while also presenting proposals to amend existing human rights conventions in order to correspond to this Principle (Thorme, 1991, p. 301).

Generally speaking, human rights are those rights every person everywhere holds in order to be protected from any kind of harm. Since the conception of human rights has changed over time — for instance, the keeping of slaves was not considered inhuman in the past while under current human rights norms slavery is illegal — it is not unrealistic to include new concepts and threats into a human rights discourse. Since the deterioration of the environment has been recognised as a major and ever growing threat to human existence, it is therefore not illogical to make a clean environment a human right.

The 1970s saw an ever growing discourse on a healthy environment as a human right. On the one hand, proposals to include the right to a healthy

environment in the European Convention on Human Rights failed. On the other hand, however, national constitutions incorporated this right, for example in Germany, Japan or the Soviet Union, to name a few. At present, more than 100 constitutions contain a right to a healthy environment (Nanda, 2022).

In the 1980s, several severe environmental disasters, e.g. Chernobyl, made humankind aware of the fragility of the natural environment. In the wake of these disasters and the expanding human rights discourse, over time several international (human rights) organisations started to include the right to a clean environment into their statutes, such as the African Commission on Human and Peoples' Rights, the Inter-American Commission on Human Rights, the Council of the League of Arab States or the Association of Southeast Asian Nations (Nanda, 2022).

In 1989, the first legal action was taken at the United Nations. Two cases were brought before the Sub-Commission on Prevention of Discrimination and Protection of Minorities by several environmental and human rights NGOs. These cases, defending the interests of indigenous peoples in Ecuador from the destruction of forests and the local population in Guatemala from fumigation programs were chosen to legally establish the link between a clean environment and the protection of human rights. In both cases, the Sub-Committee confirmed this link.

Also the 1992 UN Summit on Environment and Development (Rio Summit) recognised that without a healthy environment, sustainable development cannot occur. It is thus that the Rio Declaration notes in Principle 1 that "[human beings] are entitled to a healthy and productive life in harmony with nature" while Principle 10 notes that "each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes" (United Nations, 1992).

The first legally-binding recognition of this right was incorporated in 1998 in the Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention), adopted by the UN Economic Commission for Europe. While not speaking of a 'healthy' or 'clean' environment as such, Article 1 of the convention refers to "the right of every person of present and future generations to live in an environment adequate to his or her health and well-being." Even though the Aarhus Convention is regional in scope, it is the first multilateral agreement that fully implements Principle 10 of the Rio Declaration by requiring states to combine environmental rights with human rights.

During the 2000s, the issue of linking human rights with a clean, safe and healthy environment did not disappear. Instead, the UN's Human Rights Council (HRC) took up on the issue. The HRC is an independent body within the United Nations system, comprising of 47 regionally represented UN member states, serving in three-year terms: 13 African States, 13 Asian-Pacific states, 6 Eastern European states, 8 Latin American and Caribbean states and 7 Western European and other states. On 7 April 2022, Russia became the first UN Security Council member to be formally removed from the HRC over the massacre in Bucha, Ukraine (Roth, Sullivan, Beech & Ly 2022).

The HRC appointed an independent expert in 2012 to further investigate the link between a clean environment and human rights. The reports by this expert, who in 2015 became Special Rapporteur, outlined the close interconnectedness of these issues, described more than 100 good practices, presented associated state obligations and provided for numerous recommendations on how to implement human rights obligations in relation to the environment. The importance of this topic is probably best exemplified by the fact that the initial mandate of three years of the independent expert was extended by another three years in 2015 and again in 2018. At the time of

writing, the HRC still has an appointed Special Rapporteur on Human Rights and the Environment (IJRC, Undated).

In 2018, Special Rapporteur John H. Knox noted in his report:

> The time has come for the United Nations to formally recognize the human right to a safe, clean, healthy and sustainable environment, or, more simply, the human right to a healthy environment. It is understandable that the central United Nations human rights instruments […] do not include an explicit right to a healthy environment. They were drafted and adopted before the modern environmental movement raised awareness of the breadth and depth of the environmental challenges facing humanity. Today, however, it is beyond debate that human beings are wholly dependent on a healthy environment in order to lead dignified, healthy and fulfilling lives (Knox, 2018, para. 37).

Finally, in October 2021, the HRC recognised the human right to a safe, clean, healthy and sustainable environment (HRC, 2021a).

The HRC resolution

At its 43rd meeting, the HRC adopted the resolution with 43 states in favour, 0 against and 4 abstentions. While the resolution found wide support, it did not come without criticism. Even some states having voted in favour criticised the HRC draft resolution for putting additional burdens on developing states and for using terminology — for instance 'clean, healthy and sustainable environment' — which is neither internationally agreed upon nor can be found in any legally-binding agreement. Also the term 'unsustainable management' or 'unsustainable development' were criticised for expressing a notion that cannot be found in other internationally agreed texts. The meeting records show that only after extensive debate and several revisions, the HRC was able to adopt the document (HRC, 2021b).

A closer look at the draft resolution by the HRC reveals, however, what these terms may imply or what they should not hinder: the sixth preambular paragraph thus reads as follows:

> Recognizing that sustainable development, in its three dimensions (social, economic and environmental), and the protection of the environment, including ecosystems, contribute to and promote human well-being and the enjoyment of human rights, including the rights to life, to the enjoyment of the highest attainable standard of physical and mental health, to an adequate standard of living, to adequate food, to housing, to safe drinking water and sanitation and to participation in cultural life, for present and future generations.

While, quite typical for UN resolutions and agreements, the text is held in a broad manner, the link between a clean, healthy and sustainable environment and human rights to life, physical and mental health, adequate living standards, food, housing, water and sanitation, in addition to culture is rather obvious and the resolution should be read against that backdrop. To turn this matter around, if the environment cannot be held clean, healthy and sustainable state, the enjoyment of these human rights is acerbated and possibly compromised.

For the purposes of our work, i.e. the link between conservation and local populations, the tenth preambular paragraph is highly relevant and could serve as yet another reference point that would justify the inclusion of local populations in the decision-making processes. The paragraph reads:

> Recognizing also that the exercise of human rights, including the rights to seek, receive and impart information, to participate effectively in the conduct of government and public affairs and in environmental decision-making and to an effective remedy, is vital to

the protection of a safe, clean, healthy and sustainable environment

On the one hand, this paragraph can be read as a call for more effective participation of civil society, and arguably indigenous peoples and local communities (IPLCs) in environmental decision-making. Indeed, participation in environmental decision-making and access to information — free, prior and informed consent — are considered fundamental human rights. However, as Sellheim & Ojanperä (2021) have shown, the application of these rights lacks far behind.

On the other hand, this paragraph also reveals another highly important element: that the participation of IPLCs is 'vital to the protection of a safe, clean, healthy and sustainable environment.' While there are numerous scholars and political bodies that have recognised the fact that effective biodiversity conservation can only occur through the inclusion of IPLCs (see also the recent report by IPBES on the Sustainable Use of Wild Species (IPBES, 2022), this issue), bodies such as the International Whaling Commission (IWC) or the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) show time and again that this link has not reached every corner of international environmental decision-making. In other words, top-down decision-making without proper consultation and inclusion of IPLCs appears to be more appreciated than decision-making mechanisms that correspond to the standards set out in abovementioned paragraph.

Against the backdrop of the HRC resolution, also the UN General Assembly could no longer ignore the issue.

The UN Resolution

At its 76th session, the United Nations General Assembly discussed the human right to a clean environment. While at the time of writing a detailed meeting record is not yet available (see United Nations, 2022b), information provided by the UNGA for the media shows that Costa Rica introduced the document and that the General Assembly "called upon States, international organizations, business enterprises and other relevant stakeholders to adopt policies, enhance international cooperation, strengthen capacity-

Vote results on UN Resolution on the human right to a clean, healthy and sustainable environment.

building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all" (United Nations, 2022c). As a basis for discussion served the HRC resolution, which was to be confirmed by the UNGA. Before adoption, however, several member states voiced their concerns over the legal character, terminology and conceptual difficulties that would come along with the resolution. Despite these discussions, however, it is noteworthy that of the 169 UN Member States being able to vote, none voted against the adoption of the resolution. Instead, merely eight countries — Belarus, Cambodia, China, Ethiopia, Iran, Kyrgyzstan, the Russian Federation and Syria — abstained from taking a vote.

The resolution itself is a comparably short document, consisting of 19 preambular paragraphs and merely four operational paragraphs. In the first preambular paragraphs, fundamental documents adopted under the umbrella of the United Nations are recalled. These relate to human rights as well as sustainable development and include the Universal Declaration of Human Rights, the Stockholm and Rio Declarations and "relevant international human rights treaties" (Preambular paragraph 1). Notably, reference to the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) or the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) is absent. This is quite surprising since UNDRIP indirectly refers to the right to a clean environment in Article 32.3 ("appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact") while UNDROP directly refers to it in Article 18.2 ("States shall take appropriate measures to ensure that peasants and other people working in rural areas enjoy, without discrimination, a safe, clean and healthy environment"). The reason for the absence of these declarations cannot be ascertained.

In preambular paragraph 5, the HRC resolution is recalled, yet without further emphasis, contextualisation or justification. Merely starting from preambular paragraph 7, a more detailed link between human rights and the status of the environment is presented. For instance, preambular paragraph 7 reads:

> Recognizing that sustainable development, in its three dimensions (social, economic and environmental), and the protection of the environment, including ecosystems, contribute to and promote human well-being and the full enjoyment of all human rights, for present and future generations

It cannot be ascertained by this fundamental paragraph merely occurs on the seventh position as it provides the basis for the entire document and its *raison d'être*. Arguably, of course, it is not sustainable development which stands at the centre of attention of this resolution, but rather the link between a clean environment and human rights, but content-wise, this paragraph should be found in the beginning of the document.

The document continues with environmental threats such as climate change, pollution or the unsustainable management of natural resources, to name a few, that impede the full enjoyment of human rights and the important role international cooperation plays to strengthen the human, institutional and technological capacities of developing states. Quite interestingly, the document also takes a gender-approach. In preambular paragraphs 10, the resolution recognises that the human rights implications of environmental damage are most acutely felt by women and girls, as well as by the most vulnerable segments of society, namely indigenous peoples, children, older persons and persons with disabilities. One paragraph down, the resolution recognises

> the importance of gender equality, gender-responsive action to address climate change and environmental degradation, the empowerment, leadership, decision-making and full, equal and meaningful participation of women and girls, and the role that

women play as managers, leaders and defenders of natural resources and agents of change in safeguarding the environment.

Preambular paragraph 12 continues with outlining the threats, such as environmental degradation, climate change or unsustainable development, which may impede the full enjoyment of human rights. This paragraph, however, integrates the principle of intergenerational equity as it does not merely refer to the present, but also to future generations. In order to facilitate mechanisms that allow for proper management of the environment and therefore to ensure that its components can be sustainably used, preambular paragraph 13 underlines that "to participate effectively in the conduct of government and public affairs […] is vital to the protection of a clean, healthy and sustainable environment." Again, participation in decision-making is highlighted as crucial for the sustainable use of fauna and flora. While the paragraph does not explicitly mention IPLCs, its broad scope allow for an interpretation that is inclusive of the interests of IPLCs.

Preambular paragraph 14 underlines the state obligation to respect, protect and promote human rights, especially with regard to addressing environmental challenges. States are further obligated to protect the "human rights of all, as recognized in different international instruments." Again, IPLCs are not explicitly mentioned, but the addition "that additional measures should be taken for those who are particularly vulnerable to environmental degradation" allows for the conclusion that IPLCs are indirectly referred to in this context. Why no direct reference is made to UNDRIP and/or UNDROP can, once again, not be ascertained.

This paragraph is followed by five short paragraphs, which 1. underline the responsibility of business to protect human rights; 2. affirm the importance of a clean, healthy and sustainable environment; 3. take note of the report of the Special Rapporteur on human rights obligations relating to a clean environment; 4. note "The highest aspiration: a call to action for human rights" by the UN Secretary General to the HRC; and 5. note that "a vast majority of States have recognized some form of the right to a clean, healthy and sustainable environment through international agreements, their national constitutions, legislation, laws or policies."

The operational part of the resolution consists merely of four paragraphs. In paragraph 1, the right to a clean, healthy and sustainable environment as a human right is recognised. In paragraph 2 it is noted that the right to a clean, healthy and sustainable environment is related to other rights and existing international law. Paragraph 3 "*[a]ffirms* that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law". And in paragraph 4, states, international organisations, businesses and other relevant stakeholders are called upon to "scale up efforts to ensure a clean, healthy and sustainable environment for all" through the adoption of respective policies, through increased international cooperation, increased capacity-building and increased sharing of good practices.

Possible implications of the resolution

As highlighted by several UN Member States, the resolution does not have legally-binding character and should instead be considered a statement of political will. In that sense it cannot be enforced as there is no international political entity which has the mandate to ensure compliance to this resolution. The implementation of the rights and obligations set forth in the resolution thus rests with the national legal systems of the UN Member States themselves of which 150 have incorporated human rights and environmental provisions in their national legislation.

This said, even though the resolution itself is a soft-law instrument and thus not legally binding,

some of the provisions in it are — in so far as they stem from agreements that are of a legally-binding character. For example, the right to a clean, healthy and sustainable environment itself is binding for more than 150 countries due to their national legislation. These states are therefore required by national law to ensure that this right is implemented properly. Indirectly, the rights of IPLCs are recognised throughout the text of the resolution.

This is to say that since IPLCs' cultures often hinge on an unspoilt environment, Article 27 of the International Covenant on Civil and Political Rights (ICCPR) comes into play. This article, which serves as a crucial internationally agreed-upon and legally-binding article for indigenous rights, sets out that "[i]n those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language." In other words, if culture cannot be enjoyed because of environmental degradation, this would constitute a violation of this article.

Be that as it may, since there is no way to enforce the resolution as a 'soft-law' agreement, other ways and means should be taken to operationalise its provisions. One opportunity could be the next Conference of the Parties (COP) of CITES in November 2022. Several agenda items address participation of IPLCs, livelihoods and food security. One such agenda item (Item 87) deals with amendments to Resolution Conference. 9.24 (Rev. CoP17). This CITES resolution sets standards for the amendments to the Appendices, stipulating that biological and trade criteria should be taken into account. Botswana, Cambodia, Eswatini, Namibia and Zimbabwe, however, challenge this rather narrow approach in document CoP19 Doc. 87.1 by calling for considerations of Appendix-listings on livelihoods and food security through stakeholder consultations before a proposal to add a species to one of the Appendices is tabled.

The UN resolution on the human right to a safe, clean, healthy and sustainable environment could strengthen these endeavours. Even though it is not legally-binding, it can time and again serve as a reference point for approaches to environmental decision-making that take the human dimension, i.e. effects of protective measures on human livelihoods and food security, into consideration. This means that the resolution finally allows for decision-making that does not disassociate environmental protection (and arguably environmental rights) from human rights and wellbeing.

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ARTICLE

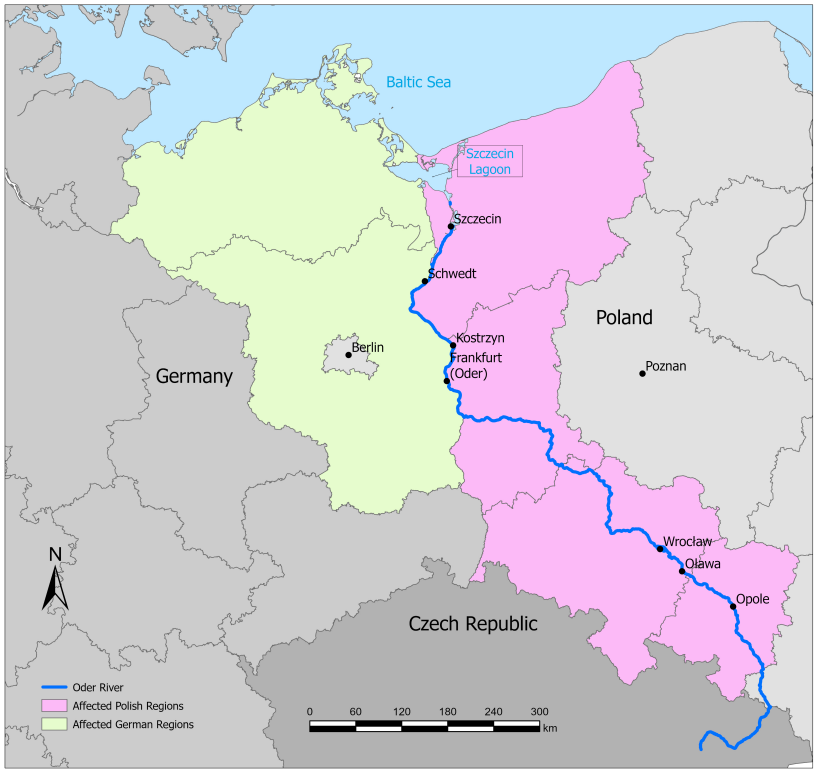
Origins of mass die-off of fish in the Oder River still unknown, but algae likely to be the culprit

Introduction

In late July 2022, things started to change in the Oder River — the border river between Germany and Poland. Residents living along the river banks in the Polish city of Oława started to notice large numbers of dead fish floating in the low waters of the Oder. As such, this is nothing unusual. After all, water levels have been dropping due to the heat wave that has been hitting Central Europe for a few weeks now. But also on the German side, fishers started to notice what they only knew from disaster movies: hundreds, thousands of dead fish started to appear, which are more than usual. As a consequence, they alerted the authorities that things are not what they should be in the Oder.

The main authority for the Oder on the German side is the Environment Agency of Brandenburg (Landesamt für Umwelt Brandenburg, LfU). LfU operates several stations along the river, which monitor water quality. From 1 August onward, these stations picked up a rather sudden increase in conductibility, which is an indicator of the water's salinity. Between 1–6 August, salinity levels rose from 1300 MilliSiemens per centimetre to more than 2000 MilliSiemens per centimetre, even going beyond what could be displayed on LfU computers. As *Der Spiegel* reports, however, the LfU merely observed and did not react (Kollenbroich, Merlot & Schrader, 2022).

Apart from salinity, also oxygen levels and PH-levels rose dramatically while the cloudiness of the water and UV absorption, a sum parameter for specific dissolved organic substances, increased. Lastly, levels of nitrate-nitrogen dropped, which



Affected regions by the Oder River mass die-off

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Sources:
Humdata, Bundesanstalt für Gewässerkunde

could be an indicator for increased algal bloom.

The devastating result of these drastic changes has thus far been: More than 30 tonnes of dead fish taken out of the river by German authorities and more than 100 tonnes of dead fish taken by Polish authorities. At least more than 500km of the river are now dead waters. Four Polish provinces — Opolskie, Dolnośląskie, Lubuskie and Zachodniopomorskie — and the German province of Brandenburg are directly affected by this disaster. It was also feared that the mass die-off expands into other waters since the Oder discharges into the Szczecin Lagoon, thus also affecting Mecklenburg-Vorpommern, before flowing into the Baltic Sea. Luckily, this fear has not become reality.

While this is certainly positive, the impacts are severe: Between 25—50% of all fish in the Oder are presumed to have perished during this event while Germany's Environment Minister, Steffi Lemke (Green Party) has expressed doubts whether the river will recover at all due to the unknown effects of the die-off on the Oder ecosystem.

Oder River data

Length: 866 km to Szczecin
Source: Close to Kozlov în Czech Republic
River mouth: Swinemünde in the Szczecin Lagoon as well as Usedom and Wolin
Course: Czech Republic, Poland, German-Polish border area
Border river between Germany and Poland: 179 km
Navigable kilometres: 717 km

The question remains, what has caused this drastic change in water quality within just a few days leading to one of the most devastating fish mass die-offs in the history of the Oder?

Theories for the mass die-off

Up to this day it remains unclear what has caused this event, even though it is very likely that anthropogenic discharges, paired with low water levels and warm water temperatures have cause this environmental catastrophe. The original theory circled around a possible industrial accident or deliberate pollution. In the focus of attention were levels of mercury which could have caused such drastic changes within a short period of time. Polish and German authorities investigated this issue and more than 200 individuals were interrogated. The result was, however, that mercury levels were still in the norm while there are thus far no indications for an accident or deliberate acts of pollution.

That said, it is not impossible that some form of chemical might have caused or contributed to the mass die-off. After all, it depends on the way laboratories work. When looking for a known chemical, this chemical is rather easy to spot. But the search for an unknown chemical as a cause might prove significantly more difficult: once released into the river, it might have caused a chain reaction due to the interaction with the river's flora and fauna — only then exposing its deadly character. Another challenge to find it is that it might have changed its chemical structure due to its exposure to oxygen or sunlight. Consequently, even though nothing has been found yet, this does not mean that this possibility can be ruled out.

This is especially the case since Poland's Prime Minister Mateusz Morawiecki reported of possible environmental crimes, i.e. the release of large amounts of chemicals into the Oder close to the city of Opole. This report, however, came much too late and he was criticised for not having informed German authorities about this issue. He, in turn, reported that the the information about the river's changes had reached him only by 9 or 10 August. As a consequence, he relieved the leaders of the water and environmental agencies of their duties. Even though earlier informing the German authorities would not not have prevented the spread of the toxin, it might have helped to coordinate cleaning efforts better in order to slow down the spread within the food chain.

Despite the still unknown cause for the mass die-off, it appears as if a yet unknown type of algae may be responsible. Researchers from the Berlin-based Leibniz Institute for Water Ecology and

Freshwater Fisheries (IGB) have found a high concentration of an algae that emits a type of toxin which is extremely poisonous for fish. Although the type appears to be primarily occurring in brackish water, the high salinity associated with the high levels of oxygen point into the direction of the algae itself having caused the problems.

This leaves the question of why the level of salinity has increased so dramatically. Researchers from the IGB consider wastewater from Polish potash mining as having cause the increase in salt. Since this has been ongoing for a rather long time, the problem can indeed be considered an anthropogenically caused environmental disaster. Despite these indications, the theory has not yet been proven.

Impacts on local fisheries

Fisheries along the shores of the Oder have a long tradition. Already during the Middle Ages, fisheries played an important role for the local population. It is therefore not surprising that over the last 100+ years, several small-scale family-run fisheries businesses have developed, primarily aiming for pikeperch (*Sander lucioperca*), Wels catfish (*Silurus glanis*), bream (*Abramis brama*) and pike (*Esox lucius*).

Small fishery business have had to endure significant challenges over time: On the one hand, they were forced to subdue to the political conditions, especially during times of the Soviet Union and the German Democratic Republic and the transition to a market economy since 1989; on the other hand also environmental challenges threatened their existence, first and foremost flooding and fires.

But none of the past disasters had such profound effects as the current mass die-off. Obviously, the large numbers of dead fish make it increasingly difficult for fishers to reach a certain catch. Even though some fishers usually add imported fish, such as eel from Ireland or mackerel from Norway to their inventory, fish from the Oder nevertheless constitutes the backbone of their businesses. But since the reason for the die-off is still not entirely clear, buyers now largely abstain from buying any fish from the Oder river, since it is feared that this fish might be poisoned. In fact, for around two weeks in August, the sale of Oder fish was prohibited over concerns of poisoning.

In Brandenburg, 12 out of 145 fisheries businesses are directly affected by the Oder disaster. Whether or not they will endure this challenge remains to be seen. However, even businesses that are both engaged in fisheries and tourism are threatened in their existence since the unknown origins deter tourists from coming to the Oder while, especially on the Polish side, fishing and bathing bans are imposed.

The way forward

The search for the origins of the disaster are still ongoing while fears of a spread of the die-off have prompted close monitoring of the Szczecin Lagoon at the Oder's river mouth. As of the time of writing, no fish die-off can be noted there, even though news report note that the danger is not yet over. But in light of the transboundary nature of the catastrophe and the lack of information exchange at its early stages, the European Commission has offered support as regards expertise and information. Whether the cause will ever be found remains to be seen, but it remains imperative that environmental authorities closely cooperate in order to contain the damage as much as possible.

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SUMMARY ANALYSIS

The IPBES Report on Sustainable Use of Wild Species

Introduction

On 7 July 2022, the Intergovernmental Science-Policy Platform for Biodiversity and Ecosystem Services (IPBES) released its long-awaited Summary for policymakers of the thematic assessment of the sustainable use of wild species. Albeit merely an advance, unedited version of the report is available at the time of writing, it nevertheless provides profound insight into the challenges that people and peoples engaged in the utilisation of wild species are facing and what means and ways are possible to make the use of these species sustainable.

In this article, the core elements of the report are presented and contextualised, especially with regard to the consideration of indigenous peoples and local communities (IPLCs) and their livelihoods. The findings of the report are then placed within the preparations for the upcoming meetings of the International Whaling Commission (IWC) in October 2022 and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) in November 2022.

Background

The IPBES Assessment on Sustainable Use of Wild Species was set in motion at IPBES' sixth meeting (IPBES-6) in Medellin, Colombia. The underlying rationale for the report was that "[t]here is a need for a comprehensive assessment of the status of and trends in the use of wild species, and of possible future scenarios of such use, in terms of the sustainability of current use in its socio-ecological context as well as the status of and trends in the direct and indirect drivers that affect that sustainability" (IPBES, 2018, p. 3). Consequently, the objective of the assessment is "to consider various approaches to the enhancement of the sustainability of the use of wild species of all organisms within the ecosystems that they inhabit and to strengthen related practices, measures, capacities and tools for their conservation through such use" (ibid., p. 1). In order to reach this objective, 85 experts from social and natural sciences and holders of indigenous and local knowledge were acquired to produce such assessment. Moreover, more than 200 additional authors contributed to the assessment, making use of more than 6,200 sources. On 7 July 2022, finally, the summary of the report was approved in Bonn, Germany (IPBES, 2022).

The scoping document that underlies the report (see IPBES, 2018) stresses that the focus of the report will rest on the sustainable use of wild species. It notes that the report therefore does not take into account the management of crops or livestocks on farms or in aquaculture, with the exception of these potentially providing alternatives to the use of wild populations. This resulted in the fact that IPLCs played a major role in the collection of data and the analyses presented in the report. After all, IPLCs depend to a large degree on wild species and their conservation successes are undisputed: even though indigenous peoples comprise merely 5% of the world's population, they occupy, own or manage around 20—25% of the world's land territories. Here, more than 80% of the world's biodiversity can be found while this land intersects with approximately 40% of terrestrial protected areas and ecologically intact landscapes (United Nations, 2018). The scoping document consequently remarks:

> Indigenous and local people generally possess significant knowledge on the wild

> species that surround them, including knowledge about their habitat, seasonal availability, species ethology in the case of animal species and other matters, and they often use them for subsistence and other purposes. Consequently, indigenous and local people are major stakeholders and key partners for national Governments and international agencies seeking to safeguard biodiversity through conservation measures or regulatory interventions (IPBES, 2018, p. 8).

Against this backdrop, the report aims to analyse and identify trends up until 2020, develop future projections until 2050 and, based on these, develop policy options that enable the sustainable use of wild species. In terms of definitions of concepts, especially CITES, the UN's Food and Agriculture Organization (FAO) and the Convention on Biological Diversity (CBD) are being consulted.

The Summary for Policymakers

The currently available Summary for Policymakers is an advanced, unedited version. However, it has been heralded as the most recent authoritative document emerging out of IPBES' expert group on sustainable use. It is therefore treated as merely undergoing minor (editorial) changes prior to final adoption.

The 33-page long document is subdivided into four chapters, which are named after 'key messages' to be taken away from it: A. Sustainable use of wild species is critical for people and nature; B. Status and trends in the use of wild species; C. Key elements and conditions for the use of wild species; and D. Pathways and levers to promote sustainable use and enhance the sustainability of the use of wild species in a dynamic future. In terms of definitions, for the term 'sustainable use', the reports uses the definition of Article 2 of the CBD:

> "Sustainable use" means the use of components of biological diversity in a way and at a rate that does not lead to the long-term decline of biological diversity, thereby maintaining its potential to meet the needs and aspirations of present and future generations.

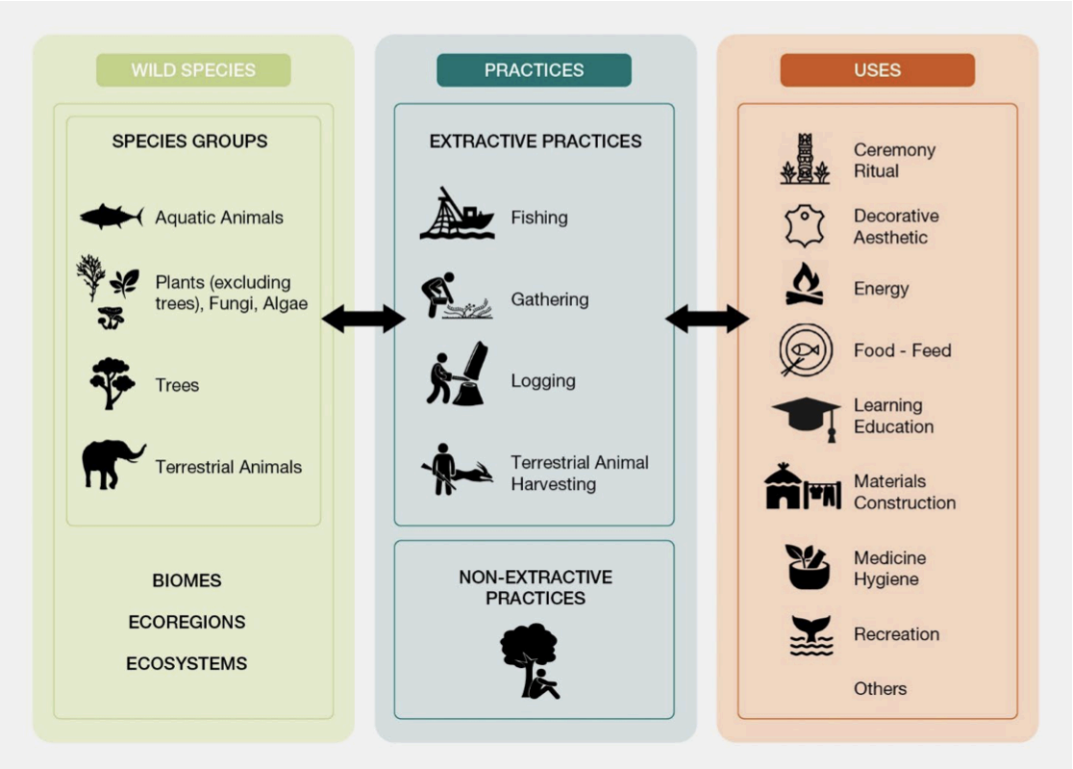
'Wild species' are defined as "populations of any species that have not been domesticated through multigenerational selection for particular traits, and which can survive independently of human intervention that may occur in any environment. This does not imply a complete absence of human management and recognises various intermediate states between wild and domesticated" (IPBES, 2022, p. 3).

Against this backdrop and along with the 'key messages' come several other key findings that comprise the main body of the report. In the following, we will go through the report based on the 'key messages' (chapters) and the respective findings that come along with these.

Sustainable use of wild species is critical for people and nature

Under this heading, three findings can be found that circle around a matrix consisting of the type of wild species, practices that are applied to gain access to these species and uses of the respective species.

It is thus that the report finds that "[b]illions of people in all regions of the world rely on and benefit from the use of wild species for food, medicine, energy, income and many other purposes" (IPBES, 2022, p. 4). The degree to which this happens varies, but the report establishes that around 50,000 wild species are used for food, energy, medicine, material or other purposes through a multitude of different activities, such as fishing, gathering or harvesting.



Organising matrix of the report © IPBES, 2022, p. 4.

Of these 50,000 species, 7,500 species are wild fish or aquatic invertebrates, 31,100 are wild plants of which 7,400 are trees, 7,500 species of wild amphibians, reptiles, birds and mammals, 1,700 species of wild terrestrial invertebrates and 1,500 species of fungi. This translates, for instance, into approximately 2.4 billion people being dependent on wood for cooking.

These species are of extreme relevance as sources of subsistence and income. While it can be assumed that it is especially developing countries that rely on wild species, the report makes clear that also in the developed world 4–68% of households in Europe and North America participate in gathering of species. Yet another interesting finding of the report is that through non-extractive use, i.e. wildlife watching, 120 billion USD were generated in 2018, which exceeds the revenue of illegal wildlife trade fivefold (IBPES, 2022, p. 5).

Another finding is that the "[s]ustainable use of wild species is central to the identity and existence of many indigenous peoples and local communities" (IPBES, 2022, p. 6). If they are no longer able to access these wild species, important elements of their identity disappear. Moreover, hindered access impacts sources of subsistence and income generated through formal and informal markets. The utilisation of these species is in large parts guided by knowledge, practices and worldviews that have evolved over long periods of time. Another figure shows how central access to wild species is for indigenous peoples and local communities.

A key finding of the report — at least for the purposes of effective biodiversity conservation — is that "[e]nsuring sustainability of the use of wild species, including *inter alia* by promoting the sustainable use and halting overexploitation, is critical to reverse the global trend in biodiversity decline" (IPBES, 2022, p. 9). For a long time, scholars and practitioners, as well as environmental governance bodies, have called for the inclusion of IPLCs in the decision-making process in order to ensure that biodiversity can be protected efficiently. As shown elsewhere, this issue has not been address uniformly in international environmental governance and bodies such as the

The essential role of wild species to IPLCs © IPBES, 2022, p. 8

International Whaling Commission or CITES have shown great inertia to include IPLCs (Sellheim, 2020; Sellheim & Ojanperä, 2021). As a consequence, calls have been uttered to establish processes that ensure that the interests and the voices of IPLCs are recognised before management or conservation decisions are being taken (Cooney et al., 2021).

In order to achieve the sustainable use of biodiversity, the report notes that it is imperative to identify and reverse the trends that lead to unsustainable use, which endanger about 28–29% of near-threatened or threatened species worldwide. In combination with the fact that 38 million km^2 in 87 countries, corresponding to around 40% of conserved areas on land, are managed by indigenous peoples make it ever more important to strengthen indigenous voices and their role in conservation and management decisions (IPBES, 2022, p. 9).

Status and trends in the use of wild species

The second chapter of the report concerns the status and trends in the use of wild species. The report notes that there no clear trends are discernible, but that the status and use varies across types and scales of use as well as socio-ecological contexts. Concerning marine fish species, generally can be said that 34% of stocks are overfished while 66% are fished and managed within sustainable levels. Especially the robustness of fisheries management schemes proves beneficial in this regard and stocks are increasing. According to the UN Food and Agricultural Organization (FAO), around half of landed fish stem from well-managed and sustainable fisheries. Concerning countries and regions without robust fisheries schemes, data is oftentimes deficient and no clear trends can be identified.

A figure outlining trends in other uses (gathering, logging, terrestrial animal harvesting and non-extractive uses) shows that also here data is often deficient and that many 'sub-uses' are highly variable. In the case of logging, for instance, it is either well-established or established but incomplete that use for material construction and energy are increasing, but that the sustainability of these uses show a high degree of variability in trends (see IPBES, 2022, p. 11). Concerning large terrestrial species, these are most frequently targeted for subsistence and commercial use as important sources for meat and income. As a consequence, "[l]arge mammals alone comprised 55% to 75% of total wild meat biomass hunted annually in different regions of the world" (IBPES, 2022, p. 12).

Important to recognise is also the fact that the degree of sustainability is influenced by diverse drivers, such as land- and seascape changes, climate change, pollution or invasive species.

These impact species distribution and abundance, inevitably leading to challenges (and benefits) for resource users dependent on species. Yet another driver is identified to be the degree to which IPLCs' rights are protected and land tenure and resource rights are recognised. The better land and resource rights are protected, the more likely it is that abundant species are used sustainably (IPBES, 2022, p. 15).

In how far this can be rectified with the finding that global trade in wild species has increased significantly over the last 40 years is not discussed in the report. Since global trade is a major driver of the use of wild species, the report calls for more effective regulation of this trade from a global to a local level. It remarks that this regulation, however, might also be the cause of unsustainable use as it introduces structures and rules which do not correspond to traditional use relations and practices. It is therefore that "[s]ustainable, legal and traceable trade of wild species is important for biodiversity-dependent communities, especially indigenous peoples and local communities and people in vulnerable situations especially in developing countries and has the potential to contribute to reversing biodiversity decline (IPBES, 2022, p. 16).

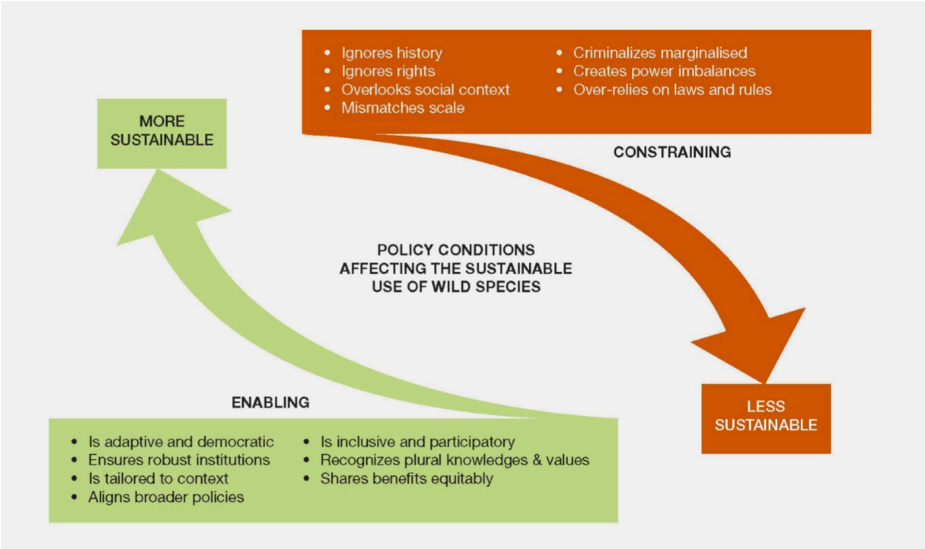
The report further notes that "[k]ey elements of sustainable use […] have been identified in relevant international and regional standards, agreements and certification schemes but indicators are incomplete, most notably for social components" (IPBES, 2022, p. 17). This is to say that different international agreements use their own sets of indicators for specific practices, but that there are no streamlined indicators that consider sustainable use as such. These refer mostly to impacts on biodiversity and the material and non-material contributions of biodiversity to human wellbeing. Unfortunately, however, these indicators hardly take into account social indicators of sustainable use. This means that indicators do not consider specific practices in particular socio-ecological contexts, making it difficult to apply them in a manner that corresponds to the social components of sustainable use of wild species (IPBES, 2022, p. 18).

Key elements and conditions for the sustainable use of wild species

The third chapter of the report identifies key elements that could ensure the sustainable use of species. In the centre of attention stand policies that are adaptive and take into account the socio-ecological contexts in which the use of wild species occur. While voluntary, non-binding agreements do show some trends towards taking into account social *and* ecological aspects, international agreements often merely focus on ecological, economic and governance dimensions while cultural elements receive little attention. This contributes to reduced effectiveness and increasing unfairness, particularly in regard to tenure and access rights of IPLCs. Indeed, policies that fail to take into account social elements may even contribute to negative ecological and social developments. The report even goes so far as to state that "[p]olicy instruments and tools commonly fail when they are not tailored to local ecological and social contexts" (IPBES, 2022, p. 19). And further, "[w]here customary governance is ignored, new policies may undermine previously successful approaches to sustainable use" (ibid.).

A figure thus clarifies that policies that ignore histories and rights do not contribute to sustainable use while policies that do, do contribute to sustainable use. In order to ensure that elements such as histories and rights are taken into account adequately, the report notes that it is imperative to have adaptive and democratic institutions and that participatory mechanisms increase the effectiveness of conservation instruments:

> Conservation instruments such as protected areas or other effective conservation measures can also contribute to the



Conditions that enable (green) or constrain (red) sustainable use policies © IPBES, 2022, p. 20

> sustainability of the use of wild species […]. However, to be effective, protected areas should be inclusive of indigenous peoples and local communities and other people involved, avoid displacing indigenous peoples, local communities, and dependent livelihoods, and be embedded in larger planning processes, and have a full implementation strategy (IPBES, 2022, p. 22).

In order to avoid unsustainable use, the report highlights the importance of recognising customary institutions and rules pertaining to wild species. This is especially the case since this recognition avoids conflicts and contributes to policy effectiveness, also by lowering the transaction costs for monitoring. Moreover, more attention to the knowledge of IPLCs, especially where scientific knowledge may be data deficient, may fill gaps in knowledge, particularly with regard to socio-ecological components of sustainable use, and thereby improve decision-making.

Pathways and levers to promote sustainable use and enhance the sustainability of the use of wild species in a dynamic future

The last chapter of the report stresses the importance of transformative change in order to ensure the sustainability of wild species in the future. The need for transformative change was already uttered by IPBES in 2019 and a transformative change assessment is currently underway (see IPBES, 2021). In light of demographic changes, changing consumption patterns and technological advancements, the pressure on wild species as well as their use is likely to increase. The impacts on wild species and their use are not necessarily merely negative, but especially due to technological advancements may become more efficient, as long as monitoring, surveillance and enforcement are able to follow suit.

The idea of transformative change, on the other hand, is merely possible if institutions and governance system take multiple value systems into account, action is concerted, costs and benefits distributed equally and changes in cultural norms and preferences are recognised. In order to do so, seven key elements — and their reflection in

existing voluntary and binding agreements pertaining to the five sectors outlined above — were identified: Inclusive and participatory decision-making; Inclusion of multiple forms of knowledge and recognition of rights; Equitable distribution of costs and benefits; Policies tailored to local social and political contexts; Monitoring of social and ecological conditions and practices; Coordinated and aligned policies; and robust institutions, from customary to statutory. Since merely in the fisheries sector the key elements are best reflected in binding agreements whereas the other sectors show deficits, a large set of policy options was developed to achieve transformative change across the other sectors as well. For instance, for inclusive and participatory decision-making the report presents the following policy options: "Enact policies with clear guidance on transparent processes for decision-making and representation; Build the capacity of all actors; Develop national, regional, and international contact points, platforms and community facilitators, mediators" (IPBES, 2022, p. 27).

In order to achieve transformative change and to ensure sustainability, "use of wild species requires constant negotiation and adaptive management. It also requires a common vision of sustainable use and transformative change in the human-nature relationship" (IPBES, 2022, p. 28). Especially the latter part of this quote shows how important the common vision for sustainable use is, whilst recognising differences in values. The report notes that this is best achieved through participatory and inclusive decision-making in order to enable all actors to be able to think from different value perspectives. That said, it is once again highlighted that transformative change can only be achieved by overcoming the human-nature-divide and by recognising that humans are part of nature.

The upcoming meetings of the International Whaling Commission and CITES

In light of the above it is important to take a look at two of the most controversial meetings that will take place in the fall of 2022: the 68th meeting of the International Whaling Commission (IWC) and CITES. These two bodies have repeatedly been dealt with as being marked by differences in values and differences in worldviews, while ignoring the rights of IPLCs (see e.g. Sellheim, 2020; Cooney et al., 2021). Even though the IWC, for example, recognises a type of whaling called Aboriginal Subsistence Whaling (ASW) despite its moratorium on commercial whaling, the case of the Makah in Washington State has shown that indigenous whalers face significant difficulties to obtain a quota from the commission: In this case, the Makah had not whaled for more than 70 years because commercial whaling had decimated the grey whale stocks. Since then, however, grey whale stocks have recovered to a degree. And only after a long struggle the Makah were able to receive a quota from the IWC in 1999 (Brand, 2009).

Even though an indigenous people may opt for obtaining a quota, it is up to the nation state to table a 'Needs Statement' to the commission. This Needs Statements serves as a justification for the commission why an indigenous people should obtain a quota. Yet, this statement may still be rejected by the commission for political or any other reason. And it might not even be tabled in the first place, if the nation state does not support the indigenous people and their request (see e.g. Maruyama, 2013). Since there is no mechanism in place that allows indigenous organisations or representatives to participate in the decision-making process of the IWC — except for being granted the right to speak either as a member of a delegation or as an observer — it is highly unlikely that the IPBES report has any influence on the next meeting of the IWC. Also the adoption of the 2009 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) or the 2018 UN Declaration on the Rights of Peasants and Other People

Working in Rural Areas (UNDROP), and not even an invited expert on indigenous rights for IWC66 in 2016 have had any impact on the decision-making processes and outcomes in the commission (see Sellheim, 2018).

The situation is similar, yet somewhat different in CITES. CITES has for quite some time aimed to recognise and consider IPLCs through different working groups, for example the CITES working group on livelihoods. These working groups, however, have not consistently been in existence and have been struggling with financial problems for quite some time. At COP18 in 2019, several African states aimed to establish a new Rural Communities Committee with its own decision-making powers — also in reference aforementioned UNDRIP and UNDROP. This proposal was rejected by a vast majority of CITES parties, especially because its legal status and thereby its 'weight' within CITES could not be determined and it could not be determined who the term 'rural' actually refers to.

At COP19, which will take place in Panama in November 2022, several agenda items reflect the interest of some CITES parties to not let this issue go, however. For instance, under agenda item 87.1, amendments to Resolution Conf. 9.24 (Rev. CoP17) will be discussed. While this may sound rather technical, it is extremely important in so far as the resolution sets biological and trade criteria for the amendments of the CITES Appendices. The proposed amendments to the resolution — tabled by Botswana, Cambodia, Eswatini, Namibia and Zimbabwe — aim to also take livelihood and food security criteria into account and therefore to closely consult with those affected by any appendix-listing of a species prior to this species' inclusion in the Appendices. The recent IPBES report provides ever more argumentative food for states supporting these amendments, making it argumentatively difficult to have the proposal rejected.

Conclusion

The recent IPBES report is yet another document which outlines the urgent necessity to make IPLCs part and parcel of decision-making processes that aim at environmental protection and species conservation. While it is not, as such, a document that provides a detailed roadmap as to *how* precisely IPLCs are to be included in these processes, it is now up to the different institutions and organisations to pay due regard to IPBES' findings in order for effective biodiversity conservation to be achieved.

The examples from the IWC and CITES show, however, that this may not necessarily be the case, either because a body may not have any mechanisms for effective participation in place or because a body is not committed to include IPLCs in the decision-making processes. Either way, one can assume that over time decision-making structures will change in so far as a gradual realisation may take hold that without IPLCs effective conservation can never be achieved. In any case, the more documents, studies and assessments from different bodies and institutions come to the same conclusion, also the most reluctant organisations will have to follow suit eventually. If not, they will not be able to keep up with the *zeitgeist* of effective biodiversity conservation and at some point disappear into oblivion.

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VIDEO REVIEW

‘Die Recyclinglüge’ (‘The recycling-lie’)

— by Dr Nikolas Sellheim

In June 2022, Germany’s first public television channel, *ARD*, released a documentary with the rather lurid title “Die Recyclinglüge”, the recycling lie. The 75-minute documentary breaks with the commonly-held assumption that separating garbage into plastic, bio-waste, paper, or residual waste might alleviate the plastic and other waste problems the world faces. In a small review such as the present one it is not possible to go into every detail, but given the global implications of the process of recycling, we consider it necessary to provide some insight into the content of the documentary, as well as some fact-checking.

Already the opening sentence of the documentary frames the narrative of the documentary: “The world drowns in plastic.” Accompanied by images of tons of plastic waste, it becomes unmistakably clear that this documentary takes a global approach to plastic pollution. After one year of investigative research, the main purpose of this documentary is to expose what large corporations do with their plastic waste, how sub-contractors deceive the public and criminal networks trade with plastic waste.

In the centre of attention stands the concept of a circular economy, which is to enable the reuse of plastics. The film immediately shows how large corporations produce plastic packaging that ends up in the mangrove forests of Indonesia. One of the first claims of the film, brought forth by former industry advisor and founder of the NGO *The Last Beach Cleanup*, Jan Dell, is that even though in the laboratory everything can be reused, large corporations are not interested in earnest in reusing their own plastic due to the exorbitant costs associated with such reuse. In the early 1990s, the German government realised that plastic pollution is becoming an ever-increasing problem. Therefore, ‘Der Grüne Punkt’ — the ‘Green dot’ — was introduced, which indicated that the

Screenshot from Die Recyclinglüge.

industry that produced plastic also had to pay for its recycling. After 30 years, an entire billion-Euros worth recycling industry has developed.

'Der Grüne Punkt' *label, indicating that the plastic product is to enter the circular economy after use.*

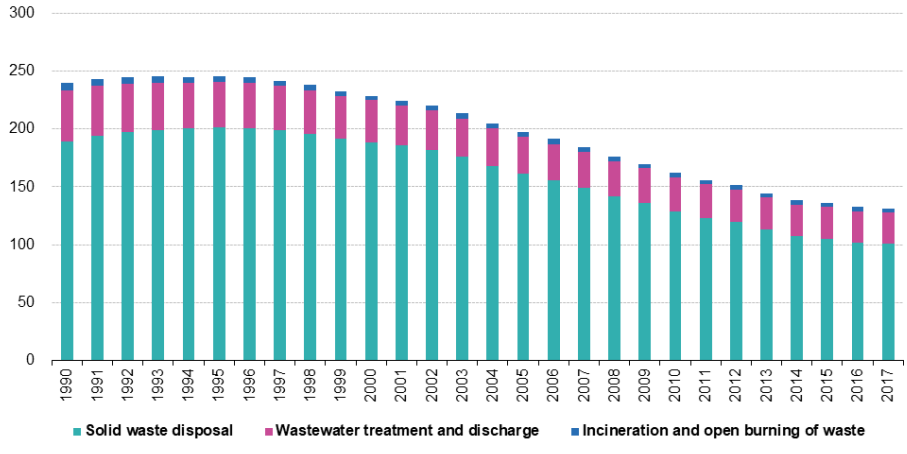
The documentary shows such recycling plant in Germany, which appears to produce well-sorted plastics, ready to be reused. However, according the film, merely 5% of recycled plastics are in fact used again, especially for shampoos and laundry detergent. Foodstuffs cannot be packed in such recycled plastics due to its remaining impurity. Indeed, the European Food Safety Authority (EFSA) released a Scientific Opinion on this issue in 2015 (EFSA, 2015) in which it underlines the complexities of the safety of plastic reuse. Also the European Union's legal framework is very clear concerning this issue, even though it does not reject recycled plastics as food packaging when certain standards are met (see EU, 2004).

As a result, the oil and chemistry industries have discovered plastic production as a major element for generating profit. All in all, the documentary claims, more than 400 million tons of new plastic are being produced every year with a growing tendency, estimated to be worth more than 400 billion dollars. It is estimated that more than 20% of all oil production will flow into the production of plastics in the near future. The UN Environment Programme (UNEP) confirms some of these numbers and notes also that worldwide less than 10% of plastics are being recycled (UNEP, 2021).

While some of the plastics are used to be 'down-cycled', i.e. they are used for products of even lesser quality, such as railway ties, the film shows that most of the plastic ends up as being used for 'energetic recycling': a paraphrase for burning, for instance in concrete factories. In Germany alone, plastic waste amounts to 70% of burning fuel for concrete production (see also Andert, 2021). This makes the concrete industry one of the main emitters of greenhouse gases worldwide. Also the incineration of waste in unique waste incineration facilities, such as Amager Bakke in Copenhagen, creates significant amounts of greenhouse gases. The documentary notes that at present, waste incineration in Europe creates 52 million tons of CO_2 each year, implying that this number grows. The European Environment Agency has found, however, that greenhouse gas emissions from waste have fallen by 42% between 1995—2017 (Eurostat, 2020a).

Even though waste incineration is comparably cheap, shipping waste to other countries is even cheaper. Until 2018, industrial nations shipped

Greenhouse gas emissions of waste management, EU-28, 1990-2017
(million tonnes of CO_2 equivalent)



Source: EEA, republished by Eurostat (online data code: env_air_gge)

eurostat

their plastic waste to China until the country decided to no longer import waste. The US and European states quickly found alternatives and entered into contracts with importers from other Asian nations, first and foremost Malaysia, the Philippines, Thailand, Cambodia and Indonesia. Yet, these governments also started to limit import, which led to Turkey become the main importer for European waste.

Here, the documentary shows how Turkish customs open containers of illegally imported waste, also from Germany. The equation is put up that the more legally exported waste is limited, the more smuggling of waste increases. While we cannot confirm this claim, Eurostat has found that between 2004—2019 European waste exports to Turkey have increased threefold to 11.4 million tonnes. This indeed makes Turkey the biggest importer of European waste (Eurostat, 2020b). As the documentary shows and *Politico* confirms, much of this imported waste is incinerated or

TerraCycle *logo and label.*

processed (dumped) illegally (Uğurtaş, 2020).

This leads the documentary to waste trafficking. In an interview, Ernesto Bianchi of the European Anti-Fraud Office (OLAF) of the European Commission, states that waste trafficking is worth between 11–12 billion US dollars worldwide, resembling revenues from human trafficking. Due to differences in legislation, language and communication, detection and investigation is, according to Bianchi, extremely difficult.

In order to determine the degree to which illegal trade in waste is happening, the journalists decide to go undercover and launch a fake company, aiming to export waste to Turkey. Relying on a conversation with a Turkish trader, reproduced from memory, it is shown how low-quality mixed plastics are hidden behind high quality plastics to deceive customs in Turkey. Since the Turkish government also increased its rules, the fake company was not able to export its waste to Turkey. Instead, a new contact enabled the fake company's representative to meet with a contact of the "waste mafia" in Bulgaria who confirmed that imports are possible — even of low-quality plastics. By bribing the authorities, the importer remarks, imports of German waste can be made possible.

The Bulgarian importer explains that the imported waste that cannot be recycled will be used as fuel for the Bulgarian cement industry. When he shows the secretly filming journalists his recycling plant it becomes rather apparent that there has not been any recycling going on for quite some time, but rather that the plastic cubes are sorted based on former content (such as cat food or chips), seemingly on their way directly into the furnace. This leads the team to a company called *TerraCycle (*https://www.terracycle.com/en-GB/*)* from the United States with dependencies in Germany and the UK. According to the documentary, *TerraCycle* has found ways and means to reuse hardly reusable plastics, such as from chips bags, turn them into pellets and create new products out of these. The strictly sorted plastics are collected by volunteers who then deliver them to *TerraCycle.*

One such volunteer can be found in the UK who is presented with her own collected materials for recycling that the team of journalists recovered in Bulgaria. In an interview, the CEO of *TerraCycle*, Tom Szaky, is presented with photo evidence from Bulgaria. Even though he promises to investigate this issue, he ends the interview. Towards the end of the documentary, aforementioned Jan Dell enters the scene again. She discovered that many non-recyclable plastic products wear the *TerraCycle* label, implying that they can be reused. She tells the journalists that when she wanted to become a

volunteer to collect chips bags, she was put on a waiting list and nothing happened thereafter. She explains this by saying that *TerraCycle* is not interested in paying for *all* waste, but merely for a small percentage. On the other hand, companies that cooperate with *TerraCycle* still have the label on their products, irrespective of whether the respective plastic can be reused or not. This 'greenwashing' enables them to avoid developing new technologies for the development of new plastics and materials.

The end of the film shifts to Indonesia again. The narrator states that in developing countries no such companies like *TerraCycle* or labels such as the Green dot — and sometimes not even proper waste management — exist. Instead, large companies put their products in non-recyclable plastics, which end up in the rivers and the seas or which are burned under the open skies. However, since the markets of Asia are consistently growing and become more and more lucrative, large corporations do not want to give up on them. Instead, they say, all Asia needs is a recycling system based on Western examples. To achieve this, the *Alliance to End Plastic Waste (*https://endplasticwaste.org/en/about*)* was founded, comprising of large corporations from the plastic sector. The *Alliance* vowed to invest 1.5 billion US dollars within five years to tackle the plastic problem in Asia and to establish a recycling system.

Research by Reuters journalist Joe Brock has shown, however, that the promises of the *Alliance* were not implemented. For instance, Brock explains in an interview, the promise to free the Ganges from plastic resulted in the plastic collectors becoming unemployed since they were simply forgotten by the *Alliance* (see also Brock, Geddie & Sharma, 2021). In an interview with Nicholas Kolesch, Vice-President of Projects of the *Alliance*, the journalists aimed to challenge the *Alliance's* mission by asking how increased plastic production of its members can be aligned with a circular economy. This question was not answered, but instead Kolesch referred to increased plastic production in light of increased wealth and better economic conditions. The film ends by noting that the only way to tackle the problem is a massive reduction of plastic and a self-assessment of how much plastic we really need.

After having watched the documentary twice, the question remains what to do with the information it contains. On the one hand, it is of course necessary to expose the practices of the plastic industry and plastic traders. On the other hand, does this result in simply giving up on separating waste in a normal household? What is missing is a message in this regard, simply because it can be assumed that some recycling is better than none. The systemic problems, also the role politics could play, are not properly addressed and the film is shot through a lens of profit maximisation for a few (international) corporations.

That said, even though documentaries should always approached with caution, some fact checking has shown that the information in this film can be considered correct. Therefore it is imperative that the message contained in it is spread further and that malpractices of corporations and other dubious actors in the waste trade are exposed — not least for politics to respond and to bring violators of laws and regulations to justice.

Theatrical information:

Script and director: Tom Costello, Benedict Wermter

Producer: Tristan Chytroschek

Concept: Carsten Stormer

Narrator: Hansi Jochmann

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RESEARCH NOTE

Global response of conservationists across mass media likely constrained bat persecution due to COVID-19

Introduction

With the COVID-19 pandemic still holding the world in its grip, the exact origins of the SARS-CoV-2 virus, causing the respiratory disease COVID-19 are to a large extent still unresolved. While it is rather certain that the virus originates in the Wuhan region in China, and that a wet market — a market where unprocessed animal products are sold — plays a pivotal role in the first transmission from animal to human, it is still unclear which animal was the first carrier of the virus. The first species that shifted into the focus of attention were pangolins and bats. Several studies seem to underline the hypothesis that due to trade in pangolins and bats at the Wuhan market, the virus found its way into human beings (see e.g. Lam et al. 2020; Zhou et al. 2020). While pangolins were rather quickly ruled out as being the immediate host, the view that bats constitute the originator species still remains (Voskarides, 2022). This, even though it was demonstrated that neither pangolins nor bats were sold at the Wuhan wet market before the outbreak of the pandemic (Xiao et al., 2021).

Irrespective of the factual origins and the host species that was responsible for the transmission of the virus from animals to humans, it became clear

rather quickly that bats would suffer a tremendous reputational loss. And it is this loss, paired with its effects on conservation efforts that a new article entitled "Global response of conservationists across mass media likely constrained bat persecution due to COVID-19" (Nanni et al., 2022) published in *Biological Conservation* deals with.

Article summary

(written by Veronica Nanni)

The mass media represent one of principal news sources for the public. In the internet era, reading news on the web has become usual in people's daily lives and the information delivered by the media has gained the capacity to reach a global audience within a very short period of time. For those reasons, the way the online reports are framed by the media may substantially shape the public's risk perception, promoting or discouraging tolerance towards wildlife.

At the early stage of the COVID-19 pandemic, bats were suggested as the most plausible reservoir of the virus, and this became a frequent topic in news reports, potentially strengthening a negative view of this ecologically important taxa. We studied how media framed bats and bat-associated diseases before and during the COVID-19 pandemic by assessing the content of 2651 online news reports published across 26 countries in 7 languages, to understand how quickly a biased negative representation of bats by global press may undermine conservation efforts.

The COVID-19 outbreak generated global media attention on bats as disease reservoirs. Our results show that the overabundance of poorly contextualised news reports on bat-associated diseases increased the persecution toward bats at the onset of the COVID-19 pandemic. However, the subsequent interventions of conservationists allowed positive messages on bats to resonate across global media, likely preventing an increase in bat persecution.

Our work highlights the modus operandi of global media concerning attractive biodiversity topics, which has broad implications in species conservation. Knowing how the media acts is fundamental for anticipating the spread of (mis)information and negative feelings towards wildlife. Collaborating with journalists by exchanging experiences and engaging in dialogue should be central in future conservation programs.

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ARTICLE

The UN Declaration on the Rights of Peasants: An overview

(*Disclaimer: This article was originally published in German as 'Die UN Erklärung über die Rechte von Kleinbauern: Eine Übersicht' in* Natur & Recht *44 (2022), pp. 528—54*)

Introduction

The right to food has been a long-standing issue within the context of international human rights and humanitarian law. It is, for example, enshrined in article 25 of the Universal Declaration on Human Rights (UDHR) (United Nations, 1948), in article 11 of the International Covenant on Economic, Social and Cultural Rights (ICCPR) (United Nations, 1966), in articles 20 and 23 of the Refugee Convention (United Nations, 1951) or in article 12.2. of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (United Nations, 1979). While the right finds application in a large number of human rights instruments, the number of people suffering from undernourishment has been continuously on the rise, reaching a peak in the wake of the global economic crisis of more than 1 billion in 2009. Even though with the stabilisation of the economy the number has once again decreased, in 2018 the estimated number of people suffering from hunger is more than 800 million (FAO, 2018).

With this prospect, the Human Rights Council (HRC) has made the right to food one of its elementary areas of work. To this end, the Human Rights Council Advisory Committee (AC) was established as a "think-tank for the Council and work at its direction" and "is to provide expertise to the Council in the manner and form requested by the Council, focusing mainly on studies and research-based advice" (HRC, 2007, paras. 65 and 74). In March 2008, the AC was mandated to "consider potential recommendations [...] on possible further measures to enhance the realization of the right to food" (HRC, 2008, para. 34).

The mandate to make recommendations to the HRC that would enhance the realisation of the right to food marked the starting point for the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), which was adopted by the UN General Assembly (UNGA) on 17 December 2018. This paper traces the history of the UNDROP and analyses the key rights enshrined in it.

The Process towards UNDROP

The Human Rights Council

Upon the recommendations of the AC that were presented as Recommendation AC rec. 2/7, which is publicly not accessible, the HRC further advanced the mandate of the AC in 2009 and requested it to conduct a study on discrimination within the context of the right to food (HRC, 2009, para. 36). The urgency and the need to implement measures that tackle the global problem of hunger is vocally expressed in Resolution 10/12 and the HRC thus considers hunger an "outrage and a violation of human dignity" and the large number of children dying from hunger "intolerable" (Ibid., paras. 1 and 3). In this light, the work of the AC appears ever more urgent and the eradication of hunger ever more a key element of the HRC's work. Notably, in its new mandate the AC was to combine two elementary rights in its study, namely the right to food and the right to non-discrimination. The interlinkage of these two fundamental rights already points towards the diversity that shape the nature of the right to food – and issue that will find reflection in the draft of the UNDROP.

The preliminary report of the AC was presented

to the Council at its 13th session in February 2010 (HRC, 2010a). The report stresses the multitude of interacting elements that push hunger and malnutrition. Keys stakeholder are peasants and other small-scale farmers and workers. Peasants are disproportionately affected by power structures of the international markets for agricultural end-products and the markets for products to conduct agriculture in the first place. The report highlights the dominance of multinational corporations in the markets for genetically modified seeds, which peasants and small-scale farmers have difficulties accessing both as consumers and providers. This, in turn, leads to lower income *vis-à-vis* large farms and ultimately to aggravated access to adequate food. Moreover, access to market is significantly more difficult for peasants and small-scale farmers in countries which are not members of the Organization for Economic Co-operation and Development (OECD). Even though technically economic, it is these circumstances that translate into discrimination and lack of access to adequate food.

Another major finding of the preliminary report is that it is particularly women that suffer discrimination and thus inadequate access to food. Even though women grow and cultivate more than 50% of the world's food, 70% of the world's hungry are women. The reason for this disparity lies in their low access to land and the oftentimes customary inheritance laws, which are dominated by men (UNECA, 2017, pp. 3–4). Additionally, women face significant disadvantages in their ability to access education and health care, making them increasingly susceptible to the effects of malnutrition. The AC thus concludes that "[d]iscrimination against women in the context of the right to adequate food is a culmination of all other aspects of discrimination that stifle women's rights to equality and empowerment" (HRC, 2010a, para. 34).

In addition to peasants and farmers, other groups particularly affected by hunger the report identifies to be children, refugees, indigenous peoples and minorities. Broadly summarised, children suffer directly from malnutrition and lack of access to healthcare paired with still ongoing practices of child labour. Refugees, on the other hand, either flee from hunger and/or suffer from malnutrition in refugee camps. Indigenous peoples and minorities suffer from hunger largely due to unequal power relations and, in case of the former, insufficient access to their traditional lands (ibid., paras. 35—34).

Upon the presentation of the study to the Council in its 13th session, the HRC invited nation states, UN agencies, international organisations and non-governmental organisations to comment on the report. Furthermore, in light of the preliminary report, the Council requested the AC to conduct a study on means to "further advance the rights of people working in rural areas, including women" (HRC, 2010b). Along with the final report on discrimination (HRC, 2011a), the AC presented its preliminary report at the 16th session of the HRC in 2011. Even though the trajectory of the final report remains the same as that of its preliminary version, an important change is the notable scarcity of the term 'peasant'. Instead, the term 'people working in rural areas' essentially replaces the former. Notwithstanding, the report concludes that "people most vulnerable to hunger and malnutrition include people working in rural areas, the urban poor, women, children, refugees, indigenous people, disabled people, the elderly and other minorities. Most of these people are hungry because they suffer from many forms of discrimination" (ibid., para. 85).

In the preliminary study on the advancement of the rights of 'peasants and other people working in rural areas' (henceforth abbreviated as 'POPRA') (HRC, 2011b) which was also presented to the HRC at its 16th session, four groups were identified that suffer the most from malnutrition and hunger: smallholder farmers, tenant farmers, people living from traditional hunting, fishing and herding, and peasant women. While summarising the findings of the study on discrimination, the report notes that POPRA do not enjoy special protection under international law, but are subject

to common human rights instruments, particularly ICCPR and ICESCR as well as CEDAW and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). Even though a framework for their protection exists, the report laments that there is a significant deficit concerning its implementation. In order to advance the rights of POPRA, international norms should be better implemented, gaps in the international human rights regime should be identified, and the process to develop a legal instrument for the protection of POPRA be initiated. Particularly the latter is of relevance to fill the gap of legal recognition of workers that are, such as POPRA, in informal employment sectors and thus not protected by the instruments concluded under the International Labour Organization (ILO) (ibid., pp. 18—20).

In the same session, the HRC further expanded the AC's mandate in a threefold manner by requesting it to investigate (1) the urban poor and their right to food; (2) rural women and the right to food; and (3) the relationship between severe malnutrition and childhood diseases (HRC, 2011c, para. 43). For the purposes of this paper, we neglect (1) and merely take into account the other two points. At the 19th session of the HRC in February 2012, a concept note (HRC, 2012a) on the preliminary study on rural women and the right to food was presented, outlining the focus of the study, the final version of which was presented at the 22nd meeting in February 2013 (see below). Moreover, the final study on the advancement of the rights of POPRA was presented and taken note of (HRC, 2012b).

While substantively there are no significant differences to its preliminary version, its Annex now contained a draft declaration on the rights of peasants and other people working in rural areas. The AC concludes in the report that in order to better protect and promote the rights of POPRA it considers the adoption of a new legal instrument "the best way to further advance the protection of the rights of peasants and other people working in rural areas" (ibid., para. 72). The declaration in the annex which followed the structure of the UNDRIP, could therefore serve as a model for such instrument.

Concerning the link between malnutrition and childhood diseases, the study conducted by the AC established that it is particularly rural areas and associated issues resulting from discriminatory policies and practices that cause malnutrition and childhood diseases (HRC, 2012c). In both cases, therefore, the link between rural communities, malnutrition, discrimination and disease constituted the underlying narrative.

Finally, at the 22nd meeting, the final report on rural women and the right to food (HRC, 2012d) was taken note of. The report itself mirrors the findings of the study on discrimination from 2010. However, the report concludes that

> [t]he primary consideration for increasing the protection of women through strategies and policies which promote de jure and de facto equality is of a legal nature, flowing from states' human rights obligations under international law. There is a legal imperative to treat rural women as equal to rural men, to women and men in general (ibid., para. 74).

La Via Campesina

The process to initiate the work on a Declaration on the Rights of Peasants was not a process that found its motivation within policy-making circles. Instead, it was organisations from the civil society that triggered the process within the United Nations, first and foremost the international peasants movement La Via Campesina (LVC), representing around 200 million farmers and peasants worldwide.

Especially LVC has lobbied for increasing peasant's rights for almost three decades. Arising as an organisation representing farmers from South and Central America and Europe in the early 1990s, LVC has struggled against the corporatisation of the agricultural sector. Particularly the role of the World Trade

Organization (WTO) and the liberalisation of trade in the agricultural sector, paired with the strengthening of food sovereignty, has been the main focus of LVC during that time. While food sovereignty stood at the fore of LVC's activities, this mainly followed the predominant discourse on the right of each nation to produce and consume its own food. Yet with a changing paradigm, LVC's activities relating to food sovereignty had overcome nation-state discourses in the early 2000s and had started to develop rights-based arguments connected to the rights of farmers, land rights, cultural rights and protection of local knowledge. By using already existing human rights mechanisms, this cause was advanced while a discourse that challenges western-dominated individualistic approaches to human rights by exclusively focusing on collective rights has developed (Claeys, 2013).

Over time, food sovereignty was replaced therefore by an overarching focus on the rights of peasants and farmers in general. From 2002 onwards, LVC called for a global convention on peasant rights and has ever since voiced its concerns at the meetings of the Human Rights Council meetings (La Via Campesina, 2004). Five key demands stood at the fore of LVC's campaign: 1. the fair distribution of income, access for the poor to land and natural resources; 2. The adoption of the proposal on food sovereignty for the eradication of hunger; 3. The development of programmes by international and state entities for the recuperation of healthy seeds, the revitalisation of farmland, the protection of water, and the use of organic fertilisers to revive agricultural production. 4. The exertion of pressure on governments and other actors which violate peasant rights; and 5. The removal of the WTO from agriculture (Ibid.). At the Regional Conference on the Rights of Peasants, which was held in Jakarta, Indonesia, in 2002, a first draft on a Declaration on the Rights of Peasants was presented. The work on this declaration continued in several workshops and meetings throughout the 2000s. The demands by LVC were further elaborated upon at the 2008 Conference on Peasants' Rights in Jakarta, where the conference's final declaration highlighted the key struggles peasants are facing: expulsion from lands and removal from sources of livelihoods; land grab and destruction of harvest; insufficient income to live in dignity; loss of seeds and agricultural knowledge; marginalisation, particularly of women peasants; and violent oppression (La Via Campesina, 2008). At the International Coordinating Committee meeting in Seoul, March 2009, LVC finally adopted the Declaration on the Rights of Peasants – Women and Men (henceforth referred to as LVC Declaration) (La Via Campesina, 2009).

The document makes unmistakably clear that the causes for the plights of peasants are rooted in the liberalisation of the agricultural markets, fostered by the WTO, free trade agreements, governments and international organisations, which prevent national governments from "protecting and supporting their domestic agriculture," (Ibid., no pagination) as the explanatory paragraphs stipulate. Indeed, it is the "capitalist logic of accumulation [which] has dismantled peasant agriculture" (Ibid.).

The LVC Declaration lays out fundamental rights of peasants, including "women and men" in parentheses, and is considered "an essential step forward [for] the recognition, promotion and protection of the rights and freedoms of peasants, including the elaboration and adoption of an International Convention on the Rights of Peasants" (Ibid., Preamble). In 13 articles, the first of which defines the subjects,[1] the declaration frames the following rights and freedoms:

- Rights of peasants, broadly defining the peasants (women and men) have equal rights and fundamental freedoms and are to be free

[1] [M]an or woman of the land, who has a direct and special relationship with the land and nature through the production of food and/or other agricultural products. […] [A]ny person engaged in agriculture, cattle-raising, pastoralism, handicrafts-related to agriculture or a related occupation in a rural area. This includes Indigenous people working on the land. […]

from discrimination (article II);

- Right to life and to an adequate standard of living, including women's rights to their own bodies, protection from trafficking, freedom to determine the number of children and contraception methods, or education (article III);
- Right to land and territory, collectively or individually, including right to water, technology, and management and conservation (article IV);
- Right to seeds and traditional agricultural knowledge and practice, including the right
- to reject varieties of plants they consider to be dangerous economically, ecologically and culturally, and food security (article V);
- Right to means of agricultural production, including the right to access to credit for there agricultural activity, and to be actively involved in planning, formulating and deciding on the budged for national and local agriculture (article VI);
- Right to information and agriculture technology (article VII);
- Freedom to determine price and market for agricultural production, including the right to develop community-based commercialisation systems in order to guarantee food security (article VIII);
- Right to the protection of agriculture values, including the right to knowledge and rejection of interventions that can impact agricultural values (article IX);
- Right to biological diversity, including the right to reject patents, to reject intellectual property rights, and to reject certification mechanisms established by transnational corporations (article X);
- Right to preserve the environment, including the right to preserve the environment based on their knowledge, to reject all forms of exploitation which causes environmental damage, and reparation for ecological debt and the historic and current dispossession of territories (article XI);
- Freedoms of association, opinion and expression, including the right to form and join independent peasant organisations, trade unions or cooperatives, to resist oppression and to resort to peaceful direct action to protect their rights (article XII);
- Right to access to justice, including the right not to be criminalised for claims and struggles (article XIII);

The LVC Declaration contains rather bold rights along with fundamental human rights. Apart from the basic rights associated with right to life, access to justice, or freedom of expression, it furthermore stipulates (1) women's rights, (2) the right to seeds, and (3) the right to resist. The rights in the LVC relating to women, on the one hand, mirror rights enshrined in the CEDAW, particularly concerning equity and education. On the other, they go significantly beyond these and aim to empower women to control their own bodies, which can be interpreted as a 'pro-choice' provision, and the number of children they wish to have. Also the right to choice in contraception methods can be considered revolutionary, particularly bearing in mind the role of preservative-opposition in many developing countries.

The right to seeds, a newly developed right, particularly in light of genetic engineering of seeds and associated patents, which hinder farmers from using these seeds unless they are in an agreement to do so with the patent holder. This right is thus a manifestation of the anti-corporate spirit of the LVC Declaration as it aims to significantly weaken prevailing intellectual property rights and the rights of patent holders. Yet, the importance of this right becomes ever more prevalent in the context of the agriculture giant Monsanto, which has been engaged in numerous lawsuits, both as defendant and plaintiff, until it was taken over and

renamed by Bayer in 2018 (Vidal, 2018).

Lastly, the right to resist is a right, which does not find reflection as such in the international human rights documents. While the freedom of opinion and expression are well established, the right to resist relies on a specific understanding of justice (or injustice), which legitimises the right to make use of direct action – albeit non-violent. Interestingly, this approach is often used by the environmental movement, such as Greenpeace (O'Neil, 2014) or Friends of the Earth (Friends of the Earth, Undated), to justify action to further their cause. As a human right, this has, to the knowledge of the author, not surfaced thus far. Also concerning the rights of indigenous peoples, the right to resist may be perceived as a normative right, such as in the case of the Dakota Access pipeline protests in 2016 (Skalick & Davey, 2016), but it has yet to be found as a verbalised right in an international document. Instead, the right to resist is framed as an obligation to resist that makes reference to specific rights, such as the right to land.

In light of these rather revolutionary new rights, which are themselves difficult to imagine implemented on a global scale, the Human Rights Council praised the LVC Declaration as an "important example of an anti-discriminatory strategy that could improve the protection of the right to food" (HRC, 2011d, para.54).

The setting of norms by La Via Campesina as regards peasant rights and their continuous presence at meetings of the Human Rights Council and the General Assembly have in the end paid off. The adoption of the Declaration on the Rights of Peasants marks an important stepping stone towards the protection of peasants and farmers, particularly in light of corporate dominance in the agricultural sector.

The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP)

The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) (United Nations, 2018) was adopted on 17 December 2018 with 121 countries voting in favour and 8 against. 54 countries abstained while 10 did not participate in the vote. The adoption of the declaration, which this author considers a rather important step towards the normative recognition of women's and local rights, in combination with environmental and fundamental human rights, found surprisingly little media attention. Merely upon targeted search on the internet some news outlets with reference to the UNDROP can be found. Be this as it may, developing economies constitute the group of countries with the highest approval rating. Also the Arabic states have supported the UNDROP. Most European states abstained from the vote while Sweden, Hungary and the UK — at that time still being an EU Member — as the only EU Member States, opposed it. This is rather surprising particularly given that the agricultural sector of Sweden constitutes a rather large part of the Swedish economy. Other states in opposition to the Declaration were Australia, Guatemala, Israel, New Zealand, United Kingdom, United States. In fact, Australia, New Zealand and the US also belonged to those states opposing the UNDRIP in 2007, even though over time they have formally endorsed it (Sellheim, 2019). For reasons not ascertainable, the 10 states not participating in the vote were Burkina Faso, China, Equatorial Guinea, Eswatini, Marshall Islands, Micronesia (Federated States of), Nauru, Paraguay, Tonga and Turkmenistan.

The Rights and Freedoms in the UNDROP

The UN Declaration on the Rights of Peasants is a comprehensive document that links fundamental human rights, the rights of women and children, labour rights, and environmental rights in 28

articles. Compared to the LVC Declaration, the UNDROP is, first, significantly more extensive, and, second, significantly less radical, particularly as regards women's rights and the right to resist even though they have not fully disappeared from the text of the declaration. However, the right to seeds is still a core right, as we will see below.

The Preamble

The UNDROP's Preamble consists of 32 paragraphs, both outlining the general (normative) setting in which the Declaration is to be located and more precise problems that gave rise to it in the first place. In this sense, paragraphs 1–5 outline the overall human and labour rights setting. On the one hand, concrete human rights instruments are named (UHDR; International Convention on the Elimination of All Forms of Racial Discrimination; ICCPR; ICESCR; CEDAW; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Declaration on the Right to Development; and UNDRIP) that provide for the overall trajectory of the Declaration. On the other, also labour and other rights are cited, albeit merely in a general manner: Preambular paragraph 2 refers to the "relevant conventions of the International Labour Organization and other relevant international instruments that have been adopted at the universal or regional level." Which conventions and other instruments are referred to remains in the dark. Notably, reference to ILO Convention 169 on Tribal and Indigenous Peoples (ILO, 1989) is absent.

In the sixth preambular paragraph, the Declaration provides for a normative justification, namely the "special relationship and interaction" of POPRAs with the "land, water and nature" on which they depend for their livelihoods. The implicit reference to a cultural dimension of this special relationship is picked up on in the 16th paragraph, where the term "Mother Earth" is introduced as a term that "nature" is also referred to. Where and by whom this term is used as well as an explanatory sentence on why the insertion of 'Mother Earth' is relevant is not elaborated upon. Merely in paragraph 25 the respect towards the "diversity of cultures" could point towards differences in perceiving the commodities of nature and the cultural role it plays in the interaction of humans with the environment. This paragraph itself echoes the objectives of the Convention for the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005), stipulated in its article 1, yet without directly referencing it.

Paragraph 7 stipulates, in rather broad and imprecise terms, the rights to development, biodiversity and food. In this context, reference to the Convention on Biological Diversity (CBD) (United Nations, 1992) and its protocols would appear justified. Instead, these references, along with the "extensive body of conventions and recommendations" of the ILO, other treaties and guidelines, and the work by other international organisations on food security, such as the Food and Agriculture Organization (FAO), are referenced in paragraphs 26—29, thus towards the end of the Preamble. While a direct link with the respective paragraph would appear reasonable, the placing of the legal and organisational references at the beginning and the end of the Preamble highlights that the rights and problems the Declaration addresses are well-embedded in an international framework. Therefore, the 'weight' of these references increases.

Paragraphs 8—11 outline the problems that provide the *raison d'être* of the Declaration. First, POPRA are disproportionally affected by malnutrition and hunger; second, environmental degradation and climate change affect them significantly; third, an ageing and out-migrating peasant population caused by hardships on the land provide heavy burdens for rural populations; fourth, forcible evictions and displacement; and fifth, a high rate of suicide (Nuñez, 2014). Within these, more concrete problems are identified in paragraphs 12—16. Most notably, they note that peasant women and children suffer significantly

more from problems associated with discrimination and lack of access to educational, health and social services and from environmental degradation. Moreover, it is emphasised that it is particularly "small-scale fishers and fish workers, pastoralists, foresters and other local communities" that face difficulties to make their voices heard and to defend their human rights and access to resources. Further, the need for initiatives to bolster rural development and the need for efforts to bolster agricultural production are explicitly emphasised in paragraph 15 and 16.

Directly tangible problems are addressed in paragraphs 17 and 18, such as exploitative conditions, insufficient wages and lack of social protection, intimidation and violence, while paragraph 19 addresses the structural problem of lack of access to courts, police and other means to rectify these problems. Paragraph 20 refers to the structural problem of food product speculation and associated problems relating to the distribution of foodstuffs — a core issue in the work of La Via Campesina in its Declaration, outlined above.

Paragraphs 21—23 reaffirm the right to development, to sovereignty over natural resources, and to food sovereignty. In the following paragraph, the responsibilities of the individual to promote and observe the rights of the Declaration and in national law. This responsibility is derived from the setting in which the individual operates, namely in relation to other individuals and the community in which she or he lives. This paragraph echoes the core provisions of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (OHCHR, 1998), particularly its last preambular paragraph, which reads: "Recognizing the right and the responsibility of individuals, groups and associations to promote respect for and foster knowledge of human rights and fundamental freedoms at the national and international levels." The UNDROP does not make direct reference to this declaration, however.

The last three paragraphs (30—32) of the Preamble outline the wider goals the Declaration is to achieve: the mutual support of the UNDROP and other instruments to strengthen human rights; increased commitment of the international community to advance human rights and to foster cooperation and solidarity; and a coherent interpretation and application of international human rights norms and standards.

General rights and obligations (Articles 1—3)

28 articles constitute the operative part of the UNDROP. The majority of the provisions is formulated in an imperative manner ('shall') and puts obligations on states to protect peasant rights. A clear-cut objective or aim of the Declaration is absent. Yet, a noteworthy characteristic of the UNDROP, compared, for instance, with the UNDRIP, is the high degree of precision in its articles. Even though the articles themselves do not contain headings, they are clearly addressing specific issues and delimitable rights of the UNDROP's subjects and obligations of states.

Article 1 provides for the scope of the Declaration by defining the term 'peasant' for its purposes. The definition by and large corresponds to that provided in the LVC Declaration: a peasant engages in small-scale agricultural production for subsistence and/or for the market, and relies largely on family and household labour as well as other non-monetised labour. Moreover, a peasant is dependent and specially attached to the land. To this end, the Declaration "applies to any person engaged in artisanal or small-scale agriculture, crop planting, livestock raising, pastoralism, fishing, forestry, hunting or gathering, and handicrafts related to agriculture" (Article 1.2), including dependents of peasants. Even though rather precise, it remains unclear where small-scale agriculture ends and large-scale agriculture starts and which parameters are used to determine these limits. Notwithstanding, the subjects are also indigenous peoples and local communities that work on the land, are transhumant, nomadic or

semi-nomadic as well as those that are landless, but who engage in the activities outlined in the article. Lastly, the Declaration also applies to hired workers, which includes migrant workers independent from their migration status, as well as seasonal workers. In other words, also refugees are protected by the Declaration. Since the 1951 Convention Relating to the Status of Refugees differentiates between refugees with a nationality and those that are stateless, the UNDROP breaks with this dual approach and places them equally under protection provided they are engaged in the activities outlined above. Normatively, the UNDROP could therefore also be placed in contexts of humanitarian law even though the Preamble does not point towards an inclusion of migration-related issues. Notwithstanding, article 1 consequently provides important insights into the multiple groups of marginalised people(s) that are subjects of the Declaration.

Article 2 outlines the general obligations of states, which are to "promptly take legislative, administrative and other appropriate steps" to realise the rights in the Declaration "that cannot be immediately guaranteed" (Article, 2.1). Even though the language in this provision is kept vague, the terms 'promptly' and 'immediately' imply a sense of urgency, requiring states speed up the wheels of implementation. Given that the UNDROP is a declaration and thus not enforceable, this provision nevertheless provides a good reference point to tackle long-lasting procedural and administrative mechanisms that may provide obstacles to rights implementation. This is particularly the case since the article furthermore requires states to pay particular attention to the needs of the rural population including older persons, women, youth, children and persons with disabilities that are subject to discrimination. Moreover, states are required to consult with POPRA before decisions are being made that affect them and their rights. While not expressed as such, this provision corresponds to the free, prior and informed consent (FPIC), a key right in the UNDRIP. Instead, the UNDROP refers to the "active, free, effective meaningful and informed participation […] in associated decision-making processes" (Article 2.3). The article furthermore reflects the aim of a coherent interpretation of human rights norms as states "shall elaborate, interpret and apply relevant international agreements and standards […] in a manner consistent with their human rights obligations" (Article 2.4). This article also includes a provision that requires states to exert influence over non-state actors to respect and strengthen the rights of POPRA. Here, reference is made to individuals and organisations as well as transnational corporations and businesses. This provision thus corresponds to the call of La Via Campesina for more control and the curb of influence of corporations on rural lands. In addition, states are required to foster cooperation between states and with rural people, provide inclusive and accessible development programmes, ensure capacity-building, foster and make accessible scientific knowledge, and provide technology. As the final provision of this article, states are to provide means that limit foodstuff-related speculation on the markets. This, once again, is a key demand by LVC and others, aiming to reduce the power and impact of multinational corporations on rural communities.

Article 3 outlines general rights of POPRA. Here, the right to the full enjoyment of human rights as enshrined in UDHR and other instruments is referenced, albeit with a special emphasis on the right to be free from discrimination. At the same time, it is stipulated that they also enjoy the right to development while putting an obligation on states to protect POPRA from different kinds of discrimination.

Women's rights (Article 4)

Women's rights constitute a core right enshrined in the UNDROP. As the discourse on the rights of peasants has demonstrated from the beginning, women's rights have been considered an elementary part of the rights of peasants. The Preamble consequently makes reference to the CEDAW and it is thus little surprising to find an article on the rights of women in the UNDROP.

What is remarkable, however, is the, first, the location of the article and, second, the precision with which women's rights are presented. The location of the article following general rights and obligations points towards the normative importance of women's rights in the context of the rights of POPRA. This furthermore indicates that a structural advancement of women's rights on an UN level may be occurring, especially since the UNDRIP does not hold clauses other than general ones relating to women's rights. Since POPRA are to a large degree indigenous (Nuñez, 2014), the UNDROP provides an important reference point to strengthen the rights of indigenous women (Inter-American Commission on Human Rights, 2017). The fact that women's rights occur before other more concrete rights of POPRA is therefore an important indicator for the fundamental role women play in the discourse on the rights of peasants.

The article aims towards the achievement of four overarching goals: (1) the elimination of discrimination against peasant women; (2) empowerment; (3) full enjoyment of all human rights and fundamental freedoms; and (4) free pursuit of, participation in and benefit from political and cultural development. The human rights and fundamental freedoms are listed in 10 alphabetically ordered subparagraphs, including inter alia equal and effective participation in decision-making; highest standards of physical and mental health; benefit from social security programmes; access to training and education; equal access to economic and employment opportunities; access to land and resources; and freedom from violence.

Compared to the LVC Declaration, the provisions set for in the UNDROP are significantly less radical and consequently do not include the right to control their own bodies anymore. However, a provision that would indeed allow for such a right would have been rather unlikely to be accepted by the UN Member States, given the differences in views over matters related to contraception and abortion. This being said, the HRC in its General Comment 36 (HRC, 2018) on article 6 of the ICCPR (Right to Life) has in principle voiced its support for the right to abortion even it walked on thin ice when it noted: "[R]estrictions on the ability of women or girls to seek abortion must not, inter alia, jeopardize their lives, subject them to physical or mental pain or suffering […], discriminate against them or arbitrarily interfere with their privacy" (Ibid., para. 8). The right of women to control their own bodies is therefore rooted in a discourse on their physical and mental wellbeing, which can be interpreted in a multidimensional manner. In this sense, article 4.2. (b), which mirrors the first and second preambular paragraph of the Constitution of the World Health Organisation (WHO) (WHO, 2006), could indeed be interpreted in a manner that makes bodily autonomy inherent to the right to physical and mental health.

In large parts article 4 mirrors the provisions of CEDAW article 14, some are even taken over verbatim. While none of the state parties of CEDAW has objected to article 14, the long list of reservations and objections to specific provisions of the convention show that UN Member States are far from a consensus on women's rights and associated matters of discrimination against women. The UNDROP therefore presents another means to strengthen women's rights on the international level.

Legal, administrative and procedural rights (Articles 5—12)

Article 5 sets out that POPRA have the right to have access to and participate in the management of natural resources in their communities. In order to prevent negative effects of resource exploitation, states are obligated to conduct social and environmental impact assessments, ensure that the communities have been properly consulted, and ensure that modalities are in place that benefit-benefit-sharing occurs. This article thus goes significantly beyond the provisions in the UNDRIP, for example, which, by and large, merely provide for backward-looking provisions by requiring states to redress or compensation for past

environmental or social damage (e.g. UNDRIP, art. 28). Any provision that enables equitable benefit-sharing cannot be found. Merely the right to FPIC "in connection with the development, utilization or exploitation of mineral, water or other resources" (UNDRIP, art. 32.2) could be interpreted in this manner. However, state obligation for social and environmental impact assessments is absent from the UNDRIP, thus making the UNDROP an important tool in this regard.

Article 6 provides for the right to life, liberty and security of person, mirroring the provisions of article 6 of the ICCPR. The important addition, however, is the right to "physical and mental integrity", which can be found in article 6.1. With the Constitution of the WHO as a normative backdrop, this addition can be interpreted in a broad manner, meaning to include issues relating to identity, culture or other non-measurable elements of mental health.

Article 7 stipulates the right of POPRA to be recognised as persons before the law and formulates the state obligation to provide for the freedom of movement in rural areas. Moreover, states are required to cooperate in the light of transboundary tenure issues, which affect POPRA. This clause is particularly relevant in an African context, where population growth and other issues have contributed to long-lasting transboundary land tenure conflicts (FAO, Undated).

The right to freedom of thought, religion and assembly is reflected in article 8, mirroring a right which is enshrined in all major human rights instruments. A scaled-down version of the right to resist can still be found in this article: the right to participate in "peaceful activities against violations of human rights and fundamental freedoms" (Article 8.2). This provision can be interpreted as a normative right to resist human rights violations, yet without explicitly mentioning it. Instead, this right is limited by article 8.3., based on the reputation of others, and in terms of protection of national security, of public order, or of public health or morals. These restrictions, however, cannot be arbitrary and must be rooted in national law. Moreover, they are to be necessary. Two aspects rise to the fore here: first, the protection of public order, health and morals derives from similar clauses in all major human rights instruments as well as from instruments regulating international trade under the WTO. Neither of these terms is defined more clearly and is thus subject to national considerations. This leads to the second element of this provision: the notion of 'necessity'. It is ultimately inherently at the discretion of the government authorities to decide if and what kind of restrictions are to be applied to protect national security, public order, health and morals. By inserting this provision, the drafters thus appear to satisfy both POPRA and states alike.

In article 9 the right to form unions, cooperatives and other organisations that represent POPRA and their interests is enshrined. These organisations are to be free from repression and interference. The second subparagraph is a verbatim reproduction of article 21 ICCPR, enabling the state to put restrictions on the right to form these organisations in order to protect national security, public safety, public order, public health and public morals. Once again, the same argument as above applies to this section. Lastly, the article requires states to provide support and encourage for the formation of organisations. However, the qualifier "appropriate measures" was added to this clause, which therefore leaves it to the nation state to determine the nature of its support.

Following the right to form unions and other organisations, article 10 provides for the right to active participation in the preparation and implementation of policies and programmes affecting POPRA. This participation is to be promoted by the states, who are also to "respect[…] the establishment and growth of strong and independent organizations of [POPRA] and promot[e] their participation in the preparation and implementation of food safety, labour and environmental standards that may

affect them" (Article 10.2). The obligations of the state outlined in article 9 are therefore once again underlined, providing for an interlinked right to participation and state support to form organisations.

Commercial contexts are raised in article 11 where access to information regarding the production, processing, marketing and distribution of goods by POPRA is manifested (Article 11.1). In the second subparagraph, a rather general right to "information relevant, transparent, timely and adequate information in a language and form and through means adequate to their cultural methods so as to promote their empowerment and to ensure their effective participation in decision-making in matters that may affect their lives, land and livelihoods" (Article 11.2). This right does not appear to be exclusive to the commercial context in which it appears in this article, but rather seems to underline the urgent need of the right to participation in different settings. The third subparagraph, however, turns back to the commercial sphere by requiring states to, once again, provide 'appropriate measures' for and impartial and system on a local, national and international level to evaluate and certify POPRA products.

The right to access to justice can be found in article 12. Here, focus is put on effectiveness, non-discrimination and fairness and contains the right to have POPRA customs, traditions, rules and legal systems considered in legal proceedings. In order to achieve this aims, states are obligated to provide for accesses and to resolve disputes, also in the language of the persons concerned. Consequently, states are obliged to provide legal aid and other support that enable POPRA to access judicial services. Moreover, they are obliged to strengthen human rights institutions and to provide for "effective mechanisms for the prevention of and redress for any action that has the aim or effect of violating their human rights" (Article 12.5). As such, the right to access to justice cannot be found in the major human rights instruments. The UDHR merely speaks of the right for an 'effective remedy' "for acts violating the fundamental rights granted him by the constitution or by law" (United Nations, 1948, art. 8) while the ICCPR provides for an 'effective remedy' when the rights in the ICCPR are being violated (ICCPR, art. 2.3.(a)). As Francioni has demonstrated, the right to access to justice has been far from being a universally applicable human right (Francioni, 2007). This being said, in 2012 the UNGA adopted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (United Nations, 2013), which constitutes the first internationally recognised right to legal aid. A similar provision cannot be found in the UNDRIP.

Labour rights (Articles 13 and 14)

Articles 13 and 14 outline rights associated with work and labour conditions. Article 13 provides for the general right to choose work. Already in the second subparagraph, child labour is explicitly forbidden by protecting children of POPRA from any labour that compromises its right to education, health and development. Furthermore, states are required to provide for sufficient work opportunities and for 'appropriate measures' "to establish and promote sustainable food systems" in regions marked by poverty and absence of employment opportunities (Article 13.4). They are also required to monitor compliance with labour laws and to ensure labour inspection. Lastly, the article protects POPRA from forced labour, trafficking and slavery. It is particularly highlighted that the state obligation to protect POPRA from these activities is to include "fishers and fish workers, forest workers, or seasonal or migrant workers" (Article 13.6). It cannot be ascertained why these groups are mentioned separately here, especially since the term peasant as defined in article 1 specifically includes these groups.

In article 14, safe working conditions are guaranteed. To this end, POPRA have the right to a healthy work environment and be involved in the review of safety and health measures. Moreover, they have the right to be free from violence and harassment and have the right to remove

themselves from danger in their work activity without having to fear work-related retaliation. In this context, POPRA furthermore have the right "not to use or be exposed to hazardous substances to toxic chemicals, including agrochemicals or agricultural or industrial pollutants" (Article 14.2). This right can be interpreted as not merely relevant for the health of POPRA, but also translate into agricultural practices: if an increasing number of workers refer to this right, companies could be forced to change their practices in the long run (cf. Nicolopoulou-Stamati et al., 2016). In combination with the state requirement to provide for 'appropriate measures' for safe and healthy working conditions, which includes corrective measures and penalties, and a rather precise set of subparagraphs outlining state obligations concerning the labelling, storage and disposition of chemicals used in agriculture, this may become a far-reaching provision as regards the future of agricultural development. Moreover, this provision is a deeply enshrined right of the Basel Convention on Hazardous Waste (UNEP, 1989).

These two articles comprehensively provide for a framework of protection that has found numerous reflections in the body of the ILO — both in its legal texts as well as in guidelines and recommendations. To this end, no new rights are generated in the UNDROP as regards labour rights, but they are focussed on the interests and wellbeing of POPRA even though they may have wider consequences if applied.

The Right to Adequate Food and Good Standards of Living (Articles 15 and 16)

Articles 15 constitutes a core demand by organisations such as La Via Campesina: the right to adequate food. Since the right to food is enshrined in the UDHR and the ICESCR, article 15.1 makes explicit reference to adequate nutrition. In Arctic contexts, for example, it is often lamented that — despite the high prices — foods available in the supermarket does not hold the same nutritional value as traditional foods such as seal or whale (Huet et al, 2012). A reference to adequate food corresponds to General Comment 12 of the Committee on Economic, Social and Cultural Rights on ICESCR article 11 (Right to Food), which defines 'adequate food' as:

> "The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights" (CESCR, 1999, para.8).

The unhindered access to nutritional food, both in physical and economic terms, is thus a right that finds reflection in article 15, which states are required to ensure through 'appropriate measures' to combat malnutrition. Notably, in this obligation, the article highlights that these measures are to include education on "basic knowledge on child nutrition and the benefits of breastfeeding" (Article 15.3). Two fundamental rights thus come together: on the one hand the right of women to breastfeed and the right of infants to be breastfed while at the same time corresponding to the notion of 'adequacy' in relation to food. While, at first sight, reference to breastfeeding in a human rights instrument such as the UNDROP appears surprising, it corresponds to the overall discourse on women's and children's rights, the right to health and to food. This issue was addressed in a joint statement by the UN Special Rapporteurs on the Right to Food, Right to Health, the Working Group on Discrimination against Women, and the Committee on the Rights of the Child (OHCHR, 2016). The first sentence already makes clear: "Breastfeeding is a human rights issue for both the child and the mother" while, later on, it is emphasised that "States should take all necessary measures to protect, promote, and support breastfeeding, and end the inappropriate promotion of breast-milk substitutes and other foods intended for infants and young children up to the age of 3 years" (Ibid.). While the UNDROP is the first human rights instrument to directly address the right to breastfeeding and to be

breastfed, these rights are nonetheless discursively well established (Kent, 2001).

Article 15 proceeds to stipulate food sovereignty and the right of POPRA to determine their own food and agricultural systems and the right to participate in decision-making processes regarding these. Lastly, the article requires states to "advance and protect the right to adequate food, food security and food sovereignty and sustainable and equitable food systems" (Article 15.5).

The notion of adequacy also finds its reflection in article 16 where the right to an adequate standard of living is confirmed. This does not merely include housing, but extends to the means to achieve these, "including production tools, technical assistance, credit, insurance and other financial services" (Article 16.1). States are therefore required to provide for means of transportation and facilities necessary to implement this right. Since POPRA are also entitled to the commercialisation of their products, states are obligated to provide for market access at prices that guarantees proper income to be able to reach an adequate standard of living.

The article further stipulates that states have the requirement to take 'appropriate measures' to protect livelihood options and sustainable agricultural production through respective environmental, trade and investment policies and programmes, as well as fair and equitable wages. As we have seen above, this obligation was a key demand by La Via Campesina throughout the years. Moreover, states are obliged to strengthen resilience of POPRA against natural disasters and economic disruptions. This obligation is unique and up to the point of writing a discourse on human rights-based state obligations to strengthen resilience in case of natural disasters and economic disruptions is new. Even though these provisions can be embedded in the wider discourse on human security *vis-à-vis* human rights (Annan, 2005), the UNDROP is the first legal instrument that puts these obligations into a concrete human rights context.

Land and environmental rights (Articles 17 and 18)

Article 17 is an extensive article on the right to land, which includes the right to access to, and sustainable use and management of the "water bodies, coastal seas, fisheries, pastures and forests therein" (Article 17.1) in order to achieve an adequate living standard. This right is paired with the right to cultural development and a life in peace, security and dignity. The right to land is a fundamental right for indigenous peoples and finds reflection in UNDRIP article 28 and ILO 169 articles 13—19. In order to protect the right to land and associated rights, states are obligated to protect POPRA from discrimination, also resulting from change of marital status or insufficient economic resources. States are also required to recognise land tenure rights, which include customary tenure systems that have not been recognised by law. To this end, POPRA are to be protected from the arbitrary removal from their lands along with the natural commons and collective use and management. States are to protect POPRA through respective provisions in national law.

The article holds a significant humanitarian component since it expresses the right of POPRA to return to their lands, which they have been deprived of, to have access to resources and adequate living conditions restored and to be compensated if their return is not possible. The right to return is in broad terms already enshrined in article 13 UHDR and has found reflection in all major human rights instruments (cf. Rosand, 1998, p. 1121). Particularly article 1.C of the Refugee Convention states that a refugee is able "to return to the country of his former habitual residence." In the wake of the conflict in former Yugoslavia, the right to return was also addressed by the Committee on the Eradication of Racial Discrimination (CERD), which demanded that "persons be given the opportunity to return safely to the places they inhabited before the beginning of the conflict and that their safety be guaranteed, as well as their effective participation in the conduct of public life" (CERD, 1995, para. c). While other human rights and

humanitarian instruments mostly refer to the right to return in the context of the home country, the Refugee Convention and CERD place this in a context of residences, underlining the right of refugees without a nationality to return to their 'habitual residences.' By inserting a seminar clause, the UNDROP picks up on a contentious issue, for example in the context of Israel and forcefully evicted Palestinians. This could explain Israel's opposition to the Declaration. Moreover, article 17.6. calls for agrarian reforms to ensure access to land and resources, "to limit excessive concentration and control of land, taking into account its social functions." Once again, the conflict in Israel, particularly in the Gaza Strip, may serve as an explanation for Israel's voting behaviour. Lastly, article 17 in rather broad terms requires states to ensure the conservation and sustainable use of land and resources and the "regeneration of biological and other natural capacities and cycles" (Article 17.7). Ultimately, humanitarian law and environmental law are linked in this article.

This issue is further advanced in article 18, where the right to conservation and protection of the environment is articulated. It is therefore the responsibility of states to ensure that access to a clean and healthy environment is guaranteed and that they follow their respective obligations to combat climate change. POPRA therefore have the right to be fully included in mitigation and adaptation policies, including their traditional knowledge. This provision corresponds to the overall narrative concerning indigenous and local communities in the Paris Agreement on Climate Change (United Nations, 2015), and particularly its article 7.5 that calls for parties to include indigenous and local communities into adaptation policies and actions.

The article also makes direct reference to the provisions of the Basel Convention on Hazardous Waste, and in particular the general obligations outlined in its article 1, by requiring states to ensure that no hazardous waste is disposed on on the lands of POPRA and to cooperate in case of transboundary pollution. Lastly, in article 18.5 the obligation of states to ensure that POPRA are protected from abuses by non-state is emphasised again.

The right to seeds (Article 19)

Article 19 provides for the right to seeds. This right is, as such, a new right and has thus far not found reflection in international law. Even though UNDRIP article 31 gives indigenous peoples the right to "to maintain, control, protect and develop [….] the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds […]" (cf. UNDRIP, art. 31), the precise right to seeds is a right which stands at the heart of the UNDROP.

The right to seeds consists of four core rights, as laid out in article 19.1: 1) Protection of traditional knowledge related to plant genetic resources; 2) Equitable benefit-sharing; 3.) Participation in decision-making concerning conservation and sustainable use of plant genetic resources; and 4) saving, using, exchanging and selling farm-saved seed or propagating material. The right to seeds, however, extends to the protection of traditional knowledge (article 19.2.).

In order to guarantee the right to seeds, states have the obligation to "respect, protect and fulfil" (Article 19.3) this right. While one might assume that this is a general obligation of states in relation to the rights contained in the UNDROP, the explicit mentioning of this obligation points to the importance of this right. Moreover, the obligation to respect the right of peasants to rely on their own seeds and to decide on what crop of species they wish to grow is an important element in the self-determination of POPRA vis-à-vis the interests of large agricultural corporations, particularly since states are furthermore required to support peasant seeds systems and the use of peasant seeds. Consequently, states, in their conduct of research on agriculture, are also to integrate the needs and experiences of POPRA. While formulated in a precise, yet scaled-down manner, these rights and obligations by and large

correspond to articles V and XI of the LVC Declaration and thus reflect the importance of the right to seeds as a core right of the UNDROP. Even though the question of 'need' is a blurry one and subject to different ways of interpretation, the approach of this article clearly requires states to take the interests of POPRA into account and not to override them in the interests of corporate gain. Consequently, another core demand of LVC and others rises to the fore here: the limiting of impacts of free trade agreements on POPRA.

Lastly, the right to seeds encompasses the state obligation to "ensure that seeds policies, plant variety protection and other intellectual property laws […] respect and take into account the rights, needs and realities" (Article 19.8) of POPRA. It remains unclear what this means in practice, but it can be assumed that, given the sensitivity of intellectual property rights, this particular provision has been an obstacle for many states to support the UNDROP. After all, this is a direct challenge of agreements such as Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (WTO, 1994), which provide patent holders with intellectual property. Sui generis approaches to patents and breeders' rights are an exception (Golay, 2016).

Generally speaking, the different rights associated with the right to seeds are derived from the 2010 Nagoya Protocol to the Convention on Biological Diversity (United Nations, 2010) as well as article 8 (j) of the CBD. The Nagoya Protocol has 114 state parties and entered into force only in October 2014. The UNDROP therefore makes use of the prevailing legal discourse on access and benefit-sharing relating to biological resources and links this with the core demands of POPRA — namely that their seeds are protected and they maintain their rights to them. Once again, this right is particularly important in the context of Monsanto, as mentioned above. Moreover, the right to seeds corresponds to the provisions of the 2001 Plant Treaty (FAO, 2001), particularly as regards access, benefit-sharing and dissemination. The major difference lies, first, in the clear formulation of a 'right to seeds' as a distinct right. Second, the Plant Treaty clearly stipulates that intellectual property laws are to be respected, potentially putting POPRA at a disadvantage *vis-à-vis* patent holders.

Biodiversity and water rights (Article 20)

Article 20 in three subarticles summarises the core objectives of the CBD and its Cartagena Protocol on Biosafety (United Nations, 2000). Article 20.1. thus requires states to prevent the depletion of biodiversity and ensure its conservation and sustainable use. Article 20.2. focuses exclusively on CBD article 8 (j) and is in part taken over verbatim. It requires states to promote and protect traditional knowledge, innovation and practices of POPRA relevant for the conservation and sustainable use of biodiversity. An important addition, however, is that it is stipulated that this includes "traditional agrarian, pastoral, forestry, fisheries, livestock and agroecological systems," providing for a significantly more precise understanding of what the knowledge, innovation and practices are to imply. Lastly, article 20.3. reflects the core objective of the Cartagena Protocol by paraphrasing its article 1. States are thus required to "prevent risks of violation of the rights of peasants and other people working in rural areas arising from the development, handling, transport, use, transfer or release of any living modified organisms" (Article 20.3).

Right to water and sanitation (Article 21)

Article 21 provides for rights to water and sanitation. In five subparagraphs, two rights and three state obligations are expressed. POPRA thus have the right to safe and clean drinking water and sanitation as well as the right to water for personal and domestic use, as well as livelihoods. They are "to be free from arbitrary disconnections or the contamination of water supplies" (Article 21.2). States, on the other hand, are to ensure access to water, while including customary water management systems. They are to provide for improved sanitation, particularly for women and girls that belong to disadvantaged or marginalised groups, as well as, *inter alia*, migrants irrespective of their migration status, and they are to provide for

affordable irrigation technology. Water-related ecosystems fall under the protection of states in order to ensure the right to water and sanitation. This includes the restoration and protection of water ecosystems from industrial and other pollution. Lastly, states are to protect the right to water from being impaired by other actors while they are to make the conservation, restoration and sustainable use of water their priority.

The right to water as a human right is, arguably, a rather young right and is, as such, not a self-standing right in the core human rights instruments. Even though water supply has been made reference to, for example, in the 1949 Geneva Conventions, the right to water as such only emerged in 1977 when it was acknowledged by the UN Water Conference in Mar Del Plata, Argentina. Here, the conference adopted several resolutions that manifested the right to water and sanitation as a human right (United Nations, 1977). Reference to the right to an adequate water supply can subsequently be found, for instance, in article 14.2 (h) of the CEDAW or article 24.2. (c) of the Convention on the Rights of the Child. This right was confirmed in 1992 at the Rio Conference where both the Rio Declaration and Agenda 21 reaffirmed the Action Plan proposed in Mar Del Plata. Throughout the 1990s, several other conferences confirmed the right to water and sanitation either as a distinct human right or as an element of the right to an adequate standard of living. By then, the right to water had been reflected in numerous regional human rights instruments. Globally, in 2002, the Committee on Economic, Social and Cultural Rights adopted its General Comment No. 15 on articles 11 and 12 of the ICESCR. In the comment, the committee established that the right to water and sanitation is a human right and falls well within the ambit of ICESCR articles 11 and 12 since the right to water is inextricably linked to the right to adequate standards of living (CESCR, 2003).

The UNDRIP does not contain explicit reference to the right to water. Even though UNDRIP article 24.2. refers to "the highest attainable standard of physical and mental health," which can be interpreted as including the right to water, it is nevertheless rather imprecise. The UNDROP, on the other hand, stands out in its degree of precision in this regard and reflects international human rights standards pertaining to the right to water and sanitation.

Social and cultural rights (Articles 22—26)

The importance of the right to water becomes ever more prevalent since it is not embedded in the articles on social and cultural rights, but is a stand-alone article in the UNDROP. The right to social security (article 22) is a well-established human right and can be found, for instance, in UHDR article 22 and 25 as well as ICESCR articles 9 and 10. In order to provide for the right to social security, states are to provide certain guarantees to POPRA, which, at a minimum, include "access to essential health care and to basic income security, which together secure effective access to goods and services defined as necessary at the national level" (Article 22.2). These guarantees are to be reflected in law.

While the right to social security and insurance is well-established, it is most noteworthy that that UNDROP refers to the right to a basic income. It remains unclear whether the term used in this article refers to minimum wages or to the highly disputed concept of a basic income, which provides for an automatic and unconditional income for individuals. An experimental study from Finland on the effects of a basic income has demonstrated that these effects are primarily reflected in increased self-perceived wellbeing while the are no measurable effects on employment (Ministry of Social Affairs and Health, 2019). The UNDROP therefore goes well beyond common human rights standards in the context of basic income, provided it does indeed refer to the conceptual basic income.

Article 23 provides for the right to the highest attainable standard of physical and mental health, thus mirroring the provisions of ICESCR article 12. This right is reflected in the right to access to

social and health care services and associated duties of states to provide for these. More specifically, however, this also includes the right to use traditional medicines and the conservation of species and minerals for medicinal use. Here, a potential conflict with the Convention on International Trade in Endangered Species (CITES) (UNEP, 1973) is possible since it is also traditional medicines in Asia which drive the illegal trade in endangered species (Stromberg & Zielinski, 2011). In how far this potential conflict can be rectified remains to be seen.

Article 24 contains the right to housing, a life in peace and dignity and the right to be protected from eviction, harassment and discrimination. While the right to housing, peace and dignity is a common human rights standard and can be found in all major human rights instruments, the protection from forced eviction is specific to the UNDROP and, as explained above, was a key concern of the peasant movement. Interestingly, the article does not require states to provide for housing, peace and dignity, but merely to protect POPRA from forced eviction and just compensation if eviction is unavoidable (Article 24.3).

The right to adequate training and education is enshrined in article 25. On the one hand, this training is to be "suited to the specific agroecological, sociocultural and economic environments" (Article 25.1) in which POPRA find themselves. This training should include programmes that foster productivity and strengthen resilience. The right to education as such is linked to the right of children to education, particularly reflected in the UN Convention on the Rights of the Child. However, the qualifier "in accordance with their culture" (Article 25.2) points towards the respect for indigenous educational systems, in principle reflecting UNDRIP article 14.1., which notes: "Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning." Particularly bearing in mind the rights of article 25.1., states are obliged to encourage farmer-scientist partnerships and to "provide training, market information and advisory services at the farm level" (Article 25.3). The strengthening of resilience is, therefore, a core element in this article. While POPRA are to be supported in case of natural disasters, it also aims to make them more competitive on the global markets, once again reflecting the normative opposition towards corporate interference.

Lastly, article 26 provides for the right to culture. This right is a key right in international human rights law and particularly relevant in the context of indigenous peoples. Consequently, it is ICCPR article 27, which stands at the core of the right to culture. To this end, POPRA have the right to their own culture and to decide on their cultural development. Particular attention is given to the right to protection of local and traditional knowledge and practices. While itself a cultural right, this also mirrors the provisions of CBD article 8 (j) and is thus linked to environmental protection. States thus have the duty to respect and protect the right of POPRA "relating to their traditional knowledge and eliminate discrimination against the traditional knowledge, practices and technologies" (Article 26.3) of POPRA. Contrary to the UNDRIP, the UNDROP does not hold precise provisions on the protection of language. The focus on traditional knowledge once again underlines the objectives of the Declaration having been motivated by corporate interference and its influence on agricultural practices. Cultural rights therefore do not seem to stand at the fore of the Declaration, but are a means to achieve the end of increased self-determination vis-à-vis outside corporate actors.

Final provisions (Articles 27 and 28)

Article 27 and 28 constitute final provisions of the UNDROP. Article 27 places the duty to contribute to the realisation of the Declaration onto the United Nations and its agencies, as well as other intergovernmental organisations. Particularly development assistance and cooperation are

highlighted. Article 28 protects POPRA as well as indigenous peoples from any impairment of rights they hold or may hold in the future caused by the UNDROP. To this end, the "human rights and fundamental freedoms of all, without discrimination of any kind, shall be respected in the exercise of the rights enunciated in the present Declaration" (Article 28.2).

Conclusion

The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas is an extensive documents that contains a wide array of internationally enshrined human rights standards. Even though UNDROP is a declaration and therefore not legally binding, most of the rights in it are. However, the Declaration goes significantly beyond human rights law, but encompasses provisions from labour law, environmental law and even humanitarian law. Even though many of the rights are geared towards peasants, the Declaration also contains rights that go beyond established human rights standards, such as the right to seeds and the right to breastfeed / be breastfed.

Through its wide scope, the Declaration must be seen in combination with the 2015 Sustainable Development Goals (SDGs), whose 17 goals are directly reflected in the UNDROP: elimination of poverty (Goal 1) and hunger (Goal 2), health and wellbeing (Goal 3), quality education (Goal 4), gender equality (Goal 5), clean water and sanitation (Goal 6), decent work and economic growth (Goal 8), reducing inequalities (Goal 10), sustainable cities and communities (Goal 11), responsible consumption and production (Goal 12), or peace, justice and strong institutions (Goal 16). Moreover, the wider implications of environmental protection as part of the human rights narrative in the Declaration reflects upon the environmental dimensions of the SDGs, contained in Goal 14 and 15.

The normative impact of the UNDROP as a reference point in human rights other deliberations can be expected to be high, especially due to the precision of many of its provisions. Contrary to the UN Declaration on the Rights of Indigenous Peoples, however, the UNDROP has found rather little reflection in international discourse despite its relevance for indigenous and local communities. However, given its important contribution to the discourse on local rights, it is merely a matter of time until its discursive relevance will grow.

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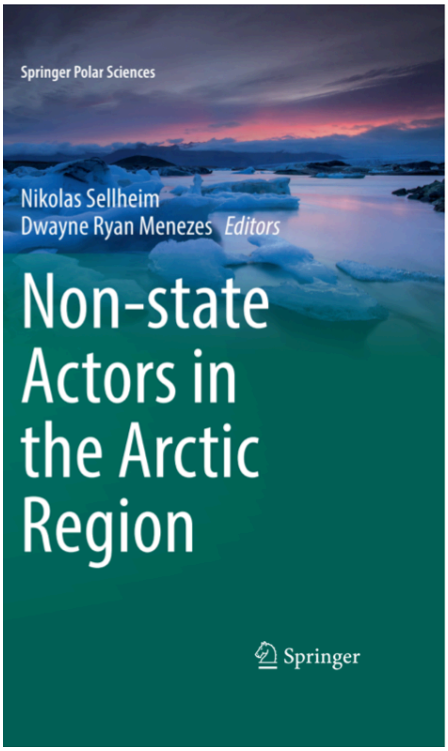
BOOK NEWS

'Non-State Actors in the Arctic Region', edited by Nikolas Sellheim & Dwayne Ryan Menezes



Dr Nikolas Sellheim and Dr Dwayne Ryan Menezes (*Polar Policy and Research Initiative, PRPI*) have edited a volume entitled *Non-state Actors in the Arctic Region.* The book will be published by Springer in October 2022. Apart from the Editors themselves, the book contains chapters from renowned scholars as well as early career scholars from all across the Arctic as well as from non-Arctic states.

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