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“Balancing Environmental Responsibilities: Issues and Challenges of Biocultural Rights”

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The relationship between human rights and the environment can be very thorny. A blanket protection of the environment might endanger some human rights, particularly those of indigenous peoples and local communities. In contrast, the protection of human rights might come at the expense of the environment, if natural resources are overexploited to respond to important human needs. Dr. Giulia Sajeva explored these complex interactions between human rights and the environment in her lecture at SAIS and drew on her recently published book: *When Rights Embrace Responsibilities, Biocultural Rights and the Conservation of Environment*.

Biocultural rights have been described as a set of emerging human rights in international law that combine the notions of indigenous peoples’ rights and community-based conservation. Biocultural rights have two main foundations or justifications: the importance of self-determination and the conservation of cultural diversity of indigenous peoples and local communities; and the conservation of the environment. This basket of rights varies based on the people or community, but can generally be divided into four categories: the rights to lands and natural resources, to self-government, to cultural identity, and to the procedural rights necessary to make these rights enforceable. Duty-holders are also needed to ensure compliance with the rights. Often, these will be states, international organizations, and private enterprises.

One could argue that if these rights and duties are in place, indigenous peoples and local communities will always want and be in the condition to protect their local environment. However, this line of thinking could lead to the “noble savage trap” – the notion that indigenous peoples will always act - i.e. be willing to act and have the possibility to act - in the environment’s best interest. Yet this ignores the fact that indigenous peoples may find themselves in conditions which lead them to, willingly or unwillingly, overuse natural resources. Hence, it is argued, biocultural rights do actually also bestow a set of duties to indigenous peoples and local communities themselves: if a certain group claims biocultural rights to an area of land, such rights will come with the duty to conserve the environment.

Consequently, while there can be benefits to combining human rights and environmental protection in this way, there are also a number of challenges. The main issue is that biocultural rights are environmentally-conditioned human rights; that is, to be a holder of such rights, a community needs to be and remain sustainable. A community’s right to self-government, for example, would only be recognized to the extent that it does not harm the environment. The main question arising is: would it be fair? Another challenge is that there is disagreement even amongst conservation scientists as to what constitutes sustainable behavior. Therefore, there is a question of who the claimant should be in these situations – who decides whether a community is being sustainable or not? The state could fill this role, although states cannot always be trusted when managing indigenous rights. Lastly, there is the question of what the sanctions should be if communities do not remain

sustainable – do they lose their rights completely, or would they need to compensate for the environmental degradation?

Vis à vis these challenges, Dr. Sajeve notes that it is important to make a distinction between indigenous peoples and local communities, as they are not the same subjects in international law. Indigenous peoples have a link to precolonial societies and are holders of indigenous peoples' rights according to international law, and in many cases also national law. Therefore, they already hold a set of human rights that are not environmentally-conditioned: while indigenous rights may be related to the environment, such as rights to environmental assets, they do not require indigenous peoples to be or remain sustainable in order to be holders of the rights. One must therefore be careful not to conflate the discussion of biocultural rights with indigenous peoples' rights, as it could lead to indigenous peoples' rights being claimed to be environmentally-conditioned as well. Instead, Dr. Sajeve suggests that biocultural rights be used only for local communities or in situations where indigenous peoples' rights are being denied; that is, they are a second-best option to be used if a people does not have any other way of claiming or obtaining indigenous peoples' rights.