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INDIGENOUS RIGHTS IN JAPAN: THE EFFECT OF THE UNITED NATIONS
DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES ON THE AINU

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AHRENS GENE MICHAEL KERWOOD

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INDIGENOUS RIGHTS IN JAPAN: THE EFFECT OF THE UNITED NATIONS
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BY

Dr. Eric Heinze, Chair

Dr. Elyssa Faison

Dr. Noah Theriault

I dedicate this thesis to my family. You never stopped supporting me through my education and encouraged me to achieve so much more than I ever could have imagined.

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Abstract

This thesis examines how Japan internalizes international Indigenous rights norms. The application of the Declaration on the Rights of Indigenous Peoples (DRIP) in Japan relating to Ainu Indigenous rights provides a narrow case study for my analysis. On July 6, 2008, the Japanese government recognized the Ainu as Indigenous. Utilizing the five-phase spiral model, I find that the DRIP acted as an impetus for change within the context of Indigenous rights in Japan. In the first section of this thesis, I describe the current international development of Indigenous rights norms. In doing so, I introduce the spiral model as a constructivist analysis of norm internalization. The spiral model provides a nexus between two popular Indigenous law perspectives—social movements and the legalist rational model, which provide pressures for governmental reform from below and above, respectively. This thesis ultimately demonstrates how these pressures cooperated to progress Japan further through the spiral model. The rest of this thesis examines the Japan-Ainu case study within the framework of the spiral model. I begin my spiral model analysis with Phase 1 (repression and activation of networks) at the end of World War II. From there, I systematically pinpoint Japan's progression through Phase 2 (denial) and Phase 3 (tactical concessions). Near the end of Phase 3, I demonstrate how the DRIP assisted Japan's transition into Phase 4 (prescriptive status), where it remains currently. I also discuss what changes are necessary to shift Japan into Phase 5 (rule-consistent behavior). In conclusion, I determine that cooperative domestic-transnational pressures can use non-binding international documents such as the DRIP to bring about moderate change in a state's Indigenous policies.

Introduction

The Japanese government formally recognized the Ainu as an Indigenous population on June 6, 2008.¹ This monumental event for the Ainu of Japan took place less than one year after the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (DRIP) by the UN General Assembly. Some legal professionals dismiss declarations as an inadequate tool to establish and promote human rights because they are considered aspirational and not directly enforceable.² However, the relatively short time between the adoption of the DRIP and the acknowledgment of the Ainu's Indigeneity raises the question whether the DRIP played a role in facilitating this change.

The Ainu are people of the north, distinct from the ethnic Japanese "Wajin" from the south.³ Ainu largely occupy the northern island of Japan, Hokkaido. Historically, the Ainu also occupied parts of northern Honshu (Japan's largest island), southern Sakhalin, and the Kurile Islands; but most present-day populations are located solely in Hokkaido. The Ainu faced legal persecution dating back to the Meiji Restoration of 1868. For over a century, national regulations encouraged the "Japanisation" of Ainu society and culture. These regulations proved themselves extremely effective in severing the Ainu from their culture and traditions until the

¹ Masami Ito, "Diet officially declares Ainu indigenous," *The Japan Times* June 7, 2008, accessed April 10, 2017, <http://www.japantimes.co.jp/news/2008/06/07/national/diet-officially-declares-ainu-indigenous/#.WKNYwTsrKHu>.

² Jacob Dolinger, "The Failure of the Universal Declaration of Human Rights," *University of Miami Inter-American Law Review*, 47:2 no. 4 (2016), 184.

³ Henry Stewart, "Representation of the Ainu in Textbooks and Museums – Historical and Contemporary Ramifications," in *The Ainu: Indigenous People of Japan Vol. 3*, ed. Henry Stewart (Sapporo: Hokkaido University Center for Ainu and Indigenous Studies, 2012), 5.

1990s.⁴ The late 20th Century witnessed a growing movement of Ainu leaders advocating for Ainu rights and recognition of indigeneity, including the election of Shigeru Kayano, the first Ainu to sit in the Japanese legislature, the Diet.⁵ A 1999 Sapporo District Court ruling in *Kayano et al v. Hokkaido Expropriation Committee* (Nibutani Dam Decision) provided an opportunity for change by recognizing the Ainu as “a distinct ethnic group.” Under this determination, the Japanese government was legally bound to consider protective measures for the Ainu within the meanings of Article 13 of its constitution (“All people shall be respected...”) and the International Covenant on Civil and Political Rights (ICCPR).⁶ However, this judicial decision did not consider the Ainu to be Indigenous Peoples, and Japan’s legislative and executive branches largely ignored further Ainu outcry for recognition until June 2008.

I seek to answer the following question within this thesis: In what ways has the DRIP acted as an impetus for change in Japan’s legal recognition of the Ainu as an Indigenous People? Specifically, I wish to understand what developments in Ainu Indigenous rights might be attributed to the DRIP since its adoption in 2007. In seeking to answer these questions, I do not make the assumption that the DRIP was the most significant factor providing the preconditions for recognition of Ainu Indigeneity. Rather, through my question, I determine whether the DRIP contributed toward the preconditions and pressures necessary for the Japanese government to change its

⁴ Ibid., 6-7.

⁵ Ibid., 7.

⁶ Mark Levin, “Kayano et al. v. Hokkaido Expropriation Committee: ‘The Nibutani Dam Decision’,” *International Legal Materials* (University of Hawaii at Manoa – William S. Richardson School of Law) 394, accessed April 10, 2017, <https://ssrn.com/abstract=1635447>.

Indigenous policies, despite the presence of Japanese officials who firmly believe the state to be homogenous.⁷

My research is academically significant because it attempts to further clarify how international norms are internalized domestically, specifically the newly emerged rights of Indigenous Peoples. The history of Ainu activism domestically and internationally illustrates how Indigenous populations can affect international norms. Those international norms can then affect how actors perceive and interact with Indigenous Peoples. However, the relationship between external influences and Japanese state policies are not as straightforward as legal documentations may make it seem. The late 20th Century Japanese state has been widely criticized for responding to international pressures with the adoption of international laws without instituting enforcement mechanisms to ensure positive change.⁸ In order to accurately identify the nature of the DRIP's influence, my research also looks at the current state of conditions for the Ainu nearly a decade after the DRIP's adoption by the UN General Assembly.

Japan has far fewer Indigenous populations than other states, but arguably contains at least one recognized (Ainu) and unrecognized (Okinawans) Indigenous population for comparison. The Ainu are the first and only Indigenous minority recognized by the Japanese government, whereas recognition has yet to be extended to the Okinawan population in the south. Since fewer Indigenous populations reside within the Japanese state than other states that were heavily colonized, such as the U.S. and

⁷ "Ibuki: Japan 'extremely homogenous'," *The Japan Times*, February 26, 2007, accessed April 10, 2017, <http://www.japantimes.co.jp/news/2007/02/26/national/ibuki-japan-extremely-homogenous/#.WKNYVzsrKHs>.

⁸ Debito Arudou, "Righting a wrong: United Nations representative's trip to Japan has caused a stir," *The Japan Times* June 27, 2006, accessed April 10, 2017, <http://www.japantimes.co.jp/community/2006/06/27/issues/righting-a-wrong/#.WKNc1DsRKHs>.

Canada, there are less domestic variables that could contribute to the development of Japanese Indigenous rights.⁹ However, it is important to note that Indigenous Peoples, much like states, also have their share of internal debate and disagreements. Multiple positions and identifies can be held by individuals that consider themselves “Indigenous,” and plenty of other variables can arise that make this analysis much more complex than initially presumed, such as the emergence of local Ainu organizations and generational differences between younger and elder Ainu individuals.

This thesis is not an assessment of the general role of international declarations. Rather, the focus of this thesis is limited to the DRIP’s impact regarding the Japanese government’s recognition of the Ainu as Indigenous People. Additionally, this thesis does not claim that the DRIP was the sole, or even most prominent, driving force for change in Japanese law for the Ainu community. To claim so would be to ignore decades of hardship and efforts by Ainu grassroots activists, and over-emphasize the efforts of the outside international communities. This view perpetuates colonialist thought by emphasizing an outside community that decided “what’s best” for the Indigenous population. Rather, I seek to demonstrate the role the DRIP played in the various stages that led to the Ainu’s recognition. I ultimately argue that the DRIP coupled with domestic-transnational social networks held a moderate effect on Japanese Indigenous law and assisted with the Ainu’s eventual recognition as Indigenous.

⁹ In comparison, the U.S. currently recognizes 567 Native American tribes, and many treaties/statutes further complicate the field of Federal Indian law. (“Frequently Asked Questions,” *US Department of the Interior*, Bureau of Indian Affairs, last modified February 14, 2017, accessed April 10, 2017, <http://www.bia.gov/FAQs/index>.)

Methodology

This project utilizes social constructivist theory as the scholarly framework to examine Japan's Indigenous rights policies. Social constructivism, when applied to International Relations, emphasizes the role of actors' interests and preferences in relation to the shaping of their identities. Specifically, I rely on the "spiral model" created by Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink in their book, *The Power of Human Rights*.¹⁰ Their framework, the spiral model, was designed to "explain the conditions under which international human rights regimes and the principles, norms, and rules embedded in them are internalized and implemented domestically."¹¹ Risse, Ropp, and Sikkink place significant value on the establishment and sustained upkeep of social networks between domestic and international actors as a vehicle of change for the implementation and internalization of international human rights norms. These social networks are crucial for norms to affect state behavior. They serve three purposes: (1) as alerts regarding moral consciousness for both liberal and non-liberal states, (2) as empowering and legitimizing forces for domestic oppositions, and (3) as a challenge to norm-violating governments by transnational structures.¹²

The spiral model consists of a number of "boomerang throws," which are patterns of influence where the domestic group bypasses the repressive state to directly appeal to international allies.¹³ Those international allies then apply outside social pressures against the repressive state on behalf of the domestic group. This creates a

¹⁰ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (New York, Cambridge Press, 1999), 7.

¹¹ Ibid., 3.

¹² Ibid., 5.

¹³ Ibid., 18.

dual-social pressure system, effectively compelling the state “from above” and “from below” to bring about the desired change.¹⁴ The authors do not present the spiral model as an evolutionary process of governmental change. Rather, the spiral model’s five different phases offer an explanatory roadmap for how international norms are internalized, and where along the process state governments are most likely to withdraw from the internalization process.

Using the spiral model as a guiding conceptual framework, I analyze government documents, non-governmental reports, and other secondary sources to develop a working understanding of Ainu rights discourse. Many of these documents are readily available in English for non-Japanese scholars who wish to research this topic further. Many of these resources also entail a brief background of the Ainu since knowledge of their existence is still limited outside of Hokkaido. These sources therefore also exemplify the breadth to which the Ainu have effectively reached out to the international community for support. Prior to the late 20th Century, Indigenous rights were viewed as domestic issues addressed by the state. Few international influences were present besides the International Bill of Rights and the Universal Declaration of Human Rights.¹⁵ Since the 1980s, the Ainu have been one of many Indigenous groups working alongside the United Nations to initiate change for the

¹⁴ Ibid., 33.

¹⁵ The International Bill of Rights refers to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) its Optional Protocols, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its Optional Protocols. (“Fact Sheet No.2 (Rev.1), The International Bill of Human Rights,” *Office of the United Nations High Commissioner for Human Rights*, last accessed April 10, 2017, <http://www.ohchr.org/Documents/Publications/FactSheet2Rev.1en.pdf>.)

protection and promotion of Indigenous Peoples.¹⁶ Furthermore, texts published by Ainu museums and Ainu organizations have proven useful to minimize second-hand misinformation.

Chapter Overviews

This thesis is divided into three chapters. Chapter I: Indigenous Rights Discourse discusses how the spiral model can act as a framework of compromise between two popular explanatory perspectives in Indigenous rights discourse. To do so, I examine the strengths and weaknesses of the social perspective of the Indigenous rights movement and the legalist ration perspective of Indigenous rights in international law. Following this, I present a detailed explanation of the spiral model and its application to the case of Japan and the Ainu.

Chapter II: Japan Before the DRIP addresses the history of the Ainu prior to the UN General Assembly's adoption of the DRIP in 2007. This chapter argues that the Japanese government's interactions with domestic and international actors since World War II illustrate phase progression within the framework of the spiral model. Specifically, this chapter analyzes Japan's movement through Phase 1, Repression and activation of networks, Phase 2, Denial, and the earlier stages of Phase 3, tactical concessions.

Chapter III: The DRIP's Effect in Japan demonstrates how the DRIP has furthered the development of Ainu Indigenous rights. To do this, I examine what policy steps the Japanese government has taken, or failed to take, over the past decade. This

¹⁶ Mitsuahara Okada, "The Plight of Ainu, Indigenous People of Japan," *Journal of Indigenous Development*, 1, no.1 (2012): 1-14, accessed April 10, 2017, http://scholarspace.manoa.hawaii.edu/bitstream/handle/10125/21976/v1i1_02okada.pdf.

chapter concurrently argues that the DRIP played a role in the Japanese government's recognition of the Ainu in 2008. This chapter recognizes this as a pivotal point in time that moves Japan into Phase 4, prescriptive status. However, further changes are necessary for Japan to eventually enter Phase 5, rule-consistent behavior.

In conclusion, I review this project through the broader context of international norms. Here, I consider how Japan's experiences with Indigenous rights norms may be applicable to other states. This project concludes with suggestions for activists that may seek to further Indigenous rights in other states.

Conclusion

This thesis analyzes the role of the DRIP in regards to the successful recognition of the Ainu as an Indigenous People. Using the spiral method as my framework, I expect to find that the DRIP moderately effected the development of Japanese Indigenous rights law. Additionally, this result will likely be aided by domestic-transnational social networks that can then apply pressure against the Japanese government for change from above and below.

Chapter I: Indigenous Rights Discourse

The emergence of suitable international conditions for the development of Indigenous rights is a recent phenomenon that originated from changes in the world's political climate following the end of World War II. The establishment of the United Nations helped to create an institutional framework to codify new international norms, including the current international human rights regime. As human rights have progressed, more nuanced classes of protection have developed that target classes such as children, women, and Indigenous Peoples.

This chapter seeks to answer two broad questions that will help set up the analyses in Chapters II and III. First, what have other scholars found regarding the question of how international norms are thought to influence domestic politics, specifically as it pertains to international human rights norms such as Indigenous rights? To answer this question, I look at two different approaches utilized by scholars: (1) viewing Indigenous rights as a global social movement and (2) viewing these rights from a legalist rational perspective. From examining these two approaches, I determine that the spiral model acts as a unique intersection that offers a nuanced application of both aforementioned scholarly approaches.

Second, how does the spiral model suggest that the DRIP influenced the recognition of the Ainu in Japan? In answering this question, I will provide a general overview of the spiral model as a means of analysis for human rights norms. This overview includes an introduction on how each phase of the model will correspond with historical developments of the Ainu movement. I also offer a brief discussion of the DRIP, but specific details as to its effects are largely reserved for Chapter III.

Global Movement or Legalist Rational Perspective?

The willingness of the international community to accommodate Indigenous Peoples is a fairly recent phenomenon that developed alongside post-World War II ideals of universal human rights.¹⁷ Prior international norms accepted and promoted colonialism as an essential element of state control over Indigenous populations. The Doctrine of Discovery, among other colonial norms, acted as a legal justification for European states to “carve-up” large portions of the world how they saw fit.¹⁸ Indigenous issues were considered an internal affair with little political leverage granted to the Indigenous population. These norms continued until the atrocities of World War II provoked a global realization that states could not be expected to always decide in the best interest of its citizens or imperial subjects. Specifically, a state’s minority population was seen as vulnerable to the whims of a state’s majority that could be stimulated by populist demands. Regarding Indigenous Peoples specifically, changes enacted since then can be interpreted in two ways: (1) as a social movement for Indigenous rights or (2) as a legalist rational explanation of international norm adoption. Stated in other terms, these two categories generally represent a bottom-up or top-down approach, respectively. However, as we shall see later, the spiral model offers a compromise between the two perspectives. The spiral model considers social communications between both domestic and international actors as necessary to explain how the Japanese government’s Ainu policies changed to better reflect international Indigenous rights norms.

¹⁷ Ronald Niezen, *The Origins of Indigenism* (Los Angeles: University of California Press, 2003), 30.

¹⁸ Pope Alexander VI, *The Doctrine of Discovery, 1493*, The Gilder Lehrman Institute of American History, accessed April 10, 2017, <https://www.gilderlehrman.org/history-by-era/imperial-rivalries/resources/doctrine-discovery-1493>.

Indigenous Rights as a Movement: The Social Perspective

Scholarly works discussing the Indigenous rights movement often view this perspective as a bottom-up approach, examining grassroots movements as instrumental to change nationally and internationally.¹⁹ Despite the Indigenous movement's lack of international traction prior to the post-World War II period, scholars largely trace the beginnings of this movement to Deskaheh, the leader of the Iroquois Confederacy of Six Nations at Grand River. Deskaheh appealed to the League of Nations in 1923 asking them to recognize the Confederacy's sovereignty.²⁰ A similar petition for sovereignty was made a few years later by Maori religious leader T.W. Ratana. Both of these petitions to an international forum arose after the appealing parties became frustrated with their state's unwillingness to recognize them.²¹ Despite the League's refusal to hear Deskaheh and Ratana's petition, their efforts would lay the groundwork for future appeals to international bodies by Indigenous Peoples years later.

The Indigenous movement of the late 20th Century served as support and publicity for Indigenous communities to expand grass-root claims of self-determination to an international audience. Niezen argued that four aspects of the postwar era

¹⁹ Jose Vargas Hernandez and Mohammad Reza Noruzi, "Historical Social and Indigenous Ecology Approach to Social Movements in Mexico and Latin America," *Asian Culture and History* 2, no. 2 (2010), 178, accessed April 22, 2017, <http://www.ccsenet.org/journal/index.php/ach/article/view/6602>; Nancy Romer, "Bolivia: Latin America's Experiment in Grassroots Democracy," *New Politics* XI-4, no. 44 (2008), accessed April 22, 2017, <http://newpol.org/content/bolivia-latin-americas-experiment-grassroots-democracy>.

²⁰ "Indigenous Peoples, Indigenous Voices," *United Nations Permanent Forum on Indigenous Issues* (UN Department of Public Information, 2007), 7, accessed April 10, 2017, http://www.un.org/esa/socdev/unpfii/documents/unpfii brochure_en07.pdf.

²¹ Taiaiake Alfred and Jeff Corntassel, "A Decade of Rhetoric for Indigenous Peoples," *Indian Country Today* (May 11, 2004), accessed April 22, 2017, http://www.corntassel.net/print_rhetoric.htm; "Tahupōtiki Wiremu Rātana, Biography," *NZ History*, accessed April 22, 2017, <https://nzhistory.govt.nz/people/tahupotiki-wiremu-ratana>.

contributed to the new international climate.²² These were (1) the realization that states could not always be relied on to protect their own citizens, (2) the dismantling of European colonialism, (3) the failure of educational assimilatory policies to eliminate tribal culture and tradition, and (4) the development of an Indigenous middle-class.²³ The first two factors are direct effects of World War II. The first factor recalls not only the horrors of Nazi concentration camps, but also the internment of Japanese-Americans. The second factor considers the role of international organizations and instruments during the decolonization of many parts of Africa, Asia, and Latin America after World War II. However, it is worth noting that the third factor's failure to *completely eliminate* Indigenous culture and tradition should not be misconstrued as having no effect on Indigenous populations. In many instances, Indigenous cultures, traditions, and languages were irreparably changed through educational assimilation. Still, these programs often led to the development of Indigenous support groups and organizations that eventually joined to form Indigenous lobbying communities.²⁴ These lobbying communities would form the foundation of public power during the Indigenous movement. Likewise, the fourth factor created a class of Indigenous individuals educationally equipped to work alongside non-governmental organizations to provide socio-economic improvements for other Indigenous Peoples.²⁵

Niezen argued the existence of an "international Indigenism" joined different groups of peoples across multiple continents with very few similarities. Indigenous populations can vary greatly geographically, politically, and culturally. Instead, these

²² Niezen, *The Origins of Indigenism*, 40.

²³ *Ibid.*, 40-42.

²⁴ *Ibid.*, 42.

²⁵ *Ibid.*

populations relate through a consistent pattern of colonial subjugation that often included land appropriation, prohibition of cultural amenities and ideals, abrogation of treaties, and relegation to a lesser status than the colonizing population.²⁶ Niezen finds that these common historical experiences have proven to be an effective joining factor between Indigenous populations all over the world regardless of their other differences.²⁷

An important part of Indigenous rights discourse is the debate over self-determination.²⁸ Some states fear Indigenous self-determination as an inherent grant of right to secession from the state territory.²⁹ Gilbert argued that although a nexus between self-determination and land rights certainly exists within the liberal ideals “of a people entitled to pursue its own destiny,” current understandings of self-determination within Indigenous rights appear to be much narrower.³⁰ “In a post-colonial context, there is an increasing movement towards the recognition of a right to self-determination as comprising a right to effective political participation within the State’s borders.”³¹ Likewise, Niezen has stated that Indigenous Peoples “do evince many features of nationalism but do not as a rule aspire to independent statehood.”³² Indigenism can be distinguished from other forms of ethno-nationalism in three ways. First, most Indigenous populations are smaller in population. Second, secession would absolve the

²⁶ Ibid., 87.

²⁷ Ibid.

²⁸ Jeremie Gilbert, “Self-Determination and Autonomy: Emerging Standards on Territorial Negotiations,” in *Indigenous Peoples’ Land Rights Under International Law, From Victims to Actors* (Transnational Publishers 2006), 199-249; Niezen, *The Origins of Indigenism*, 203-05.

²⁹ Gilbert, “Self-Determination and Autonomy: Emerging Standards on Territorial Negotiations,” 199.

³⁰ Ibid., 200-01.

³¹ Ibid., 201.

³² Niezen, *The Origins of Indigenism*, 204-05.

former host state of treaty and trust obligations. Third, the Indigenous rights movement acts as a disincentive toward Indigenous secession since recognition and in-group membership can be obtained without leaving the host country.³³ Instead of creating a separate state, Indigenous self-determination is more likely to occur in states regarding the property and usufructuary rights of land and resources. However, ethno-nationalism, where a nation is defined by ethnicity, can arise among Indigenous nations within settler-colonial states.³⁴

Another debate within Indigenous rights discourse is the conceptualization of Indigenous rights as both individual and collective rights. Most human rights within the current international regime stem from the rights of individuals. The terminology of “peoples” is troubling for some human rights scholars who fear this language departs from the anchor of individualism in human rights and creates a group construct to oppress the individual.³⁵ However, Niezen explains that the overemphasis on the individual in practice can interpose burdens to Indigenous populations similar to discredited Indian policies of the 19th Century.³⁶ International actors have slowly begun to realize the importance of cultural membership, and that an individual can have several group loyalties as part of his or her intersectional identity.³⁷

³³ Ibid.

³⁴ Paul Nasady, “Boundaries among Kin: Sovereignty, the Modern Treaty Process, and the Rise of Ethno-Territorial Nationalism among Yukon First Nations,” *Comparative Studies in Society and History* 54 no. 3 (2012) 499-532, 503, accessed May 4, 2017, <https://doi.org/10.1017/S0010417512000217>.

³⁵ Ibid., 128.

³⁶ Ibid., 129.

³⁷ Alexandra Xanthaki, *Indigenous Rights and United Nations Standards: Self Determination, Culture and Land* (New York, Cambridge University Press, 2007), 38-39.

Indigenous Rights as Law: The Legalist Rational Perspective

The other major thought as to why states comply with international rules and norms is the legalist rational perspective. Likewise, discussions involving Indigenous self-determination and collective rights are viewable through the legalist rational perspective as well. Self-determination is widely held to be a principle of customary international law, perhaps even reaching the status of *jus cogen* or a preemptory norm.³⁸ Legal institutions and international treaties have a strong basis of decolonization and empowerment of minority populations. For example, the UN Charter, Chapter XI, Articles 73 and 74 are the basis of UN decolonization efforts.³⁹ Eighty former colonies have gained independence and thereby their right to self-determination since 1945 and all eleven territories originally placed under trusteeship of the UN achieved self-determination.⁴⁰ Some view self-determination as “an integral part of the right of people to choose their own political regime and to be free of authorization oppression.”⁴¹ Conversely, others view self-determination more modestly, and reserve secession as a final effort against egregious violations. Collective rights can be viewed as inherently opposing codified individual rights or as interdependent through current international norms.

The legalist rational perspective explains human rights compliance through a top-down approach, with most change originating at the international level through

³⁸ James Anaya, *Indigenous Peoples in International Law*, 2nd ed. (Oxford University Press, 2004), 75.

³⁹ “History,” *The United Nations and Decolonization* (UN Department of Public Information), accessed May 4, 2017, <http://www.un.org/en/decolonization/history.shtml>.

⁴⁰ *Ibid.*

⁴¹ Stephen Macedo and Allen Buchanan, *Secession and Self-Determination* (New York Press, 2003), 88.

treaties and other international documents.⁴² These documents broadly codify international norms that can then be applied against norm-violating states. For example, to ensure that states adhere to international law, international actors can utilize shame to apply social pressure for change. Shaming is regarded as “a deliberate attempt to negatively impact a state, regime, or leader’s reputation by publicizing and targeting violations of international law norms.”⁴³ A bad international reputation can have actual negative effects within the international arena politically and economically. Therefore, the threat of being shamed can be a motivating factor for states to correct domestic law.

Undoubtedly, major international documents such as the Universal Declaration of Human Rights (UDHR) and the International Bill of Rights play a major role in shaping Indigenous rights from a legalist rational perspective. However, a state’s motives for ratifying international treaties remains debatable. Hathaway argued that states are more likely to ratify international treaties if they can gain social benefits for their position rather than if the same benefits can be gained through a treaty’s effect.⁴⁴ Simply being a member of a treaty creates trust and avenues of social interaction between states that outweigh the negative effects of the treaty. Conversely, Simmons argued that recorded state behaviors do not support this interpretation. Instead, most governments take the responsibilities entailed in treaties seriously and act rationally when choosing whether to ratify a treaty. States are more likely to ratify treaties they

⁴² William Easterly, “Design and Reform of Institutions in LDCs and Transition Economies,” *American Economic Review: Papers & Proceedings* 98:2 (2008), 96, accessed April 22, 2017, <https://pdfs.semanticscholar.org/a52f/e27783ae6caaae87aa7030849917c650927d.pdf>.

⁴³ Sandeep Gopalan and Roslyn Fuller, “Enforcing International Law: States, IOS, and Courts as Shaming Reference Groups,” *Brooklyn Journal of International Law* 39, no.1 (2004), 75, accessed April 10, 2017, <http://brooklynworks.brooklaw.edu/bjil/vol39/iss1/2/>.

⁴⁴ Beth Simmons, *Mobilizing for Human Rights* (Cambridge Univ. Press, 2009), 59.

believe in and oppose treaties they find threatening.⁴⁵ These international agreements act as a codification of Indigenous norms that can prevent rights reduction over time in the international arena.

Guzman also argues that one of the driving forces for states to comply with international norms is their reputational benefits. According to Guzman, states have no particular desire for a good international reputation, but ratification of treaties presents opportunities to create goodwill and potential future gains.⁴⁶ “If improving one’s reputation can yield value in the form of higher payoffs, then states have an incentive to develop and maintain a good reputation.”⁴⁷ A good reputation frames the state as a credible partner for future cooperative arrangements that may prove beneficial. These benefits may be financial, greater reciprocal concessions, or future promises.⁴⁸ Conversely, the opposite effects may be had if a state has a less favorable reputation. Therefore, reputation creates a rational incentive for states to comply with international norms.

Xanthaki has pointed out that international monitoring mechanisms have “intensified [their] monitoring of Indigenous issues” since the start of the 21st Century.⁴⁹ For instance, Article 27 of the International Covenant on Civil and Political Rights (ICCPR) has continuously been interpreted as granting strong indigenous land rights.⁵⁰

⁴⁵ Ibid., 64.

⁴⁶ Andrew Guzman, *How International Law Works: A Rational Choice Theory* (Oxford: University Press 2008), 34.

⁴⁷ Ibid., 36.

⁴⁸ Ibid., 35.

⁴⁹ Alexandra Xanthaki, “Indigenous Rights in International Law Over the Last 10 Years and Future Developments,” *Melbourne Journal of International Law* (2009), 27, accessed April 10, 2017. <http://www.austlii.edu.au/au/journals/MelbJIL/2009/3.html>.

⁵⁰ Ibid.

Likewise, the Committee on Economic, Social and Cultural Rights issued General Comment No. 14, encouraging the protection of medicinal plants, animals and minerals necessary for the implementation of Indigenous healthcare plans.⁵¹ Additionally, the International Convention on the Elimination of All Forms of Racial Discrimination (1965) created the Committee on the Elimination of Racial Discrimination (CERD) to monitor the implementation of the Convention. Some examples of CERD's action includes its 1997 General Comment No. 23 on the rights of Indigenous Peoples, and multiple usage of its "Urgent Action Procedure" against states such as New Zealand and the United States to push states away from policies deemed discriminatory to Indigenous populations.⁵²

Although this list of influential international documents could, no doubt, be elaborated, I wish to instead focus on one particular convention that laid the foundation for the eventual adoption of the DRIP—the International Labor Organization Convention 169 (C169) – the Indigenous and Tribal Peoples Convention, 1989.⁵³ Prior to late 2000s, C169 was labeled “international law’s most concrete manifestation of the growing responsiveness to [I]ndigenous [P]eoples’ demands.”⁵⁴ C169 is described as a revision to a prior outdated convention from 1957, Convention 107 (C107). The distinguishing factor between C107 and C169 was the special inclusion of Indigenous leaders during the drafting of C169. Conversely, C107 did not account for desires of

⁵¹ Ibid., 28.

⁵² Ibid.

⁵³ “C169 – Indigenous and Tribal Peoples Convention, 1989 (No. 169),” *International Labour Organization*, September 5, 1991, Accessed April 10, 2017, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312314.

⁵⁴ Anaya, *Indigenous Peoples in International Law*, 47.

Indigenous peoples, but rather sought to protect Indigenous Peoples “through assimilation and integration into mainstream society.”⁵⁵ As Anaya notes in his analysis, the core of C169 was fundamentally different from its predecessor.⁵⁶

The basic theme of C169 is indicated by the treaty’s preamble, which recognizes “the aspirations of [Indigenous] [P]eoples to exercise control over their own institutions, ways of life and economic development and to maintain and develop their identities, languages, and religions, within the framework of the States in which they live.”⁵⁷ Upon this premise, the treaty included provisions advancing indigenous cultural integrity, land and resource rights, and non-discrimination in social welfare spheres; and it generally enjoins states to respect Indigenous Peoples’ aspirations in all decisions affecting them.⁵⁸ Other specific rights in C169 include the adoption of special measures for safeguarding persons, institutions, property, labor, culture and the environment (Art. 4), self-determination of development and improvement of livelihood, (Art. 7), ownership and possession of traditional lands (Art. 14) and procedural transmission of land rights (Art. 17).⁵⁹

The weakness of C169 lies in its limited ratification. A convention is legally binding only for those parties that choose to ratify it. Neither Japan nor a majority of large state actors with Indigenous populations, such as the U.S., have ratified C169. In fact, a majority of those ratifying states are concentrated in Latin America.

⁵⁵ Kaja Göcke, “Indigenous People in international Law,” in *Adat and Indigeneity in Indonesia: Culture and Entitlements between Heteronomy and Self-Acsription*, ed. Brigitta Huser-Schäublin (Göttingen University 2013), 7.

⁵⁶ Anaya, *Indigenous Peoples in International Law*, 47-48.

⁵⁷ “C169 – Indigenous and Tribal Peoples Convention, 1989 (No. 169),” Preamble.

⁵⁸ Anaya, *Indigenous Peoples in International Law*, 48.

⁵⁹ Judith Royster, Michael C. Blumm, and Elizabeth Ann Kronk, *Native American Natural Resources 3rd ed.* (Carolina Academic Press, 2013), 555.

Nevertheless, Anaya argued the significance of C169 should not be understated, because it contributed to a growing area of customary international law regarding Indigenous rights.⁶⁰

In regards to Japan's ratification of ILO treaties, one pre-World War II treaty may implicate the Japanese government's earlier recognition of the Ainu. This treaty is 1939's C050 – Recruiting Indigenous Workers Convention.⁶¹ Although the treaty was designed to allow states to recruit workers “who do not spontaneously offer their services,” the treaty indicates an understanding of an existing difference within the state-Indigenous society relationship. C050 definition of indigenous workers includes “workers belonging to or assimilated to the dependent Indigenous populations of the home territories of Members of the Organisation.”⁶² Additionally, Article 5 restricts labor recruitment before a competent authority has considered the withdrawal of adult males (workers) from within the social life of the population. However, it is unclear as to who the competent authority is to make certain decisions within the rules of the convention, whether that is the state or an external governing body. It is no surprise that international documents pre-dating World War II fell short of the protections we have come to expect since the creation of the United Nations and the UDHR. At a minimum, C050 exemplifies that the Japanese government was a signatory to an early convention that considered the effects that a state's majority population could have on the local

⁶⁰ Anaya, *Indigenous Peoples in International Law*, 49.

⁶¹ “C169 – Indigenous and Tribal Peoples Convention, 1989 (No. 169).”

⁶² “C050 – Recruiting of Indigenous Workers Convention, 1936 (No. 50),” *International Labour Organization*, September 8, 1939, accessed April 10, 2017, http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C050.

Indigenous minority. The legalist rational model accounts for Japanese government's ratification of C050, but not C169, through a cost-benefit analysis. C050 provides economic incentives with little restriction on the actions of the Japanese government. On the other hand, C169 would provide heavier restrictions against the Japanese government, and had little economic or reputational benefit.

Both social movements and legalist rational perspectives play an important role in Indigenous rights discourse. However, the spiral model offers a unique application of these two aforementioned approaches, because it considers both the grassroots movements of oppressed groups and the actions of international organizations. It highlights the importance of domestic-transnational social ties while also considering the legalist rational interpretations of current international laws and norms. The model therefore explains how the local grassroots movement is able to apply pressure from the "bottom-up" while international organizations simultaneously pressure change from the "top-down."

The Spiral Model and the DRIP's Influence on the Ainu of Japan

The DRIP is the central piece of my analysis on Japan. It is not only an example of an international instrument, but also demonstrates the growth of international norms through codification since the beginning of modern human rights discourse. For my overall argument, this means that codification of international norms may prolong their existence, making states much more likely to successfully navigate through the entirety of the five phase spiral model.

In this section, I first provide a brief outline describing the DRIP and its purpose. Then, I explore my proposed model of explanation through a brief description

of the model's five stages proposed by Risse, Ropp and Sikkink. Additionally, I introduce how I plan to argue, through the spiral model, that the DRIP influenced the recognition of the Ainu in Japan in 2008.

The Declaration on the Rights of Indigenous Peoples

The DRIP was preceded in 1993 by the U.N. proclaimed "Year of the World's Indigenous Peoples," which was largely seen as disappointing with little action from states to change.⁶³ This year later turned into an International Decade (1995-2004), followed by the Second International Decade (2005-2014).⁶⁴ The creation of the UN Permanent Forum on Indigenous Issues was a positive effect of 1993 that arguably played an integral part in future negotiations.⁶⁵ DRIP negotiations continued throughout this time until 2008. Upon the UN General Assembly's vote in favor of its adoption, 143 states, including Japan, consisted of the majority needed to adopt the DRIP. The four states that initially voted against its adoption (Canada, Australia, New Zealand, and the United States) would eventually reverse their positions and adopt the DRIP as well.⁶⁶

The DRIP adoption on August 13, 2007 was the culmination of an intense negotiation period that lasted over two decades. These discussions included representatives from states and Indigenous populations who sought to create a document that sufficiently met the needs of Indigenous populations while remaining adoptable by the UN General Assembly. The DRIP reflected a growing source of

⁶³ Elvira Pulitano, *Indigenous Rights in the Age of the UN Declaration* (Cambridge 2012), 15.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ "Declaration on the Rights of Indigenous Peoples", *UN Human Rights Office of the High Commissioner*, accessed April 10, 2017, <http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx>.

customary international law despite its non-binding nature as a declaration. It was designed to function as “a universal framework of minimum standards for the survival, dignity and well-being of Indigenous Peoples.”⁶⁷ These protections included an already well-established list of individual rights, now reiterated in the Indigenous context, as well as collective rights such as the right to culture, language, and freedom from assimilation. Indigenous Peoples hold the right to self-governance as an exercise of self-determination under Article 4 “in matter relating to their internal and local affairs, as well as ways and means for financing their autonomy.”⁶⁸ This included copyright protections and land rights granted to Indigenous peoples. The DRIP also indirectly addressed other human rights that reflects human rights norms, but have failed to be directly included in international instruments, such as the prohibition of ethnocide.⁶⁹ Furthermore, states are charged with taking effective measures to promote tolerance from non-Indigenous state citizens, and are required to help Indigenous Peoples implement programs to revitalize and promote their culture. These ideals are listed and summarized throughout the DRIP’s forty-six articles.

Despite the DRIP’s ambitious language, a few major weaknesses continue to draw criticism. First, the DRIP fails to precisely define the term “Indigenous.” This omission aided in the DRIP’s initial adoption in the UN General Assembly because it inherently granted states the power to determine if a populations was Indigenous. Populations that failed to be listed and considered before the UN decolonization

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Xanthaki, “Indigenous Rights in International Law Over the Last 10 Years and Future Developments,” 30-31.

committee were therefore much more unlikely to be recognized.⁷⁰ Second, Articles 25-26 recognized Indigenous rights to land, territory, and other natural resources. These articles largely reflected land rights codified in ILO C169 that initially gave pause to many states.⁷¹ Strong interpretation of these articles might create large cessionary impacts on states originally founded through colonialization, particularly in the four states that originally voted against the DRIP: The United States, Canada, Australia, and New Zealand. To rectify this, the four opposing states did not view these articles as guaranteeing the right to secession upon adoption of the DRIP. Finally, the DRIP's status as a declaration makes it non-binding on states. This means that most of the document's language can be considered aspirational. Very few avenues of recourse can be taken against states that continue to violate the DRIP beyond social shaming and public embarrassment. Still, the DRIP plays a significant role in Indigenous rights as a widely recognized document of codified international norms.⁷² The following section will explain how these social punishments play into my analysis and may still provide real change for Indigenous populations.

Applying the Model

This section provides a basic outline of the spiral model and its five phases. Each subsection details the expected interactions of the domestic opposition, the state, and the international community. Additionally, these subsections include how each phase of the model will correspond with the historical development of the Ainu movement.

⁷⁰ Pulitano, *Indigenous Rights in the Age of the UN Declaration*, 105.

⁷¹ *Ibid.*, 51.

⁷² Xanthaki, "Indigenous Rights in International Law Over the Last 10 Years and Future Developments," 30.

What is the Spiral Model?

The spiral model is a five-phase model that seeks to explain the processes by which a repressive state can internalize international norms promoted by domestic grassroots movements and transnational actors. This process relies on sustainable social networks between the domestic and international levels to distribute information and apply pressure from a top-down and bottom-up approach simultaneously. Rather than focusing solely on the role of international policies, the model “explore[s] the conditions under which networks of domestic and international actors are able to change these domestic structures themselves.”⁷³ Most prior applications of the spiral model largely focus on the state internalization process of human rights norms. This is largely because human rights naturally challenge a state’s ability to rule over its domestic society, they are well established through international institutions and regimes, and they compete with other principled ideas.⁷⁴ Sustainable domestic-transnational communication, without the state acting as a necessary go-between, allows domestic problems to be raised directly and openly in the international arena. This pattern of communication has been characterized as a “boomerang throw” since the repressed domestic group bypasses the state to interact with actors on the international stage.⁷⁵ The spiral model require continuous pressure from above and below between the repressed domestic group and international actors.

Risse, Ropp, and Sikkink argue that the process of a state’s internalization of international norms is reliant on a process of *socialization*. Socialization is defined as

⁷³ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (New York, Cambridge Press, 1999), 4.

⁷⁴ Ibid.

⁷⁵ Ibid., 18.

“the process by which principled ideas held by individuals become norms in the sense of collective understandings about appropriate behavior which then leads to changes in identities, interest, and behavior [of the state].”⁷⁶ Although not bound to this order, states often begin the socialization process through instrumental adaptations in reaction to pressure domestically and internationally.⁷⁷ This may include some tactical concessions, such as releasing prisoners or signing international agreements. As the process continues, states often engage with argumentative discourse, which includes governmental adaptation, strategic bargaining, persuasion, argumentation, and moral-consciousness-raising.⁷⁸ Finally, as the state further internalizes international norms, it will begin to institutionalize and habitualize these norms within its society.⁷⁹ This process is dependent on social interactions between the state and other domestic and international actors that apply pressure.

Utilizing domestic-transnational social structures provide three different benefits for domestic opposition groups: (1) moral consciousness-raising, (2) empowerment and legitimization of domestic groups against norm-violating states, and (3) the creation of a challenge mechanism to pressure the state to adopt and follow norms by pressuring “from above and below.”⁸⁰ Repressive regimes often adopt international standards to avoid international scrutiny and project a façade of compliance. Domestic-transnational networks continue the process of social scrutiny against the violating state to increase the likelihood of internalizing international norms.

⁷⁶ Ibid., 11.

⁷⁷ Ibid., 12

⁷⁸ Ibid., 13.

⁷⁹ Ibid., 16-17.

⁸⁰ Ibid., 5.

The five phases of the spiral model are as follows: (1) Repression and activation of networks, (2) Denial, (3) Tactical concessions, (4) Prescriptive status, and (5) Rule-consistent behavior.⁸¹ Evolutionary progress should not be assumed within this model, as state responses to endogenous and exogenous pressures might also result in a return to repressive practices.⁸² Still, this model offers an analytical framework for understanding how international and domestic pressures may result in a state's internalization of and compliance with international norms. Additionally, this model offers an explanation why the Japanese government was willing to recognize the Ainu as an Indigenous People less than one year after the adoption of the DRIP and only a decade removed from a century of assimilatory policies.

Phase 1: Repression and Activation of Networks

The first phase starts with very high levels of repression by the state against the domestic group. “[D]omestic societal opposition is too weak and/or too oppressed to present a significant challenge to the government.”⁸³ Domestic opposition forces must socially connect to transnational actors to put the norm-violating state on the international agenda for investigation. However, if social links are frequently suppressed, the state's time spent in Phase 1 can be exceedingly lengthy. Levels of state repression may vary from mild levels to extreme levels bordering genocide, and a state's level of repression can often indicate the likelihood of the emergence of domestic-transnational social links.⁸⁴

⁸¹ Ibid., 20.

⁸² Ibid., 18.

⁸³ Ibid., 22.

⁸⁴ Ibid.

My analysis for the Ainu (Chapter II) begins at the end of World War II in 1945. This determination already distinguishes my analysis from a majority of Risse, Ropp, and Sikkink's examples because it predates the 1970s international human rights movement. Many of their examples focus on states that established authoritarian governments around or slightly before the 1970s. However, Japan's governmental liberalization preceded the human rights movements. The Taisho Democracy Movement (1912-1931), a brief era of political liberalism, ended with the Manchurian Incident of 1931.⁸⁵ Ultra-nationalism and militarism grew in Japan under the Showa Emperor and eventually led to Japan's involvement in World War II.⁸⁶ Japan's post-war constitution elevated the role of the National Diet, a bicameral parliamentary legislature with representatives elected by the people, and the Emperor forced to disavow his own divinity and become no more than a political figurehead.⁸⁷ Earlier liberalization without a regression into authoritarian governance enabled the Ainu to quickly establish domestic-transnational social ties with limited repression during the human rights movement of the 1970s. This quickened Japan's transition into Phase 2 during the 1970s.

Phase 2: Denial

While oppression of the Ainu continued through Phase 2, the Japanese government was forced to respond to international and domestic allegations of

⁸⁵ "Taisho Democracy in Japan: 1912-1926," *Facing History and Ourselves*, accessed May 7, 2017. <https://www.facinghistory.org/nanjing-atrocities/nation-building/taisho-democracy-japan-1912-1926>; Andrew Gordon, *A Modern History of Japan: From Tokugawa to the Present* 2nd ed. (Oxford Press University, 2009), 187-88.

⁸⁶ David Lu, Japan, *A Documentary History: The Late Tokugawa Period to the Present* (East Gate Book, 1997), 411.

⁸⁷ *Ibid.*, 466-71.

Indigenous norm violations. The placement of norm-violating states onto the international agenda for human rights begins Phase 2. Risse, Ropp and Sikkink characterize the initial beginnings of Phase 2 as “the production and dissemination of information about human rights practices in the target state.”⁸⁸ With cooperative involvement from human rights organizations in the repressive state, the information is delivered through transnational networks to lobby international human rights organizations and liberal states for aid.⁸⁹ Lobbyists often adopt an aura of “moral persuasion” to pressure states and other international organizations that claim to condemn the violating state. Once a promoting state or organization begins to champion the lobbied message, the norm-violating state often responds to these exogenous pressures with denial through accusatory claims of illegitimate intervention in internal affairs.⁹⁰ Domestic opposition remains vulnerable during this phase. Initial attempts to persuade violating states may appear counter-productive, particularly if the state increases its repression of the domestic opposition. Some states may attempt to bribe or eliminate the domestic opposition.⁹¹ However, the norm-violating state’s need to respond to these accusations already shows that the socialization process has begun. If exogenous social pressures were of no concern to the norm-violating state, then it would have no need to respond.

For Japan, phase 2 reflected the above process. As the influence of the civil rights and Indigenous movements of the 1970s started to be felt in Japan, denial of

⁸⁸ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 22.

⁸⁹ Ibid., 23.

⁹⁰ Ibid.

⁹¹ Ibid., 24.

continued Ainu existence by the Japanese government steadily increased.⁹² When the UN Commission on Human Rights inquired about the Ainu in 1980, the Japanese government remained adamant that the Ainu were neither a minority nor an Indigenous population.⁹³ The government's position would remain as such until the 1990s.

Phase 3: Tactical Concessions

During this phase the pressures from both domestic and international oppositions have begun to shift the policy of the norm-violating state. In an attempt to ease this pressure or recover previous support from liberal states, the norm-violating state may seek to temporarily-improve the condition of the repressed domestic group. Tactical concessions from a norm-violating state, such as the release of political prisoners or signing international treaties, can empower the domestic opposition to continue to strive for change from within the state. Additionally, domestic-transnational networks are often strengthened through these concessions. However, Phase 3 is a deciding moment within the model. These concessions can result in “enduring change” toward internalization of international norms or a “backlash” that reinstates oppressive governance.⁹⁴ If this tenuous scenario is successfully navigated, the norm-violating state will begin to lose control of the domestic situation. Simply put, “people start losing their fears.”⁹⁵ The state then begins to become entrapped in their own language from previous human rights negotiations.

⁹² Henry Stewart, “Representation of the Ainu in Textbooks and Museums – Historical and Contemporary Ramifications,” in *The Ainu: Indigenous People of Japan Vol. 3*, ed. Henry Stewart (Sapporo: Hokkaido University Center for Ainu and Indigenous Studies, 2012), 6.

⁹³ *Ibid.*, 7.

⁹⁴ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 25.

⁹⁵ *Ibid.*, 26.

The clearest evidence of Phase 3's existence in Japan occurred in 1997 with the repeal of the 1899 Law for the Protection of Aborigines (1899 Protection Act). It was replaced by the Promotion Act of Ainu Culture and Dissemination of Knowledge Regarding Ainu Traditions (1997 Promotion Act).⁹⁶ While the act did not recognize the Ainu as an Indigenous People, it was the first law in Japanese history to recognize the presence of a minority population. This act was preceded two months earlier by the landmark legal case issued by the Sapporo District Court, *Kayano et al. v. Hokkaido Expropriation Committee* (The Nibutani Dam decision), which first included the recognition of the Ainu as a minority population.⁹⁷ The Japanese government continued to avoid recognizing the Ainu as Indigenous until 2008.

Phase 4: Prescriptive Status

This phase begins when a state no longer finds the validity of the international norms controversial. Although the state might continue to violate these norms, it has begun to critique itself. A state's display of four specific indicators determines whether a state has accepted of the validity of human rights norms.⁹⁸ First, the state has ratified all or most of the major human rights conventions. Second, international norms have been integrated into the state's constitution and/or domestic law. Third, some institutionalized mechanism, such as a specialized court or council, must provide access for domestic groups to report violations. Finally, the state acknowledges the value of

⁹⁶ Mark Levin, "Essential Commodities and Racial Justice: Using Constitutional Protection of Japan's Indigenous Ainu People to Inform Understandings of the United States and Japan," *New York University Journal of International Law & Politics* 33 (New York Press, 2001), 467.

⁹⁷ Mark Levin, "Japan: Kayano et al. v. Hokkaido Expropriation Committee: The Nibutani Dam Decision," *International Legal Materials* (University of Hawaii at Manoa – William S. Richardson School of Law, 1999), 394-429, <https://ssrn.com/abstract=1635447>.

⁹⁸ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 29.

human rights norms through its rhetoric, and continuously engages in constructive dialogue with critics.⁹⁹ However, successful change within a state must go beyond norm-appeasing rhetoric. Real change toward domestic enforcement of these norms must be present.

Here is where the DRIP plays a crucial role in the development of Ainu rights. The DRIPs adoption, followed shortly thereafter by the recognition of the Ainu in 2008, presents the likely scenario that the DRIP accelerated Japan's transition from Phase 3 to Phase 4. Ainu Indigenous recognition exemplifies Japanese government's acceptance of international norms pertaining to Indigenous Peoples. Furthermore, the four phase indicators are met in at least some minimum capacity from this point forward.

Phase 5: Rule-Consistent Behavior

Finally, Phase 5 is achieved when the state fully adopts international norms and their institutions. This phase is difficult for the state to remain in, and continued pressure through social networks are vital for sustainable state improvements.¹⁰⁰ This task grows increasingly difficult once gross violations are ended and the international limelight is transferred to other areas of importance. In order to sustain these necessary social pressures, the state must fully institutionalize norm compliance measures and habitualize their practices through law enforcement. Assuming these measures are taken, the state has successfully internalized international norms.

My current analysis places Japan in Phase 4 of the spiral model, but potential for the state's future transition to Phase 5 is already present. In 2020, the Symbolic Space for Ethnic Harmony will open for the protection and promotion of Ainu culture. Steps

⁹⁹ Ibid.

¹⁰⁰ Ibid., 31.

are also being taken to revise repatriation laws for Ainu ancestral remains and funerary items. Likewise, discussions to aid the Ainu population through education and employment have increased, and include the active input of Ainu cultural leaders. Keeping in mind the Indigenous rights and international norms mentioned previously, the remainder of this project will focus on identifying and applying facts relevant to my case study of the Ainu within the framework of the five-phase spiral model.

Conclusion

Chapter I has provided a general overview of two methods to interpret the development of Indigenous rights norms: social movements and the legalist rational model. Both of these models provide valuable insight into a state's internalization process of international norms, but fail to thoroughly account for the strengths of the other model. The spiral model bridges this gap. It offers an explanation why domestic pressure from below and international pressure from above both play a vital role in implementing change. In the next two chapters, I examine the state of affairs between the Ainu and the Japanese government as a case study within the framework of the spiral model.

Chapter II: Japan Before the DRIP

This chapter seeks to position Ainu history within the spiral model prior to the DRIP's adoption in 2007. However, I first find it necessary to present a background of the Ainu to distinguish them from the Wajin historically, genetically, and culturally. This chapter also details Japan's first three phases of the spiral model: (1) Repression and activation of networks, (2) Denial, and (3) Tactical concessions. My analysis places Phase 1 between the end of World War II and the early 1970s. Phase 2 extends from the mid-1970s to 1997, and encompasses multiple denials of continued Ainu existence by the Japanese government. Finally, Phase 3 begins with the repeal of the 1889 Protection Act in 1997, and ends in 2008 with the recognition of Ainu Indigeneity. However, the latter half of my Phase 3 analysis continues in Chapter III, and focuses on the DRIP's influence in Japan.

Historical Indigeneity

Early ancestors of the Ainu were hunter-gatherers without a written language. Instead, they depended upon a process of rich oral story-telling to pass down cultural history. Two of the earliest Wajin records prove the presence of the early Ainu in Japan during the 6th Century: the *Kojiki* (712 AD) and the *Nihongi* (720 AD).¹⁰¹ Wajin writings dating back to the 8th Century also evidenced friendly and hostile interactions with native peoples to the north of them, whom they called the Emishi.¹⁰² "Ainu culture" culminated during the early 13th Century from a blending of Jomon, Epi-

¹⁰¹ John Batchelor, *The Ainu of Japan* (1892), p. 297.

¹⁰² Mark Levin, "Essential Commodities and Racial Justice: Using Constitutional Protection of Japan's Indigenous Ainu People to Inform Understandings of the United States and Japan," *New York University Journal of International Law & Politics* 33 (New York Press, 2001), 421.

Jomon, Satsumon, and Okhotsk cultures.¹⁰³ By the 17th Century, “intensive contact” between the Ainu and the Wajin had forced the Ainu to withdraw from northern Honshu into Hokkaido, southern Sakhalin, and the Kurile Islands.¹⁰⁴ Ainu genetics and physical characteristics differed from the southern Wajin population. Many historical photographical and textual depictions of Ainu men include long beards more relatable to Mongoloid populations rather than the Wajin.¹⁰⁵ Genetic comparisons of ancient DNA between Jomon and Yayoi societies have further distinguished the ethno-genesis of the Ainu and Wajin populations. For instance, the G and Y haplogroups dominant in Ainu populations are absent or scarce in Okinawan and Wajin populations, indicating Ainu genetic transferal likely derived from Siberia rather than Southern Japan, creating a new population.¹⁰⁶

Wajin colonization of Ainu lands is first demonstrated through three military encounters and the establishment of the Matsumae fief in southern Hokkaido. All three encounters (Kosyama—1457, Syakseyin—1669, Kunasiri-Menasi—1789) ended in Ainu military defeat and eventually placed Ainu communities under Japanese sovereign territorial rule.¹⁰⁷ Likewise, the establishment of the Matsumae fief in 1604 was a

¹⁰³ Henry Stewart, “Representation of the Ainu in Textbooks and Museums – Historical and Contemporary Ramifications,” in *The Ainu: Indigenous People of Japan Vol. 3*, ed. Henry Stewart (Sapporo: Hokkaido University Center for Ainu and Indigenous Studies, 2012), 5.

¹⁰⁴ *Ibid.*, 6.

¹⁰⁵ Emiko Ohnuki-Tierney, *Illness and Healing Among the Sakhalin Ainu: A Symbolic Interpretation* (Cambridge, 1981), 207; “Ainu Museum Poroto Kotan: Homepage,” *Ainu Museum Poroto Kotan*, accessed April 10, 2017, <http://www.ainu-museum.or.jp/en/info/midokoro.html> (accessed March 15, 2017).

¹⁰⁶ Ken-ichi Shinoda, “Genetic Structure of the Japanese and the Formation of the Ainu Population,” in *The Ainu: Indigenous People of Japan Vol 3*, ed. Henry Stewart (Sapporo: Hokkaido University Center for Ainu and Indigenous Studies, 2012), 32-33.

¹⁰⁷ “Ainu History and Culture: The Ainu People,” *Ainu Museum Poroto Kotan*, accessed April 10, 2017, <http://www.ainu-museum.or.jp/en/study/eng01.html> (accessed March 15, 2017).

precursor to further land expropriations of the next few centuries.¹⁰⁸ The Meiji government created the Hokkaido Colonization Commission in 1869. The Commission was specifically tasked with developing sparsely populated regions of Hokkaido and “civilizing” the Ainu.¹⁰⁹ To do this, strict assimilatory policies were implemented. These policies included restrictions on Ainu traditional hunting/gathering, prohibition of Ainu language, forcible adoption of farming, and the enrollment of all Ainu as Japanese subjects.¹¹⁰ Large areas of land once occupied by the Ainu were categorized as *terra nullius*, which provided legal justification for the Japanese government to claim and distribute land according to its desires.¹¹¹ With the loss of their means of survival, increased Wajin migration to Hokkaido, and a growing problem of foreign diseases in Ainu communities, the Ainu population dropped dramatically between 1873 and 1936.¹¹²

Meiji-era assimilation efforts were further reinforced with the enactment of the 1899 Protection Act, which called for the “dissolution of the Ainu culture and society, and final assimilation.”¹¹³ Additionally, the act labeled the Ainu as “former aborigines,” a title that would continue for nearly a century.¹¹⁴ Instead of resisting, many Ainu

¹⁰⁸ Brett Walker, *The Conquest of Ainu Lands: Ecology and Culture in Japanese Expansion, 1590-1800* (Univ. of CA Press, 2001), 37.

¹⁰⁹ Yuuki Hasegawa, “The rights movement and cultural revitalization: the case of the Ainu in Japan,” in *Cultural Diversity, Heritage and Human Rights: Intersections in Theory and Practice*, ed. Michele Langfield, William Logan, and Mairead Nic Craith (Stanford University Press, 2004), 106.

¹¹⁰ Stewart, “Representation of the Ainu in Textbooks and Museums – Historical and Contemporary Ramifications,” 6.

¹¹¹ Tessa Morris-Suzuki, “The Ainu: Beyond the Politics of Cultural Coexistence,” *Cultural Survival* 23, no. 4, 23, December 1999, accessed April 10, 2017, <https://www.culturalsurvival.org/publications/cultural-survival-quarterly/ainu-beyond-politics-cultural-coexistence>.

¹¹² Hasegawa, “The rights movement and cultural revitalization: the case of the Ainu in Japan,” 209.

¹¹³ Stewart, “Representation of the Ainu in Textbooks and Museums – Historical and Contemporary Ramifications,” 6.

¹¹⁴ Jennifer Chan-Tiberghien, *Gender and Human Rights Politics in Japan* (Stanford University Press, 2004), 106.

struggled to adapt to life as Japanese subjects in order to survive. The 1899 Protection Act survived for nearly a century with only a few of its most unpopular sections being repealed during the 1930s.¹¹⁵

Beside the unsuccessful efforts of Ainu activist Kannari Tarō during the late 19th Century, Ainu communities largely remained silent within Japanese politics.¹¹⁶ As the Ainu's integration within the Japanese system continued during the 20th Century, Ainu society became much more vocal about the enduring issues of political and socioeconomic inequalities. The establishment of the "Tokachi Kyokumeisha" (Tokachi Clear Dawn Society) on May 8, 1927, created the first Ainu organization intended for the "management and promotion of the culture and economy of the Ainu race."¹¹⁷ Although the Kyokumeisha claimed not to promote any radical political lines, its existence encouraged other Ainu to speak out against the Japanese government. One such example was Kaizawa Hiranosuke's unsuccessful petition to the Japanese government for Ainu representation in the Congress of Asian Peoples in Nagasaki.¹¹⁸ The Kyokumeisha's continued efforts to revise the 1899 Protection Act resulted in a unanimous vote from 130 members to create the Hokkaido Ainu Kyokai (later renamed the Hokkaido Utari Kyokai in 1961) on July 18, 1930.¹¹⁹ However, the Kyokai's early actions did not promote Ainu sovereignty. Some successful assimilation was seen as a way to help Ainu families escape poverty and alcoholism. Likewise, a lack of effective

¹¹⁵ Morris-Suzuki, "The Ainu: Beyond the Politics of Cultural Coexistence."

¹¹⁶ Richard Siddle, *Race, Resistance and the Ainu of Japan* (New York, 1996), 114-115.

¹¹⁷ *Ibid.*, 132.

¹¹⁸ John Maher, "Reversing Language Shift and Revitalization: Ainu and the Celtic Languages," *The Japanese Journal of Language in Society* 17, no. 1 (2014), 3, johncmaher.weebly.com/uploads/1/5/9/5/15955968/ainu-celtic.pdf.

¹¹⁹ Siddle, *Race, Resistance and the Ainu of Japan*, 134.

avenues of redress left them little hope in persuading the Japanese government to allow, let alone support, Ainu culture.¹²⁰ Nevertheless, the Kyokai provided the first large forum for Ainu to address communal issues and bond together under a common purpose.

Phase 1: Repression and Activation of Networks - 1945 to Early-1970s

As discussed in the previous chapter, Phase 1 entails “repression and the activation of networks.”¹²¹ My analysis starts with Japan’s entry in Phase 1 of the spiral model at the end of World War II, a time of rapid liberalization following the state’s surrender to the Allied powers. Additionally, post-war society in Japan developed the first human rights normative framework conducive to Indigenous rights. Dates prior to 1945 do little to contribute to my analysis beyond emphasizing the longstanding existence of repression and domestic opposition against Ainu rights. The Japanese government’s early liberalization and continued inclusion in international human rights discussions aided Japan’s quick transition into Phase 2 once Indigenous rights were popularized during the 1970s human rights movement. Keeping this in mind, I have mapped Japan’s time in Phase 1 from 1945 to the early 1970s.

Phase 1 of the spiral model entails two factors: (a) a repressive situation “where domestic societal opposition is too weak and/or too oppressed to present a significant challenge to the government,” and (b) the eventual activation of domestic-transnational advocacy networks capable of gathering enough information on the norm-violating state to place it on the international agenda.¹²² The first factor is often much easier to identify

¹²⁰ Ibid., 135.

¹²¹ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (New York, Cambridge Press, 1999), 22.

¹²² Ibid.

based on consistent patterns of behavior extending a long time, possibly even centuries. For the Ainu and other Indigenous populations, the oppression perpetuated by the state stems from decades of policies that often include expropriation of lands, prohibition of language and/or traditions, and institutionalized assimilation policies. The activation of international advocacy networks was not possible for the Ainu Indigenous rights movement until the early 1970s. By then, efforts to generate change through domestic avenues were largely exhausted and frustrations had reached a boiling point. These frustrations prompted the Ainu to reach out to the international community to assist in placing pressure on the Japanese government. As domestic Ainu protests increased dramatically, additional attention turned to the global arena to relate Ainu struggles to similar narratives of other Indigenous and minority populations.

(a) Repression

With the surrender of Japan on August 15, 1945, many Japanese citizens were repatriated from war-gained territories, including most of the Ainu inhabiting Sakhalin.¹²³ Ainu and Wajin alike faced severe levels of poverty, and most Ainu worked alongside Wajin to restore Japan's economic vitality.¹²⁴ The Ainu movement re-emerged after an eight year hiatus thanks largely to the emergence of a liberal post-war political government. Still, a heavy blow was dealt to Ainu livelihood with the Agricultural Land Readjustment Law of 1946 (1946 Readjustment Law). Over 1,200 Ainu farmers lost their land holdings equaling 34% of arable lands in Japan.¹²⁵ The 1946 Readjustment Law was enacted despite significant Ainu attempts to appeal to the

¹²³ Siddle, *Race, Resistance and the Ainu of Japan*, 147.

¹²⁴ Levin, ""Essential Commodities and Racial Justice: Using Constitutional Protection of Japan's Indigenous Ainu People to Inform Understandings of the United States and Japan," 421-422.

¹²⁵ Siddle, *Race, Resistance and the Ainu of Japan*, 151.

Hokkaido governmental offices, the Imperial Household Ministry, and the occupying Supreme Commander Allied Powers (SCAP).

Additionally, racial stigmas persisted in Japanese postwar society against the Ainu, and many Ainu renounced their ancestry to chase socio-economic opportunities in Tokyo and other cities in southern Japan. The Tokyo Ainu populations drastically increased during the 1960s because flourishing companies would mass-hire young Ainu workers and bring them from Sapporo to Tokyo.¹²⁶ The Japanese government's political presentation as a homogenous state exacerbated cultural tensions, and many Ainu faced discrimination regardless of their blood quantity levels. This discrimination wrongly branded the Ainu as an incapable of modernizing.¹²⁷ Ainu frustrations peaked in 1968 while Japan celebrated 100 years of development in Hokkaido.¹²⁸ The celebration completely overlooked the existence of the Ainu population to perpetuate the government's narrative of progressive modernization in geographically "empty space."

A new wave of Ainu activism emerged during the 1960s. Joined with the rise of youth movements across Japan and the international publicity of the U.S. Civil Rights Movement, growing public outcry against the marginalization of the Ainu became one of many civil rights topics in Japan.¹²⁹ These activities challenged the developmental "empty space" history perpetuated by the Japanese government. Activism remained largely domestic until Ainu organizations began to appeal to the international community in the 1970s. Discrimination was still present within Japanese society, but

¹²⁶ Mark Watson, *Japan's Ainu Minority in Tokyo: Diasporic Indigeneity and Urban Politics* (New York Press, 2014), 69.

¹²⁷ Ann-Elise Lewallen, *The Fabric of Indigeneity: Ainu Identity, Gender, and Settler Colonialism in Japan* (New Mexico, 2016), 71.

¹²⁸ Siddle, *Race, Resistance and the Ainu of Japan*, 163.

¹²⁹ *Ibid.*, 162-63.

Ainu activists brought attention to these issues whenever possible. One form of this denounced discrimination included the use of Ainu stereotypes in the media on six separate occasions: the Hokkaido Broadcasting Company in 1973, a popular TV show in 1973 *Mito Komon*, an offensive promotional poster for Hokkaido goods displayed at Tokyo department stores in 1974, a discriminatory cartoon in magazine *Pureiboi* in 1978, and advertisements in *The Japan Times* in 1979 and 1981.¹³⁰

(b) Activation of Domestic-Transnational Advocacy Networks

Media coverage of the Indigenous Civil Rights movements in the United States, Canada, Australia, and New Zealand was readily available in Japan during the early 1970s. However, the first delegation of Ainu representatives to travel abroad went to none of the aforementioned states. Instead, initial domestic-transnational ties were established between the Ainu and autonomous minority regions in China.¹³¹ A delegation of 15 Ainu arrived in China in February 1973, and spent three weeks observing Chinese policies toward minority populations. Both parties held the tour as a success, and three more delegations were sent to China in 1976, 1978, and 1983.¹³² Ainu leaders also later sent delegations to Alaska, Canada, and Scandinavia to connect with other minority Indigenous populations.¹³³

In addition to Ainu activities abroad, new domestic activities began to create social avenues for the dissemination of information pertaining to Ainu culture. These activities were part of an ongoing process of re-birth for Ainu ethnic identity that had

¹³⁰ Ibid., 167.

¹³¹ Ibid., 177.

¹³² Ibid.

¹³³ Richard Rice, "Ainu Submergence and Emergence: Human Rights Discourse and the Expression of Ethnicity in Modern Japan," *University of Tennessee at Chattanooga*, accessed April 10, 2017, http://www.uky.edu/Centers/Asia/SECAAS/Seras/2006/Rice.htm#_ednref11.

been lost through the generations of oppression.¹³⁴ Most notably was the creation of the Poroto Kotan Ainu Museum in Shiraoi in 1976.¹³⁵ Tourism revenues secured economic self-reliance for Ainu people, promoted an Ainu self-identity through the education of Japanese and international travelers. However, these methods were not without their critiques, particularly from those who felt the colonial nature of tourism overshadowed its benefits.¹³⁶

However, to present the domestic Ainu movement as wholly peaceful would be misleading. Some activists invoked public-shaming tactics to achieve broad media coverage, but further divided the national debate on Ainu rights. One example of these tactics used by activists included the interruption of a panel of Ainu studies experts during the 1972 annual meeting of the Japanese anthropological and ethnological societies.¹³⁷ These were acceptable consequences for some Ainu rights activists that believed the actions were necessary to raise national awareness of the continued struggle for Ainu rights. However, dangerous actions were also taken in the name of Ainu liberation. A few non-Ainu detonated two bombs near the Asahikawa shrine in the name of Ainu Liberation on October 23, 1972.¹³⁸ The Ainu community met this action with sharp criticism, and forty Ainu activists met in Asahikawa to protest the bombing and deny Ainu involvement.¹³⁹ Additionally, the terrorist cell group “East-Asia Anti-

¹³⁴ Johnathon Friedman, “Being in the World: Globalization and Localization,” *Theory, Culture & Society* (SAGE, 1990), 314.

¹³⁵ “Ainu Museum Poroto Kotan: Homepage,” *Ainu Museum Poroto Kotan*, accessed April 10, 2017, <http://www.ainu-museum.or.jp/en/info/midokoro.html> (accessed March 15, 2017).

¹³⁶ Masahiro Nomoto, “Ainu and the Museum, The Birth of the Ainu National Museum,” in *The Ainu: Indigenous People of Japan Vol 3*, ed. Henry Stewart (Sapporo: Hokkaido University Center for Ainu and Indigenous Studies, 2012), 57.

¹³⁷ Mark Watson, *Japan’s Ainu Minority in Tokyo: Diasporic Indigeneity and Urban Politics* (New York Press, 2014), 15.

¹³⁸ Siddle, *Race, Resistance and the Ainu of Japan*, 165.

¹³⁹ Ibid.

Japan Armed Front” bombed the Hokkaido Government in 1976, the day after the anniversary of the 1899 Protection Act. Although no Ainu individuals or organizations were responsible for these attacks or other crimes, the fact that these actions were committed in the name of Ainu liberation led to the increased politicization of Ainu rights discourse.¹⁴⁰ Japanese public opinion remained suspicious of any Ainu activities.

International delegations and domestic tourism indicated the activation of initial domestic-transnational links between the Ainu and international organizations. Additionally, the activation of domestic-transnational networks continued. Some of these include social ties with the Inuit of Canada and the United States, as well as other Indigenous populations that participated in the third World Council of Indigenous Peoples, and the UN Working Group on Indigenous Populations.¹⁴¹ Strong Ainu connections with the United Nations would unfortunately not develop until the 1980s. Still, by the mid-1970s the Japanese government had already taken defensive measures to deny Ainu Indigeneity. These denials marked Japan’s entrance into Phase 2 of the spiral model.

Phase 2: Denial - Mid-1970s to 1997

The transition between Phase 1 and Phase 2 is unique within my analysis because it is the only gradual transition. Japan’s denial of Indigenous rights began while human rights institutions, such as the Committee on the Elimination of Racial Discrimination, were still under development. Once international institutions established a means to place a state on the international agenda for violation of

¹⁴⁰ Ibid., 166.

¹⁴¹ Erick Larson, Zachary Johnson, and Monique Murphy, “Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions,” *Alternatives: Global, Local, Political* 33 no. 1 (SAGE 2008), 58-59.

Indigenous rights norms, public scrutiny began to prompt the Japanese government to deny that the Ainu continued to exist as a separate people.¹⁴²

Risse, Ropp, and Sikkink state that in the denial phase “the norm-violating government refuses to accept the validity of international human rights norms themselves and that it opposes the suggestion that its national practices in this area are subject to international jurisdiction”¹⁴³ At first glance, denials from the Japanese government seem inconsistent with the above definition. A majority of the Japanese government’s denials was not against the validity of Indigenous rights norms, but rather that no such Indigenous populations existed within Japan.¹⁴⁴ Nevertheless, the foundational argument behind these denials remained the same. The fact that the state needed to deny the existence of the Ainu despite evidence to the contrary indicates that the socialization process had begun, meaning that the Japanese government has begun to interact and internalize aspects of Indigenous rights discourse.¹⁴⁵ Were it not, the state would feel no pressure to deny these allegations. I divide my Phase 2 analysis into two subsections. First, I demonstrate the further strengthening of domestic-transnational ties, which also indicates the presence of the aforementioned “boomerang throws” between the Ainu Indigenous rights movement and international organizations. Then, I discuss the state’s public denials that were prompted by continuous social pressures caused by coordinated pressure from above and below.

¹⁴² Siddle, *Race, Resistance and the Ainu of Japan*, 178.

¹⁴³ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 23.

¹⁴⁴ Siddle, *Race, Resistance and the Ainu of Japan*, 179.

¹⁴⁵ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 23.

(a) Continuous Cooperative Pressure

As mentioned earlier, initial domestic-transnational social ties for the Ainu first developed through Ainu delegations sent to other states with colonial histories. These delegations were tasked with creating a comparative legal analysis of foreign laws and their effects on the local Indigenous populations. If Ainu-China relations metaphorically opened the door for international Ainu activism, Ainu-Inuit relations in 1977 walked the Ainu through that door. Following an international convention in Japan sponsored by the International Whaling Commission, two Inuit leaders met with Ainu leaders in Nibutani.¹⁴⁶ The meeting reinforced the importance of solidarity between Indigenous Peoples worldwide, prompting one Ainu leader to state “that there is no limit to what oppressed people can do when they meet and work together.”¹⁴⁷ Ainu leaders thereby promised to continue relations with the Inuit and establish further connections with other Indigenous populations worldwide. An Ainu delegation to the Northern Slope Autonomous region was dispatched the following year.¹⁴⁸ Thanks to the development of Ainu-Inuit relations, the first Ainu representative attended the third World Council of Indigenous Peoples in 1981.¹⁴⁹ This event would prove indispensable toward Ainu international visibility.

Ainu international involvement with the United Nations began at the fifth session of the Working Group of Indigenous Populations in 1987.¹⁵⁰ It is worth noting

¹⁴⁶ Larson, Johnson, and Murphy, “Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions,” 58.

¹⁴⁷ Ibid.

¹⁴⁸ Siddle, *Race, Resistance and the Ainu of Japan*, 177.

¹⁴⁹ Chan-Tiberghien, *Gender and Human Rights Politics in Japan*, 98.

¹⁵⁰ Larson, Johnson, and Murphy, “Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions,” 59.

that Ainu involvement at a UN function is traceable to 1976. Then, a group of Ainu artists performed modern dramatizations of Ainu epics at a UNESCO cultural festival in Paris.¹⁵¹ However, the involvement of Ainu delegations in UN political discussions on Indigenous rights blossomed during the 1980s. Ainu political involvement with the UN exposed them to new international resources.¹⁵² One of those resources was International Labor Organization Convention no. 107 (C170), which Ainu leaders were unaware of until international working groups informed them.¹⁵³ “As a result of the contact and travel, the more conservative Ainu leaders associated with the [Kyokai] came to embrace the nonassimilationist agenda.”¹⁵⁴ In a statement on partial revisions to C170, the Kyokai declared that it opposed “any international convention of domestic law which holds an assimilationist program as its basic orientation.”¹⁵⁵

The Kyokai’s new position was undoubtedly clarified with the adoption of a 1982 proposal declaring “that the Ainu, as the [I]ndigenous [P]eople of the disputed Northern Territories, possessed [I]ndigenous rights in the region and should be included in any discussions in the future.”¹⁵⁶

Despite the Ainu’s involvement in United Nations events, Ainu activists at home became frustrated by the high barriers of international involvement, particularly in

¹⁵¹ Siddle, *Race, Resistance and the Ainu of Japan*, 174.

¹⁵² Larson, Johnson, and Murphy, “Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions,” 59.

¹⁵³ Ibid.

¹⁵⁴ Ibid.

¹⁵⁵ Ainu Association of Hokkaido, “A Statement of Opinion Regarding the Partial Revision of ILO Convention No. 107 by The Ainu Association of Hokkaido,” *The New Zealand Digital Library, the University of Waikato*, accessed April 24, 2017, <http://www.nzdl.org/gsdImod?e=d-00000-00---off-0ipc--00-0---0-10-0---0---0direct-10---4-----0-1--11-en-50---20-about---00-0-1-00-0--4---0-0-11-10-OutfZz-8-00&cl=CL1.11&d=HASH01892653c384dd249401bfe0&x=1>.

¹⁵⁶ Siddle, *Race, Resistance and the Ainu of Japan*, 183.

meeting the “challenges of available times, language ability, and expertise.”¹⁵⁷ These struggles remain difficult to overcome, and often necessitate the usage of a “statesmen” class capable of connecting domestic voices to international listeners and vice-versa. Still, these channels provided effect means of change, albeit possibly slower than a scenario without these barriers.

Coordinated pressure between the domestic Ainu movement and international organizations continued throughout the 1990s. In 1991, the UN Working Group on Indigenous Populations held symposiums in Tokyo and Sapporo.¹⁵⁸ In 1992, the Hokkaido Utari Kyokai Executive Director Giichi Nomura spoke as a representative of all Indigenous Peoples at the opening ceremony of the UN General Assembly’s “Year of Indigenous People.”¹⁵⁹ In the conclusion of his speech, Nomura called for further Indigenous interdependency, stating the following:

In this new era in which the world is grouping towards a redefinition of the international order following the end of the Cold War, we believe "a new partnership" of [I]ndigenous [P]eoples which includes this world view can make a lasting and valuable contribution to the global community. It is the desire of indigenous peoples to make the future, full of the hopes of all mankind, an even better place.¹⁶⁰

In less than a decade, the Ainu had developed from one of the newest Indigenous populations to enter the international activist arena into one of the leading Indigenous populations for change thanks largely to these domestic-transnational social ties established during the 1970s and 1980s.

¹⁵⁷ Larson, Johnson, and Murphy, “Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions,” 61.

¹⁵⁸ “Ainu Historical Events,” *Ainu Association of Hokkaido*, accessed April 10, 2017, <https://www.ainu-assn.or.jp/english/history.html>.

¹⁵⁹ Ibid.

¹⁶⁰ Giichi Nomura “Inauguration Speech at the U.N. General Assembly,” *Ainu Association of Hokkaido*, accessed April 10, 2017, <https://www.ainu-assn.or.jp/english/inaug.html>.

(b) State Denial

As international visibility of the Ainu increased during this time, so too did the Japanese government's denials of their continued existence. This was despite the fact that the Japanese government had ratified the ICCPR and the ICESCR in 1979. The surprising economic growth following World War II further entrenched ideals of Japanese uniqueness and homogeneity within Japanese politics. However, The Japanese government's denial of the existence of minority populations in the late 1970s exemplified that the socialization process, which is the process in which international norms are internalized and implemented domestically, had begun to effect the Japanese government.

As the UN increased its efforts to promote international Indigenous rights, more attention shifted toward the Ainu.¹⁶¹ By the 1980s, the Japanese government argued that the Ainu were fully assimilated into Japanese society.¹⁶² In its first review under the Human Rights Committee in 1981, the Japanese government contended that they completely support minority rights, but no people or groups of people existed within Japan that met the ICCPR's legal description.¹⁶³ In response to the Committee's concern, Japanese representatives clarified that Article 27's protection of minorities was aimed at those that (1) differed from the general population ethnically, religiously, or culturally, and (2) could currently be differentiated from the general population from a historical, social, or cultural perspective.¹⁶⁴ In explicitly addressing the Ainu, the

¹⁶¹ Stewart, "Representation of the Ainu in Textbooks and Museums – Historical and Contemporary Ramifications," 6-7.

¹⁶² Larson, Johnson, and Murphy, "Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions," 59.

¹⁶³ Human Rights Committee XIV Session, *Summary Record of the 320th Meeting* (1981), 2.

¹⁶⁴ Human Rights Committee XIV Session, *Summary Record of the 324th Meeting* (1981), 11.

Japanese representative responded, “since the Meiji restoration in the [19th Century], establishment of a rapid communication system had made the difference in their way of life indiscernible. The [Ainu] were Japanese nationals and treated equally with other Japanese.”¹⁶⁵ Similar questions and responses were also given during Japan’s second review with the Committee in 1988.¹⁶⁶

Another example of state denial of Ainu existence made national headlines in 1986. While addressing parliament, Prime Minister Nakasone stated that no racial minorities existed in Japan.¹⁶⁷ This statement provoked outrage not only from the Ainu community, but other minority populations such as the local Korean and Chinese populations. Surprisingly, the Japanese government responded to this public outcry by backpedaling from this stance within domestic politics. However, the government continued to claim the lack of minorities in Japan until 1981.

By 1993, the Japanese government recognized in its report to the Committee that the Ainu were indeed a minority population (not Indigenous) within the interpretation of Article 27 of the ICCPR. However, the state insisted that the Ainu had not been denied their right to their own religion, language, or culture because they are Japanese nationals.¹⁶⁸ These denials would gradually weaken as Japan entered Phase 3 of the spiral model in 1997.

¹⁶⁵ Ibid.

¹⁶⁶ UN General Assembly, Forty-third Session, *Report of the Human Rights Committee* (1988), 148.

¹⁶⁷ Tessa Morris-Suzuki, “Still a way to go for Japanese minorities,” *East Asia Forum*, accessed April 10, 2017, <http://www.eastasiaforum.org/2015/05/11/still-a-way-to-go-for-japanese-minorities/>.

¹⁶⁸ Human Rights Committee, *Consideration of Reports Submitted by the States Parties in Accordance with Article 40 of the Covenant* (1991), 49.

Phase 3, Part I: Tactical Concessions – 1997 to 2008

I would like to preface this section by clarifying that Chapter II only contains the early stages of Japan's Phase 3 analysis. This is because the latter half of Phase 3 is heavily related to the adoption of the DRIP and the perceived effects the document had in shifting Japan into Phase 4. Therefore, the full analysis of Phase 3 is divided between Chapters II and III.

The Japanese government's denials of Ainu rights began to erode during the 1990s. A state's entrance into Phase 3 of the spiral model is evidenced through *tactical concessions* that create "cosmetic changes to pacify international criticisms."¹⁶⁹ Although the 1990s witness a multitude of political changes for the benefit of the Ainu, none rivaled the importance of the repeal of the 1899 Protection Act. My analysis of Phase 3 begins with this repeal caused by two governmental actions: (1) the surprising court decision of *Kayano et al. v. Hokkaido Expropriation Committee*, and (2) the adoption of the 1997 Promotion Act of Ainu Culture and Discrimination of Knowledge Regarding Ainu Traditions (1997 Promotion Act) as a tactical concession to international and domestic pressures.

I will first quickly introduce some of the domestic changes meant to appease the Ainu population preceding 1997. The Japanese government's appeasement of Ainu frustrations actually began much earlier in the 20th Century. Early appeasements can be traced back to 1919 with the first revision of the 1899 Protection Act.¹⁷⁰ The Act would be revised four more times (1937, 1946, 1947, and 1968) before its eventual repeal. However, these appeasements were miniscule in scope and did little to change the status

¹⁶⁹ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 25.

¹⁷⁰ "Ainu Historical Events."

of the Ainu from “former aborigine.” These provisional appeasements continued the existence of “welfare colonialism” over the Ainu population.¹⁷¹ This later included the establishment of the Hokkaido Utari Welfare Policy in 1974, which sought to help Ainu economically without improving any cultural rights.¹⁷²

The 1990s bore witness to a drastic change in Japan’s domestic human rights laws. Other domestic social movements continued to lobby the government for change, particularly the movements to advance women and children rights.¹⁷³ By 2001, eight separate laws had been passed to address women and children issues.

A similar pattern of domestic lobbying paired with continuous international pressures would eventually effectuate change for the Ainu. Shigeru Kayano became the first Ainu to sit as a member of the Diet in 1994.¹⁷⁴ Within his first month in office, Kayano also became the first person to speak the native Ainu language on the Diet floor.¹⁷⁵ In 1995, the Diet formed an Experts Meeting Concerning Ainu Affairs to consider a plan to replace the 1899 Protection Act.¹⁷⁶ This plan was known as the draft Ainu New Law. It had been promoted by the Hokkaido Ainu Kyokai eleven years earlier, but the empowering of a new coalitional political party within the Diet allowed for further changes. However, as we shall see later, many aspects of the proposed Ainu New Law were omitted or weakened in the 1997 Promotion Act.

¹⁷¹ Chan-Tiberghien, *Gender and Human Rights Politics in Japan*, 106.

¹⁷² Ibid.

¹⁷³ Ibid. 137.

¹⁷⁴ Siddle, *Race, Resistance and the Ainu of Japan*, 188.

¹⁷⁵ Ibid.

¹⁷⁶ Larson, Johnson, and Murphy, “Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions,” 63.

The events of 1997 hold the strongest evidence of Japan's entrance into Phase 3 of the spiral model. The Japanese government's tactical concessions taken in response to exogenous and endogenous pressures empowered the domestic Ainu population while slightly easing international pressures. The actions of Japan's judicial and legislative branches re-categorized the Ainu as a minority population owed special protections by the Japanese government.

(a) Kayano et al. v. Hokkaido Expropriation Committee

On March 27, 1997, The Sapporo District Court ruled in what quickly became one of the most influential court cases on Ainu rights. Despite the court's ruling that no substantive relief could be granted, an alternative victory was won for the entire Ainu population.¹⁷⁷ The following subsection details the facts of this case and its effect on Japan's Ainu population.

Plans to build a dam over the Saru River in Nibutani village began in 1978, and a compulsory taking of the surrounding lands was issued by the Hokkaido government in 1986.¹⁷⁸ For generations, the Ainu considered these surrounding lands and the river to be sacred.¹⁷⁹ Many archeological items tied to Ainu history remained unearthed near the river. Additionally, Nibutani largely consisted of Ainu, who made up 70-80% of the population.¹⁸⁰ In 1989, Shigeru Kayano (who would later become a Diet member) and

¹⁷⁷ Mark Levin, "Kayano et al. v. Hokkaido Expropriation Committee: 'The Nibutani Dam Decision'," *International Legal Materials* (University of Hawaii at Manoa – William S. Richardson School of Law) 394, accessed April 10, 2017, <https://ssrn.com/abstract=1635447>.

¹⁷⁸ *Ibid.*, 4.

¹⁷⁹ US Department of State, "Japan," *Country Reports on Human Rights Practices – 1999* (West, 2000), 12.

¹⁸⁰ Mark Levin, "Kayano et al. v. Hokkaido Expropriation Committee: 'The Nibutani Dam Decision'," 18.

Kiichi Kaizawa filed an administrative appeal to halt production.¹⁸¹ As construction continued, both Kayano and Koichi Kaizawa (son of the then-deceased Kiichi) filed a suit with the Sapporo District Court in 1993.¹⁸²

In a shocking decision, the court held that the Japanese government was bound under Article 13 of the Japanese Constitution and Article 27 of the ICCPR “to give due consideration to cultural interests of the minority Ainu people in carrying out its affairs.”¹⁸³ More importantly, the court found that the Ainu were a minority aboriginal race, a major shift from the long-held title of “former aborigine.”¹⁸⁴ It was thereby ruled that the Hokkaido government had illegally expropriated the land, but no injunction was granted and the land was not order to be returned because the construction of the dam had been completed.¹⁸⁵ Still, the court’s decision set a new precedent for Ainu rights as a minority population, and received widespread national publicity.¹⁸⁶

Since the court’s decision, further industrial development in the area has waned. The once-planned industrial sector never developed due to a lack of investment, and the dam can only supply electricity to the local population.¹⁸⁷ Instead, the current primary purpose of the Nibutani dam is to supply agricultural waters to rice fields

¹⁸¹ Larson, Johnson, and Murphy, “Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions,” 69.

¹⁸² Ibid.

¹⁸³ Mark Levin, “Kayano et al. v. Hokkaido Expropriation Committee: ‘The Nibutani Dam Decision’,” 28.

¹⁸⁴ US Department of State, “Japan,” 12.

¹⁸⁵ Ibid.

¹⁸⁶ Larson, Johnson, and Murphy, “Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions,” 69.

¹⁸⁷ “Nibutani Dam on Ainu Homeland, Japan,” *Environmental Justice Atlas*, accessed May 8, 2017. <https://ejatlas.org/conflict/dam-on-ainu-homeland>.

downstream.¹⁸⁸ Additionally, the dam has largely inhibited the migration path of Shishamo Salmon, which holds religious significance to Ainu culture.¹⁸⁹

(b) The 1997 Promotion Act

Less than two months after the decision of the Sapporo District Court, the 1899 Protection Act was repealed and replaced with the 1997 Promotion Act. Although the 1997 Promotion Act seemingly coincided with the judicial decision in *Kayano et al.*, its initial drafting resulted from a 1996 report of the Advisory Committee on the Future Measures for Ainu People.¹⁹⁰ This historic change in Japan's legal policy exemplified Japanese tactical concessions to appease domestic and international pressures. Some aspects of the law were groundbreaking for Ainu recognition within Japan. It was the first law enacted in Japanese history to recognize the existence of a minority population in Japan.¹⁹¹ Furthermore, it promoted the restoration of Ainu lifestyle and culture through the preservation of Ainu oral traditions and constructive recreations of tradition Ainu houses, boats, and clothes.¹⁹² The 1997 Promotion Act defines Ainu Culture as "the Ainu language, cultural assets such as music, dance, handicraft or others that have been succeeded by the Ainu and cultural assets that have derived from the above."¹⁹³

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

¹⁹⁰ Hiroshi Maruyama, "Beyond the Present Ainu Policy: emancipating the Ainu from subordination to Japan," *FOCUS* 81 (2015), accessed May 7, 2017.

<http://www.hurights.or.jp/archives/focus/section3/2015/09/beyond-the-present-ainu-policy-emancipating-the-ainu-from-subordination-to-japan.html#1>.

¹⁹¹ Levin, "Essential Commodities and Racial Justice: Using Constitutional Protection of Japan's Indigenous Ainu People to Inform Understandings of the United States and Japan," 467.

¹⁹² The Foundation for Research and Promotion of Ainu Culture, *Together with the Ainu* (2013), 27.

¹⁹³ Outline of Act on the Promotion of Ainu Culture, and Dissemination and Enlightenment of Knowledge about Ainu Tradition, etc., アイヌ文化の振興並びにアイヌの伝統等に関する知識の普及及び啓発に関する法律（概要," *Japanese Law Translation*, accessed May 7, 2017.

<http://www.japaneselawtranslation.go.jp/common/data/outline/h09Zzk00520101je2.0.htm>.

The Japanese government assigned both the Minister of Land, Infrastructure, Transport, and Tourism (MITI) and the Minister of Education, Culture, Sports, Science, and Technology (MEXT) the duty of creating policies to promote Ainu culture.¹⁹⁴ These two government organizations established the Foundation for Research and Promotion of Ainu Culture (FRPAC) in November to further enact the 1997 Promotion Act.¹⁹⁵ A 1999 supplementary provision to the 1997 Promotion Act would later explicitly state that the Government should also take appropriate measures to respect the ratification of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the spirit of the UN Decade for Human Rights Education.¹⁹⁶

Unfortunately, the flaws within the 1997 Promotion Act instead turned the perceived Ainu victory into a temporary bandage of tactical concessions. In comparison to the draft New Ainu Law previously promoted by the Hokkaido Utari Kyokai, the 1997 Promotion Act “rejected all aspects . . . pertaining to the issues of self-determination, special representation, access to natural resources, economic autonomy, and anti-discrimination, leaving only the thin crescent of cultural promotion and dissemination of information about the Ainu to the Wajin Japanese.”¹⁹⁷ The law failed to fully recognizing Ainu Indigeneity and gave no assurance of whether special rights were guaranteed to the Ainu as a distinct ethnic group.¹⁹⁸ These shortcomings

¹⁹⁴ Ibid.

¹⁹⁵ Levin, "Essential Commodities and Racial Justice: Using Constitutional Protection of Japan's Indigenous Ainu People to Inform Understandings of the United States and Japan," 468.

¹⁹⁶ The Foundation for Research and Promotion of Ainu Culture, *Together with the Ainu*, 33.

¹⁹⁷ Levin, "Essential Commodities and Racial Justice: Using Constitutional Protection of Japan's Indigenous Ainu People to Inform Understandings of the United States and Japan," 467.

¹⁹⁸ US Department of State, "Japan," 13.

emphasized the tactical nature of the government's concessions—that the Ainu were now a minority, but the laws that protected them remained fairly weak.

The 1997 Promotion Act remains good law within Japan. A recent 2016 anti-hate speech law was passed to curb discrimination in Japan, but has largely been criticized as ineffective and too narrow in scope.¹⁹⁹ The FRPAC continues to operate as a sponsor of Ainu annual events, such as the Ainu Cultural Festival, and acts as an educational organization to further promote Ainu culture throughout all provinces in Japan.²⁰⁰ This promotion has also expanded beyond Japan's state borders. Thanks in part to the FRPAC, Ainu dancers have performed during a wide variety of ceremonies in the U.S., U.K, Finland, and other states.²⁰¹

(c) Continued Governmental Push-back

Phase 3 is rightfully labeled as one of the most precarious moments of the spiral model. Despite the aforementioned changes in domestic law, Japan internationally participated in “an awkward dance around the issue of Ainu indigenoussness” during the decade following the enactment of the 1997 Promotion Act. Following the act's adoption, many Ainu to a “wait and see” approach to the new changes being implemented.²⁰² Meanwhile, the Japanese government continued to claim to international audiences that the Ainu were a completely assimilated population. This included the Japanese government's first and second reports to the CERD Committee in

¹⁹⁹ Antoine Senkoff, “The Ainu People and Japan – Recognition over Reconciliation,” *The McGill International Review* (March 2017), accessed May 8, 2017. <http://mironline.ca/ainu-people-japan-recognition-reconciliation/>.

²⁰⁰ The Foundation for Research and Promotion of Ainu Culture, 26-27.

²⁰¹ *Ibid.*, 27.

²⁰² US Department of State, “Japan,” 13.

1999, and in 2001 before the Durban conference.²⁰³ The linguistic *modus operandi* for the Japanese government became to recognize that the Ainu were a minority population “indigenous to Hokkaido,” but not an Indigenous People for purposes of international law.²⁰⁴ Additionally, the Hokkaido High Court’s 2004 decision in *Ogawa v. Hokkaido (Governor)* weakened the pro-Ainu judicial analysis established in *Kayano et al.*, and found that the management of Ainu communal property over the past century had been adequate despite the improper management resulting in substantial financial loss.²⁰⁵ The early 2000s quickly bore witness to a regression of newly established domestic Ainu rights. Had internal and external pressures been alleviated by the 1997 Promotion Act, continued decay of newly established Ainu rights might have caused Japan to regress back to Phases 1 or 2.

Conclusion: No Phase Regression

Before the Japanese government could completely curtail the effects of *Kayano et al.*, renewed international and domestic pressures would emerge in 2007 with the adoption of the DRIP. This is discussed in detail in Chapter III. However, in concluding part 1 of my Phase 3 analysis, I wish to draw attention to certain characteristics present within Japan’s particular case study scenario that prevented its regression to Phase 1 or 2. First, domestic-transnational human rights networks remained active during this period, and Japan’s active membership in UN organs such as the Human Rights Committee, the Human Rights Council, and the CERD Committee continued to the

²⁰³ Chan-Tiberghien, *Gender and Human Rights Politics in Japan*, 107.

²⁰⁴ Levin, “Essential Commodities and Racial Justice: Using Constitutional Protection of Japan’s Indigenous Ainu People to Inform Understandings of the United States and Japan,” 468.

²⁰⁵ Georgina Stevens, “Ogawa v. Hokkaido (Governor), the Ainu Communal Property (Trust Assets) Litigation,” *Indigenous Law Journal* 4 (2005).

application of international pressures. Japan's status as a transparent non-authoritarian state also prevented the state from enacting brutal methods to extinguish domestic Ainu demands or silence Ainu leaders. Finally, the Japanese government had become too embedded in the process of "self-entrapment," where previous argumentative concessions begin to transform from instrument reasons to true dialogue.²⁰⁶ The Japanese government's gradual belief of its own appeasing rhetoric is one factor that eventually forced the state into Phase 4 of the spiral model.

In summarizing Chapter II, the Ainu are evidenced as an Indigenous populations existing in northern Japan prior to Wajin occupation. However, Japan's colonial control over the Ainu damaged the population's cultural heritage. In phase 1, I exemplified how the growth of the domestic Ainu movement began to challenge the assimilatory repressiveness of the state promulgated by the 1899 Protection Act. Once domestic attempts were frustrated, the Ainu sought to obtain global support from international organizations and other Indigenous populations. As pressures intensified domestically and internationally, the Japanese government tactically repealed the 1899 Protection Act. However, the 1997 Promotion Act still failed to meet many of the needs of the Ainu, and did not recognize them as Indigenous under international standards. While the Japanese government awkwardly avoided the issue of Ainu Indigeneity over the next 10 years, multiple UN organizations continued to determine international standards for Indigenous rights. These UN organizations included the UN Working Group on Indigenous Populations, the UN Economic and Social Council, and the Commission on

²⁰⁶ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 28.

Human Rights.²⁰⁷ These international Indigenous rights standards would eventually be codified in the DRIP. Its influence in Japan are further discussed in Chapter III.

²⁰⁷ “Historical Overview,” *United Nations Declaration on the Rights of Indigenous Peoples* (UN Division for Social Policy and Development Indigenous Peoples), accessed May 4, 2017.
<https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>.

Chapter III: The DRIP's Effect in Japan

As mentioned previously, the development of Indigenous Peoples rights is a recent phenomenon. The Declaration on the Rights of Indigenous Peoples was a result of these new endeavors that codified the growing international norms. Less than one year later, the Ainu were officially recognized by the Diet as Indigenous by the Japanese government.

This chapter examines Japan within late-Phase 3 (tactical concessions) and Phase 4 (prescriptive status), and discusses what must be done for Japan to enter Phase 5 (rule-consistent behavior) in the future. More specifically, I seek to explain how the DRIP could be utilized as an impetus for change to result in Japan's internalization of Indigenous Peoples human rights norms. Since the Diet's recognition of the Ainu in 2008, the Japanese government has undergone rapid policy change to support Ainu cultural, economic, and social rights. Admittedly, governmental adaptation remains sluggish regarding the adoption of political developments, such as self-determination. To support my analysis that Japan is currently in the process of internalizing Indigenous norms while recognizing their validity, I will first detail the Japanese government's interaction with the DRIP during the brief time between its adoption and the Diet's recognition of the Ainu less than a year later. Next, I examine the Japanese government's policies after 2008 for evidence that Japan's internalization of international Indigenous rights norms has reached the prescriptive status of Phase 4. Finally, I discuss what steps should be taken in the near future if Japan is to reach Phase 5, rule-consistent behavior.

Phase 3, Part II: Tactical Concessions - The DRIP and Its Effect

Recall that Phase 3 has been divided in order to highlight the DRIP's adoption and its role in Japan's eventual completion of Phase 3. We last left our discussion on Japanese Indigenous law with the establishment of Ainu minority rights by the Japanese judiciary in the case of *Kayano et al.* The case of *Ogawa*, which had found the Japanese government not liable for gross mismanagement of Ainu communal lands, along with other governmental actions began to expose the shortcomings of the 1997 Promotion Act, but domestic and international actors continued to be apply pressure on the Japanese government for substantive change in Ainu rights.

Surprisingly little readily-accessible information is available detailing the short time between the DRIP's adoption in the UN General Assembly in 2007 and the Diet's unanimous adoption of the "Resolution Calling for the Recognition of the Ainu People" as Indigenous in 2008. Some sources appear to treat the two events as inherently connected.²⁰⁸ The lack of focus on this detail perhaps signifies the obvious connection believed by most historians and Ainu scholars that the DRIP played an imperative role.²⁰⁹ Thus, it is important to establish why such connections between the two events are presumable. In doing so, I will also detail how the Japanese government began to engage in tactical concessions, as detailed in Phase 3 of the spiral model.

²⁰⁸ Mitsuha Okada, "The Plight of Ainu, Indigenous People of Japan," *Journal of Indigenous Development*, 1, no.1 (2012): 7-8, accessed April 10, 2017, http://scholarspace.manoa.hawaii.edu/bitstream/handle/10125/21976/v1i1_02okada.pdf; Simon Cotterill, "Ainu Success: The Political and Cultural Achievements of Japan's Indigenous Minority, アイヌの成果--日本先住少数民族の政治的文化的業績," *The Asia-Pacific Journal* 9:12 no. 2 (2011), 6-7, accessed April 10, 2017, <http://apjpf.org/2011/9/12/Simon-Cotterill/3500/article.html>.

²⁰⁹ Okada, "The Plight of Ainu, Indigenous People of Japan," 2.

Noting my reasoning from Chapter II why Japan's internalization of Indigenous rights norms did not regress back to Phase 2 (continued social links, active international participation, and liberal transparency), scholars have also concluded that Japan's "goal of becoming an important international leader ha[d] led it to embrace global norms that may clash with domestic priorities."²¹⁰ Risse, Ropp, and Sikkink hint at the effects of such priorities where they state, "To the degree that a nation values its membership in an emerging community of liberal states, it will be more vulnerable to pressures than a state that does not value such membership."²¹¹ The Japanese government's desire to be a great player within the UN was an advantage for the Ainu when pushing for recognition.²¹²

One case of international embarrassment for Japan occurred during 2006. Doudou Diene's (UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance) comments after his official visit in 2005 that "in Japan ... there are no instruments that enforce the general principle of equality or offer sanctions against discriminatory acts committed by individuals, business, or NGOs."²¹³ Although the Japanese government did not explicitly deny Diene's claim, they "complained to the Commission on Human Rights in 2006 that

²¹⁰ Erick Larson, Zachary Johnson, and Monique Murphy, "Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions," *Alternatives: Global, Local, Political* 33 no. 1 (SAGE 2008), 66.

²¹¹ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (New York, Cambridge Press, 1999), 24.

²¹² Larson, Johnson, and Murphy, "Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions," 67-68.

²¹³ Cotterill, "Ainu Success: The Political and Cultural Achievements of Japan's Indigenous Minority, アイヌの成果--日本先住少数民族の政治的文化的業績," 6.

Diene had made ‘many statements which were beyond the Special Rapporteur's mandate.’”²¹⁴

Despite this embarrassment, the Japanese government had already to change its international rhetoric during the 2000s. The government’s international policy change on Indigenous rights was first exemplified by the Japanese government’s vote in favor of the revised draft edition of the DRIP in 2006. This decision was in spite of the Japanese government’s longstanding complaint that an objective definition of “Indigenous Peoples” was necessary for the declaration’s success.²¹⁵ During continued DRIP considerations in 1995, the Japanese government stated the following:

It cannot be meaningful to draft this declaration without clearly defining the term "indigenous populations" who are to be entitled to the rights listed in this instrument. Furthermore, using the term "indigenous populations" without establishing objective definitions would cause arbitrary interpretation and end up with confusion.²¹⁶

Additionally, Japanese representatives during the drafting of the DRIP cautioned other participants on creating strong provisions on land rights, political participation, and collective rights.²¹⁷

Pressures that persuaded Japan’s vote during the 2006 draft discussion are noted in the decision-making process. Prior to the vote, a Japanese official noted that the state intended to abstain from the vote.²¹⁸ However, prior to their decision, the Japanese representative in Geneva reported that two states who had indicated they would vote

²¹⁴ Ibid.

²¹⁵ Larson, Johnson, and Murphy, “Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions,” 67.

²¹⁶ “Consideration of A Draft United Nations Declaration on the Rights of Indigenous Peoples, November 13, 1994 (E/CN.4/1995/WG.15/2/Add.1),” *United Nations Economic and Social Council* (1994), accessed May 7, 2017. http://www.un.org/en/ga/search/view_doc.asp?symbol=E/CN.4/1995/WG.15/2/Add.1.

²¹⁷ Ibid.

²¹⁸ Ibid.

against the draft, Canada and Russia, received strong criticism from the rest of the international community in Geneva.²¹⁹ This stirred fears that the Japanese delegation could be “criticized from both sides” of the argument if they abstained.²²⁰ Therefore, evidence points to Japan as having reacted to pressures applied by international society to vote in favor of the 2006 draft DRIP resolution. “‘The representative to the United Nations in Geneva didn’t want Japan to be criticized by international society in the conference room’ and so persuaded Tokyo to vote for the resolution.”²²¹ It is also important to note that the UN ECOSOC lists the Hokkaido Utari Kyoukai (listed as Ainu Association of Hokkaido) is one of seventeen organizations of Indigenous Peoples accredited as having observed and participated in DRIP negotiations.²²²

The Japanese government’s favorable vote for the draft DRIP resolution strongly exemplified a tactical concession that marks Phase 3. This was a strategic move by the Japanese government to lessen international isolationism, which Canada and Russia were facing because of their vote.²²³ These concessions by the Japanese government were arguably more beneficial for the Ainu than any prior concessions. The government also announced that the Ainu had not been recognized as an Indigenous People in 2006, but it was willing to recognize that the Ainu should participate in conferences about Indigenous Peoples’ rights.²²⁴ The Japanese government’s support of

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

²²² “Report of the Working Group established in accordance with Commission on Human Rights resolution 1995/32 of 3 March 1995 (E/CN.4/2005/89/Add.1),” *United Nations Economic and Social Council*, accessed May 7, 2017. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/113/03/PDF/G0511303.pdf?OpenElement>.

²²³ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 25.

²²⁴ Larson, Johnson, and Murphy, “Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions,” 68.

Ainu participation in international dialogue further highlighted why the Japanese government hesitated to extend Indigenous title to the Ainu. A real concern existed in Japan that “recognition of the Ainu as [I]ndigenous would require recognition of expansive rights associated with self-determination, particularly concerning natural resources.”²²⁵ These concerns considered resource development and land disputes that were similarly echoed by the four states that would later vote against the DRIP’s adoption in 2007.²²⁶ However, the Japanese government did not abstain or vote against the 2006 draft DRIP or the DRIP’s adoption in 2007.²²⁷

The international importance of the DRIP’s adoption for Indigenous Peoples was immediately apparent as a standard of norms for Indigenous cultural rights, land usage, and self-determination. It was an international non-binding declaration applicable to all states (unlike ILO C169) that reinforced popular Indigenous rights while also providing Indigenous communities with explicit materials to further pressure states to adopt rights that might remain controversial.²²⁸ For the Japanese government, it quickly became the topic of discussion for Ainu rights.

Ainu community leaders and other pro-Ainu government leaders sought to capitalize on the international momentum of change for Indigenous Peoples after the DRIP’s adoption in 2007. They invited the Japanese government to join this wave of

²²⁵ Ibid.

²²⁶ Mieke Coppes, “Canada’s Acceptance of the United Nations Declaration on the Rights of Indigenous Peoples: Implications for the Inuit,” *The Arctic Institute* (August 9, 2016), accessed April 10, 2017, <http://www.thearcticinstitute.org/canadas-acceptance-declaration-rights-indigenous-peoples/>.

²²⁷ Larson, Johnson, and Murphy, “Emerging Indigenous Governance: Ainu Rights at the Intersection of Global Norms and Domestic Institutions,” 67.

²²⁸ Alexandra Xanthaki, *Indigenous Rights and United Nations Standards: Self Determination, Culture and Land* (New York, Cambridge University Press, 2007), 30.

change by developing a new comprehensive Ainu policy.²²⁹ In November 2007, Japanese Communist Party member Kami Tomoko demanded that the government recognize the Ainu as Indigenous Peoples in accordance with the DRIP.²³⁰ Likewise, the Hokkaido Utari Kyokai sent an official request that the government recognize them as Indigenous.²³¹ Perhaps the key piece of the puzzle however, was the strategic placement of the Indigenous Peoples Summit in Ainu Mosir in July 2008. This event was sponsored by an Ainu-centric Steering Committee “outside of the government-sanctioned networks of power such as the Ainu Association of Hokkaido.”²³² Additionally, the executive director for this event was Shimazaki Naomi, who would later serve as the first Ainu Minzokuto (Ainu Party) candidate in 2012.²³³ The Indigenous Peoples Summit preceded the 34th G8 summit by a mere three days, and would ultimately host around 1800 people, with 200-250 being Ainu.²³⁴ Japanese leaders feared further international criticism could stem from visible mobilization of domestic Ainu rights activists and preempted the predicament by recognizing the Ainu

²²⁹ Cotterill, “Ainu Success: The Political and Cultural Achievements of Japan’s Indigenous Minority, アイヌの成果—日本先住少数民族の政治的文化的業績,” 6.

²³⁰ Akahata, “Diet Adopts Resolution Calling for Ainu to be Recognized as Indigenous People,” *Japan Press Weekly* (June 7, 2008), accessed April 24, 2017, http://www.japan-press.co.jp/2008/2577/humanrights_1.html.

²³¹ Cotterill, “Ainu Success: The Political and Cultural Achievements of Japan’s Indigenous Minority, アイヌの成果—日本先住少数民族の政治的文化的業績,” 6.

²³² Ann-Elise Lewallen, “Indigenous at last! Ainu Grassroots Organizing and the Indigenous Peoples Summit in Ainu Mosir” *The Asia-Pacific Journal*, 6, no. 11 (2008), 4, accessed May 4, 2017, <http://apjif.org/-ann-elise-lewallen/2971/article.html>.

²³³ Ann-Elise Lewallen, *The Fabric of Indigeneity: Ainu Identity, Gender, and Settler Colonialism in Japan* (New Mexico, 2016), 225. The party unfortunately failed to meet legal requirements to become a bona fide party six months after its launch. “Ainu group gives up fielding candidates in poll,” *The Japan Times*, July 12, 2013, accessed May 8, 2017. <http://www.japantimes.co.jp/news/2013/07/12/national/politics-diplomacy/ainu-group-gives-up-fielding-candidates-in-poll/#.WRD5GeUrLIU>.

²³⁴ Ann-Elise Lewallen, “Indigenous at last! Ainu Grassroots Organizing and the Indigenous Peoples Summit in Ainu Mosir,” 4.

as Indigenous.²³⁵ Thanks to these domestic and international activists empowered by the recent adoption of the DRIP, the Japanese government was placed in the ultimate hard spot, unable to avoid international criticism unless governmental action was taken to recognize the validity of Ainu Indigeneity.

Upon foreseeing the unavoidable conflict, the Diet unanimously adopted a resolution urging government officials to officially recognize the Ainu on June 6, 2008.²³⁶ The government's response was affirmative. "The government will not only enhance the Ainu policies taken so far, but will also make efforts to establish comprehensive policy measures in recognition of the fact that the Ainu are an [I]ndigenous [P]eople with a unique language as well as religious and cultural distinctiveness."²³⁷

In order to not overshadow this pivotal through the over-emphasis of the spiral model, I wish to once again reframe this moment within the initial question of this project, which is "In what way has the DRIP acted as an impetus for change regarding Ainu rights in Japan?" The DRIP's adoption empowered the domestic Ainu and pro-Ainu activists in two ways. First, it empowered them to petition the government for immediate change to recognize the Ainu as Indigenous Peoples of Japan.²³⁸ This is because the DRIP provided domestic activists a legal tool to work with that had already been publicly supported by the Japanese government at the UN General Assembly, one of the most important bodies in international relations. Second, the DRIP's adoption

²³⁵ Ibid.

²³⁶ Teruki Tsunemoto, "Toward Ainu- and Japan-Specific Indigenous Policies," in *The Ainu: Indigenous People of Japan Vol. 3*, ed. Henry Stewart (Sapporo: Hokkaido University Center for Ainu and Indigenous Studies, 2012), 43.

²³⁷ Ibid.

²³⁸ Akahata, "Diet Adopts Resolution Calling for Ainu to be Recognized as Indigenous People."

empowered a non-traditionally sanctioned Ainu organization to take advantage of the wave of international change through the Indigenous Peoples Summit.²³⁹ This action intertwined domestic and international pressures, and provided the Japanese government enough incentive to finally recognize the Ainu as Indigenous.

This pivotal moment is where the Japanese government ceased its tactical concessions, and began to accept the validity of Indigenous norms. Risse, Ropp, and Sikkink argued that a principled idea gains “prescriptive status” under Phase 4 through a decisive process that creates a sustained impact for social and political change.²⁴⁰ Unfortunately, this determination is somewhat dampened due to political rights restrictions that will be discussed in length during the next section. Nevertheless, most evidence suggests Indigenous norms had acquired prescriptive status in Japan following the recognition of the Ainu as an Indigenous People in 2008.

Phase 4: Japan’s Prescriptive Status on Indigenous Rights – 2008 to Present

Phase 4, prescriptive status, entails the state’s acceptance of the validity of international norms, and regular state involvement to comment on its own behavior.²⁴¹ Phase 4’s prescriptive status is a tricky phase to identify. On one hand, the state has taken great strides to change according to domestic and international pressures, including self-diagnosis of violations. However, the state’s behavior may continue to violate international norms at times. I divide my Phase 4 analysis into three subsections. First, I examine the Japanese government’s domestic policy changes since their recognition of Ainu Indigeneity in 2008. Next, I tie these changes to the four indicators

²³⁹ Ann-Elise Lewallen, “Indigenous at last! Ainu Grassroots Organizing and the Indigenous Peoples Summit in Ainu Mosir.”

²⁴⁰ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 29.

²⁴¹ Ibid.

of prescriptive status described by Risse, Ropp, and Sikkink: (1) ratification of human rights conventions, (2) institutionalization of norms in a state's constitution and/or domestic law, (3) institutionalized methods to file individual complaints, and (4) discursive practices. While addressing these indicators, I also highlight specific areas that have not witnessed a full domestic implementation of the DRIP with regard to the Ainu. Finally, I specifically address the fourth indicator, discursive practices. In doing so, I address four criteria necessary to identify whether the aforementioned discursive practices are actually present in Japan.

(a) Japanese Policy Changes Since 2008

Despite the government's decision to recognize the Ainu as an Indigenous People, confusion remained as to whether this definition was synonymous with the DRIP largely because the declaration lacked a clear definition.²⁴² To solve this dilemma, the Japanese government organized the Advisory Council for Future Ainu Policy, consisting of eight experts. Their findings were published in the Advisory Council's Final Report in July 2009. Based on the Advisory Council's recommendations, the Japanese government adopted a Japan-specific definition for Ainu Indigeneity.²⁴³ This definition referred to the Ainu as "a minority people who were the first to settle in [a] certain part of the country, and deemed that if the state enters their territory without prior consent and adversely affects their culture under a national policy, then it has a grave responsibility to provide reparations for related damage."²⁴⁴ The Final Report called for the Japanese government to respect the DRIP "as a general

²⁴² International Work Group for Indigenous Affairs (IWGIA 2010), "Japan," *The Indigenous World 2010* (Copenhagen 2010), 302, accessed April 10, 2017, <http://www.iwgia.org/regions/asia/japan>.

²⁴³ Tsunemoto, "Toward Ainu- and Japan-Specific Indigenous Policies," 45.

²⁴⁴ Ibid.

international guideline for [I]ndigenous policies.”²⁴⁵ However, enactment of the DRIP should also not overshadow the realities of conditions for many Ainu people and current conditions of the country.²⁴⁶

This Japan-specific definition of Indigenous Peoples had two immediate consequences. First, this definition marked the introduction of international Indigenous Peoples norms into the Japanese legal system. The definition recognized that the DRIP held a significant role in shaping how Japan’s future Ainu policy should proceed. Second, it limited the DRIP’s influence to social, cultural, and economic aspects of Ainu rights. Other rights, such as self-determination and land rights, would remain absent under the Japanese definition of Indigenous People.²⁴⁷

Following the recommendations of the Advisory Council, the Secretariat Cabinet established a permanent advisory body for Ainu policy, the Ainu Policy Promotion Council. The Promotion Council consisted of 14 council seats with 5 of them reserved for Ainu representatives.²⁴⁸ Multiple projects have since been assigned by the Japanese government to the Promotion Council. These projects contain a wide breadth of topics such as cultural initiatives, educational reformation, repatriation of ancestral remains, measurements of Ainu economic and social livelihood, hate-speech against Ainu, and awareness campaigns through tourism and multimedia.

One specific project set to open in 2020 is the “Symbolic Space for Ethnic Harmony,” a national institution designed to educate visitors about Ainu livelihood and

²⁴⁵ Advisory Council for Future Ainu Policy, “Final Report, Provisional Translation,” in *The Ainu: Indigenous People of Japan Vol. 3*, ed. Henry Stewart (Sapporo: Hokkaido University Center for Ainu and Indigenous Studies, 2012), 21.

²⁴⁶ Ibid.

²⁴⁷ Tsunemoto, “Toward Ainu- and Japan-Specific Indigenous Policies,” 45.

²⁴⁸ International Work Group for Indigenous Affairs (IWGIA 2010), “Japan,” 303.

history from the perspective of the Ainu. The Symbolic Space is currently being built in the traditional Ainu village of Shiraoi. The development of this area was one of the primary recommendations attached to the Final Report in 2009 as an area “where Ainu and other Japanese people can learn together about the history and culture of the Ainu so that related information can be passed on to future generations.”²⁴⁹ Additionally, to increase Ainu ownership and legitimacy of the Symbolic Space, the initially planning included interviews with both experts and young Ainu individuals.²⁵⁰ The Symbolic Space is scheduled to open before the 2020 Tokyo Olympics in order to maximize its international publicity.²⁵¹

Additionally, the Symbolic Space holds a secondary purpose as a repository for the eventual repatriation of ancestral remains and funerary items. Past misguided attempts to study Ainu anatomy resulted in Japanese universities collecting over 1,600 Ainu remains.²⁵² Most of these remains do not have identified lineal descendants, are dismembered and stored separately, and/or suffer from poor university bookkeeping. Repatriation has become a dividing issue within Ainu communities, particularly around means of restoring the dignity of those Ainu remains once held in mass storage.²⁵³ A number of Ainu individuals would rather see remains returned to local Ainu organizations for reburial and funerary, but universities with large Ainu remains

²⁴⁹ Tsunemoto, “Toward Ainu- and Japan-Specific Indigenous Policies,” 47.

²⁵⁰ “Overview of the Master Plan for the ‘Symbolic Space for Ethnic Harmony,’” *Prime Minister of Japan and his Cabinet*, accessed May 7, 2017, http://www.kantei.go.jp/jp/singi/ainusuishin/pdf/symbolicspace_e.pdf.

²⁵¹ International Work Group for Indigenous Affairs (IWGIA 2016), “Japan,” *The Indigenous World 2016* (Copenhagen 2016), 235, accessed April 10, 2017, <http://www.iwgia.org/regions/asia/japan>.

²⁵² International Work Group for Indigenous Affairs (IWGIA 2015), “Japan,” *The Indigenous World 2015* (Copenhagen 2015), 237, accessed April 10, 2017, <http://www.iwgia.org/regions/asia/japan>.

²⁵³ Ibid.

collections, such as Hokkaido University, cited government guidelines that act as barriers to these efforts.²⁵⁴ Despite the polarizing effect of repatriation, the Symbolic Space's plans for these remains hopes to prove to the Ainu community that Ainu remains can be treated with reverence.

Avenues of Ainu ancestral repatriation will hopefully continue to expand with the building of the Symbolic Space. For now, two recent effective repatriation examples have proven successful. First, a court-mediated settlement between a small group of Ainu descendants from Urakawa, Hokkaido, and Hokkaido University in July 2016 saw the repatriation of twelve Ainu remains that had been confiscated nearly eighty years prior.²⁵⁵ More recently, the Urahoro Ainu Association and Hokkaido University also came to an agreement in March 2017. This agreement saw the return of seventy-six sets of Ainu remains to descendants, and the University shouldered the costs of transportation and reburial.²⁵⁶

(b) Four Indicators of Prescriptive Status

To determine whether Phase 4 conditions were met in Japan, it is first pertinent to list the four indicators of prescriptive status identified by Risse, Ropp, and Sikkink. These four indicators are as follows:

- (1) they ratify the respective international human rights conventions including the optional protocols;
- (2) the norms are institutionalized in the constitution and/or domestic law;

²⁵⁴ Ibid.

²⁵⁵ Hiroshi Fukasawa and Jun Hasegawa, "Proper Burial given to 12 Ainu 80 Years After Being Dug Up," *The Asahi Shimbun* (July 18, 2016), accessed April 10, 2017, <http://www.asahi.com/ajw/articles/AJ201607180037.html>.

²⁵⁶ "Hokkaido University agrees to return remains of Ainu to descendants," *Japan Times* (March 23, 2017), accessed April 10, 2017, http://www.japantimes.co.jp/news/2017/03/23/national/hokkaido-university-agrees-return-remains-ainu-descendants/#.WN_VGPkrLIU.

- (3) there is some institutionalized mechanism for citizens to complain about human rights violations; and
- (4) the discursive practices of the government acknowledge the validity of the human rights norms irrespective of the (domestic or international) audience, no longer denounce criticism as “interference in internal affairs,” and engage in a dialogue with their critics.²⁵⁷

Keep in mind that the “true beliefs” held by the Japanese government are not relevant to this determination. Rather, consistency between verbal promises and state actions are the main focal point of Phase 4.

I narrowly tailored my analysis of the first prescriptive status indicator toward conventions relatable to Indigenous Peoples. The DRIP is currently the only universally acknowledged international document pertaining to Indigenous rights. Despite the DRIP’s status as a non-binding declaration, we can still identify important elements of Japanese support, namely through a positive vote in favor of its adoption by the UN General Assembly. Likewise, the Japanese government’s vote in favor of the 2006 draft DRIP further supports this argument. In a broader scope, Japan is also a party to most major international human rights treaties. Although the Japanese government has not ratified all of these international treaties or their optional protocols, Japan is a party to those that relate to Indigenous Peoples. This includes the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social, and Cultural Rights (ICESCR), and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

Regarding the second indicator, current constitutional interpretations demonstrate the institutionalization process currently taking place within Japan. This process is particularly strong with regard to Ainu cultural and economic rights. Article

²⁵⁷ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 29.

13 of Japan's Constitution establishes as a fundamental principle to respect the identity of the Ainu.²⁵⁸ Article 13 states the following:

All of the people shall be respected as individuals. Their right to life, liberty, and the pursuit of happiness shall, to the extent that it does not interfere with the public welfare, be the supreme consideration in legislation and in other governmental affairs.²⁵⁹

The Advisory Council specifically addressed this constitutional tie as a vehicle for future Ainu policy. "If an Ainu individual willingly chooses to live with the identity of an Ainu, with different culture from many other Japanese, his/her choice should not be unjustly hindered by the government or any other individual."²⁶⁰ In order to meet this constitutional standard, the Advisory Council strongly recommended bridging the historical economical and educational gaps between the Ainu and other Japanese, while also taking measures to respect the cultural diversity of the Ainu. This cultural respect included, but was not limited to, the ability for Ainu to practice their traditional language and religious beliefs.²⁶¹ Utilizing the 1997 Promotion Act and the DRIP, the Japanese government seeks to adjust domestic law to reflect these constitutional responsibilities. Although these actions largely reflect what the 1997 Promotion Act was initially intended to provide, the DRIP's addition provides an international legal basis to these claims, and solidifies Ainu Indigenous rights claims while providing a basis for future negotiations regarding self-determination.

²⁵⁸ Tsunemoto, "Toward Ainu- and Japan-Specific Indigenous Policies," 48; Okada, "The Plight of Ainu, Indigenous People of Japan," 9; Advisory Council for Future Ainu Policy, "Final Report, Provisional Translation," 22.

²⁵⁹ *The Constitution of Japan*, Article XIII (1946).

²⁶⁰ Advisory Council for Future Ainu Policy, "Final Report, Provisional Translation," 22.

²⁶¹ Okada, "The Plight of Ainu, Indigenous People of Japan," 9.

One large question remains regarding the second indicator within the Japanese context. Why has the Japanese government failed to enforce the Ainu's right to self-determination, along with other political rights reflected in multiple articles of the DRIP? Part of this is because the concept of self-determination remains undefined. However, this is also because of the contested nature of these ideas within Japanese society. Ainu are considered Japanese citizens with access to similar civil and political rights as the majority Japanese population. However, current policymakers in Japan contend that the nuanced historical relations between the Ainu and the Wajin have led to multiple inhibiting factors for Ainu-specific political rights. One such factor is the Ainu's traditional autonomous element, or lack thereof. Unlike many Native American tribes, the Ainu lacked a sovereign tribal structure that could negotiate as a representative of all Ainu with the Japanese government.²⁶² This is due in part to the fact that the Ainu were never a clearly defined state that could negotiate treaties as equal with other states, unlike many Native American tribes that hold a long history of treaty negotiations. Another factor includes the hesitance of many modern Ainu to claim their ancestry. Decades of assimilation resulted in strong social discrimination against the Ainu within Wajin society.²⁶³ Such discriminatory thinking continues to be rectified within the public sphere, but its effects are nonetheless a real concern for many of Ainu ancestry.

Finally, the constitutional anchor for Ainu rights under Article 13 fails to account for collective rights. Although individual rights are protected, property law and

²⁶² Tsunemoto, "Toward Ainu- and Japan-Specific Indigenous Policies," 45.

²⁶³ Ibid., 47.

political rights largely reflect Western ideals that are not conducive to the collective.²⁶⁴

This is a problem that other states, such as the U.S., continue to struggle with. The Japanese government first hopes to revive Ainu cultural pride that may encourage more to reclaim their Ainu ancestry. A rekindling of Ainu culture identity might be able to bring about a stronger Ainu collective identity that can then be imbued with certain political rights in accordance with the DRIP. Until then, policy implementation regarding Ainu self-determination will remain difficult.

The third indicator identifies how the Ainu can report Indigenous rights violations. I have already demonstrated through the cases of *Kayano et al.* and *Ogawa* that individual Ainu are welcome to bring their issues to court for judicial intervention. The DRIP and the 1997 Promotion Act thereby plays an important role in judicial decision-making to rectify these violations against individual Ainu. Beyond normal court proceedings, local Ainu organizations can raise specific issues to Working Groups that provide multiple reports to the Promotion Council throughout the year.²⁶⁵

(c) Discursive Practices as Indicators of Prescriptive Status

The last indicator of prescriptive status focuses on the Japanese government's current "discursive practices." Discursive practices are essentially a measurement of the state's internalization of international norms displayed through the state's day-to-day discourse. It is important that the Japanese government begins to "walk and talk" like other states that have already internalized Indigenous norms. In order to identify that these discursive practices are met by the state, Risse, Ropp, and Sikkink adopted four

²⁶⁴ Ibid., 48.

²⁶⁵ "About the Council," *Council For Ainu Policy Promotion*, accessed April 10, 2017, http://www.kantei.go.jp/jp/singi/ainusuishin/index_e.html.

criteria. These criteria are (1) argumentative consistency, (2) adherence to norm validity, (3) reaction to criticism, and (4) matched deeds.²⁶⁶

First, “argumentative consistency” is important when recognizing the claims of normative ideas.²⁶⁷ This means that the Japanese government’s dialogue on Indigenous rights should not substantially differ between audiences, particularly between the domestic and international arenas. Previous examples mentioned in Chapter II illustrate that this was not always the case prior to 2008.

The Japanese government has emphasized domestically and internationally its recent efforts to promote the Ainu culturally, educationally, and economically. The Japanese government’s recent reports to the CERD reiterated these policies. In 2010, the Japan representative reported the following to the CERD:

The human rights organs of the Ministry of Justice have expanded and strengthened their promotion activities to spread and enhance the idea of respect for human rights with a view to realizing a society where the dignity of the Ainu people is fully respected by eliminating prejudice and discrimination against the Ainu people while disseminating and deepening correct knowledge and understanding of the unique culture and traditions of the Ainu people.²⁶⁸

Likewise, the Japanese government reported to the CERD similar policy approaches in 2014, and introduced the Working Group for the “Symbolic Space for Ethnic Harmony and the Working Group for the “research on living Conditions of Ainu Peoples outside Hokkaido.”²⁶⁹ Additionally, Domestic consistency is visible through the “Inkarapte

²⁶⁶ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 29-30.

²⁶⁷ *Ibid.*, 29.

²⁶⁸ Committee on the Elimination of Racial Discrimination, “Reports submitted by States parties under articles 9 of the Convention: third to sixth periodic reports due in 2007: Japan (CERD/C/JPN/3-6),” *UN International Convention on the Elimination of All Forms of Racial Discrimination*, 9.

²⁶⁹ Committee on the Elimination of Racial Discrimination, “Reports submitted by States parties under article 9 of the Convention: Seventh to ninth periodic reports of States parties due in 2013: Japan

campaign.”²⁷⁰ The campaign promotes Ainu culture through several media routes, including banners, signs, and online advertisements.²⁷¹

Second, discursive practices should continue to “adhere to the validity of the norm” despite a decrease in pressures or changes in state leadership.²⁷² This standard is more telling for states that have recently changed from authoritarianism to liberal regimes. Still, party-control shifts in Japan’s Diet offers a comparable analogy. Despite the Liberal Democratic Party’s (LDP) loss to the Democratic Party of Japan (DPJ) in 2009 from a lower house election, national policies to promote Ainu culture remained enforced.²⁷³ This election ended 54 consecutive years of control by the LDP.²⁷⁴ The Ainu did not lose their newfound recognition due to this political party transition. The same remains true after the 2012 election, when the LDP regained control of the Diet.²⁷⁵ The LDP has since remained in control of the Diet.

Third, in areas where the Japanese government continues to exhibit inconsistencies with Indigenous norms, how does the government react to criticism?²⁷⁶ Recall from Chapter II that before the DRIP’s adoption, the government’s common response to international critiques was to claim that Japan was a homogenous state and that the Ainu were fully integrated into Japanese society. Such governmental reactions

(CERD/C/JPN/7-9),” *UN International Convention on the Elimination of All Forms of Racial Discrimination*, 5.

²⁷⁰ “Irankarapte, Let’s begin with ‘Hello.’” *Irankarapte*, accessed April 10, 2017. <http://www.irankarapte.com>.

²⁷¹ *Ibid.*

²⁷² Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 30.

²⁷³ David Arse, “Japan in 2009, A Historical Election Year” *Asian Survey* 50, no 1. (2010): 40-55, accessed April 10, 2017, <http://www.jstor.org/stable/10.1525/as.2010.50.1.40>.

²⁷⁴ *Ibid.*

²⁷⁵ “Shinzo Abe’s sumo-sized win,” *The Economist* (December 16, 2012), accessed April 10, 2017. <http://www.economist.com/blogs/banyan/2012/12/japans-election>.

²⁷⁶ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 30.

are no longer the case. Instead, the Japanese government recognizes the continued existence of the Ainu and the duties owed to them as an Indigenous minority. Although international criticism against the government's Ainu policy has tapered since 2008, where criticisms have persisted the Japanese government has engaged in dialogue with critics.²⁷⁷

Fourth, Japan must enforce the Indigenous rights responsibilities it has assumed during international dialogue through domestic action. States are expected to implement “a sustained effort to improve the human rights condition.”²⁷⁸ Sustained effort plays a key role in a state's eventual introduction into Phase 5 of the spiral model. Since 2008, the Japanese government has enacted a variety of changes to promote Ainu culture. Those that have been discussed previously include the creation of the Symbolic Space for Ethnic Harmony, the research of living conditions for Ainu people, and the current addressment of Ainu ancestral repatriation. Likewise, the Japanese government in tandem with multiple Ainu organizations create the Irankarapte campaign to further popularize and promote Ainu culture.²⁷⁹ In the realm of education, the Japanese government has implemented a scholarship program for high school and university Ainu students under the Second Promotion Policy for the Improvement of the Ainu People's Life (2008).²⁸⁰

²⁷⁷ “Replies by the Government of Japan to the List of Questions Sent by the Country Rapporteur in Connection with the Consideration of the Third to Sixth Periodic Reports of Japan (CERD/C/JPN/Q/3-6),” *UN International Convention on the Elimination of all Forms of Racial Discrimination* (CERD/C/JPN/Q/3-6/Add.1/Rev.1 2010), 12-14.

²⁷⁸ *Ibid.*, 30.

²⁷⁹ “Irankarapte, Let's begin with ‘Hello.’”

²⁸⁰ “Replies by the Government of Japan to the List of Questions Sent by the Country Rapporteur in Connection with the Consideration of the Third to Sixth Periodic Reports of Japan (CERD/C/JPN/Q/3-6),” 12.

Still, recent concerns have been raised over the Japanese government's willingness to provide sustained efforts to enforce Ainu Indigenous rights. One major concern is Japan's governmental guidelines for 2016 junior high history textbooks. These revisions replaced key phrases such as "expropriation of land from the Ainu people" to "giving land to the Ainu people."²⁸¹ In response to criticism from Ainu activists, the government responded that the "defects in the passage have been resolved," but further information toward these corrections has yet to be reported.²⁸²

Additionally, hate speech in response to Ainu promotion has become a greater concern, particularly cyber hate-speech. Anti-Ainu Twitter posts from Sapporo City Assemblyman Kaneko Yasuyuki in 2014 and Hokkaido prefectural legislator Onodera Masaru in 2015 were met with harsh criticism by Japanese civil society.²⁸³ Despite both individuals failure in their reelection bids in 2015, their actions highlight a growing wave of anti-Ainu and anti-minority sentiments in Japan.

When viewing its discursive practices in totality, Japan offers a mixed bag of successes and disappointments. In many ways, the Japanese government has successfully "talked-the-talk" as an international participant in Indigenous human rights. The Japanese government has ratified most the relevant international treaties and participated in dialogue with majority human rights bodies such as the CERD and the ICESCR Committee. However, most of the Japanese government's implemented changes have focused on Ainu cultural rights, and even those policies have faced

²⁸¹ "History in Japan's textbooks gets government makeover," *The Japan Times* (April 7, 2015), accessed April 10, 2017. http://www.japantimes.co.jp/news/2015/04/07/national/history-in-japans-textbooks-gets-government-makeover/#.WN_Y6vkrLIU.

²⁸² International Work Group for Indigenous Affairs (IWGIA 2016), "Japan," 235.

²⁸³ Ann-Elise Lewallen, *The Fabric of Indigeneity: Ainu Identity, Gender, and Settler Colonialism in Japan*, 222-23.

domestic pushback. The eventual opening of the Symbolic Space for Ethnic Harmony will be a telling factor for how the Japanese government's policy of Ainu cultural promotion will proceed in the future.

In light of the multiple variables of this Phase 4 analysis, I would place Japan in the early stages of this phase. This is despite nearly a decade of development since Japan's entrance into prescriptive status of its Indigenous rights policies. The Japanese government's sudden recognition of the Ainu appeared to indicate that further internalization of Indigenous norms would be swift, but the government's actions since then demonstrate a slower methodical approach. The Japanese government has certainly shown that it is willing to internalize certain aspects of Indigenous human rights norms that are easier to implement, such as cultural promotion. Within those limits, the Japanese government has taken strides to improve Ainu livelihood through economic incentives and educational support. The DRIP's role in Japanese society as a reference tool has furthered these efforts and provided legal standards for cultural protection and promotion.

However, the state's inability to provide the Ainu with land rights and political rights is a significant barrier for full norm integration. Furthermore, recent concerns of sustained effort by the Japanese government present a possible path for future phase regression. Although Phase 4 expectations largely emphasize the role of communicative behavior between the Japanese government and domestic Ainu organizations, both domestic and international activists must continue to apply pressure to decrease the chances of phase regression

Phase 5: What Changes are Necessary for Rule-Consistent Behavior?

Having roughly located Japan's current position within the spiral model at the beginning of Phase 4, I now consider what future changes are still essential for Japan to fully internalize international Indigenous norms. In doing so, I also wish to stress the important role that domestic-transnational social networks will continue to play if Japan hopes to achieve Phase 5 rule consistent behavior. Recall that Phase 5 goes beyond the acceptance of valid human rights norms. Phase 5 should encompass the full internalization of international norms through institutionalization and habitualization.²⁸⁴ Additionally, this phase can prove exceedingly difficult for a state to enter and remain in once international limelight is transferred to other areas of importance.

Some required changes have been thoroughly discussed during my Phase 4 analysis. Self-determination, land rights, and other political rights included in the DRIP are key elements of international Indigenous rights norms that remain absent in Japan. While the contextual argument for and against these rights was detailed earlier, the simple fact remains that these are currently internationally recognized as key concepts within Indigenous rights. So long as these elements are absent, it is hard to argue that the Japanese government is exuding rule-consistent behavior. Additionally, present concerns regarding hate-speech and historical revisionism must be addressed. These are red flags that could inhibit Japan's progression in the future.

The Ainu will unfortunately continue to face racial prejudice for some time. Because the dominant actors for Phases 4 and 5 are national governments and domestic society, it is imperative that domestic Ainu associations avoid scandals and other

²⁸⁴ Risse, Ropp, and Sikkink, *The Power of Human Rights: International Norms and Domestic Change*, 31.

actions that belittle the cohesiveness and trust currently being built between the Ainu and non-Ainu communities. An audit of the Hokkaido Ainu Kyokai in 2012 uncovered misappropriation of funds that resulted in heavy reputational damage.²⁸⁵ The fallout of this issue resulted in the resignation of several top leaders, reorganization of multiple branch offices of the Kyokai, and a significant loss of funding for Ainu language curricula.²⁸⁶ Additionally, since the specific fault in this scenario dealt with money, the scandal further emboldened holders of long-held racial biases that Ainu lack mental insight, mathematical skills, and are easily swindled.²⁸⁷ As Japanese society changes, Ainu associations will continue to be highly scrutinized, and therefore must avoid presenting opportunities that can be utilized to empower prejudices.

Assuming that all of the above changes are eventually implemented, other resources and activities could further support a future transition into Phase 5 for Japan. Successful opening of the Symbolic Space for Ethnic Harmony and continued changes in pro-Ainu repatriation law are strong starting points that could open more opportunities for dialogue. The Symbolic Space's opening near the 2020 Tokyo Olympics will hopefully increase international publicity for the Ainu and offer a strong future support system from transnational actors.

Finally, it is important to understand the Japanese government's Indigenous policies beyond the scope of the Ainu. Specifically, I am referring to the government's policies with the Indigenous Okinawans. Despite the DRIP's adoption and domestic activism, the Okinawans remain a population that has yet to be recognized by the

²⁸⁵ Lewallen, *The Fabric of Indigeneity: Ainu Identity, Gender, and Settler Colonialism in Japan*, 219.

²⁸⁶ Ibid., 220.

²⁸⁷ Ibid., 219.

Japanese government as Indigenous. Okinawan domestic-transnational networks are rapidly expanding, and Okinawans are becoming stronger actors within the international arena. In 2014, Okinawans joined the Ainu in the first U.N. Indigenous Peoples Conference despite their lack of recognition.²⁸⁸ The Okinawan Indigenous rights movement has gained momentum since the Ainu's official recognition in 2008.²⁸⁹ Still, the Okinawans face a hurdle absent in the case of the Ainu- the presence of U.S. military bases for national security. Understandably, an entirely separate spiral model analysis could be developed detailing the Okinawan Indigenous rights experience thus far. However, for sake of brevity I wish to only bring to light the continued complexities of Japan's internalization of Indigenous norms. For Japan to successfully enter Phase 5 of the spiral model, serious issues must be addressed by the government to apply these norms to all of its Indigenous populations, not just the Ainu.

Conclusion

I have discussed how the DRIP has possibly played a significant role in Japan's internalization of international Indigenous rights norms. The DRIP's adoption near the end of Phase 3 prevented further phase regression and reinvigorated domestic and international Ainu activists. The Japanese government's eventual acceptance of Ainu Indigeneity shows how these pressures can influence domestic policies. However, more work is necessary to push Japan into Phase 5. Current domestic laws focus specifically on cultural revivification while leaving out other political rights enclosed in the DRIP.

²⁸⁸ "Ainu, Okinawans join first U.N. indigenous peoples' conference." *The Japan Times* (September 23, 2014), accessed April 10, 2017, <http://www.japantimes.co.jp/news/2014/09/23/national/ainu-okinawans-join-first-u-n-indigenous-peoples-conference/#.WOFADPkrLIU>.

²⁸⁹ Ryan Yokota, "The Okinawan (Uchinanchu) Indigenous Movement and Its Implications for Intentional/International Action," *Amerasia Journal* 41, no. 1 (2012), 55-73.

Perhaps a certain amount of reformation and education is necessary within Japanese society before the Ainu can be granted these rights. Assuming that current plans remobilize a number of the Ainu population that has hidden away their cultural heritage, incorporation of Ainu political rights could become a much easier task. These rights and the continued problems of racial biases are areas that domestic-transnational social networks can continue to provide support and pressure points for change.

Conclusion

This project has shown that some progression within the context of Ainu rights is attributable to the Declaration on the Rights of Indigenous Peoples. The DRIP's adoption in 2007 provided a codified document of internationally recognized norms for pro-Ainu parties to draw upon, and further strengthened socio-political pressures from above and below that were already established. Therefore, the DRIP acted as an impetus for change within the context of Ainu-Japan relations.

Utilizing the five-phase spiral model as an explanatory and conceptual framework for the internalization of Indigenous rights, I have shown how the Japanese government's domestic policy has developed since the end of World War II. The spiral model bridges the gaps between the two most popular perspectives for Indigenous rights development—social movements and the legalist rational model. To do this, it positions actions from domestic and international actors as cooperative pressures for policy change. The more a state seeks to protect its international reputation, the more these cooperative pressures will influence domestic Indigenous policies.

Phase 1, repression and the activation of social networks, began with the liberalization of the Japanese state following World War II. Two factors characterized Phase 1: (a) Ainu activists were at the time too weak to present a significant challenge to the Japanese government, and (b) domestic-transnational networks were eventually activated which allowed the Ainu to appeal to an international audience. The continuation of the 1899 Protection Act continued a policy of assimilation and discrimination against the Ainu during this period. Ainu activism increased during the 1960s, but domestic avenues of remedy proved limited. The 1970s bore witness to a

shift in global thought regarding Indigenous rights. The emergence of the human rights movement during this time motivated the Ainu to begin to look abroad to other Indigenous Peoples for support, starting first with minority populations in China. This, along with the emergence of new domestic avenues to disseminate information provided a process of re-birth for Ainu culture that had largely been lost.

Phase 2, denial, began during the mid-1970s and continued until 1997. While the Japanese government did not deny the validity of Indigenous rights, they did deny that any such populations existed in Japan. Two factors were identifiable during this phase: (a) domestic-transnational social ties strengthen which allowed activists to apply continuous cooperative pressure against the Japanese government, and (b) the Japanese government began responding to this pressure by denying that the Ainu continued to exist. The Ainu continued to connect with other Indigenous minority populations such as the Inuit, but also became active participants in international Indigenous discourse. This included participation in UN symposiums and other functions that drew further scrutiny toward Japan's denials. These denials began to recede during the 1990s.

Phase 3, tactical concessions, began during 1997 and ended with the Japanese government's recognition of the Ainu in 2008. Japanese tactical concessions during the late-1990s sought to appease the Ainu minority. Two major examples of this appeasement process occurred at the beginning of Phase 3: (a) the case of *Kayano et al. v. Hokkaido Expropriation Committee*, and (b) the revocation of the 1899 Protection Act for the 1997 Promotion Act. The judge in *Kayano et al.* held that the Ainu were a minority population with a right to special protections from the Japanese government. Less than two months after this decision, the 1997 Promotion Act replaced the long-

standing 1899 Protection Act. Despite these changes, the government attempted to curtail these changes during the early- to mid- 2000s. The DRIP's adoption reinvigorated Ainu activism, and the Japanese government formally recognized the Ainu as Indigenous on June 6, 2008. This moved Japan into Phase 4 of the spiral model.

Phase 4, prescriptive status, is where Japan currently resides within the spiral model. Although Japan continues to violate some Indigenous norms, the government has largely accepted that these norms are valid. Likewise, the state can self-diagnose its current shortcomings. In this phase, I addressed Japanese Ainu policies since the Ainu were recognized. This included the development of a Japan-specific definition of Indigenous Peoples that focused largely on cultural, educational, and economic empowerment of Ainu people. Additionally, the Japanese government created the Advisory Council to address Ainu needs, and the Symbolic Space for Ethnic Harmony will open in 2020. Still, Ainu land rights, self-determination, and other political rights are still not available at this time. Due to these limitations, I hesitated to place Japan any farther than the earlier stages of Phase 4.

Phase 5, rule-consistent behavior, has yet to be achieved by Japan. In order to enter this phase, the Japanese government must be willing to adopt Indigenous norms in their entirety, including those mentioned previously that remain unavailable. Phase 5 requires full institutionalization and habitualization of these norms. Since trust between the Ainu and Japanese society are still developing, it is imperative that domestic Ainu associations avoid scandalous behavior. They are representatives of the Ainu people domestically and internationally. Likewise, international activists should continue to apply pressure for complete change. In a broader perspective, similar policy

development is necessary regarding the Okinawans, who remain unrecognized by the Japanese government. For both the Ainu and the Okinawans, further integration of the DRIP within Japanese domestic law can aide Japan toward an eventual transition into Phase 5.

Alternative Explanation

There is one notable alternative explanation to this model of interpretation regarding Ainu Indigenous rights in Japan. This alternative explanation considers the World Bank, the World Trade Center, and other economic international organizations that incentivize the development of human rights through financial loans to states. This model on norm internalization is based on international economic incentives from a top-down perspective. State actors may have to meet “good governance” criteria included in such loans that could enact further liberalizing measures.²⁹⁰ Risse, Ropp, and Sikkink argue that the effects of international financial institutions are already included within the spiral model as part of the transnational human rights network.²⁹¹ Additionally, the WTO has played an important role at the intersection of Indigenous rights and intellectual property rights. This explanation could provide further understanding as to how Ainu rights have developed in Japan through international influences, but most likely will not consider the role of domestic actors within the norm internalization process.

In most examples of Japanese international relations, another explanation would be available—the role of the U.S. as a leading ally. U.S.-Japan relations have stayed

²⁹⁰ Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Norms and Domestic Change* (New York, Cambridge Press, 1999), 35.

²⁹¹ Ibid.

closely connected since the end of World War II in many areas such as national defense and economics. However, as we have seen during the UN General Assembly's adoption of the DRIP, the U.S. voted against its adoption before eventually adopting it at a later date. Conversely, Japan voted in favor of the DRIP and began discussing its effect on domestic law immediately. This decision by the Japanese government to vote in favor of the DRIP despite the U.S.'s hesitation severely weakens the argument that the Japanese government was acting in step with its ally.

Japan, International Norms, and the Future of Indigenous Rights

In light of this spiral model analysis, I have offered evidence as to how the DRIP may have influenced the Ainu's recognition as an Indigenous People. Starting with the Japanese government's tactical concessions during Phase 3, I established that the Japanese government had continued to argue against the idea that the Ainu were Indigenous, but rather were a minority population. However, the Japanese government has continued to participate as a great player in the UN increased the state's vulnerability to domestic-transnational social pressures. The effect of these domestic-transnational pressures first became apparent with the Japanese government's supporting vote for the 2006 draft DRIP, despite its initial desires to abstain. Facing similar conditions, the Japanese government also voted in favor of the DRIP's adoption in 2007 by the UN General Assembly. Shortly thereafter, the Ainu invited the Japanese government to adopt many principles of the DRIP. The Japanese government's decision to finally recognize the Ainu as Indigenous peoples stemmed partially from the popularity of the newly adopted DRIP, and the utilization of domestic-transnational social ties to potentially highlight continued discrepancies between the government's

Indigenous standards and international standards. This was done through the strategic placement of the Indigenous Peoples Summit in Ainu Mosir by the IPS Steering Committee a mere three days before the 34th G8 summit.

The Japanese government's recognition of the Ainu prior to these two summits not only allowed Japan to avoid the potential international criticism, but also altered the political narrative that the government was successfully adapting international standards for Indigenous rights recently codified in the DRIP. This propelled Japan into Phase 4, prescriptive status. Although the government still has not fully integrated the DRIP's standard into domestic law, policy changes since 2008 have demonstrated that the Japanese government remains serious in its responsibility to promote and revive Ainu culture. These changes include the Japanese government's development of the Promotion Council, scholarship offers, the Symbolic Space for Ethnic Harmony, the Irankarapte promotional campaign, and the current redress of repatriation methods for Ainu ancestral remains.

We must also ask ourselves why Japan's internalization of Indigenous rights norms is important to our greater understanding of international norms. From what this analysis has shown, moderate change in domestic policies to adopt international standards need not have binding force. In recalling the example of ILO C169, we know that having states ratify binding treaties on Indigenous rights remains an extremely high bar. Finding an alternative route for change is significant. Domestic and international activists can successfully utilize non-binding international documents to provide cooperative pressure for change. To support this theory, I have demonstrated the gradual transformation of Japan, a state that once publicly prided itself on homogeneity,

but now seeks to enforce international Indigenous standards with the Ainu.

Additionally, keep in mind that this change occurred without the support of four traditionally liberal actors with large Indigenous populations: the United States, Canada, Australia, and New Zealand.

This project also demonstrates when internalization of Indigenous rights is more likely. Cultural and educational rights for Indigenous Peoples appear to be easier for states to implement, and may tend to be some of the first major changes in domestic law. However, land rights, self-determination, and other political rights may remain controversial as Indigenous Peoples rights continue to develop. This may remain an issue, particularly for states with property rights that focus on individual ownership. The future of Indigenous Peoples rights may see a two-step process in states that are unwilling or cannot implement the full spectrum of Indigenous Peoples rights. Cultural and educational rights might be able to act as an initial agent for change to create awareness outside of the Indigenous population and further support of Indigenous rights. However, the opposite may be true if states remain unwilling to implement a second round of Indigenous rights for political representation. Wide-scale indifference to Indigenous self-determination could have damaging consequences to Indigenous rights norms despite the DRIP's influence. Domestic and transitional actors have a significant responsibility to continue to pressure states governments to accept Indigenous rights in total.

Advocates for Indigenous Peoples rights should bear in mind the spiral model when pressuring states for policy change. They need to encourage the Indigenous population to actively participate in international Indigenous forums, and strengthen

domestic-transnational social ties the violating state can face international scrutiny.

Domestic and international actors can wield the DRIP as a codified example of international Indigenous norms to pressure a violating state into international conformity. While this social process does not guarantee that a state will adopt international Indigenous norms, it does offer itself as a peaceful method of change supported by international society. The Ainu have successfully worked alongside the international community to bring about domestic changes in Japanese Ainu policy. Indigenous rights will continue to develop as more Indigenous Peoples activate domestic-transnational ties with the international community. Activists should further seek to connect these communities as a social network of support for Indigenous Peoples.

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