International Journal of Cultural Property (2011) 18:459–460. Printed in the USA.

doi:10.1017/S0940739111000361

New Working Group on "Cultural Protocols" Convenes at New York University, 19 August 2011

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Protocols in international law seem to be proliferating. Examples of official protocols at international law abound, from the 1967 Stockholm Protocol Regarding Developing Countries (amending the Berne Convention on copyright), to the 1997 Kyoto Protocol on climate change, to the recent Nagoya Protocol on Access and Benefit Sharing in 2010. But what exactly is a "protocol" compared to other international legal instruments, such as declarations and treaties? And why does there seem to be a flurry of new protocols today, in domains as vast as intellectual property and indigenous people's rights? On 19 August a new "working group" convened at the New York University School of Law to begin to study protocols, especially with an eye toward their use as a tool to protect indigenous cultural property—hence, the term "cultural protocols." The working group is the brainchild of Dr. Jane Anderson of the University of Massachusetts and Professor Barton Beebe of the New York University School of Law.

Greek for "the first glued in," the term "protocol" first referred to the table of contents at the start of a book intended to guide the reader through a work. Today, the lay understanding of protocol is as an established code of procedure or behavior—in international diplomatic circles, a protocol is the official etiquette. In international *law*, "protocol" is also a term of art, where it can be another name for a treaty. In fact, in international law, no precise nomenclature exists, such that the names treaty, convention, and protocol are all used interchangeably to describe voluntary international agreements between state parties, which are binding at international law.

The nomenclature "protocol" is often used to denote an amendment or supplement to an existing treaty. Amending protocols alter earlier treaties and are initially open only to the parties to original treaty. Supplementary protocols are linked to an initial treaty but stand on their own and can broaden the substantive provisions of the initial treaty. For example, the Nagoya Protocol on Access to Genetic

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Resources emphasizes certain commitments made earlier by state parties to the Convention on Biological Diversity (CBD) adopted in 1992. By revisiting that earlier agreement in the Nagoya Protocol in 2010, parties reaffirmed their commitment to the CBD, especially to access and benefit sharing with respect to biological resources and traditional knowledge. Protocols can give more specificity to older agreements, make earlier general commitments binding (as was the case with the Kyoto Protocol), and can renovate older agreements by linking those earlier conventions to contemporary agendas. The Nagoya Protocol, for example, links the CBD with the United Nations Millennium Development Goals, including poverty eradication, women's empowerment, climate change, and sustainable development. Participants in the working group included Kathleen A. Brown-Pérez of the University of Massachusetts, Kristen Carpenter of the University of Colorado School of Law, Margaret Chon of the Seattle University Law School, and Lorie Graham of Suffolk Law School, as well as Preston Hardison, Policy Analyst for the Tulalip Tribes, Sonia Katyal of the Fordham Law School, Angela Riley of the UCLA Law School, Madhavi Sunder of the UC Davis School of Law, and Gregory Younging of the University of British Columbia, Okanagan.