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ARTICLE

From tapestries to treaties: Indigenous diplomacy in the evolution of intellectual property law as advocacy

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Abstract

This article explores the intersection of Indigenous cultural heritage and international intellectual property (IP) law. Drawing on personal narrative, community memory, and institutional experience, it traces how, despite colonial legacies embedded within global IP regimes, Indigenous Peoples have carved out space for agency and influence through diplomatic engagement in international forums such as the World Intellectual Property Organization (WIPO). The article narrates and examines the evolution of Indigenous participation within WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (IGC), culminating in the landmark adoption of the 2024 WIPO Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge. Through the lens of "Indigenous diplomacy," it argues that Indigenous advocates have not only contested exclusion but also reshaped aspects of legal norms, contributing to a broader decolonial movement that seeks justice, recognition, and the right to control and benefit from their intellectual and cultural heritage.

Keywords: Indigenous Peoples; Indigenous diplomacy; intellectual property law; traditional knowledge; traditional cultural expressions; genetic resources; WIPO; cultural heritage; decolonization; international law

Introduction

Surrounded bythe colorful tapestries woven by community artisans displayed at our market stall in *La Plaza de los Ponchos*, Ecuador's largest artisanal market, I often watched my mother interact with both national and international tourists as she negotiated fair prices for the goods we offered. She would explain the meanings behind the geometric designs woven into the textiles, which depict the sacred volcanoes of Imbabura Province in the Ecuadorian highlands. Among the most iconic of these is Tayta Imbabura, or Father Imbabura, as we call him: our spiritual guide and a living volcano who has watched over the Kichwa Otavalo people for generations. These designs are passed down across generations, reflecting a system of knowledge transmission sustained through collective memory and cultural continuity.

This understanding of culture as living and relational resonates with broader Indigenous scholarship. As Terri Janke reflects, "For Indigenous Peoples, culture equals life.

Culture means Indigenous ways of seeing and being connected to the world, to the plants, animals, and all things on the land, in the sky, and the sea."[1] Culture is, in essence, an extension of our lived experiences, intellect, spirituality, and values, carefully preserved despite repeated attempts to erase our ways of life through colonial violence and structures.

In 2017, I learned about a case of misappropriation involving a Spanish clothing brand that had replicated one of our designs: the geometric Chismosas pattern. Despite various advocacy efforts by activists, the lack of effective national or international legal mechanisms to protect Indigenous designs made it impossible to pursue legal recourse. Opinions within the Kichwa Otavalo were divided: Some viewed the incident as a promotional opportunity, while others condemned it as a clear case of intellectual property theft that brought no benefit to the rightful knowledge holders. This episode exposed the structural limits of the legal frameworks governing cultural production.

The World Intellectual Property Organization (WIPO), the United Nations agency responsible for the governance of intangible assets, defines intellectual property as "creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce."[2] Developed during the Enlightenment and the industrial era, this legal system was designed to promote innovation and reward individual creators. Yet it failed—and still often fails—to recognize and accommodate the collective nature of Indigenous knowledge systems.

This mismatch lies in several foundational features of the intellectual property system. First, intellectual property law is based on the assumption of individual ownership and requires knowledge to be attributed to an identifiable legal owner. In contrast, Indigenous Peoples have foundations of ownership that, contrary to Western understandings, are based on relationships, stewardship, and collectivity. Consequently, their knowledge is often developed collectively over extended periods and cannot be neatly attributed to a single individual. Second, intellectual property protection depends on novelty, meaning that knowledge must be considered "new" to qualify for rights. However, Indigenous Peoples' knowledge systems are cumulative and intergenerational, meaning their value lies precisely in their continuity and long-standing use rather than in claims of newness. Third, intellectual property rights that protect knowledge as an intellectual output are generally granted for a limited duration. In many jurisdictions, once these rights expire, the protected knowledge enters the public domain and may be used by others without the right holder's consent. For Indigenous Peoples, whose knowledge is understood as living, ongoing, and requiring long-term stewardship, this temporal limitation is a mismatch. Finally, intellectual property rights are defined by state-based legal systems and territorial borders shaped by colonial legacies. Indigenous Peoples' knowledge, by contrast, is often tied to lands, relationships, and cultural practices that predate and extend beyond these imposed borders, challenging the assumptions of territorial exclusivity.

As a result, Indigenous Peoples have operated on an inherently unequal playing field. Their cultural and intellectual heritage has been misused, stolen, and commercialized without attribution and with minimal, if any, benefit to its rightful custodians. This systemic dispossession has harmed Indigenous economies, identities, and cultures and violated rights to self-determination.

Nevertheless, Indigenous Peoples are not passive victims of this system. Rather, they are actively working to reshape it as a form of decolonial resistance. As Claire Charters observes:

[1] Janke 2021, 7.
[2] WIPO 2025a.

> The greatest influence of Indigenous Peoples on international law is our contribution to a pragmatically-driven yet conscious reframing of its foundation … crafting a legal system that achieves the "sweet-spot." It has sufficient "hard-law" quality to restrain the self-interested instincts of powerful states—much needed by Indigenous Peoples seeking to realize their claims against states—and systemic inclusion and justice.[3]

In this context, I explore how Indigenous Peoples have asserted agency within international legal spaces, focusing on the historic WIPO Diplomatic Conference that led to the adoption of the *Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge.* Drawing from this experience—and as a former WIPO Indigenous fellow who had the honor of witnessing this international milestone—I argue that Indigenous diplomacy constitutes a powerful form of advocacy. It amplifies the voices of those who, against all odds, have demonstrated that even entrenched systems can be slowly reshaped in pursuit of equity and justice.

From recognition to engagement: Building international legal pathways for Indigenous intellectual property

In 2007, Indigenous Peoples around the world witnessed a significant legal and moral milestone in international human rights: the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[4] by the UN General Assembly. This landmark instrument was the result of decades of sustained advocacy and negotiation by Indigenous representatives and their allies. Stamatopoulou notes that "Legally, the Declaration is important because, at the normative level, it establishes the rule of equality and affirms the right to lands, territories, resources; the right to self-determination; and cultural rights. It establishes how these rights are to be applied for Indigenous Peoples."[5] The UNDRIP contains key articles, such as Articles 11, 12, and 31, directly related to the protection of Indigenous Peoples' cultural and intellectual property rights and has since become a flagship legal reference for Indigenous engagement at both the UN and national levels.

Article 31, in particular, affirms:

> Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.[6]

Although UNDRIP is not legally binding, it establishes minimum international standards and holds substantial political and normative influence. It has become a powerful tool for Indigenous Peoples to assert their rights within international and domestic legal systems.

Other relevant instruments, while not specifically centered on Indigenous Peoples, have also contributed to the broader legal landscape. For example, the UNIDROIT Convention on

[3] Charters 2021, 123.

[4] United Nations General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295, 13 September 2007.

[5] Stamatopoulou 2024, 160.

[6] UNDRIP, art. 31.

Stolen or Illegally Exported Cultural Objects (1995), particularly Article 5, addresses the repatriation of cultural property.[7] Though it does not explicitly mention collective or Indigenous Peoples' rights, its focus on returning stolen artifacts provides a basis for cultural restitution. Similarly, ILO Convention No. 169 on Indigenous and Tribal Peoples (1989)[8] indirectly emphasizes the importance of respecting cultural and intellectual heritage, reinforcing the idea that these elements are essential to the survival and dignity of Indigenous Peoples.

It is important to recognize that, for Indigenous Peoples, intellectual and cultural property are inseparable from their relationship with the land, as they are deeply embedded in territory, community, and spirituality. Therefore, efforts to protect traditional knowledge are also efforts to protect land, sovereignty, and identity. This has prompted Indigenous advocates to engage in multiple international forums beyond the human rights framework, including the Convention on Biological Diversity (CBD),[9] which has become another important arena for debates around access, benefit sharing, and biocultural rights. In particular, Article 8(j) of the CBD, together with the discussions advanced through its Working Group on Article 8(j) and related provisions (now institutionalized through the Subsidiary Body on Article 8(j) and Other Provisions), has provided a key forum for advancing discussions on traditional knowledge, prior informed consent, and benefit sharing.

A broader constellation of international human rights and environmental instruments has also informed Indigenous engagement in global legal processes. For instance, the *International Covenant on Civil and Political Rights* (ICCPR)[10] recognizes minority cultural rights, while the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)[11] affirms the right of everyone to take part in cultural life and to benefit from scientific progress. These frameworks have reinforced Indigenous Peoples' strategic engagement across multiple international fora on these matters.

As the international community began grappling with emerging intellectual property challenges related to globalization, rapid technological change, and increasing recognition of diverse cultural contributions, WIPO initiated a critical process. Between 1998 and 1999, WIPO conducted the Fact-Finding Missions on Traditional Knowledge, Innovations, and Practices. These missions were designed to gather firsthand insights into the intellectual property needs and expectations of Indigenous Peoples and local communities worldwide.[12]

Unlike previous top-down processes, Indigenous Peoples were central to shaping this initiative. For instance, tribal governments such as the Tulalip Tribes of Washington in North America—who continue to participate in WIPO intergovernmental meetings as observers—welcomed WIPO delegates to their territories, and Indigenous leaders participated in roundtables and policy dialogues on traditional knowledge and intellectual property to share their perspectives. Similar scenarios were replicated in the South Pacific, Eastern and Southern Africa, the Caribbean, South Asia, West Africa, North America, the Arab countries, South America, and Central America.[13] Their voices were instrumental in shaping the resulting reports and recommendations submitted to WIPO.

The outcomes of the Fact-Finding Missions, coupled with informal consultations by the WIPO Director General at that time, led to an important decision in 2000 by member states:

[7] UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, Rome, 24 June 1995.

[8] International Labour Organization (ILO), *Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries*, adopted 27 June 1989, entered into force 5 September 1991.

[9] *Convention on Biological Diversity*, 1760 UNTS 79, entered into force 29 December 1993.

[10] *International Covenant on Civil and Political Rights*, 999 UNTS 171, entered into force 23 March 1976.

[11] *International Covenant on Economic, Social and Cultural Rights*, 993 UNTS 3, entered into force 3 January 1976.

[12] WIPO 1999.

[13] WIPO 2001.

the establishment of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore (IGC). Created under the Global Issues agenda of the WIPO General Assembly, the IGC became a dedicated body to examine the intersections between intellectual property and genetic resources, traditional knowledge and folklore.[14]

Though the road has not been easy, and the intellectual property system was not designed with Indigenous Peoples in mind, the IGC has provided space for sustained engagement. Through working groups, formal interventions, and observer mechanisms, Indigenous Peoples have carved out a role within this technical and often complex forum. The introduction of UNDRIP in 2007 further legitimized and supported their participation, creating alignment between international human rights norms and technical discussions on intellectual property.

Indigenous participation in the WIPO IGC: Bridging knowledge systems through diplomacy

In 2022, as I was learning more about the intellectual property system and its implications for Indigenous Peoples, I saw a post shared by my mentor, Diego Tituaña, a member of Ecuador's Diplomatic Corps, announcing the WIPO Indigenous Fellowship. In sharing the opportunity, he consistently encouraged young members of the Kichwa Otavalo people to engage with international institutions and to learn the tools that shape global decision making—an approach he described as "Indigenous diplomacy."

The fellowship offered a practical pathway into this form of engagement. Designed to build Indigenous Peoples' capacity on IP issues, the program placed Indigenous professionals within the WIPO Traditional Knowledge Division for a limited period. I joined WIPO as the new Indigenous fellow and, in this role, I served as a liaison, supporting Indigenous peoples' organizations engaged in the work of the IGC by sharing publicly available information and procedural guidance related to negotiations within this forum.

Here, the term "Indigenous diplomacy" is used descriptively to refer to Indigenous Peoples' strategic engagement with international legal institutions to articulate their perspectives, advance collective rights, and influence normative development. While this form of engagement extends beyond state-centered negotiations, it resonates with scholarly discussions of Indigenous Peoples' participation in international law, including Claire Charters's analysis of how such participation contributes to the reframing of international legal processes.[15] For the purposes of this case, the focus here is on Indigenous engagement with WIPO within international institutional settings.

Within WIPO, Indigenous diplomacy has taken shape most visibly through the IGC. The IGC was aimed at addressing three key thematic areas—genetic resources (GRs), traditional knowledge (TK), and traditional cultural expressions (TCEs)—which were increasingly recognized as intellectual assets of many developing countries. As noted by WIPO:

> GRs, TK, and TCEs were regarded as the 'common heritage of humanity' and, at the same time, as intellectual valuables requiring appropriate forms of IP protection. ... The IGC was conceived as part of a larger and structured endeavor by WIPO to move towards a modern, responsive IP system that could embrace non-Western forms of creativity and innovation ... and be fully consistent with developmental and environmental goals.[16]

[14] WIPO 2000.
[15] Charters 2021.
[16] WIPO 2023, 3.

Furthermore, the IGC brings together a wide range of participants: member states, accredited intergovernmental organizations (IGOs) and nongovernmental organizations (NGOs), civil society, and academia, among others. Indigenous Peoples participate as accredited observers, in most cases under NGO status. However, their participation has been distinct and essential to efforts aimed at enhancing the legitimacy and transparency of the process. Over time, and in alignment with Article 31 of the 2007 UNDRIP, best practices have emerged to support their inclusion.

Since 2004, each IGC session has been preceded by a panel chaired by and composed of Indigenous Peoples, and local community representatives, whose participation is funded by WIPO.[17] These panels, thematically aligned with the session's focus, are a practice to offer member states the opportunity to hear firsthand from knowledge holders. Panels typically begin with an opening prayer and conclude with a Q&A session, further grounding the dialogue in Indigenous Peoples' realities.

Another key mechanism for Indigenous Peoples' participation is the Indigenous Consultative Forum, more commonly known as the Indigenous Caucus. This body often meets the day before each IGC session to coordinate engagement and prepare collective statements. Functioning as an informal ad hoc assembly, the caucus brings together representatives from Indigenous Peoples' accredited organizations to the IGC to articulate shared perspectives on the issues under negotiation. Furthermore, two co-chairs, elected during the first meeting of each session by the Indigenous Caucus, are entrusted with moderating discussions and guiding the group toward consensus. The WIPO Secretariat supports the caucus by providing interpretation and logistical services through the Indigenous Peoples' Center for Documentation, Research, and Information (Docip). Additionally, the Indigenous fellow serves as a key focal point, facilitating communication and coordination between the caucus and the WIPO Secretariat.

Beyond formal and informal participation mechanisms, Indigenous diplomacy has also relied on relational support within the IGC. Strategic allies within the IGC—including like-minded member states, Indigenous diplomats serving within national delegations, officials within the WIPO Secretariat in their technical and facilitative roles, and nongovernmental experts who helped bridge technical and cultural divides—has significantly shaped more inclusive practices across multilateral spaces. Key milestones include opportunities for Indigenous representatives to deliver opening statements with speaking time comparable to regional groups, as well as their participation, at the chair's discretion, in certain informal meetings, contributing to greater transparency in the process.

Recognizing the financial challenges of participating in week-long sessions in Geneva, Switzerland, WIPO established the Voluntary Fund for Accredited Indigenous and Local Communities in 2005. This mechanism supports the travel and participation of Indigenous representatives, selected via an open call and reviewed by an advisory board.[18] The board includes member state representatives, three accredited observers representing Indigenous peoples nominated by the Indigenous Caucus, and one appointed chair of the committee. Thanks to this fund, participation from the seven sociocultural regions has been possible. Still, as the fund depends entirely on voluntary contributions, its sustainability remains uncertain. Thus, there have been instances in which limited funding constrained Indigenous Peoples' participation across multiple consecutive sessions.

While these efforts mark important progress, it is important to acknowledge that such progress has unfolded within a context marked by complex power dynamics and cultural differences. There have been occasions where Indigenous Peoples' perspectives were not

[17] WIPO 2023, 4.

[18] WIPO n.d. (originally adopted 2005, as amended).

fully grasped, or where they were not always perceived as operating on an equal footing with member states. These experiences reflect broader structural challenges inherent in multilateral settings. Nonetheless, continuous engagement has laid important groundwork for more inclusive participation moving forward.

The WIPO Diplomatic Conference on Genetic Resources and Associated Traditional Knowledge

In the summer of 2022, during the WIPO General Assemblies, member states reached a decision to convene a diplomatic conference to conclude an international legal instrument relating to intellectual property, genetic resources, and associated traditional knowledge no later than 2024. The road to the diplomatic conference included a series of formal and informal consultations, including with representatives of Indigenous Peoples' accredited organizations. This decision marked the culmination of a long institutional process, bringing into focus negotiations that had been developing over many years.

The process leading to the diplomatic conference spanned more than two decades. Throughout this period, Indigenous Peoples and local community members remained engaged, returning to the IGC despite persistent financial, logistical, and institutional barriers. This continuous presence reflects a deliberate commitment to remaining visible and engaged in multilateral spaces where decisions affecting Indigenous Peoples' knowledge are made, alongside Indigenous-led efforts at other levels.

> also seek an international law that is decolonized in content by, for example, recognizing our [Indigenous Peoples'] authority, such as our right to self-determination. To achieve this, we required a shift in the quality of international law to one that permits and embodies flexibility, a de-centering of the state, the inclusion of new international legal subjects, more informal sources of law, and an openness to different and non-state sources of legal authority and approaches to international law.[19]

Writing from an Indigenous perspective, Charters argues that Indigenous Peoples:

Precisely because Indigenous Peoples as right holders are affected by the decisions made in the international arena, they have activated their diplomacy, one that seeks to shape the global governance system—one that is active and, in this particular case, seeks to prevent the lack of acknowledgment, misuse, theft, and misappropriation of intergenerational knowledge.

The negotiations at WIPO for the diplomatic conference were based on the *Basic Proposal* text, previously circulated during the IGC process as the chair's text and prepared under the leadership of the former chair of the IGC, Mr. Ian Goss. The proposal focused on the patent system in relation to genetic resources and associated traditional knowledge.

To understand the substance of the negotiations, it is necessary to briefly explain the intellectual property framework under discussion. In the field of intellectual property, a patent refers to a legal document that grants exclusive rights to the inventor of a new creation. Traditionally, patent applications have not required the disclosure of the origin of genetic resources, such as the source of a plant, nor the acknowledgment of whether traditional knowledge held by Indigenous communities informed their use. Therefore, the negotiations sought to address this lack of attribution by introducing a disclosure requirement for patent applicants, intended to potentially encourage benefit sharing. Under such a requirement, applicants would be required to identify the country of origin of the genetic

[19] Charters 2021, 124.

resource, as well as the holders of relevant traditional knowledge, where prior knowledge informed the claimed invention.

The new treaty was also seen as a potential step toward curbing "biopiracy," or the misappropriation of GR and TK associated with them.[20] Genetic resources include, for example, medicinal plants, agricultural crops, microorganisms, and animal breeds. In the patent context, biopiracy may occur when an applicant seeks to patent an innovation that relies heavily on genetic resources and/or associated TK that may not be entirely new or inventive. While some authors use the term "biopiracy" to describe a broader range of extractive colonial practices—such as the creation of monopolies over life and its ethical, ecological, and political implications—the term is used here in its narrower sense, consistent with the patent-focused scope of the treaty.

With this framework in mind, negotiations proceeded toward the diplomatic conference. The *Basic Proposal* was reviewed during the Special Session of the IGC, held from 4 to 8 September 2023, ahead of the diplomatic conference. To enhance the transparency of the process and the legitimacy of the treaty, the Preparatory Committee of the Diplomatic Conference—meeting from 11 to 13 September 2023—decided to allocate exceptional funding from the WIPO regular budget to support the participation of Indigenous Peoples from the seven sociocultural regions. These measures also facilitated greater coordination among Indigenous representatives prior to the conference, enabling the Indigenous Caucus to harmonize positions and engage more effectively in the negotiations.

The diplomatic conference kicked off with a large number of participants, including a notable presence of Indigenous Peoples' representatives from various regions of the world. The opening ceremony featured a prayer by two Indigenous representatives from South America. The WIPO Director General called on delegates to balance passion with pragmatism and then entrusted the process to the elected chair of the diplomatic conference, His Excellency Mr. Guilherme de Aguiar Patriota, Ambassador and Deputy Permanent Representative of Brazil to the United Nations.

During the week of the diplomatic conference, Indigenous Peoples participated in multiple capacities, including as members of national delegations, Indigenous state diplomats, former WIPO Indigenous fellows, and representatives of Indigenous Peoples' organizations. While discussions were challenging, Indigenous Peoples actively engaged in the negotiations by sharing their perspectives and expertise, engaging with group coordinators, and interacting with the WIPO Secretariat. Amid the intensive negotiations, coordination within the Indigenous Caucus supported collective engagement across the provisions under discussion. While some perspectives advanced by Indigenous Peoples were reflected in the final text, others were not retained.

On May 24, I remember being in the room with the Indigenous Caucus as we waited for the announcement to reconvene. The tension was palpable, as was the exhaustion from two weeks of intense negotiations. Finally, around 2 am, it was announced that a consensus had been reached among member states. Indigenous Peoples' representatives ran back to the main conference hall to witness this historic moment. As the session concluded in the early morning hours, members of the Indigenous Caucus hugged each other, some holding back tears. The moment reflected both the significance of what had been achieved and the recognition of its limits. It had been a long fight, but one that required collective work—not only from those who had advocated for many years for an instrument to come into existence, but also from allies and member states who listened and worked to identify common ground through which Indigenous Peoples could be formally acknowledged within the intellectual property system. While some of the Indigenous Caucus's expectations were

[20] Wendland 2024.

not fully met, there was nonetheless a strong sense of achievement in witnessing, for the first time, provisions for Indigenous Peoples and local communities in an intellectual property treaty.

The next morning, the closing of the session included the intervention of the Indigenous Caucus. An Indigenous elder from Latin America delivered their statement in both Spanish and Aymara, while the members of the Indigenous Caucus stood behind her in support. This practice has become a hallmark of Indigenous Peoples when intervening in international forums. Her words resonated in the assembly:

> This Treaty, the first of its kind at WIPO, finally recognizes the crucial role that Indigenous Peoples play in protecting these resources, ensuring their survival by passing our traditional knowledge from generation to generation. Our knowledge, which is often the basis of groundbreaking scientific discoveries, has been exploited for centuries. This Treaty is a first step to guarantee fair and transparent access to these resources. … Naiyr uñyas sarañataki: Looking back at the past, we walk forward. This is just the beginning. We are leaving with renewed hope, ready to participate in the continuous effort to protect our traditional knowledge. Together, we can build a future where innovation and respect go hand in hand.[21]

As the Indigenous Caucus finished their intervention, a medicine man played a seashell horn, common in Andean ceremonies, announcing the presence of Indigenous Peoples in the room. The main hall was filled with emotion, followed by a standing ovation from member state delegates. In that moment, I witnessed how Indigenous diplomacy can create space for Indigenous voices, histories, and ways of being within institutions that have not always recognized them. As part of our self-determination, we continue to walk in spaces of power, caring for one another and working to shape a fairer future—one that looks forward while acknowledging what must still be restored and what histories remain to be rewritten, even as we engage with systems built upon unequal power relations.

The treaty contains important articles that are of interest to Indigenous Peoples. To support understanding of these provisions, the WIPO Secretariat prepared an *Informal Summary of the Key Elements of the Treaty for Indigenous Peoples and Local Communities*.[22] In short, it summarizes the process of the adoption of the treaty and proceeds to highlight that the instrument acknowledges the UNDRIP in the preamble. Moreover, it describes that the treaty establishes a mandatory disclosure requirement for patent applications involving genetic resources and/or traditional knowledge associated with genetic resources. Under Article 3, applicants must disclose the country of origin or source of genetic resources and identify the Indigenous Peoples or local communities that provided traditional knowledge or, alternatively, disclose the source if that information is unknown. Article 2 clarifies that inventions are considered "based on" such resources or knowledge if they are essential to the claimed invention, and that sources may include communities, literature, or databases. Article 6 encourages parties to create accessible information systems on genetic resources and associated traditional knowledge, developed with the participation of Indigenous Peoples and local communities and with appropriate safeguards. Finally, Article 10.1 mandates the inclusion of Indigenous Peoples and local communities as accredited observers in the Treaty Assembly and calls on parties to support their participation financially.

[21] Indigenous Peoples Caucus 2024.
[22] WIPO 2024.

The instrument is not yet in force as it requires, under Article 17 of the GRATK Treaty, that it enter into force three months after 15 eligible parties, as defined in Article 12 of the Treaty, have deposited their instruments of ratification or accession.[23] As of March 5, 2025, 41 member states have signed the Treaty, indicating their intention to ratify it, and one country has already ratified the instrument.

Lessons and broader implications: Indigenous knowledge, participation, and power

While critical legal scholarship has powerfully examined how the treaty risks reinscribing Indigenous knowledge within patent logics,[24] far less attention has been paid to the diplomatic practices through which Indigenous Peoples engaged, intervened, and influenced the multilateral process itself.

The treaty represents a historic milestone that prompts critical reflection on the recognition of the vital knowledge held by Indigenous Peoples. Several challenges lie ahead: the ratification of the treaty, its implementation, and the practical utility of the disclosure requirement. Much will depend on how signatory parties choose to give life to the essence and objectives of the treaty. For these next steps, it is essential that Indigenous Peoples are at the forefront of implementation efforts. Policies and mechanisms must be developed *in conjunction* with Indigenous Peoples to ensure full transparency, accountability, and respect for their rights.

Notwithstanding its historic significance, the WIPO *Treaty on Genetic Resources and Associated Traditional Knowledge* has also been the subject of scholarly critique, particularly with respect to its limited scope and reliance on the patent system as its primary regulatory mechanism.

While the new treaty represents a historic development, its objectives are deliberately narrow in scope. The treaty is primarily designed to improve transparency within the patent system rather than to create new, substantive intellectual property rights for Indigenous Peoples and local communities. Its central mechanism—the mandatory disclosure requirement—seeks to ensure that patent applicants identify the country of origin or source of genetic resources and, where applicable, the Indigenous Peoples or local communities associated with traditional knowledge. In doing so, the treaty aims to reduce informational asymmetries, promote accountability, and support the operation of existing access and benefit-sharing frameworks. However, it does not recognize Indigenous Peoples as rights-holders within the patent system itself, reflecting the political constraints and compromises inherent in multilateral treaty-making.

This dynamic also cautions against assuming that international harmonization necessarily produces more equitable outcomes, particularly where national or regional legal frameworks have already evolved more protective mechanisms for Indigenous knowledge.

These critiques raise a fundamental question: If the international intellectual property system remains structurally misaligned with Indigenous worldviews, and if appropriation continues despite the adoption of new legal instruments, does the WIPO Treaty ultimately matter? As Lai, Wright, and Goodman argue, the treaty risks reinforcing colonial logics by subsuming Indigenous knowledge within the patent system as prior art rather than recognizing Indigenous Peoples as rights-holders with authority over their knowledge systems. Moreover, by prioritizing disclosure over consent, ownership, or benefit sharing, the treaty may inadvertently translate Indigenous demands into technical compliance mechanisms that leave underlying power relations unquestioned.[25] Yet it is precisely the

[23] WIPO 2025b.
[24] Lai, Wright, and Goodman 2025, 889–92.
[25] Lai, Wright, and Goodman 2025, 889–92.

persistence of these systemic failures—and the reality that international legal regimes will continue to evolve regardless of Indigenous participation—that has animated sustained Indigenous engagement. Participation in such processes does not reflect an uncritical endorsement of the system but rather a strategic response to its material consequences: an effort to prevent further erasure, to contest extractive practices as they occur, and to ensure that Indigenous presence remains visible within spaces that would otherwise continue to normalize exclusion under the guise of neutrality or progress.

It is also important to situate the treaty within the temporal and political realities of international law-making. For many Indigenous participants, the prevailing belief for decades was not that the resulting instrument might be insufficient, but that it might never exist at all. The negotiations within WIPO's Intergovernmental Committee spanned more than 20 years, unfolding in a system historically resistant to even symbolic acknowledgment of Indigenous Peoples as relevant actors within intellectual property governance. As Lai, Wright, and Goodman themselves observe, the treaty emerged only after prolonged contestation, compromise, and persistent opposition from powerful states, underscoring the difficulty of achieving consensus in this domain. In this sense, Indigenous diplomacy at WIPO has been driven less by confidence in international law's promises than by efforts to challenge its silences.

On the other hand, a key concern shared by Indigenous Peoples, as highlighted by Jérémie Gilbert, is the fragmentation of legal regimes that separately address TK, TCEs, and GRs. This approach is incompatible with Indigenous worldviews, which regard these elements as interconnected. Gilbert explains:

> For many indigenous peoples, the challenge has been to make their holistic approach to cultural heritage fit within the international legal regime governing cultural heritage. Under international law, a multitude of legal regimes exist to protect cultural heritage. This notably includes the protection of "intangible", "tangible", and "natural" heritage, but also the division between intellectual, immaterial, and material protection of the cultural heritage. This overall complex legal regime, which is based on a cross-competency between several international organisations, often leads to a fragmentation between a multitude of legal frameworks, which ultimately do not adequately embody the holistic cultural heritage of indigenous peoples. The system notably fails to recognise that, for indigenous peoples, cultural heritage is holistic and encompasses their spiritual, economic, and social connections to their lands and territories.[26]

In addition, Gunjan's analysis of the treaty raises concerns about the absence of a dedicated legal instrument for the protection of TCEs. While the treaty introduces a new disclosure requirement for GRs and associated traditional knowledge (ATK)—expecting contracting parties to disclose the country of origin or the Indigenous community associated with these elements—TCEs remain vulnerable. As Gunjan states:

> Contracting parties signing the Treaty are obligated to disclose the country of origin or source or identity of the indigenous people or local community of the GR and/or TK. This recent requirement raises concerns over the absence of any legal instrument for preserving TCEs as cultural heritage belonging to Indigenous communities hailing from WIPO member states. Several jurisdictions currently provide for protecting TCEs originating in their respective states under Copyrights, Trademarks and Geographical Indications. Further, the Beijing Treaty on Audiovisual Performances (2012) grants performers of folklore a right under Article 15.4 of the Berne Convention for the Protection of Literary and Artistic Works (1886) access to a mechanism for the

[26] Gilbert 2017, 31.

> international protection of unpublished and anonymous works, including TCEs. However, the lack of any dedicated legally enforceable mechanism leads to considerable exploitation of the rights of traditional communities.[27]

Further considerations should address the challenges and limitations of the treaty. Moving forward, it is crucial that the good practices developed to include Indigenous Peoples in the negotiation process are institutionalized as standard procedures. Full and effective participation must be ensured, not only through political inclusion but also through consistent and sufficient financial support, free from the risk of funding shortages. Mechanisms for coordination and capacity building are urgently needed so that Indigenous peoples who were not present at the negotiations can fully understand the scope and limitations of the treaty. Moreover, capacity-building initiatives should include practical guidance on how Indigenous Peoples can operationalize the treaty and use it as an advocacy tool to ensure the recognition of their collective knowledge in national legislation, at least in those countries that ratify the instrument.

Conclusion

Indigenous diplomacy is a powerful form of advocacy—one that has consistently demonstrated how even the most rigid systems can be challenged and transformed in pursuit of genuine equity. The WIPO Diplomatic Conference serves as a recent example: Not only did it result in the adoption of the *Treaty on Intellectual Property, Genetic Resources, and Associated Traditional Knowledge*, but it also introduced new mechanisms for Indigenous participation. These are positive, replicable practices that show how multilateral spaces can evolve to better reflect the diversity of voices shaping global norms.

Too often, the contributions of Indigenous Peoples in high-stakes negotiations are overlooked or left unacknowledged. With this work, I aim to honor and recognize the diplomatic practices through which Indigenous representatives have long engaged global institutions, demonstrating that advocacy for the protection of traditional knowledge and cultural heritage is not confined to protest or resistance alone. It also takes the form of negotiation, coalition-building, and legal intervention within institutions that were not designed to accommodate Indigenous worldviews or authority.

The movement of Indigenous knowledge from local contexts into international legal forums reflects a broader struggle for recognition, restitution, and self-determination. The outcomes achieved at WIPO are the result of decades of Indigenous-led engagement grounded in collective memory and a growing legal expertise. These efforts signal an important shift: Indigenous Peoples are increasingly asserting themselves not only as subjects affected by international law, but as legal actors and norm-shapers with legitimate standing in global governance.

At the same time, decolonizing cultural property requires more than procedural inclusion or technical reform. It demands a deeper structural rethinking of the intellectual property regime and the global legal order it supports. Indigenous knowledge is not a resource to be catalogued or commodified; it is a living, relational practice bound to land, language, and community. Protecting it, therefore, calls not only for legal safeguards but for a reimagining of ownership, value, and sovereignty within international law.

Ultimately, Indigenous diplomacy should be understood not as an uncritical endorsement of existing systems but as a deliberate and strategic form of engagement with their material consequences. Participation in multilateral forums such as WIPO reflects an assertion of presence and authority within processes that shape Indigenous lives and knowledge systems. In this sense, Indigenous diplomacy is both a strategy of survival and a practice of transformation that insists on visibility, challenges exclusion, and continues to reshape international law from within.

[27] Arora 2025.

Declaration of AI-assisted editing

The author used ChatGPT (OpenAI) in the course of preparing this manuscript to assist with organization, language refinement, and clarity of expression. All interpretations, arguments, and conclusions are the author's own, and all cited sources have been independently verified. The views expressed are the author's own, based on public information and personal experience, and do not reflect any past or current institutional affiliations.

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