

University of Akureyri,
Faculty of Law and Social Sciences, Department of Law
Master's Program in Polar Law

The EU, the Arctic and Arctic Indigenous Peoples

A proposal

Federica Scarpa

May 2013

University of Akureyri,
Faculty of Law and Social Sciences, Department of Law
Master's Program in Polar Law

The EU, the Arctic and Arctic Indigenous Peoples

A proposal

Federica Scarpa

**Masters Degree Thesis Submitted as Part of Studies for the M.A. Degree
in Polar Law**

May 2013

Abstract

This study evaluates EU policies and legislations towards indigenous peoples of the Arctic. EU's commitment to indigenous peoples has developed since 1997, when the issue was first inserted into the EU's Agenda. As a result, the EU now tries to integrate the issues of indigenous peoples into all aspects of its external relations, while actively supporting implementation of the 2007 UN Declaration on the Rights of Indigenous Peoples through the UN framework. Moreover, indigenous peoples have been designated as a thematic priority for the EIDHR, a specific EU's instrument aimed to give financial support to projects aimed to enhance and mainstream democracy and human rights. Bearing in mind this complex framework developed by the EU and aimed to support indigenous peoples' rights, this study analyses the gradual formulation of an EU Arctic Policy (the EU does not have an Arctic Policy yet). Indigenous peoples and related issues have been recognized as a political priority throughout all the process, and special emphasis has been accorded to the concept of free, (prior) and informed consent and the establishment of a "regular dialogue" with indigenous peoples representatives.

Against this background, EU's attitude toward Indigenous Peoples of the Arctic is perceived as untrustworthy. Indigenous peoples, Arctic states and even scholars believe the EU to be disrespectful of Indigenous peoples culture and lifestyle.

Therefore, this research builds on the analysis of EU's concrete actions already, or potentially, affecting the Arctic. As a result of this analysis, almost all EU legal competences affecting the Arctic directly, or potentially, affect Arctic Indigenous peoples as well. Furthermore, implementation of special adjustments tailored to the needs and rights of Indigenous peoples is inconsistent and poor.

This thesis explores possibilities on how to increase the consistency of EU's commitment toward Indigenous Peoples of the Arctic, and therefore suggest the establishment of an EU Permanent Forum on indigenous issues

Table of Contents

Chapter 1: Introduction.....	3
1.1 Structure of the Thesis.....	6
 Chapter 2: Arctic Indigenous Peoples, Livelihoods and Legal Frameworks.....	9
2.1 Indigenous Peoples of the Arctic.....	9
2.2 Indigenous Peoples: Understanding of the Term in International Law.....	13
2.3 International Framework.....	17
2.4 Indigenous Peoples' Internationalism: Seeking Legal Recognition.....	22
2.5 Arctic IPOs.....	24
2.6 Arctic Governance.....	26
 Chapter 3: The European Union and Indigenous Peoples, Question of relevance.....	33
3.1 Human Rights in the EU Primary Law.....	33
3.2 Setting the Issue Indigenous Peoples.....	37
3.3 Indigenous Peoples' Issues and Rights as part of Human Rights Concerns in the Cooperation with Third Countries	40
3.4 Indigenous Peoples Issues within EU's Cooperation Policies.....	42
3.5 European Instrument for Democracy and Human Rights.....	44
3.6 External Action: The Political Dialogues.....	45
3.7 EU Commitment on Indigenous Peoples's issues around the World.....	48
 Chapter 4: The EU Political Approach to the Arctic, Relevance of Arctic Indigenous Peoples.....	54
4.1 Introduction	54
4.2 Northern Dimension.....	55
4.3 Brief Background.....	59
4.4 EU's Documents on Arctic issues 2008-2013: Main Development	61
4.4.1. First Stage : EP Resolution on Arctic Governance,the Commission Communication on the European Union and the Arctic Region and the Council Conclusions.....	61
4.4.2 Second Stage: The EP Resolution on a sustainable Development for the High North and the 2012 Commission communication.....	69
4.5 Indigenous Peoples and EU Arctic Policy Documents.....	77
 Chapter 5: EU Concrete Actions toward Arctic Indigenous Peoples and the Arctic	85
5.1 EU Competences in relevant policy areas.....	86
5.2 EU Legal Competences affecting the Arctic and Arctic Indigenous Peoples: Sectorial Analysis	88
5.2.1 Indigenous Peoples in EU's Primary Law.....	89
5.2.2 Environmental Policy	89
5.2.3 Climate Change.....	99
5.2.4 Animal Welfare Policy	102
5.2.5 Transport Policy	107
5.2.5.1 The Exxon Valdez Oil Spill.....	107
5.2.5.2 EU Transport Policy	110
5.2.6 Common Energy Market and External Energy Policy	116
5.2.7 Common Fishery Policy	122
5.2.7.1 EU-Greenland Partnership Agreement	122

5.2.7.2 EU Common Fishery Policy	124
5.2.8 Research	128
5.2.9 Economic, Social and Territorial Cohesion Policy.....	132
5.2.10 Indigenous Peoples.....	137
5.3 EU Dialogues with Arctic Indigenous Peoples-- the First Arctic dialogue Workshop.....	139
6. Conclusions- The EU, the Arctic and Indigenous Peoples, Next steps.....	141
6.1 EU and the Arctic: Need for the EU Arctic Policy.....	144
6.2 Proposal for the Allocation of EU Arctic Policy	147
6.3 Involvement of Indigenous Peoples within the EU Arctic Policy: a proposal for an EU Permanent Forum on Indigenous Issues	148
Bibliography	156

Chapter 1

Introduction

It could be said that if the European Union (hereinafter EU)¹ ban on seal products in 2009² succeeded in anything, it was to witness the EU's legal competences and influence³ in the Arctic⁴. Since then, much has been said and written about whether the EU had “membership in the circle of those possessing legitimate claims to recognition as stakeholders in Arctic Affairs”⁵. As a relative

¹ For convenience, the European Union (EU) will be used in this research, although the treaty of Lisbon “European Community ” would be more appropriate. In case of quotations, the term used in the original source has been kept.

² Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade of seal products (Text with EEA relevance), 2009, OJ L 286.

³ See e.g.: “The EU's legal competence in the Arctic region is clearly witnessed through sealing and trade in Arctic wildlife products” (Heininen, 2011:60 and 2012a:59) ;”A prominent example is the EU ban on seal products from commercial hunting, which reveals a lack of knowledge and interaction between Arctic and non-Arctic parties. The case demonstrates that the EU is making, and will make, decisions that influence the development of the region irrespective of whether it is further involved in the Arctic Council”(Keil, 2012); “The second section takes up a case that illustrates the influence of the EU and its competences in Arctic affairs, a case that also demonstrates the complexity of the union as a supranational organization. The controversial EU regulation (EC 2009) introducing an almost total ban on placing seal products on the EU market has caused a great deal of consternation between the established Arctic Council actors and the EU; particularly concerned are Canada, Norway and the Inuit, who are represented in the Arctic Council by the Inuit Circumpolar Council (ICC), which has permanent participant status (Arctic Council 2009). The case shows the influence of the EU in Arctic affairs as well as why it is important to include the EU in the Arctic Council.”(Koivurova et al., 2012).

⁴ For practical purpose, the understanding of “Arctic” as a physical region is the one provided by the AHDR 2004. “Thus, the AHDR Arctic encompasses all of Alaska, Canada North of 60° together with northern Quebec and Labrador, all of Greenland, the Faroe Islands, and Iceland, and the northernmost counties of Norway, Sweden and Finland. The situation in Russia is harder to describe in simple terms. The area included, as demarked by our demographers, encompasses the Murmansk Oblast, the Nenets, Yamalo-Nenets, Taimyr, and Chukotka autonomous okrugs, Vorkuta City in the Komi Republic, Norilsk and Igrska in Krasnoyarsky Kray, and those parts of the Sakha Republic whose boundaries lie closest to the Arctic Circle. This, then, is the AHDR Arctic.” Arctic Human Development Report (hereinafter AHDR), 2004:17-18.

⁵ Young, 2010:169.

newcomer to Arctic politics, the EU Arctic Policy is undergoing a process of gradual formulation formally started in 2008 with the Commission communication on the EU and the Arctic region⁶ (hereinafter ‘the 2008 Commission’s communication’), and now seeking a definitive shape. So far, most of the efforts have been addressed to trying to develop a coherent and comprehensive approach to Arctic issues to achieve the three main policy objectives defined as protecting the environment in unison with its population, promoting a sustainable use of resources, and enhancing (Arctic) international cooperation⁷. Very likely to be unexpected by those for whom the EU’s Arctic policy is unfamiliar, Arctic indigenous peoples’ issues have been set as a political priority throughout the entire formulation process. Since the 2008 communication to the newest 2012 joint communication by the Commission and the High Representative for Foreign Affairs and Security Policy “Developing a European Union Policy towards the Arctic Region: Progress since 2008 and next steps”⁸ (hereinafter ‘the 2012 Commission’s communication’), indigenous peoples have been mentioned as highly relevant in the EU’s approach to the Arctic. Grounded on the broader EU commitment to human rights, the issue of indigenous peoples was first inserted into the EU’s political agenda in 1998; and now the EU is seeking to integrate indigenous peoples’ issues, as an integral part of human rights, into all aspects of its external relations: in its bilateral relation through human rights dialogues, in its works within multilateral fora, and in its cooperation funds as a thematic priority in the European Instrument for Democracy and Human Rights (hereinafter EIDHR). Nevertheless, this active commitment—and consistent funds allocation—to support indigenous rights, seems to clash with the Arctic mainstream opinion, especially among the Indigenous Peoples Organisations (hereinafter IPOs), of EU as a non-trustworthy actor and careless of indigenous peoples’ needs. Unfortunately for the EU, which is already paying dearly in terms of governance, this mainstreamed hash feeling is more than a subjective evaluation, as confirmed for instance by the words of Leona Aglukkaq⁹, interviewed about Canada’s position as regards the EU’s

⁶ Communication from the Commission to the European Parliament and the Council on the European Union and the Arctic region, COM(2008)763 of 20.11.2008, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0763:FIN:EN:PDF>

⁷ These objectives were proposed for the first time within the 2008 communication, than have been confirmed throughout the process of a gradual formulation of an EU Arctic Policy (see Chapter 4).

⁸ Joint communication by the Commission and the High Representative for Foreign Affairs and Security Policy on “Developing a European Union Policy towards the Arctic Region: Progress since 2008 and next steps” JOIN(2012), 19 final of 26.06.2012, http://eeas.europa.eu/arctic_region/docs/join_2012_19.pdf

⁹ Ms. Leona Aglukkaq is the first Inuk to be elected into the Federal Cabinet of Canada as Minister of Health (October 2008). In 2011 she was re-confirmed as Health Minister and elected as Minister of the Canadian Northern Economic Development Agency. She has been named the new Chair of the Arctic Council (Canada will take over the Chair on May 15th 2013), as she was sworn in as Minister of the Arctic Council for Canada in August 2012. (Leona Aglukkaq official website, retrieved on 15th March 2013, <http://www.leonaaglukkaq.ca/about/about-leona/>)

admittance as observer in the Arctic Council¹⁰ : “I have expressed our concern, what devastating impact the seal ban has had on Inuit way of life” and “one of the criteria [to be admitted into the Arctic Council as observer] Canada pushed really hard for was respect of the indigenous aboriginal people’s way of life”¹¹.

On the understanding that the EU ban on seal products and its implications for the market are the cornerstone of the issue, the time is now ripe to evaluate the EU’s political will regarding Arctic indigenous peoples against the EU’s concrete actions. As argued by this comparative analysis, the EU’s attitude toward Arctic indigenous peoples may be evaluated as highly inconsistent: in front of a high political commitment to a sustainable development, implementation often barely mentions indigenous peoples; the EU’s political will to involve indigenous communities in regular dialogues ended up in just one workshop and relative follow up; in relevant policy areas, such as energy or transport, the EU struggles to understand indigenous peoples’ relevance. These are just a few samples of the difficulties the EU faces in its efforts to concretely involve and take into account indigenous peoples in its commitment to the Arctic.

Against this picture, this research suggests ways to improve EU consistency toward Arctic indigenous peoples. The starting point could be considered that as long as the EU has competences in the Arctic and these are addressed to protect the Arctic environment while promoting a sustainable development, indigenous peoples are either directly or potentially affected by all of them. Indigenous peoples are often considered stewards of the environment¹², since their posses a specific traditional ecological knowledge on the surrounding areas, and their economical, social cultural well-being highly depend on the healthiness of the environment¹³, but, besides many overlapping interests, it is worth noting that environmental protection and indigenous rights and needs do not perfectly fit with one another; rather, indigenous peoples’ special needs in terms of the surrounding environment require special adjustments. Consequently, the EU could actively improve

¹⁰ Next May 2013 in Kiruna the Arctic Council will vote the admission as observer of 14 countries and organizations that have applied (inter alia the EU).

¹¹ Toronto Sun online, ‘EU seal ban to factor in its Arctic Council Bid’, February 6th 2013, retrieved at <http://www.torontosun.com/2013/02/06/eu-seal-ban-to-factor-in-its-arctic-council-bid>

¹² See e.g. EU Arctic Footprint Policy Assessment, 2010:91.

¹³ See e.g. “Successful harvesting of all the species used by indigenous peoples requires specialized knowledge of animal and fish behavior, sea ice and terrestrial conditions, and arctic weather. The detailed knowledge of the Arctic’s indigenous peoples about these factors is widely recognized. Indigenous peoples have detailed and complex systems of classification and knowledge about the natural world which is developed and enhanced through long-term experience and generational transmission (Nuttall, 1998). This knowledge has enabled indigenous societies to exploit highly productive ecosystems effectively in the region for thousands of years (Caulfield, 2000) and provides a foundation for economic, cultural, spiritual, and ethical concerns that guide the use and management of natural resources (Nuttall, 1998). (ACIA, 2005:654).

and coordinate its actions to hold a more consistent approach toward Arctic indigenous peoples in *all* relevant policy areas affecting the Arctic. Avoiding the inclusion of indigenous peoples into this debate may have the side effect of seriously hampering the EU's objectives of protecting the environment in unison with its population, promoting a sustainable development, and of course being part of the Arctic international governance. Therefore, indigenous peoples' issues, as an integrative principle for all the EU's activities in the Arctic, could be considered as highly relevant. A proper management of indigenous peoples' issues, in line with international standards and with the EU's political role in the international arena—for instance the UN—in supporting the 2007 UN Declaration on the Rights of Indigenous Peoples (hereinafter UNDRIP) and the UN Permanent Forum on Indigenous Issues (hereinafter UNPFII), would require a more proactive participation and consultation of indigenous peoples affected by EU policies. This study thus suggests the establishment of an EU Permanent Forum on Indigenous issues to be developed within the launch of the EU Arctic Policy.

1.1 Structure of the Thesis

Indigenous peoples of the Arctic, as core subjects of this study, are briefly introduced in the **second chapter** of this study. A brief mention of the concept of mixed economies is provided here, while relevant ethnographic elements for the specific analysis of EU policies are discussed throughout the fourth chapter. In the next step, a brief insight has been given on how some of those peculiar characteristics have been translated into rights and principles by human rights advocates. Special relevance has been accorded to the general principles of participation, (prior, informed and free) consent and (internal) self-determination as outlined by the two main indigenous rights instruments, namely ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No 169) (hereinafter ILO Convention No 169) and the UNDRIP, and how they specifically apply in an Arctic context.

The introductory part of this section is based mainly on the relevant works of Koivurova, Nutall, and the ADHR, as a valuable source of data. As regard human and indigenous rights discussions, the first layer of the research has been grounded on the texts, while comments and criticisms have been drawn from eminent authors such as Alfredsson. Special mention has to be accorded to the Journal "Polar Record."

How the EU has acknowledged international standards regarding indigenous peoples' rights into its internal framework is discussed in the **third chapter**. Emphasis has been given to the interrelation

EU has established among indigenous peoples' rights, self-development and protection of the environment. On the other hand, the last sub-section of the chapter is devoted to the analysis of the EU's active role in promoting states' implementation of UNDRIP standards and ratification of ILO No. 169 within the framework of the UN. This section has been mainly based on the EU's relevant documents.

Once the ground has been set, the **fourth chapter** moves toward an analysis of EU documents relative to the process of gradual formulation of an EU Arctic Policy. The documents analysed are:

- The European Parliament resolution ¹⁴ on Arctic Governance of 9 October 2008¹⁵ (hereinafter 'the 2008 EP resolution')
- The 2008 Commission communication
- Council conclusions on Arctic issues of the 2985th Foreign Affairs Council¹⁶ December 2009, (hereinafter 'the 2009 Council conclusions'),
- The European Parliament resolution on a sustainable EU Policy for the High North of 20 January 2011¹⁷, (hereinafter the 2011 EP resolution)
- The 2012 Commission's communication

Relevant mentions and progress on indigenous peoples issues, as merged by the analysis of the above documents, are provided apart.

Besides the relevant EU texts, the fundamental ground for this chapter has been the works of Airolidi¹⁸ on the EU and the Arctic.

The **fifth chapter** provides an overall view of the EU's legal competences and economic, social and environmental weight in the Arctic region, the goal of which is to show that the combination of little legal competence, but considerable economic weight (grounded on the coordination of duty, rights and economic interests of 27 states) makes the EU's presence in the Arctic considerable, and of course, improvable. Then, grounded on the complexity of *traditional* living nowadays (as described in the first chapter of the research), this chapter moves toward proving that as long as the

¹⁴ Despite the process of gradual formulation of an EU Arctic Policy has formally started with the 2008 Commission communication, the EP Resolution on Arctic governance, which predates the 2008 Commission communication, has been analyzed anyway to provide both an insight of the EP viewpoint on Arctic issues and to better understand the background which led to the 2008 Commission communication.

¹⁵ European Parliament resolution on Arctic governance, 2008 OJ C 9E, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2008-0474&language=EN>

¹⁶ Council Conclusions on Arctic Issues, 2985th Foreign Affairs Council Meeting, Brussels, 8 December 2009, http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/111814.pdf

¹⁷ European Parliament resolution on a sustainable EU Policy for the High North, 2011 OJ C 136E.

¹⁸ Airolidi, 2008 and 2010.

EU has competences in the Arctic and those are addressed to protect the Arctic environment while promoting sustainable development, indigenous peoples are either directly or potentially affected by all of them.

This section has been built mainly on the works of Koivurova (2009), Airoldi (2008 and 2010) and the 2010 EU Arctic Footprint Policy Assessment (hereinafter ‘the AFPA’) as regards the legal and economic aspects, while significant ethnographic data have been gathered by distinct relevant authors.

In the **concluding chapter**, major outcomes raised by the analysis of political statements against concrete actions are discussed. The author considers that the time is now ripe for the EU to definitely set the EU Arctic Policy under the European External Action Service (hereinafter EEAS) as preferable allocation. Within this new instrument, it would be in line with the EU’s economic interests, environmental scopes and international political role to involve indigenous peoples more actively within the whole decision-making process, since all EU competences affecting the Arctic directly or potentially affect Arctic indigenous peoples. As a valuable suggestion, the possibility is considered here of establishing an EU Permanent Forum on Indigenous Issues, as an advisory body to the EU Arctic Policy.

Chapter 2

Arctic Indigenous Peoples, Livelihoods and Legal Frameworks

2.1. Indigenous Peoples of the Arctic

The aim of this research is to evaluate how EU actions are currently or potentially affecting indigenous peoples of the Arctic. Nevertheless, the EU's role can be analysed comprehensively only if grounded on the understanding of the overall situation of Arctic indigenous peoples.

From an anthropological viewpoint, any group, sub-group and sometimes even settlement, may present such peculiar linguistic, cultural or historical background traits that they permit a standalone description for each of the groups concerned. Indeed, the current anthropological literature is now really extensive and able to cover most of the Arctic and Subarctic indigenous groups, and concerning linguistic, cultural traits and historical backgrounds. On the other side, many comparative studies have significantly contributed to outlining detailed knowledge of common features and peculiarities among distinct groups in relation to relevant topics, such as subsistence activities, economies, or adaptation to climate change. Conscious of this flourishing background, this brief section devoted to Arctic indigenous peoples provides just a few generic key-elements, but ones necessary to provide an idea of the complexity of indigenous peoples' current way of life; ethnographic data particularly relevant to a specific EU policy areas are given in the section concerned. Specifically, this section deals with the concept of mixed economies.

The indigenous peoples of the Arctic include Iñupiat, Yup'ik, Alutiiq, Aleuts, and Athapaskans of Alaska; the Inuit, Inuvialuit, Dene, and Athapaskans of northern Canada; the Kalaallit and Inughuit

of Greenland; the Saami of Fennoscandia and Russia's Kola Peninsula; and the Chukchi, Even, Evenk, Nenets, and Yukaghir of the Russian Far North and Siberia¹⁹. For thousands of years these groups have travelled across the Arctic, fishing, hunting and gathering the renewable resources of land, freshwater and seas in the surrounding environments. Geographical variations in wildlife patterns have determined the main differentiations in food consumption among the Arctic groups; for instance Canadian and Greenlandic Inuit relied mostly on marine mammals, especially seals, but also walrus, narwhals, and polar bears²⁰; Saami peoples in Fennoscandia specialised mainly as reindeer herders²¹, while Alaskan groups hunted most land mammals including caribou and musk-ox²². Where and when available, arctic fish such as salmon, Arctic char, cod or halibut provided a fundamental contribution to indigenous diets, along with many side activities—such as egg or plant gathering—that took place during the short Arctic summers. Years ago, all instruments, clothes and weapons, and sometimes tents or boats (qajaq) were all built from animal remains²³. Nevertheless, through hunting, fishing and gathering, indigenous peoples have developed an understanding of the local environment and maintained strong links with the environment; they have transmitted traditional knowledge through generations and maintained strong social relations and cultural patterns²⁴.

In different times and distinct modalities, indigenous peoples across the Arctic have all experienced harsh pressures from peoples coming from the South, largely European, who introduced—sometimes forced—completely new lifestyles and cultures, which in turn posed great challenges for the Arctic inhabitants: indigenous peoples found themselves being subjected to “permanent settlement, relocation, urbanisation, concentration as well as the northward advancement of agriculture, the introduction of elaborate infrastructure and migration from the South to name just a

¹⁹ ACIA, 2005:653.

²⁰ An extensive literature currently exists on Inuit livelihood, from the early works by Mauss at the beginning of the past century and Rasmussen during the 1920's to most recent researches, see e.g. Wenzel, Petersen and Hovelsrud-Broda.

²¹ Beside an extensive literature currently exists on Saami livelihood and reindeer herding see e.g. Ingold, 1980, Paine 1994.

²² Beside an extensive literature currently exists on Alaskan native traditional livelihood, see e.g. Wolfe and Walker, 1987; Dombrowsky, 2007.

²³ See e.g. Hovelsrud-Broda 1999 for Greenlandic Inuit.

²⁴ see e.g. “The living resources of the Arctic do not just sustain indigenous peoples in an economic and nutritional sense, but provide a fundamental basis for social identity, cultural survival, and spiritual life. As such they are as much important cultural resources as they are economic ones. This dependence on animals for food and social, cultural, and economic well-being is reflected in rules for community hunting, in herding traditions, and in patterns of sharing and gift-giving based on kinship ties and other forms of close social relatedness. Participation in family and community hunting, herding, and fishing activities contributes to defining and establishing a sense of social relatedness and is important for community and cultural identity, as well as for providing a moral framework for relationships between people and between people and animals” (ACIA, 2005:654);

few of these pressures”²⁵. Probably, among the factors that most significantly influenced indigenous peoples’ lifestyles, both in negative and positive terms, was the introduction of formal economy and new technology, including weapons, boats and domestic facilities.

The interconnection of the longstanding, traditional Arctic ways of life and Southern introductions resulted in a peculiar syncretism, now commonly referred to as mixed economy:

In indigenous communities in the Arctic today, households are economic units within villages, settlements, and small towns characterized by a blend of formal economies (e.g., commercial harvesting of fish and other animals, oil and mineral extraction, forestry, and tourism) and informal economies (e.g., harvesting renewable resources from land and sea)²⁶.

In the mixed economy system traditional hunting, fishing or gathering along with associated activities, such as processing, distributing, consuming, and celebrating them²⁷, have missed their absolute exclusivity, but have maintained a primary role—even though with sensitive local variations—in enhancing social relationships and in maintaining living cultures:

They define a sense of family community and reinforce and celebrate the relationships between indigenous peoples and the animals and environment upon which they depend (Callaway 1995, Nuttall 1992). Hunting, herding, fishing and gathering activities are based on continuing social relationships between people, animals and the environment (Brody 1983, Callaway 1995, Freeman et al. 1998, Nuttall 1992, Wenzel 1991). As such, they link people inextricably to their histories, their contemporary cultural settings, and provide a way forward for thinking about sustainable livelihoods in the future.²⁸

Furthermore, customary and local products derived from traditional activities are important sources of healthy food, nutritionally superior than the options available in the market (imported products), and, since these imported products are also often excessively expensive, local food consumption contributes to drastically reduce households’ food costs. In addition, in some areas production-surplus is also sold in the local markets; for instance, studies conducted among indigenous families

²⁵ Koivurova et oth., 2008:9.

²⁶ ACIA, 2005:656.

²⁷ cf. Freeman, 2000.

²⁸ ACIA, 2005: 650.

in Northern Russia estimated that the market value of own-produced consumed goods can be as high as several times the monetary income²⁹.

Nevertheless, all these activities would not be possible nowadays without some availability of cash income derived by market participation and access to technology. Investment in hunting equipment, such boats, fuel, rifles, but also house rental, checks or food from the market, all require consistent cash availability. Recent studies have highlighted that when traditional activities take place far from market opportunities, and households have lower cash incomes, the compensation with traditional activity is very low, underlying the high cash-investment required to practice subsistence activities such as hunting, and sometimes fishing³⁰. What is noteworthy is that the introduction and consequent dependence of indigenous Arctic peoples on technology is everything but recent; in fact, the introduction of new technologies was carried out by newcomers centuries ago. A return to traditional harvesting, as environmental lobbies especially advocate, would be no longer possible, due 'to changes in indigenous peoples' lifestyles, new standards of living, decline in natural resources and climate change'³¹.

Sources of income available for indigenous peoples may come from wage/salary, public transfers (retirement funds, unemployment, child welfare) or local handicraft production³² and currently contribute to around one half or more of households total incomes³³. As briefly mentioned, cash is necessary in order to guarantee access to technologic equipment (boat, fuel, weapons, ammunitions, etc), but also for everyday necessities as bills, rentals or consumer goods.

²⁹ Aslaksen et al., 2008.

³⁰ See e.g. "Nor has money diminished subsistence-oriented production as a central feature of life in the Arctic – indeed cash has made the continuation of hunting, herding, and gathering possible in some cases, rather than contributing to its decline (Kruse, 1991; Nuttall, 1992; Wenzel, 1991; Wolfe and Walker, 1987)" (ACIA, 2005:656); see also Aslaksen et al., 2008.

³¹ Koivurova et al.. 2008:8.

³² Aslaksen et al., 2008; Hovelsrud-Broda, 1999; Koivurova et al., 2008, ACIA, 2005.

³³ see e.g. "In mixed economies, half or more of household incomes may come from wage employment, simple commodity production, or from government transfer payments (Caulfield, 2000; Langdon, 1986; Weinstein, 1996)"(ACIA, 2005:565).

However, availability of jobs in the most remote communities is more often than not dramatically short-term, unskilled and often seasonal, against really high prices for primary needs. For instance, back in 1999 Hovelsrud-Broda conducted her research in the community of Isortoq (East Greenland), reporting that 75 individuals, (44% of the total population of 168) were between 20 and 45 years old in the face of only 24 available paying jobs. Further, money incomes from local handicraft production is highly irregular, often linked with seasonal variability as tourism, and therefore it cannot guarantee a stable source of incomes. Last, but not the least, even public transfers may be characterized by high irregularity linked to the state's economic and political environment³⁴.

As argued by this brief introduction³⁵, on the ground that the ability to carry out harvesting activities nowadays is dependent on the availability of animals, on the availability of cash and technology; local, regional and national (formal) economy heavily influences indigenous peoples' availability of cash incomes and consequently, their subsistence activities. Therefore, in referring to indigenous peoples livelihood nowadays, it must bear in mind this complex interdependency between formal and informal economies and refer to mixed economy systems.

2.2 Indigenous Peoples: Understanding of the Term in International Law

The discussion on the necessity for a definition of indigenes has been a central question "in state-indigenous relations in national and international arena"³⁶ for more than thirty years. Despite the fact some authors have considered all the advantages in a compact definition for "the

³⁴ see e.g. "For example, Callaway et al. (1999) demonstrated that the ability to carry out harvesting activities in Alaska – and thus the quality of life in rural communities – is linked to the state's economic and political environments" (ACIA, 2004:565).

³⁵ For a more comprehensive picture, a selected literature may include: Asken et al., 2008; Hovelsrud-Broda, 1999; Koivurova et al. 2008; Nutall et al. in ACIA 2005, Wenzel, G.W. 1989

³⁶ Lindroth, 2006:243.

clear out ersatz claimants and improved goodwill of governments”³⁷ for instance, the international community disagrees and no formal definition has been adopted for the moment; rather, “the prevailing view today is that no formal universal definition is necessary for the recognition and protection of their rights”³⁸. Furthermore, for the UN the lack of a compact definition “has not been crucial to the Organisation's successes or failures in those domains nor to the promotion, protection or monitoring of the rights recognised for these entities”³⁹.

Behind some methodological impasses, such as adopting a universal definition for unique and distinct realities, the harshest criticisms and fears, for instance violation of peoples’ right to self-identification⁴⁰, or a reduction of the number of individuals potentially entitled to be considered *indigenous* by means of law, esteemed exactly from those who were mostly concerned, namely the indigenous peoples themselves⁴¹.

On the other hand, there is no uniformity at national level and the concept of indigenusness has been put into words in different ways, depending on the states concerned. For example, the term *aboriginal* is preferred in Canada (see ex. Canadian Constitution, section 35: ‘The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed’), while the USA prefers the term *native* (see ex. 1971 Alaskan Native Claims Settlement, “Definition” point b, ‘“Native” means a citizen of the United States who is a person of one-fourth degree or more Alaska Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community) Eskimo, or Aleut blood, or other combination’).

When a common terminology transcending specific people(s) is required, as it is in the academic, legal or political literature, “Indigenous People(s)” seems to be the term more in use. The UN, while clearly pointing out that no definition has been officially adopted, considers for practical

³⁷ Thornberry, 2002:57.

³⁸ United Nations Development Group (UNDG), 2008:8.

³⁹ UN Department of Economic and Social Affairs (DESA), PFII/2004/WS.1/3, 2004:4. (hereinafter UN DESA 2004).

⁴⁰ On the right to self-identification see ILO 169, art.1.2 (see below).

⁴¹ see e.g.: “An example of the position of indigenous representatives is listed in the 1996 report of the Working Group (UN Doc. E/CN.4/Sub.2/1996/21) as follows: “We, the Indigenous Peoples present at the Indigenous Peoples Preparatory Meeting on Saturday, 27 July 1996, at the World Council of Churches, have reached a consensus on the issue of defining Indigenous Peoples and have unanimously endorsed Sub-Commission resolution 1995/32. We categorically reject any attempts that Governments define Indigenous Peoples. We further endorse the Martinez Cobo report (E/CN.4/Sub.2/1986/Add.4) in regard to the concept of “indigenous”. Also, we acknowledge the conclusions and recommendations by Chairperson-Rapporteur Madame Erica Dae in her working paper on the concept of indigenous peoples (E/CN.4/Sub.2/AC.4/1996/2).” (UN DESA 2004, 2004, footnote 4, p.4.)

purposes the meaning provided by the Special Rapporteur of the UN Sub-Commission for Human Rights, José Martínez Cobo (Cobo Definition), the most accepted and quoted⁴²:

“Indigenous communities, peoples and nations are those who having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or part of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”⁴³

Also the other main indigenous peoples’ rights instrument, namely the ILO 169, does not provide an official definition and “takes a practical approach and only provides criteria for describing the peoples it aims to protect”⁴⁴:

1. This Convention applies to:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

(b) peoples in independent countries who are considered as indigenous on account of their descent from the populations which populated the country, or a geographical region to which the country belongs, during the conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.[ILO No.169, art,1]

However, the fundamental criterion is considered in art. 1.2 of the Convention, that is, the self-identification determinant:

Self-identification as indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply.

The characteristics stressed by the meanings outlined above of course may describe the indigenous peoples living within the Arctic as well. In the AHDR 2004 the definition provided by the director of the International Work Group for Indigenous Affairs (hereinafter IWGIA), Jens Dah, is enunciated as:

Indigenous people are those who were marginalized when the modern states were created and identify themselves as indigenous people. They are associated with specific territories to which they trace their histories. They exhibit one or more of the following characteristics:

- They speak a language that is different from that of the dominant groups
- They are being discriminated within the legal system,
- Their cultures diverge from that of the remaining society

⁴² UN DESA, 2004:1.

⁴³ Original quote in “The Study of the Problem of Discrimination against Indigenous Populations” (also known as the Martínez Cobo study), 1986, UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1-4.

⁴⁴ “Convention No.169” (article from ‘International Labour Organization, Promoting job, protecting people website) at <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>

- They often diverge from the mainstream society in their resources use by being hunters and gatherers, nomads, pastoralists or swidden farmers,
- They consider themselves and are considered by others as different from the rest of the population⁴⁵.

These definitions may uniformly describe a consistent portion of the Arctic population⁴⁶, culturally divided in distinct groups as reported by the map (fig.1) elaborated by the Arctic Monitoring Assessment Program (hereinafter AMAP). This map will be fundamental also later, in understanding how these indigenous groups are mostly represented internationally and within the Arctic Council:



Fig.1: Indigenous Peoples of the Arctic and their affiliation with the six permanent participants of the Arctic Council. Source: AMAP[2002:4].

⁴⁵ AHDR, 2004: 46.

⁴⁶ As reported by the chapter “Arctic Demography” in the AHDR 2004, “official statistics from several Arctic Countries do not identify indigenous peoples specifically, nor do they identify all people of other ethnicities. For example, in the Saami colonized circumpolar areas of Norway, Sweden, and Finland, ethnicity is not registered in official statistics. Therefore, no demographic indicators are available for them.”AHDR [2004:29]. The Arctic Council refers that out of a total of 4 million inhabitants of the Arctic, approximately 500,000 belong to indigenous peoples [www.arctic-council.org/index.php/en/about-us/permanentparticipants].

2.3 International Framework

The development of a distinct framework of specifically addressed rights and ad hoc monitoring bodies for indigenous peoples is recent in international law; in fact it started slowly at the end of WWII, and significantly incremented after the 80s. Of course those peoples and individuals who were later entitled to those rights *are equal to all other peoples*⁴⁷; they had and now maintain the right to be entitled to all other Human Rights and have been granted access to all Human Rights monitoring bodies, on equal footing with everybody else.

Until the second half of the 70s, individuals and/or homogenous groups—as indigenous peoples—living within state(s) borders were considered a pure matter of internal policy⁴⁸. In 1975, the establishment of the World Council of Indigenous Peoples—the first indigenous peoples’ NGO—gave a strong signal to the international community, leading off a rapid process that brought indigenous peoples issues into a matter to be negotiated in the international arena as well. The first international institutions that answered indigenous peoples’ call were the UN and ILO, which have fundamentally contributed throughout the following years to the establishment of concepts such as self-determination, participation and consultation; all grounded on the acknowledgment of the right to a continued existence for distinct cultures continuously threatened by mainstream societies.

It is clearly understood that an extensive literature nowadays available might provide a detailed picture, but a comprehensive description of contents and developments of the last 40 years of achievements (and failures) falls outside the scope and objectives of this study. Therefore here it is introduced only a brief insight into the principles of self-determination, consultation and participation as they have been set out by ILO No.169 and the 2007 UNDRIP.

ILO No.169, replacing the former ILO Indigenous and Tribal Population Convention 1957(No. 107), and the UNDRIP are often referred to as the two basic human rights instruments for the

⁴⁷ UNDRIP, art.2.

⁴⁸ Among the examples, a good example is the Council of the Iroquois Confederacy that tried in 1920 to make their legal status recognized by the League of Nations with negative results (it was considered as an internal matter) [Heinämäki in Alfredsson and Koivurova (eds), 2011].

recognition and contents-development of Indigenous Peoples Rights⁴⁹; they have been also described as complementary, ‘with the UNDRIP, an aspirational document that expresses the hopes of the Indigenous Peoples for self-determination and control over their lives and development, while the ILO convention is a more concrete instrument meant to be ratified and become binding’⁵⁰.

ILO No. 169 was adopted in 1989 and ratified by 22 states, including only Norway and Denmark out of the eight Arctic states. The Convention has been built upon the acknowledgment of the importance to preserve indigenous and tribal peoples’ distinct cultures and identities, grounded on *social, cultural, religious and spiritual values and practices* (art. 5 para (a)), and in respect of *the aspirations of these peoples to exercise control over their own institutions, ways of life and economic development and maintain and develop their identities, languages and religions, within the framework of the States in which they live* (Preamble).

ILO No 169 does not deal with the concept of self-determination, but explicitly clarifies in art. 3.1 that the term ‘peoples’, as used throughout the text, does not have any implication regarding the rights that may be involved in the term under international law⁵¹.

However, ILO No 169 sets out group rights to be realised within the state borders, like the right to non-discrimination (art.3), the right to decide priorities for development (art.7) and land rights (art.14). Most important, it recognises the cornerstone importance of consultation and participation rights, over which all provisions are based. In addition, together with the recognition of these rights, the text indicates the modalities within which both these rights should be undertaken. Therefore the Convention calls on the governments, which might consult indigenous peoples in *good faith* and *through appropriate procedures*, with the clear objective to achieve agreements (art.6); where “the importance of representative is implicit in order to comply with the requirements of the text when consulting the people involved through their representative institutions, in other words, through indigenous and tribal institutions or organizations that are

⁴⁹ Traditionally, in addition to the ILO No 169 and the UNDRIP, the following conventions are considered: Covenant on Civil and Political Rights (UN1966 – in force since 1976) , Covenant on Economic, Social and Cultural Rights (UN1966, in force from 1976), The International Convention on Elimination of All Forms of Racial Discrimination (1966, in force since 1969) Convention on Elimination of All Forms of Discrimination and Convention on the Rights of the Child. Together with those standards and instruments specifically emerged from the human rights-related fields, other international legal processes, namely the environmental and sustainable development fields, have contributed to affirm basic indigenous rights principally as self-determination and cultural integrity [cf. Heinämäki in Alfredsson and Koivurova, 2011].

⁵⁰ Swebston, in Alfredsson and Koivurova, 2011:158.

⁵¹ art.3.1 ILO No.169: ‘Use of the term peoples in this Convention does not have any implication regarding the rights which may be involved in the term under international law’.

truly representative of the peoples in question”⁵².

ILO No 169 accords to indigenous peoples the right to be generally consulted ‘whenever consideration is being given to legislative or administrative measures which may affect them directly’ (art 6 (a)), but, at the same time, it involves some areas of particular relevance where consultation is obligatory, for instance when their own priorities are to be chosen ‘for the process of development which affects their lives, beliefs, institutions and spiritual well-being, the lands they occupy or use otherwise, the exercise of control over their economic, social and cultural development’ (art.7) in case of educational programmes (art. 27), in case of mineral and sub-surface resources (art.15), necessary—as an exceptional measure—relocation (art.16). In the last two cases, the text further specifies the concept of consultation, explicitly requiring a “prior consultation” rather than a more general consultation.

In the same way, the concept of “participation” is at first generally announced requiring that the peoples concerned should be part of the political life of the state “at all levels of decision-making in elective institutions and administration and other bodies responsible for policies and programmes which concern them” (art.6). As seen before in defining the “consultation principle”, some issues have specific relevance and therefore participation in those cases is rather obligatory. For instance, in case of natural resources pertaining to their lands, “these rights include the right of these peoples to participate in the use, management and conservation of these resources” (art 15), or when it regards the maintenance of traditional activities, “Governments, with the participation of population, and whenever appropriate, have to ensure that these activities are strengthened and promoted” (art.23).

With different characteristics, consultation and participation are addressed also by the UNDRIP, the UN instrument adopted by the Human Right Council in 2006 and the General Assembly in 2007, after 20 years of drafting, negotiation and hard battles between indigenous people and representatives and governments. The non-binding UNDRIP has a moral and political force for the effective protection of indigenous peoples, setting out “the minimum standards⁵³ for the survival, dignity and well-being of the indigenous peoples of the world” (art.43).

The announcement of the right of participation recalls some of the features already described for ILO No.169; so indigenous representatives, elected and chosen by people involved in their own

⁵² “Convention No.169” (article from ‘International Labour Organization-Promoting job, protecting people’ website) at <http://www.ilo.org/indigenous/Conventions/no169/lang-en/index.htm>

⁵³ For instance, art. 45 states that the standards written in the Declaration are not intended to “diminish or extinguish the rights that indigenous peoples have now or may acquire in the future”.

procedures rules, can participate with the decision-making process of the state when it affects their own rights:

Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Also the announcement of the consultation right seems to recall ILO terminology, asking states to consult in *good faith*, in order to obtain indigenous peoples' *free, prior and informed consent*, before taking any measures that may affect them:

Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

The UNDRIP, however, takes a completely distinct approach to the issue of self-determination, which was actually the main source of oppositions among negotiators. Self-determination was eventually accorded by art.3 and art.4:

Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

but somehow limited by art. 46.1:

Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

Indigenous peoples' right to self-determination is outlined in several other international instruments⁵⁴; however, there is no explicit recognition of what the exact scopes and contents are. The current agreed view considers the right to self-determination as having “the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions, is now exercised internally”⁵⁵ or, in other terms, as “normally fulfilled through internal self-determination”⁵⁶. Therefore, the right to secede arises only in the most extreme and exceptional circumstances; it “has only been found in two classes of peoples (those under colonial rule or foreign occupation)”⁵⁷, or in other terms, when the peoples concerned can demonstrate their inability to archive the established rights of self-determination guaranteed by law⁵⁸.

Therefore, consultation in good faith with appropriate procedures, through official representative institutions of indigenous peoples, “whenever consideration is being given to legislative or administrative measures which may affect them directly” (art.6 ILO No.169), and participation at all levels of decision-making in elective and administrative institutions and other bodies responsible for policies and programs which concern them, seem to be the two key-elements to guarantee the fulfillment of the rights of self-determination guaranteed by the law to freely determine their political status and freely pursue their economic, social and cultural development within a state.

In the current era, characterised by very dense global economic, social and cultural connections, and a broader geographical degree of cause-and-effect relationship, which implies a stronger relationship between local global dimensions, it would be logical to assert that consultative and participation rights should bear an external dimension. In other words, indigenous peoples, in order to *freely pursue their economic, social and cultural development* within a state, should be entitled to be consulted and also to participate in decisions when international measures may affect them. As discussed later, this aspect has no explicit recognition in international law, and it

⁵⁴ “The right of self-determination is set forth in a series of international instruments such as the UN Charter, the two International Covenants on Human Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV) of 14 December 1960, see also resolution 1541 (XV) of 15 December 1960), and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations (General Assembly resolution 25/2625 of 24 October 1970)” (Alfredsson and Koivurova (eds.) 2011:); see also Melik Özden and Christophe Golay 2009 (the authors add to the list the Vienna Declaration and Program of Action 1993, plus other instruments at regional level).

⁵⁵ Hossain, in Alfredsson and Koivurova (eds.) 2011:147.

⁵⁶ Schneiderman (ed), 1995:59.

⁵⁷ Cassese, 1995:344.

⁵⁸ Heinämäki in Alfredsson and Koivurova (eds), 2011.

mostly relies on the states' will to undertake special measures (in international law, only states may voluntarily give up certain rights of sovereignty).

2.4 Indigenous Peoples' Internationalism: Seeking Legal Recognition

As considered so far, indigenous peoples' current status may be described by means of an opposing relation: even though indigenous people worldwide are a unique reality, with unique culture, social and other values, standards regarding culture, social and other rights of indigenous peoples have been universally recognised and set out at the international level. Further, because of the opportunities offered by the international law to compel states by means of treaties and customary law what states often would not negotiate at the national level, international law is considered by indigenous people as a preferential tool for advancing their political goals⁵⁹, even though indigenous peoples can only enjoy a limited international legal personality and a hampered capacity as subjects in the international (hard) law-making process. However, as will be discussed later in this paragraph, these restrictions imposed by the international legal rules have not completely prevented indigenous peoples from slowly gaining some forms of influencing power in the international arena.

The current achievements have been principally gained bottom-up, when indigenous peoples from all over the world started informally gathering together to discuss their unique social, economical and environmental concerns. These gatherings slowly gave rise to international movements, activisms, diplomacies, today collectively referred to as indigenous peoples' internationalism⁶⁰. The beginning of contemporary indigenous internationalism, one of the sterling achievements of the 20th century⁶¹, was started and launched at the Arctic Peoples Conference held in Copenhagen in 1973⁶², when, as it can be easily noted, the main indigenous rights instruments, namely ILO169 and the UNDRIP, were far from even being discussed. Since that moment, indigenous peoples have started to organise themselves into Non Governmental Organisations (hereinafter NGOs) and International Non Governmental Organisations (hereinafter INGOs), a completely new way to advance their claim both domestically and internationally and a new opportunity to participate at the international fora.

⁵⁹ See e.g. Koivurova and Heinämäki 2006.

⁶⁰ See e.g. Loukacheva, 2009.

⁶¹ Jull, 1999:12.

⁶² Jull, 1999:12

IPOs, despite the fact that they are really a special kind of NGO representing groups with specific rights under international law to be accomplished within the state, by means of legal procedures of international law they have to comply with existing legal relations between states and all other NGOs. Under international law, in fact, only states and Intergovernmental Organisations (IG) are considered subjects of law; that means only states bear the right to create those rules and principles under which they will be bound. Other no-state entities may acquire, in specific circumstances, some kind of legal personality: that means they may bear both legal rights and obligations under international law as objects of international law, but they are not entitled to create rules and principles, which means they are not entitled to be subject of international law.

While there is broad agreement about the limitation of no-state actors within the decision-making process in international law, there are some aspects regarding indigenous peoples role and status that should be considered.

First of all, because of special rights accorded to indigenous people to *freely determine their political status and freely pursue their economic, social and cultural development* within a state, and because that capacity can be recognised only by the state concerned, indigenous peoples rights to participate in the decision-making process and be represented at the international level mostly rely on the will of states to undertake special measures. For example, states may accord indigenous peoples some rights to negotiate at the international level on matters that may directly affect them⁶³, or may enhance external capacities through internal self-governance: “the more rights of self-governance for indigenous peoples possess [at national level], the best influence they should have in international treaty making”⁶⁴. Despite right to self determination, as described above, does not explicitly embrace representation at international fora; it should be noticed that this is not even explicitly forbidden, especially if the modalities that allow such international participation to take place are provided by means accorded by the state itself. For instance, devolution of decision-making power for areas particularly affecting indigenous people may fulfil the right to self-determination within the concerned state, without giving rise to secession. Even though it is not impossible legally, however “it is doubtful that national government would recognise direct indigenous peoples’ representation in international forum as a right”⁶⁵.

⁶³ see e.g. Loukacheva, 2009 and Tennberg, 2006.

⁶⁴ Koivurova and Heinämäki, 2006:102.

⁶⁵ Loukacheva, 2009:53.

Secondly, even though indigenous peoples and IPOs have really limited power in the hard law-making process, they have consistent influence in the soft law-creation process. Even though the supremacy of hard law instruments is well accepted, since states are formally bound to comply, the role of soft law needs at least to be re-evaluated and its political, moral and soft value reconsidered and re-balanced. As described by Koivurova and Heinämäki⁶⁶, the soft law method contains both the seeds of revolutionary changes and inner limitations. The authors recall the possibilities that the soft law decision-making process might offer in terms of expanding the range of participants in co-operation. Of course, the step forward, that is, turning the soft law concept into a binding norm and having true impacts, rely on the will to make the soft law a hard law norm, and that also relies on the subjects in international law. The soft law method, however, provides non-states actors with the real possibility to influence the future decision-making process; often with impressive results as within the Arctic Council.

The third aspect considers what indigenous peoples have gained *de facto*, especially across the Arctic. The international framework is not unchangeable, and while such forms of *de facto* participation and consultation need a legal justification, at the same time it (may) demonstrate that indigenous people may effectively have the power to influence the decision-making process, or, at least, to create a new, concrete power-relation between states and indigenous peoples.

2.5 Arctic IPOs

Six IPOs⁶⁷ currently represent the rights and interests of Arctic Indigenous Peoples⁶⁸:

- **Arctic Athabaskan Council (ATC)** is an international treaty organisation established to internationally advocate rights and interests of American and Canadian Athabaskan member First Nation governments; which means approximately 45,000 Athabaskan living in 76 communities of Alaska (including fifteen traditional villages), Yukon (the Council of Yukon First Nations and the Kaska Tribal Council) and Northwest Territories (Dene Nation). They represent 2% (12,000) of the total Alaskan population, but about one-third of the Yukon Territory (10,000), the Northwest Territories and northern regions (20,000) in Canada. Once semi-nomadic hunters, they now live in towns and settlements, still relying on caribou, moose, beaver, rabbits, hunting and fishing.

⁶⁶ Koivurova and Heinämäki, 2006.

⁶⁷ See figure 1.

⁶⁸ Information for this section is taken in the respective IPOs web-sites (and reported in the Arctic Council official web-site in describing its Permanent Participants, see references in the Bibliography-internet sources)

- **Aleut International Association (AIA)** is an Alaskan Native not-for-profit corporation (registered in Alaska 1998) raised from the fusion of the former Aleutian/Pribilof Islands Association (U.S.) and the Association of the Indigenous Peoples of the North of the Aleut District of the Kamchatka Region of the Russian Federation (AIPNADKR), to address mainly environmental and cultural concerns. Currently the Board of Director comprises four Alaskan and four Russian Aleuts. They now represent Aleut peoples living in the Russian and American Aleutian, Pribilof and Commander Islands.
- **Gwich'in Council International (GCI)** is a no-profit organisation established in 1998 to represent Gwich'in people at the Arctic Council. GCI represents about 9,000 Canadian and U.S. Gwich'in⁶⁹ and currently addresses priorities that relate to the environment, youth, culture and tradition, social and economic development and education.
- **Inuit Circumpolar Council** was one of the first IPOs established (Alaska, 1977) and one of the most symbolic, a group that is often associated with carrying the voice of the Arctic peoples internationally⁷⁰. They represent approximately 150,000 Inuit of Greenland, Canada, Alaska and Russia, and carry on the idea that speaking with a united voice and combined energy is the way to realise their goals:
 - strengthen unity among Inuit of the circumpolar region;
 - promote Inuit rights and interests on an international level;
 - develop and encourage long-term policies that safeguard the Arctic environment; and
 - seek full and active partnership in the political, economic, and social development of circumpolar regions.

ICC is very active within the Arctic Council activities in the distinct working groups, but also at the UN within indigenous rights-dedicated bodies and UNESCO.

- **Russian Association of Indigenous Peoples of the North, Siberia and Far East (RAIPON)** was established in 1990 during the First Congress of Indigenous Peoples of the North of the USSR. Now it is advocating indigenous peoples' human rights, defending their legal interests, assisting in solving environmental, social, economic, cultural and educational issues, and promoting their right to self governance. Unlike the other IPOs, RAIPON is an umbrella organization for 270 thousand people of 41 indigenous groups,

⁶⁹ The founding members of GCI includes six Alaskan Gwich'in communities (Arctic Village, Chalkyitsik, Fort Yukon, Birtch, Circle and Venetic) two Gwich'in representative bodies in Canada - Vuntut Gwitchin First Nation representing Vuntut Gwitchin in Old Crow, Yukon, and Gwich'in Tribal Council representing four communities in the Beaufort Delta region in the Northwest Territories. [www.gwichin.org Homepage]

⁷⁰ Young, 1992; 34.

organized in 35 regional and ethnic organizations. Their home represents around 60% of total Russian territory, from the Murmansk region to Kamchatka.

- **Saami Council** is a voluntary Saami non-governmental organization, the first to be established among the other Arctic IPOs in 1956. They represent Saami people in Finland, Russia, Norway and Sweden. The Saami Council deals with Saami policy tasks, therefore in the promotion of rights and interests of Saami in the four countries, in the consolidation of Saami identity, and to attain recognition for the Saami as a nation and to maintain the economic, social and cultural rights of the Saami in the legislation of the four states. All these objectives are mainly achieved through the Saami Parliaments, enacted by the respective countries and working mainly with a parallel and consultative power (all the countries but Russia).

2.6 Arctic Governance

As considered so far, legitimacy of indigenous peoples' internationalism in terms of the (hard) law decision-making process and representation seems to be weak or resting on an unclear legal ground. Alongside the legal argument, however, there is a complementary aspect, that is, when some decision-making power and representation at international fora take place *de facto*, as the specific case of IPOs' status within the Arctic Council, "the region's primary forum today"⁷¹. As further described below, IPOs have been granted Permanent Participant status and may exercise a *de facto* veto⁷² over state members' proposals.

Traditionally, the starting point of Arctic cooperation is considered to have been set in 1987, when the former president of the USSR, Mikhail Gorbachev, gave the so-called "Murmansk speech" in which he proposed an Arctic-wide cooperation articulating this proposal in six points, namely establishing a nuclear-weapon-free zone, reducing military activities, cooperation in developing natural resources, scientific research, environmental protection and opening the Northern Sea Route to foreign ships⁷³.

The eight Arctic states illustrated in the Murmansk speech gathered together twice in Rovaniemi, in 1989 and in 1991, and launched the Arctic Environmental Protection Strategy (hereinafter AEPS). When this Arctic-wide cooperation got started, indigenous peoples of the Arctic already had almost

⁷¹ Graczyk and Koivurova, 2013.

⁷² see e.g. Koivurova and Heinämäki, 2006; Tennenberg, 2006.

⁷³ Heininen, 2004:208

20 years' experience in political mobilisation, both nationally and internationally. This situation led the eight Arctic States to conduct preparatory work for the oncoming AEPS along with the assistance of nine observers, among them⁷⁴ three IPOs: the Inuit Circumpolar Conference, the Nordic Saami Council, and the USSR Association of small peoples of the North. The request for observer assistance was "based on a pragmatic and functional evaluation of their involvement in, and contribution to Arctic environmental questions"⁷⁵. Furthermore, explicitly added to the AEPS objectives was the possibility of 'recognizing, extending as much as possible, seeking to accommodate the traditional and cultural needs, values and practices of the indigenous peoples as determined by themselves, related to the protection of the Arctic environment'⁷⁶.

A limited number of external entities observed the first ministerial conference, including three states (Germany, Poland and the United Kingdom), three international organizations of which two were United Nations (UN) organs (the International Arctic Science Committee (IASC), the UN Economic Commission for Europe (UNECE) and the UN Environment Programme (UNEP)), and three indigenous peoples' organizations (IPOs) (the Inuit Circumpolar Conference (ICC), the Nordic Saami Council and the USSR Association of Small Peoples of the North⁷⁷. The Declaration on the Protection of the Arctic Environment⁷⁸, which accompanied the AEPS, explicitly mentioned only IPOs as entities that would be invited to the future meetings as observers"⁷⁹, even if external observers were allowed to participate as well. However, the unique contribution provided by IPOs⁸⁰ and their increasingly important roles within the AEPS needed at the beginning to act on equal footing with external actors. The necessity to better accommodate indigenous peoples, on the explicit recognition of special linkage between their traditional and cultural needs, values and practices and the Arctic environment, was the ground for the successive distinction between

⁷⁴ The other observers were: Federal Republic of Germany, Poland, United Kingdom, United Nation Economic Commission for Europe, United Nations Environment Program and International Arctic Science Committee.

⁷⁵ Arctic Council, 1991a.

⁷⁶ Arctic Council, 1991a

⁷⁷ Young, 1998: 90.

⁷⁸ Arctic Council, 1991b. (Declaration on the protection of the Arctic environment. Rovaniemi, 14 June 1991. URL: <http://www.arctic-council.org/index.php/en/about/documents/category/4-founding-documents?download=53:aeps>)

⁷⁹ Graczyk and Koivurova 2012:3. In addition the authors suggest that given the cautious approach to indigenous peoples by the Arctic states, an explicit invitation as observers was the only way to assure IPO's participation at the AEPS.

⁸⁰ cf: "Nonetheless, the declaration recognizes native inhabitants and their traditional ecological knowledge (TEK) as providing a unique contribution to the protection of the Arctic environment; thus the successful implementation of the AEPS partly hinged upon their input and initiatives in this regard (AC 1991a: 6). Furthermore, ensuring a traditional way of living (including values, needs and practices) for indigenous peoples is one of the AEPS's five major objectives (AC 1991a: 9) and distinguishes IPOs' positions from those of non-Arctic entities" (Graczyk, and Koivurova 2012:3).

Permanent Participants, later granted to IPOs, and Observers, granted to all other non-Arctic entities, and that became official with the evolution from AEPS to Arctic Council⁸¹.

The main objectives outlined within the AEPS balanced the need to protect the Arctic Environment system, including humans, and provide for the protection, enhancement and restoration of environmental quality and the sustainable utilization of natural resources, including their use by local populations and indigenous peoples in the Arctic; with the ambitious final goal of eliminating pollution, once having identified and reduced it. The document, signed in Rovaniemi in 1991, proposed a cooperation based on the assessment on a continuous basis of an environmental threat for the Arctic; it bound⁸² the signatories to cooperate in scientific research to specify sources of pollution in the Arctic⁸³, assessments of the environmental impact of development activities, full implementation and consideration of additional measures to control pollutants and reduce their impact on the Arctic. Furthermore, the AEPS foresaw the obligation of establishing four working groups with the respective national agencies: the Arctic Monitoring and Assessment Program (AMAP), Protection of the Arctic Marine Environment (PAME), Emergency, Prevention, Preparedness and Response (EPPR) and Conservation of Arctic Flora and Fauna (CAFF).

The following years determined many changes, especially for the indigenous peoples. As underlined during the 1993 meeting in Nuuk, and in the light of the 1992 Rio Conference, a new *Task Force on Sustainable Development and Utilization* was established. Furthermore, in 1994, under the auspices of AEPS the Indigenous Peoples Secretariat (now Arctic Council Indigenous Peoples Secretariat, hereinafter IPS), a role to assist the creation of opportunities for the Indigenous Peoples' Organizations to present their causes and help provide them with necessary information and materials was established in Copenhagen. The role of the Secretariat became very important after the establishment of the Arctic Council in Ottawa in 1996, and the subsequent development of a Permanent Participant status; since then the Secretariat's role has been to facilitate contributions from the Permanent Participants, the cooperation of the eight Arctic states and the assistance of the Permanent Participants in performing principally communicational tasks. Specifically, the IPS tasks are:

- Ensuring that Permanent Participants receive documents and reports connected to the work of the Arctic Council and its working groups.

⁸¹ cf. "This distinction [between IPOs and external actors] was further strengthened by the creation of the term 'AEPS permanent participant' (Nilson 1997: 54), which referred to IPOs". (Piotr Graczyk, and Timo Koivurova 2012:3).

⁸² Arctic Council, 1991a:2.

⁸³ To be noted: in the AEPS the Arctic was not defined spatially.

- Helping Permanent Participants to present their views to the Arctic Council and its Working Groups.
- Collecting and communicating information about the Arctic Council and its results to the Indigenous Peoples in the various parts of the Arctic.
- Providing co-ordination for the Indigenous Peoples' Organizations to meet with each other, and to participate in the Arctic Council Working Groups.

All three IPOs that had participated in the preparation of AEPS, together with the newly established IPS were brought into the new high-level forum called the Arctic Council, which aimed to provide a means of promoting cooperation, coordination and interaction among the Arctic states, with the involvement of the Arctic indigenous communities and other Arctic inhabitants. Despite the focus still being on issues related to environmental protection and sustainable development, the Council released the authorization to deal with all “common Arctic issues”, but “should not deal with matters related to military security”⁸⁴. Environmental protection objectives were carried out with the four working groups created during the AEPS and now merged under the “Arctic Council umbrella”, while, to aspire to a sustainable development, the TFSDU left a part for the creation of the Sustainable Development Working Group (SDWG). While the AEPS Rules of Procedure were maintained and made explicit, under the Arctic Council new rules of participation were elaborated. In addition to the eight Arctic states, which maintained exclusive membership, a distinction between IPOs and non-Arctic states and organizations was made. Indigenous peoples organization representing:

- (a) a single indigenous people resident in more than one Arctic state; or
- (b) more than one Arctic indigenous peoples resident in a single Arctic state

are the only entities eligible for Permanent Participant status, therefore the six IPOs described above are now Permanent Participants to the Arctic Council. This category was created “to provide the active participation and full consultation with the Arctic indigenous representatives within the Arctic Council”⁸⁵ and even more important, “this principle applies to all meetings and activities of the Arctic Council”⁸⁶. Under the rules of procedures, all decisions are to be made by consensus of the members while Permanent Participants enjoy full consultation rights in connection with the

⁸⁴ AC, 1996.

⁸⁵ AC, 1996:art. 5.

⁸⁶ AC, 1996:art. 5

Council's negotiations and decisions therefore can practically impose a *de facto veto* over proposals made by member states⁸⁷.

Even though the Arctic Council is commonly considered by scholars as a soft law organization operating outside international law⁸⁸, the status and role accorded to IPOs, requiring both participation and full consultation, has been described as having no precedent and being a model to be followed by IPOs worldwide.

Also it is important to note, together with those extensive powers accorded to IPOs, the category of Permanent Participants was substantially distinguished from the Observers category. In fact, all other states and organizations may apply for Observer status bearing no decision-making powers:

Role of observers:

Decisions at all levels in the Arctic Council are the exclusive right and responsibility of the eight Arctic states with the involvement of the Permanent Participants.

- Observers shall be invited to the meetings of the Arctic Council once observer status has been granted.
- While the primary role of observers is to observe the work of the Arctic Council, observers should continue to make relevant contributions through their engagement in the Arctic Council primarily at the level of Working Groups.
- Observers may propose projects through an Arctic State or a Permanent Participant but financial contributions from observers to any given project may not exceed the financing from Arctic states, unless otherwise decided by the SAOs.
- In meetings of the Council's subsidiary bodies to which observers have been invited to participate, observers may, at the discretion of the Chair, make statements after Arctic states and Permanent Participants, present written statements, submit relevant documents and provide views on the issues under discussion. Observers may also submit written statements at Ministerial Meeting.

Since the beginning of the Arctic Council's work, many scholars wondered where the advantages of such an organisation lie. Young, among the other possible answers, has considered "that it may come as a surprise to some to realise that the council's most important role is probably generative in nature. Through its existence, the council has become a symbol of the emergence of the Arctic as a distinct region in international society"⁸⁹. Such political distinctiveness has its roots in the scientific research, which slowly began to give the perception, as a secondary effect, that the Arctic could be considered as a system apart, not only because of its unique characteristics, but in a broader sense

⁸⁷ Koivurova and Heinämäki, 2006:104; see also Tennberg, 2006.

⁸⁸ Bloom 1999:712-722; see also Koivurova: "Even though no one seems to be able to determine what it means in practical terms the Council is a soft law organization, it appears that the current consensus among both scholars and the participants in the cooperation is to treat the Council as such an organization"[2002:69-64]. See also Koivurova [2006:156].

⁸⁹ Yung, 2000:15.

that include human beings as well. Further, scientific research conducted under the Arctic Council not only contributed to the perception of the Arctic as a distinct region, it also fostered the interest of the “outside world” in the north. Especially with the ACIA report, released in 2005, even though the point was already clear for many, the climate change issue catalysed attention worldwide, turning it into an absolute priority (see below). The Arctic was seen as the place where climate change effects were visible: melting of the glaciers, loss of ice-cap areas in Greenland, loss of ice-extension over the Arctic Ocean. However, even though the climate change factor was and is having a worldwide effect, the Arctic region catalysed attention and became the preferential location where these changes can be discussed and observed. In other words, climate change, because of its global-base and multiple causes along with global effects, gave almost every actor worldwide the chance to be perceived as being properly entitled to be an Arctic actor within the Arctic environmental debate. Those worldwide Arctic and non-Arctic actors were also aware of the other side of the coin. Climate change consequences within the Arctic, mainly due to the mitigation of the harsh environmental conditions currently characterising it, may in fact offer in a near future a broad range of commercial possibilities, from oil and gas resources exploration and exploitation or new sea routes.

Reactions from the Arctic to the hypothetical resources-rush scenario possibly offered by substantial changes in the Arctic environment suffer from inconsistency. On one side, the five⁹⁰ Arctic Ocean Coastal states, at their meeting in Ilulissat in 2008, recalled that the Arctic does not need any comprehensive legal regime. Of course it was taken for granted that any Arctic land-area is under the sovereignty of a (Arctic) state, therefore is subjected to and protected by national law; external and third Arctic actors have no rights to conduct any activity without states’ permission. As far as it concerns the Arctic sea area, the five coastal states recalled the Law of the Sea regime, which provide solutions both in case of claims disputes and in regard to management and environmental protection. Such legally orderly vision however, was not confirmed by the same Arctic states, all of which during the 2000s, launched or renewed their Arctic strategies, often dealing with sovereignty issues as well.

Simultaneously, non-Arctic actors, having interest in Arctic affairs, with no Arctic territories or no possibilities to develop an Arctic strategy, “evinced a growing interest to participate in AC work since it is perceived as the only formal pathway to gain access to Arctic governance and decision-making systems”⁹¹ via observer status. The perception of such a role abroad, in fact, is confirmed

⁹⁰ USA (Alaska), Canada, Denmark (Greenland), Russia and Norway.

⁹¹ Graczyk and Koivurova, 2013.

by the persistent requests handed in to apply for the observer status—14 entities are currently applying for observer status, among them China, India, Italy and the EU.

Even if scholars had focused on Arctic Council as having missed the chance to “engage in serious strategic discussion over its place in Arctic governance”⁹², sharing the viewpoint provided by Young that “the days are over during which the council could be celebrated as the symbol of the emergence of the Arctic as an international political region”⁹³, recent developments seem to suggest a concrete possibility for major changes. For instances, a recent article on the new observer rules approved during the Nuuk ministerial meeting (May 2011) written by Graczyk and Koivurova⁹⁴, has suggested that the position of the Arctic Council in the broader setting of circumpolar cooperation might undergoing substantial changes:

Since the criteria have a highly political profile, they also have some important implications for the role of the AC in regional sovereignty and legal discourses, which the AC has never engaged in before. It thus seems obvious that the Nuuk observer rules will elevate the status of the AC in the broader setting of circumpolar cooperation, as discussed above.⁹⁵

Whatever the future of Arctic Council will be, its long-standing role in the Arctic region must not be underestimated. During those years a considerable scientific-research body has been developed under the Arctic Council’s will, influencing many crucial issues relevant to the Arctic environment and population. That data and soft law production, even though not binding, has substantially influenced national and international law making discussed and approved in distinct international fora, often becoming binding for a broader community of states. That means that even though the council is not the place where rules became binding for its members, it is the place (instead) where scientific research is set up, conducted and shared, with the broad cooperation of all Arctic actors, especially indigenous peoples.

⁹² Back in 2006, for example, Koivurova considered that Arctic Council’s “possibility to engage in serious strategic discussion over its place in Arctic governance does not, however, seem possible”

⁹³ Young, 2000:15.

⁹⁴ Graczyk and Koivurova, 2013.

⁹⁵ Graczyk and Koivurova, 2013:10.

In this chapter only the most relevant provisions regarding indigenous peoples have been analyzed in order to understand what relevance the issue has for the EU; a more specific description, which includes a sectorial analysis of all the policies affecting indigenous peoples, is illustrated in the chapter regarding EU policy toward indigenous peoples of the Arctic.

3.1 Human Right in the EU Primary Law

The EU's primary law now refers to its founding treaty, the so-called Treaty of Lisbon, which, along with new declarations and protocols, amended the Treaty on European Union, which kept the original name, (hereinafter TEU post-Lisbon)⁹⁶ and the Treaty Establishing the European Community—now renamed the Treaty on the Functioning of the European Union (hereinafter TFEU)⁹⁷. Primary law basically speaks of values where member states agree to consolidate the Union; defines the relation between the EU and its member states, and sets out rules of procedures, functions and powers accorded by member states to EU bodies. Both the EU and its bodies along with member states when applying Union laws are all bound to these values.

The primary source of law for human rights development within the Union is found in EU primary law. In accordance with TEU post-Lisbon, the text considers among the principles and values underpinning the EU's existence and actions the respect for human rights, including the rights of persons belonging to minorities:

⁹⁶ Consolidated Version of the Treaty on European Union, 2010 O.J. C 83/01.

⁹⁷ Consolidated Version of the Treaty on the Functioning of the European Union, 2008 O.J. C 115/47.

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail. (TEU post-Lisbon, art.2)

Therefore, as illustrated in art.2, respect for human rights, including the rights of persons belonging to minorities, must be seen inside the broader framework of freedom, democracy, equality and rule of law, which, in turn, are all inviolable and inalienable⁹⁸; and, as stated by the Preamble of Charter of the Fundamental Rights of the European Union (hereinafter ‘Charter of Rights’)⁹⁹ “the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law”¹⁰⁰.

The Charter of Rights—which has the same legal values as the Treaties¹⁰¹—was signed in Nice in December 2000 (but became binding with the entry into force of the Treaty of Lisbon). It set out in a single text all the rights protected under the Union but recognised in distinct times and documents; these rights have been listed in six sections: dignity, freedom, equality, solidarity, citizens’ rights and justice.

The link between the fundamental rights and law is better clarified by art. 6, therefore fundamental rights based on the European Convention for the Protection of Human Rights and Fundamental Freedoms and on the “constitutional tradition common to the Member States”, represent “general principles of the Union’s law”¹⁰². Therefore, the Union via Member States (hereinafter MSs) is bound to the 1966 International Covenant on Civil and Political Right (hereinafter ICCPR), which provide, inter alia, a provision for the protection of the rights of peoples belonging to minorities:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.
[art.27, ICCPR]

⁹⁸Cf. the treaty Preamble: “[..]drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law”.

⁹⁹ Charter of Rights, 2010 O.J. C 83/02.

¹⁰⁰ Charter of Rights, Preamble.

¹⁰¹cf TEU post-Lisbon, art. 6.1

¹⁰² cf. “The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Treaties.3. Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law “(art. 6 TEU post-Lisbon).

However, as considered later on in this study, behind both the EU and the member states—when applying Union law—are bound to these provisions, the EU has no mechanisms to apply these principles beyond its competences, as they were accorded by the treaties; that means *inter alia* that “[t]he provisions of the Charter shall not extend in any way the competences of the Union as defined in the Treaties” (TEU post-Lisbon, art.6.1).

Among the general principles relevant to human rights set out in primary law, the EU shall “combat social exclusion and discrimination” (TEU post-Lisbon, art.3), the latter defined on ground of nationality (TFEU, art.18, Charter of the Fundamental Rights art.21), and discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation (TFEU, art 10 and 19) and, *inter alia*, on “genetic features, language and membership of a national minority” by means of the Charter of rights¹⁰³. Art. 21 of the Charter is particularly relevant for the rights of indigenous peoples (and binding for the Union):

Article 21, Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Furthermore the EU, in connection with the fight against discrimination, has dedicated itself to promoting social and territorial cohesion and enhancing solidarity among the member states (TEU post-Lisbon, art.3). Such a commitment and push towards cohesion, however, has to be considered in the light of pluralism: as in the EU’s motto, *united in the diversity*, EU considers the different cultures, traditions and languages as a richness to be protected. In particular, the EU shall respect its rich cultural and linguistic diversity, and shall ensure that Europe’s cultural heritage is safeguarded and enhanced (TEU post-Lisbon, art.3); while in the Charter, diversity is considered and thus respected both in terms of culture and traditions (of the peoples of Europe) as well as national identities (Preamble), and as “cultural, religious and linguistic diversity”¹⁰⁴. It should be noted, that the TEU post-Lisbon deals both with cohesion and respect of diversities in the same article, art. 3, a choice that probably would underline the homogeneity of the process rather than considers it as contradictory.

¹⁰³ cf.: “Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited” (art.6 Charter of Rights).

¹⁰⁴ cf. Charter of rights, art.21

As considered later on in the sectorial analysis chapter, *the indivisible, universal values of human dignity, freedom, equality and solidarity, the principles of democracy and the rule of law, the principle of no discrimination*, especially on the ground of racial and ethnic origins, and EU commitment to integration and cohesion constitute all together the legal framework for the protection and development of the EU's own indigenous peoples. However, as specified later, no ad hoc instruments are available for the moment for European indigenous peoples, and they only enjoy more general rights and freedoms.

The values driving the EU's existence and internal actions have an external aspect and it is precisely on the EU's external actions where indigenous peoples' issues have been more developed and promoted. The ground for such external commitment is based again on primary law; in fact *democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity*, are considered in the treaties as universal. Because of their universal characteristics, instead of being just European values, the EU has dedicated itself to promoting them externally, through its external action:

In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens (TEU post-Lisbon, art.3)

Therefore, the EU's action on the international scene:

[...]shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law (TEU post-Lisbon, art.21)

More specifically, the Union

Defines and pursues common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to (inter alia):

(b)consolidate and support democracy, the rule of law, human rights and the principles of international law [TEU, art.21]

Over the years, the EU has made the promotion of human rights a fundamental aspect of its external relations and actions. The EU's concrete actions that regard human rights and more specifically indigenous rights' promotion in its external aspect—of course having considered the limits given by international law and sovereignty's rights—has been putting in place through three different instruments: development and cooperation policies and actions with third countries (TFEU, Title III), through political dialogues with third countries and through the EU's active participation in multilateral dedicated fora, such as the UN.

3.2 Setting the Issue – Indigenous Peoples

As illustrated in the second chapter of this research, the final decade of the second millennium has been a turning point for setting indigenous peoples' rights; for instance, ILO convention No.169 was opened for ratification in 1989; the Rio Conference was held in 1992; and the UN started its working group on indigenous peoples, leading to the adoption of the UNDRIP in 2007 and the establishment of the UNPFII. Such frameworks brought indigenous peoples to the attention of the international community, while concepts such as (free and prior) consent, participation, and (internal) self-determination, gradually started to gain recognition and be implemented.

Indigenous peoples' issues therefore were first explicitly inserted into the European agenda in 1997, during the 2012th Council meeting held in Luxembourg on June 5th, within the field of cooperation. The Council meeting was originally addressed to discuss on development concerning African Caribbean and Pacific countries (hereinafter ACP countries); however, a conclusion on indigenous peoples was integrated: "[t]he Council invited the Commission to present a policy paper on co-operation with and support for indigenous peoples. On the basis of that paper, the Council will prepare a resolution to be adopted at its meeting of November 1997"¹⁰⁵.

The commission welcomed the Council conclusion and released a working document on support for indigenous peoples in the development co-operation of the Community and the Member States¹⁰⁶ in May 1998. In this first working document, the Commission "addressed the relation between indigenous peoples and the development process"¹⁰⁷, an issue that has characterized the Europeans' first approach to indigenous peoples and which is mostly still visible in today's policies and actions. The Commission, once having recalled the coeval human rights framework¹⁰⁸, recognized for the first time the social, cultural and economic vulnerability of indigenous peoples as minorities that suffered through the effects of colonization and marginalization by the mainstream society, that led, as a consequence, to a general exclusion from the decision-making process at the political level, and

¹⁰⁵ 2012th Council meeting - DEVELOPMENT - Luxembourg, 5 June 1997, PRES/97/183, p.14.

¹⁰⁶ Working Document of the Commission of May 1998 on support for indigenous peoples in the development co-operation of the Community and the Member States, (hereinafter 'Commission working document' available at http://ec.europa.eu/human_rights/ip/docs/working_doc_98_en.pdf

¹⁰⁷ Commission working document, 1998:1

¹⁰⁸ The Declaration on Human Rights, the Covenant on Economic, Social and Cultural Rights, Covenant on Civil and Political Rights, were recalled as the basic framework for the definition of indigenous peoples' rights and important instruments for monitoring the situation of indigenous peoples [Commission working document, 1998:3]; the Vienna Declaration and Programme on Action, as "an important policy statement"; the Draft Declaration on the Right of Indigenous Peoples of 1994 [the Declaration on the Right of Indigenous Peoples was later adopted in 2007] and the proposal for a UN Permanent Forum on Indigenous issues [the first meeting was held in May 2002 in New York]; the ILO No.169, the proclamation of the International Decade of the World's Indigenous People and the 1997 Project American Declaration on the Rights of the Indigenous Peoples. The Commission acknowledged the international framework for the rights of indigenous peoples to be weak. (cf Commission working document, 1998:3-4).

prevailing conditions of poverty and lack of education. On the other hand, having accepted the coeval flourishing of a renewed worldwide interest and approach to the environment and sustainability of resources¹⁰⁹, including, for example, the 1992 Rio Conference, and considering that indigenous peoples often “inhabit areas that are considered crucial for the conservation of biodiversity”¹¹⁰ while their social and cultural practices¹¹¹ allow a sustainable use of resources (“the link gives indigenous peoples a special role in keeping and creating the biological diversity and in providing examples of sustainable development”¹¹²), the Commission set the definitive connection between indigenous peoples and development co-operation under the light of sustainability and protection of the environment. The commission therefore concluded that integration of indigenous peoples issues in general development policy¹¹³ would be in line with the Maastricht Treaty¹¹⁴ art. 130(u); it had been already integrated and was in line with the European commitment on the broader issue of human rights¹¹⁵ and many ongoing initiatives and projects had already implicitly addressed the issue without explicitly taking their special situation into account. In view of this framework, the Commission suggested that the Council take special measures to address a more comprehensive indigenous peoples’ policy with the overall aims of:

- Enhancing indigenous peoples’ rights and capacity to control their own social, economic and cultural development.

¹⁰⁹ Other international declarations and conventions were recalled : 1992 Rio Declaration, principle 22; Agenda 21, chapter 26, art. 8j of the Convention on Biodiversity, the Convention on Climate, the Change Convention on Desertification, art 16(g) and 17(c). The Commission concluded summing three crucial aspect pointed out by those instruments: 1. Their [indigenous peoples] cultures and identities are invaluable and necessary contributions for archiving sustainable development, 2. They [indigenous peoples] play a key-role regarding the conservation and sustainable use of biological diversity, 3. They [indigenous peoples] possess a special vulnerability to being disadvantaged in the development process. (Commission working document, 1998:4-5)

¹¹⁰ Commission working document, 1998:5.

¹¹¹ the Commission pointed out that “indigenous peoples’ social and cultural practices were made possible to maintain through a considerable span of time their spiritual link to the land; they possess a specific knowledge of the ecosystem and biological diversity found in their territories” Commission working document, 1998:5.

¹¹² Commission working document, 1998:5.

¹¹³ the Community established four priority areas for development and cooperation: Sustainable economic and social development, the smooth integration of developing countries into the world economy, the fight against poverty and the observance of human rights, fundamental freedom and the development of democracy and the rule of law.

¹¹⁴ Treaty on European Union (Maastricht text), July 29, 1992 O.J. C 191/1.

¹¹⁵ Europe and human rights has been extensively studied elsewhere. For the aim of this research, the main human rights instruments pointed out by the commission are listed: the Council Regulation No. 443/92 (on co-operation with countries in Asia and Latin American), Lomé Convention, European Union and the External Dimension of Human Rights Policy 1995 (COM(95)567), the Basic Document on the Relations of the European Union with Latin America and the Caribbean 1994, Council Regulation No. 3063/95 on conservation and sustainable development of tropical forest areas, 1995, Council Regulation 772/97 sustainable development.

- Enhancing indigenous peoples' territorial rights and capacity for sustainable management of biological resources¹¹⁶

and the specific aim of:

- integrating the concern for indigenous peoples as a cross-cutting aspect of human empowerment and development cooperation¹¹⁷

The Commission's suggestions to archive such objectives illuminated many interesting key-points; however, it is useful to point out those more relevant for this research:

- **Participation, especially within national and international environmental negotiations and strategy development** (Support the participation of indigenous peoples in environmental negotiations and strategies internationally and nationally, inter alia in the development of national biodiversity strategies)¹¹⁸
- **Coherence and Consistency** (Ensure coherence and co-ordination in the European Community's development co-operation, by defining a comprehensive approach to the issue)¹¹⁹
- **Identify institutional focal points** (Establish focal points to liaise with indigenous peoples in the European Commission, including delegations, and the Member States. Their responsibilities should be technical support to staff, permanent follow-up on issues relating to indigenous peoples, further development of tools and methodologies, e.g. social impact assessments and research on the inter-linkage of indigenous peoples' issues and other areas e.g. health, education, environmental concerns)¹²⁰
- **Exchange of experiences** (Participation in international negotiations, networking and exchange of experiences among indigenous peoples)¹²¹

On 30 November 1998 the Council welcomed the Working Document issued by the Commission, and having considered that many indigenous peoples live in developing countries, where they have to face economic, social and political marginalization and recurrent violation of human rights, decided to call for a comprehensive policy "integrating the concern for indigenous peoples as a cross-cutting aspect at all levels of development cooperation"¹²². Specifically, the Council acknowledged the centrality of indigenous peoples' own concept of "self-development"¹²³ as "the

¹¹⁶ Commission working document, 1998:14.

¹¹⁷ Commission working document, 1998:14.

¹¹⁸ Commission working document, 1998:14.

¹¹⁹ Commission working document, 1998:15.

¹²⁰ Commission working document, 1998:15.

¹²¹ Commission working document, 1998:15.

¹²² Council Resolution of 30 November on 1998 Indigenous peoples within the framework of the development cooperation of the Community and the Member States, p.2

¹²³ Council Resolution of 30 November on 1998 Indigenous peoples within the framework of the development cooperation of the Community and the Member States, p.1

shaping of their own social, economic and cultural development and their own cultural identities”¹²⁴, on the ground that they form a heritage of various knowledge and ideas that are a potential resource, especially in maintaining and enhancing biological diversity and sustainable development. The Council, in addition, considered that they thus “should participate fully and freely in the development process”¹²⁵, while, considering the peculiarity of each country context, they should be encouraged to have “full participation in the democratic process of their country”¹²⁶. More importantly, this Council’s Resolution definitely integrated indigenous peoples’ issues within the development and cooperation framework “by acknowledging that cooperation with indigenous peoples is considered essential for the objectives of poverty elimination, sustainable development of natural resources, and the observance of human rights and development of democracy”¹²⁷.

Therefore, once having taken into consideration the peculiarities of every circumstance, e.g. the distinctiveness of each indigenous people, the Council eventually asked the Commission, along with MSs and in cooperation with indigenous peoples, to develop a comprehensive policy with particular emphasis on practical ways to implement¹²⁸ it, while recalling the basic importance of coordination to achieve increased effectiveness and adequacy.

3.3 Indigenous Peoples’ Issues and Rights as part of Human Rights Concerns in the Cooperation with Third Countries

Once indigenous peoples have been inserted among the goals and beneficiaries of cooperation and development policies—in line with art. 130u of the Maastricht treaty—the EU took a step forwards and clarified indigenous peoples’ position in relation to the EU’s broader commitment to human

¹²⁴ Council Resolution of 30 November on 1998 Indigenous peoples within the framework of the development cooperation of the Community and the Member States, p.1

¹²⁵ Council Resolution of 30 November on 1998 Indigenous peoples within the framework of the development cooperation of the Community and the Member States, p.1

¹²⁶ Council Resolution of 30 November on 1998 Indigenous peoples within the framework of the development cooperation of the Community and the Member States, p.1

¹²⁷ Søvndahl Pedersen, 2011:5.

¹²⁸ Council Resolution of 30 November on 1998 Indigenous peoples within the framework of the development cooperation of the Community and the Member States, p.2

rights. For instance, indigenous peoples' rights become part of the EU's human rights, as stated in the twin Council Regulations (EC) No 975/1999¹²⁹ and (EC) No 976/1999¹³⁰.

In the Council Regulation (EC) No 975/1999, the EU set the requirements to implement with developing countries a cooperation on development, which shall contribute to the general objective of developing and consolidating democracy, the rule of law and to that respecting human rights and fundamental freedoms. Specifically, the Regulation set the procedures for implementation of aids and operations with the overall objectives of promoting human rights and fundamental freedoms (art. 2.1) including support for minorities, ethnic groups and indigenous peoples (art.2.1 (d)); and democratization (art. 2.2); aware of the high interdependence of all human rights, i.e. progress in economic and social development and in the achievement of civil and political rights are mutually supportive¹³¹.

In the Council Regulation (EC) No 976/1999, the EU, after having recalled the principles of indivisibility and universality of human rights and their promotion as part of the international system for the protection of human rights, considered EU operations to promote human rights principles and democratization to include, inter alia, minorities and indigenous peoples (see the preamble). The Regulation sets out that the EU's operations "to contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms"¹³², have to be implemented "in the territory of third countries or shall be directly related to situations arising in third countries"¹³³. In other words, the EU's promotion of those principles is no longer restricted to the field of cooperation and development within developing countries; but has to be included in all EU cooperation with any *third country*. In the preamble, in fact, the EU recognized the necessity "to ensure that these operations are coherent, and part with the European Union's foreign policy, including the common, foreign and security policies". In conclusion, the twin regulations definitely linked EU cooperation and development actions with the support of human rights—including indigenous peoples' and minorities'—and democratization with all third countries, thus not only developing ones.

¹²⁹ Council Regulation (EC) No 975/1999 of 29 April 1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms, 1999 OJ L 120.

¹³⁰ Council Regulation (EC) No 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries, 1999 OJ L 120

¹³¹ Preamble, Council Regulation (EC) No 975/1999.

¹³² Council Regulation (EC) No 976/1999, Art.1.

¹³³ Council Regulation (EC) No 976/1999, Art.1.

Furthermore, they have been the legal base for the creation of one of the most important EU funding instruments for the support of human rights and democratization, the European Initiative for Democracy and Human Rights, expired in 2006 and renewed under the name of European Instrument for Democracy and Human Rights (see below).

3.4 Indigenous Peoples Issues within EU's Cooperation policies

The 1998 Council's Conclusions were re-confirmed but improved in the Council conclusions on indigenous peoples at the 2463rd meeting¹³⁴. The Council recognized that while some progress had been made in integrating concern for indigenous peoples into policies, programmes and projects; in consulting indigenous peoples on policies and activities that affect them, and in providing support for indigenous peoples in key thematic areas, further actions still needed to be done. To reach that intent, the Council invited the Commission and MSs to keep pursuing the 1998 conclusions, especially those regarding the maintenance of coherence and coordination of actions between the Community and the Member States, both in pinpointing indigenous peoples' key issues affecting them directly or indirectly and for strengthening operational cooperation.

More relevant, the Council asked to both "integrate groups of indigenous peoples into the political dialogue with partner countries as an integral part of the human rights clauses of the different co-operation and association agreements and relevant regulations"¹³⁵, and "mainstream indigenous peoples' issues into the European Union's policies, practices and work methods. Where relevant, indigenous peoples should be able to fully and effectively participate at all stages of the project cycle (programming, identification, planning, implementation, and evaluation)¹³⁶".

Later in 2005, the Council, the Parliament and the Commission released a joint policy statement, 'The European Consensus on Development'¹³⁷, "which is a common vision that guides the action

¹³⁴ Council meeting General Affairs and external relations, 2463rd, General Affairs, 14183/02 (presse 350)

¹³⁵ Council meeting, 2463rd, 2002:X.

¹³⁶ Council meeting, 2463rd, 2002:XI.

¹³⁷ Joint declaration by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on the development policy of the European Union entitled "The European Consensus", 2006, OJ C 46.

of the EU, both for its MSs and Community levels, in development co-operation”¹³⁸, a competence that is shared between the European Community and its member states¹³⁹.

Within the Consensus, the primary and overarching objective pursued by the EU and its member states is the eradication of poverty in the context of sustainable development (see art.1, art.5, art.40, art.42, art.56, art.86), including pursuit of the MDGs, Millennium Development Goals¹⁴⁰(see art. 5, art.6, art.24, art.40, art.42). The EU, that already contributes with over 50% of all development aid worldwide¹⁴¹, while having recognized the importance of, and having agreed in, providing more and better financial aid¹⁴², undertook the fundamental step of extending both the concept of poverty and sustainable development beyond the pure economic issue. Poverty, in addition to its economic aspect, has been accorded a broader dimension that includes human, political, socio-cultural and protective capabilities (art.11). The overall objective of poverty reduction thus “will only be successful if equal importance is given to investing in people” (art.11), which include inter alia, health, education, protection of natural resources and securing rural livelihood and also the promotion of good governance and observance of human rights, both common values of the EU¹⁴³. Because of multiple issues raised by poverty, in the definition given within the Consensus, the concept of development, that is considered a central goal by itself, consequently could not be qualified as a simple economic growth. In fact, the shared vision on sustainable development stated in the document includes as part of sustainable development “good governance, human rights and political, economic, social and environmental aspects” (art.7).

Therefore, “poverty eradication in the context of sustainable development includes many development activities from democratic governance to political, economical and social reforms, conflict prevention, social justice, promoting human rights and equitable access to public services, education, culture, health”.

¹³⁸ European Commission, Development and Cooperation-Europe aid, see: http://ec.europa.eu/europeaid/what/development-policies/european-consensus/index_en.htm

¹³⁹ Even if a special kind of, development cooperation and humanitarian aid fall under shared competences (they fall under art.4 TFEU): “In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs”, art.4.4. TFEU.

¹⁴⁰ The eight MDGs are to: eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality and empower women; reduce the mortality rate of children; improve maternal health; combat HIV/AIDS, malaria and other diseases; ensure environmental sustainability and develop a global partnership for development (Consensus on Development, art.6). MDGs were officially set out within the 55/2 United Nation Millennium Declaration, the resolution adopted by UN General Assembly (A/55/L.2) in September 2000.

¹⁴¹ See Europaid webpage: http://ec.europa.eu/europeaid/what/development-policies/european-consensus/index_en.htm

¹⁴² Title 5 of the European Consensus on Development “Deliver more and better aid” set the European commitment, inter alia: increase financial resources (up to 0.7% of GNI by 2015) (art. 23); adaptation to the circumstances adopting different modalities (art. 26), coordination and complementarity among member states and the EC.

¹⁴³ cf. EU partnership and dialogue with third countries will promote common values of: respect for human rights, fundamental freedoms, peace, democracy, good governance, gender equality, the rule of law, solidarity and justice (art.13).

Indigenous peoples, beyond being implicitly included as specified above, have been explicitly mentioned in the Consensus on Development twice, in art.97, “in the context of poverty eradication, the Community aims to prevent social exclusion and to combat discrimination against all groups. It will promote social dialogue and protection, in particular to address gender inequality, the rights of indigenous peoples” and art. 103, “The key principle for safeguarding indigenous peoples’ rights in development cooperation is to ensure their full participation and the free and prior informed consent of the communities concerned”.

3.5 European Instrument for Democracy and Human Rights

Inside the EU’s structure, the body invested with the role of setting objectives and priorities for action and managing and implementing EU policy and the budget¹⁴⁴, is the EU Commission; specifically for this case, the Cooperation commission and its Development and Cooperation-EuropeAid Directorate General (DG). EuropeAid therefore is the only referring structure dealing with development and cooperation for the EU, where all the stakeholders may interact. Beside coordination of policies, EuropeAid bears the responsibility of implementing the EU’s external aid instruments¹⁴⁵ while spreading the EU’s core values.

As illustrated in the EU policies on development described above, the implementation actions carried out by EuropeAid cannot be limited to bestowing financial aid, but should take into consideration the broader definition of sustainable development. For this aim, the EIDHR was created, replacing the European Initiative for Democracy and Human Rights (2000-2006); a self-standing autonomous financing instrument for the promotion of democracy and human rights worldwide and where rights of indigenous peoples are a thematic priority. Furthermore, indigenous peoples’ issues crosscut through other fields; therefore indigenous-tailored projects are found among governance (cf the project “Establishing bonds between government, businesses and indigenous people in the Ucayali region, affected by the extraction of natural resources, for the recognition of their rights and for building collaborative agendas”¹⁴⁶ in Perú); promotion and protection of human rights and fundamental freedoms (cf the project “Political Dialogue for the Empowerment of Citizens Searching for Increased Access to Justice, Security and the Enjoyment of

¹⁴⁴ cf. European Commission website, at ec.europa.eu; the other main roles illustrated on the website are: propose legislation to Parliament and the Council, enforce European Law and represent the EU outside Europe.

¹⁴⁵ cf. EUROPEAID official website: http://ec.europa.eu/europeaid/who/about/index_en.htm.

¹⁴⁶ EIDHR, 2007-2010 Compendium, p 303.

Human Rights, especially for women and indigenous peoples”¹⁴⁷, Guatemala); women (“Defence of women's human rights on HIV/AIDS issues and migration by Communitarian Radios”¹⁴⁸ in Mexico) or within the fight against racism, xenophobia and discrimination (“One Citizenship: Strategic Litigation on Economic, Social and Cultural Rights of Indigenous People”¹⁴⁹ in Guatemala).

Basically, the EIDHR is the main EU instrument to enhance respect for human rights and freedom worldwide through a project-funding action. Under the EIDHR, programs, grants and human resources are available to promote democracy and human rights. These project are financed through the work and under the proposal of:

- civil society organizations;
- public- and private-sector non-profit organizations;
- national, regional and international parliamentary bodies, where the proposed measure cannot be financed under a related Community external assistance instrument;
- international and regional inter-governmental organizations;
- natural persons, where their help is necessary for achieving the aims of the EIDHR¹⁵⁰.

In addition, under certain circumstances the EIDHR also has the possibility to finance non-legal entities.

In conclusion, a vast importance is given by the EIDHR to the work of civil societies worldwide as main promoters of human rights. The program, for the period 2007-2013 has a consistent budget of € 1.104 billion.

2.6 EU and Indigenous Peoples–External Actions: the Political Dialogues

Among the instruments the EU has at its disposal to implement its policies on human and indigenous rights, the political dialogues play a fundamental role as regards the EU’s external action. This instrument basically accords the EU the possibility to examine in depth human rights situations in certain countries within the framework of its bilateral relation. Human rights issues have been integrated into the EU’s political dialogue more consistently since 2001, when the

¹⁴⁷ EIDHR, 2007-2010 Compendium, p 60.

¹⁴⁸ EIDHR, 2007-2010 Compendium, p 180.

¹⁴⁹ EIDHR, 2007-2010 Compendium, p 115.

¹⁵⁰ Development and Cooperation-EuropeAid web site: http://ec.europa.eu/europeaid/how/finance/eidhr_en.htm

Human Rights Working Group (COHOM)¹⁵¹ along with the Working Party on Development Cooperation (CoDEV)¹⁵² and the Committee on measures for the development and consolidation of democracy and the rule of law, set out the Guidelines on Human Right Dialogues¹⁵³, which objectives have been defined as:

The objectives of human rights dialogues will vary from one country to another and will be defined on a case-by-case basis. These objectives may include:

- (a) discussing questions of mutual interest and enhancing cooperation on human rights inter alia, in multinational fora such as the United Nations;
- (b) registering the concern felt by the EU at the human rights situation in the country concerned, information gathering and endeavoring to improve the human rights situation in that country.

Moreover, human rights dialogues can identify at an early stage problems likely to lead to conflict in the future¹⁵⁴.

The specific intention of such dialogues covers many issues related to human rights, and they are directed into the specific context the EU is discussing with a third party; however, they mainly concern either the discussion of mutual human rights interests and/or enhancing cooperation within human rights dedicated fora, and also to make clear EU concerns about the human rights situation in the country concerned and how to improve them¹⁵⁵.

Human rights dialogues are conducted with several third countries under distinct frameworks, for instance within the relations with candidate countries¹⁵⁶ or within the CFSP-related topics; currently the EU is also having a dialogue focused exclusively on human rights, principally with China¹⁵⁷. With regards to Arctic states, the EU is conducting dialogue with Russia, while dialogues with Canada and the USA have the main purpose of discussing common goals within the context of international cooperation.

¹⁵¹ The Human Right Working Group (COHOM) was early established in 1987 (with the extension of its mandate in 2003) under the Council of the European Union. The main task of the Human Right Working Group is to cover various aspects of EU's human right policy (therefore human rights dialogue, EU participation in international fora, thematic issues, etc) , but also to discuss on items on human rights situations of urgent concern. It is composed by human rights experts from MSs and the Commission. (http://ec.europa.eu/human_rights/workgroup/index_en.htm), Full text of the Human Right Working Group available at: http://www.consilium.europa.eu/uedocs/cmsUpload/COHOM_mandates.pdf

¹⁵² The working Party on Development (CoDEV) works on policy issues inherent with the area of development.

¹⁵³ The "EU guidelines on human rights dialogues with third countries" were adopted by the Council in 2001 and reviewed in 2009. The Guidelines are a pragmatic instrument for EU, since they drive how EU launches and conduct dialogue with third countries (available at http://ec.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf)

¹⁵⁴ EU Guidelines on Human Right Dialogues with third countries, 2001:4-5.

¹⁵⁵ EU Guidelines on Human Right Dialogues with third countries, 2001:1.

¹⁵⁶ For an exhaustive list, cf. EU Guidelines on Human Right Dialogues with third countries, 2001.

¹⁵⁷ EU before had dialogue on human rights with Iran, but they have been suspended.

As regards Russia, at the last meeting, held in Brussels in 2012, both parties raised concerns about each other's human rights situations. As those consultations have so far been held only under EU initiative, the EU has expressed its wish to meet in Moscow for the next consultation, to be conducted later in the spring 2013.

The Russia Federation worried about the mainstreaming rise of xenophobia and racism within the Union, the lack of investigation into secret detention facilities and the issue of stateless citizens. The EU instead focused on the latest Russian legislative changes that harshly affected many fields related to human rights. In the EU's view, those changes have negatively impacted the rights of the Russian Lesbian, Gay, Bisexual and Transgender Community and curtailed the rights accorded to human rights defenders and opposition leaders; furthermore, due attention was not given to several criminal cases implying human rights observation. More relevant for this research, the EU dealt with the legal changes affecting the core existence and proper operations of NGOs and INGOs within the Russian territory. First, the EU was more concerned about the difficulties for NGOs and INGOs to freely operate within the Russian territory than about rights. In line with an established practice, the EU consults Russian NGOs and INGOs to incorporate the civil society view in its actions.

This issue has specific and high relevance for Russian Arctic indigenous peoples as this directly affects the RAIPON, the indigenous peoples of the North Organisation. Briefly, as reported by the Russian Agency Social Information Report¹⁵⁸, the activities of the RAIPON had to be suspended as pursuant to the Russian federal Ministry of Justice's indication that the statute of the Organisation is not in line with Russian federal law. As reported by the press, especially by the Barents Observer¹⁵⁹, the association has continuously tried to adjust its statute in line with the Ministry's requirements, actually failing each time. RAIPON's failure was twice confirmed by pronouncement of the Russian Court, raising great concerns both in the Arctic Council and the Arctic Euro-Barents council.

The latest news, however, seems to confirm a positive achievement for the Russian indigenous association. In the latest RAIPON statement¹⁶⁰, reported by a recent article from the Barents

¹⁵⁸ original: Деятельность Ассоциации коренных малочисленных народов приостановлена, Moscow, 8.11.2012, retrived at http://www.asi.org.ru/asi3/rws_asi.nsf/va_WebPages/4EDF2863EDF6B5D844257AB000394651Rus

¹⁵⁹ Barents Observer, Moscow orders closure of indigenous peoples organization, November 12, 2012 [<http://barentsobserver.com/en/arctic/moscow-orders-closure-indigenous-peoples-organization-12-11>]; RAIPON fights for survival, November, 19, 2012, [<http://barentsobserver.com/en/arctic/raipon-fights-survival-19-11>]

¹⁶⁰ Original: Минюст РФ зарегистрировал Устав Ассоциации, 14.03.2013. retrived at <http://raipon.info/component/content/article/1-novosti/3998-2013-03-14-14-17-37.html>.

Observer¹⁶¹, the decision to approve the amendment to the statute seems to be accepted by the Russian federal Ministry of Justice.

Despite the current positive outcome of the RAIPON, two points about the EU-Russia Federation relation can be noticed. The positive commentary could be that at least the EU could dispose of the Dialogues to directly deal with issues such as the one raised by RAIPON. On the other side, beside bearing the possibility, the EU has not released any official statements or documents to directly support the RAIPON situation against Russian institutions.

3.7 EU Commitment on Indigenous Peoples' Issues around the World

Another important element of the EU's obligation towards indigenous peoples issues in its external statements, and influences and partakes in the international arena, especially through human rights-dedicated fora such as the UN.

The EU's role within the international fora and especially within the UN was enhanced by the Council Decision No. 2010/427/EU¹⁶² that established the organization and functioning of the European External Action Service (hereinafter EEAS). EEAS is the EU functionally autonomous¹⁶³ body under the authority of the High Representative aimed at supporting 'the High Representative, who also acts as Vice-President of the Commission and the President of the Foreign Affairs Council, in fulfilling his/her warrant to conduct the Common Foreign and Security Policy ('CFSP')'¹⁶⁴. EEAS could be described as the European diplomatic arm, which represents the EU (as a whole) in its entirety in its work abroad. The main task of the EEAS, as the assistant of the High Representative, is to guarantee coordination and consistency of EU external actions, while it 'should also promote the fulfillment of the objectives of the European Consensus on Development and the European Consensus on Humanitarian Aid'¹⁶⁵. The EU is therefore currently¹⁶⁶ represented in the UN fora through the European Union Delegation that works under the authority of the High

¹⁶¹ The Barents Observer, Hard-Fought new life for RAIPON, March, 15th 2013, <http://barentsobserver.com/en/society/2013/03/hard-fought-new-life-raipon-15-03>.

¹⁶² Council Decision of 26 July 2010 establishing the organization and functioning of the European External Action Service (2010/427/EU), 2010 OJ L 201/30.

¹⁶³ The autonomy of EEAS is bound to the legal responsibility of consistency with the other EU policies.

¹⁶⁴ Council Decision No. 2010/427/EU, art. 3.

¹⁶⁵ Council Decision No. 2010/427/EU, art. 4.

¹⁶⁶ The European delegation was accorded observer status for UN works in 1974. With the entry into force of the treaty of Lisbon, in 2009, the European Union was invested by its members with the power of signing contracts and to be part of international organization or international agreements.

Representative for Foreign Affairs and Security Policy along with the EEAS¹⁶⁷. Although the EU participates in UN activities as an observer bearing no right to vote, it has broadly committed itself to being involved in UN works, both in terms of participation in UN bodies, programs and agencies and in terms of financial contribution¹⁶⁸. Furthermore, in its 40 years of presence in UN activities, the EU has explicitly dedicated itself to indigenous peoples' rights through a two-fold action, for instance, in terms of sustaining UN actions and initiatives for the recognition and promotion of indigenous peoples' rights and in terms of reaffirming its own policies and commitments towards indigenous peoples in its internal and external actions on the international arena and beyond UN-related activities.

First of all, the EU has participated in the International Day of the Worlds' Indigenous Peoples since its establishment on 23 December 1994 by resolution 49/214 of the UN General Assembly (celebrated every year on August 9th). From the beginning, it was decided that this should be done every year throughout the decade of Indigenous Peoples (1994-2004); then both the decade and the celebration day were renewed for a second decade (2005-2015). Almost every year, on the occasion of that day, the EU releases a statement that reaffirms its commitments towards indigenous peoples, while many of its worldwide delegations organize several events and meetings.

The EU's main activities in supporting UN work on Indigenous Rights are realized through the two main UN bodies on human rights, namely the UN Human Rights Council (HRC) and General Assembly of the United Nations Social, Humanitarian Cultural Affairs Committee–Third Committee (hereinafter Third Committee). Furthermore, the EU recognizes the great relevance of the roles these two bodies play in the advancement of human rights, and indigenous rights, as affirmed, for instance, within the EU statement at ECOSOC on the Permanent Forum on Indigenous issues:

We encourage all States to increase their efforts to ensure the full respect of the rights of indigenous peoples. On this occasion I would like to express the support of the EU for the core UN mechanisms addressing indigenous issues: the Special Rapporteur on the Rights of Indigenous Peoples, the Expert Mechanism on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues. We would also like to commend the proven ability of

¹⁶⁷ With EEAS establishment and the consequent UNGA Resolution A/res/65/276, the EU achieves an important recognition as a performer together with UN, in other words EU can now participate and have voice within the General Assembly

¹⁶⁸ "The EU is the single largest financial contributor to the UN system. The 27 EU Member States fund 38% of the UN's regular budget, more than two-fifths of UN peacekeeping operations, and about one-half of all UN Member States' contributions to UN funds and programs. The European Commission alone contributes more than \$1.35 billion in support of UN external assistance programs and projects. (About the EU at the UN Overview: the European Union at the United Nations, http://www.eu-un.europa.eu/articles/articleslist_s88_en.htm] accessed on january 2013.)

these mechanisms to cooperate effectively with each other by carrying out their respective mandates in a complementary manner¹⁶⁹.

Specifically, the EU, about the Expert Mechanism on the Right of Indigenous Peoples (EMRIP)—established by the HRC—stated:

The Expert Mechanism on the Rights of Indigenous Peoples is also an important venue for providing the Human Rights Council with concrete advice on ways and means of better promoting and protecting the rights of indigenous peoples as set out in the Declaration on the Rights of Indigenous Peoples¹⁷⁰.

Among the EU's actions of general support towards UN activities, a great importance is accorded to the work of the UN Procedures and to the effective and independent role of the High Commissioner for Human Rights, which is, *inter alia*, partially financed through the EIDHR¹⁷¹. Despite the fact that this could be viewed as having minor importance, the European strong and explicit support to UN bodies dedicated to human rights and indigenous rights, should not be underestimated: in other words, this means that a consistent group of 27, which is *inter alia* the single largest financial contributor to the UN system, is offering through the Union its political and financial support for the diffusion and establishment of indigenous peoples' rights worldwide.

More specifically, and probably even more relevant, the EU has supported from the beginning both the 2007 UNDRIP and the creation of the Permanent Forum on Indigenous issues. EU commitment toward the UNDRIP has been explicitly and continuously re-confirmed in the speeches of EU representatives within the UN framework, both in terms of acknowledgment of its foremost instrumental value for the advancement of indigenous peoples' rights¹⁷² and ensuring their

¹⁶⁹ EU statement at ECOSOC on the Permanent Forum on Indigenous issues, 8th May, 2012, available at http://www.eu-un.europa.eu/articles/fr/article_12153_fr.htm accessed on January 2013.

¹⁷⁰ Statement on behalf of the European Union by Mr. Nicolas Burniat, Permanent Representation of Belgium to the United Nations, at the Third Committee of the 65th Session of the General Assembly, Agenda item 65 a Indigenous Issues (October, 2010).

¹⁷¹ "The EU pays tribute to the leadership of the UN High Commissioner for Human Rights, Navanethem Pillay and her Office which this year celebrates its 20th anniversary. The EU strongly supports her work and that of her staff, underlining the full independence and integrity of the mandate of the High Commissioner for Human Rights" (Statement on behalf of the European Union by Mr. Nicolas Burniat, Permanent Representation of Belgium to the United Nations, at the Third Committee of the 65th Session of the General Assembly, Agenda item 65 a Indigenous Issues (October, 2010).

¹⁷² see e.g. See for instance: 'The need for the protection and promotion of the rights of indigenous peoples and the advancement of their situation is set out in the Declaration on the Rights of Indigenous Peoples of 2007' (EU Statement - United Nations 3rd Committee: Indigenous Peoples, 22nd October 2012, New York, http://www.eu-un.europa.eu/articles/en/article_12747_en.htm); 'The EU supports the UN Declaration on the Rights of Indigenous Peoples adopted in 2007, which marked a significant development for indigenous peoples and serves as an important tool in addressing indigenous issues' (EU statement at UN Permanent Forum on Indigenous Peoples Issues, 10th May 2012, New York. http://www.eu-un.europa.eu/articles/en/article_12163_en.htm)

development worldwide¹⁷³ and of recognizing it as a milestone achievement for indigenous peoples themselves¹⁷⁴. EU action to support indigenous peoples rights at the UN goes beyond the mere acknowledgment of the UNDRIP as an important instrument for promoting indigenous and human rights; in fact, having recognized that only the full implementation of rights and principles described within the UNDRIP can provide an actual enjoyment of those rights for indigenous peoples, the EU has repeatedly pressed on *all* states to make this a reality¹⁷⁵. Indeed, on the occasion of the USA's declaration of support to the UN declaration on the Rights of Indigenous Peoples (December 2010), Catherine Ashton, the EU High Representative, welcomed the USA decision as follows:

High Representative Catherine Ashton warmly welcomes the announcement made by the United States of support for the UN Declaration. The European Union hopes to play an active role together with its partners in bringing forward initiatives to secure implementation of the standards set out in the Declaration¹⁷⁶.

In addition, the EU has explicitly recognized the value of the UNPFII as an important venue for the promotion of the dialogue with indigenous peoples, and provides its explicit support through a proactive participation during the UNPFII's works and in delivering a statement reaffirming its commitment to the promotion of indigenous peoples' rights every year during the Open Dialogue between indigenous peoples' organizations, states and UN agencies¹⁷⁷.

While supporting UNDRIP and UNPFII, the EU's representatives use the occasion to reaffirm that the European Union is founded on the values of respect for human dignity, equality and respect for

¹⁷³ See e.g. the declaration released after the adoption of the Declaration by the General Assembly: 'In addition, the recent adoption of the United Nations Declaration on the Rights of Indigenous Peoples by the General Assembly on 13 September 2007, after two decades of negotiations, was another achievement for advancement of rights and ensuring the continuous development of indigenous peoples around the world.' (EU Presidency Statement - United Nations 3rd Committee: Promotion and Protection of Human Rights, 24th October 2007, http://www.eu-un.europa.eu/articles/en/article_7442_en.htm)

¹⁷⁴ 'We [the EU] reaffirm our support to the 2007 United Nations Declaration on the Rights of Indigenous Peoples, which is an important milestone for indigenous peoples' (EU statement at UN Permanent Forum on Indigenous Peoples Issues, 8th May 2012, New York, http://www.eu-un.europa.eu/articles/fr/article_12153_fr.htm).

¹⁷⁵ See e.g.: 'The EU has supported from the very beginning the 2007 United Nations Declaration on the Rights of Indigenous Peoples. The Declaration is an important instrument for promoting human rights, but its full implementation is fundamental for the actual enjoyment of those rights. The EU has repeatedly pressed on all states to make this a reality' (EU's declaration on the International Day of the World's Indigenous Peoples, 9th August 2012, http://www.eu-un.europa.eu/articles/en/article_12500_en.htm)

¹⁷⁶ EU HR Ashton welcomes USA joining UN Declaration on the Rights of Indigenous Peoples, http://www.eu-un.europa.eu/articles/en/article_10527_en.htm

¹⁷⁷ See e.g. 'The EU participates actively in the UN Permanent Forum on Indigenous Issues every year. During the Open Dialogue between indigenous peoples' organizations, States and UN agencies, the EU delivered a statement reaffirming its commitment to the promotion of indigenous peoples and expressing support to the Forum as an important venue for the promotion of dialogue.' (UN Permanent Forum on Indigenous Peoples Issues, 10th May 2012, New York. http://www.eu-un.europa.eu/articles/en/article_12163_en.htm).

human rights, including the rights of persons belonging to ethnic, cultural or religious minorities¹⁷⁸, and particularly in the context of combating discrimination; and highlight the EU's individual commitment—in line with the UNDRIP—to promote the rights of indigenous peoples worldwide¹⁷⁹, both in and outside the EU¹⁸⁰. Moreover, EU representatives have often recalled at the UN fora that the Union supports also the other fundamental instrument for indigenous peoples rights, ILO Convention No.169 :

We work with the UN Office of the High Commissioner for Human Rights to support the participation of indigenous peoples at UN events and meetings; and we support the International Labour Organization in its work for indigenous peoples, including that based on ILO Convention 169¹⁸¹.

and explicitly supports states' ratification and implementation:

This year—for the first time—the European Commission will launch a call for proposals specifically aiming to support the participation of indigenous peoples and their representatives in the work of mechanisms and procedures of the UN and other international and regional organizations, and to support activities aiming at the ratification and implementation of ILO Convention 169¹⁸².

To conclude, the EU has developed a strong commitment towards indigenous peoples based on *the indivisible, universal values of human dignity, freedom, equality and solidarity, the principles of democracy and the rule of law*. More specifically, EU work to support indigenous peoples is carried out within the framework of the two main international instruments for the rights of indigenous peoples, namely the UN Declaration on the Rights of Indigenous Peoples and the ILO 169, while, at the same time, the EU is also actively working to spread those values by promoting the ratification of the ILO Convention 169, which is legally binding, and encouraging the implementation of the UN Declaration on the Rights of Indigenous Peoples, which has been adopted by the UN General Assembly but is not legally binding. In line with these two international instruments, the EU has

¹⁷⁸ The European Union is founded on the values of respect for human dignity, equality and respect for human rights, including the rights of persons belonging to ethnic, cultural or religious minorities. The EU also supports the rights of indigenous peoples, as set out in the Declaration on the Rights of Indigenous Peoples' (EU Statement - United Nations 3rd Committee: Indigenous Issues, 18th October 2010, http://www.eu-un.europa.eu/articles/en/article_10226_en.htm).

¹⁷⁹ See e.g. 'The adoption of the UN Declaration on the Rights of Indigenous Peoples in 2007 advanced the rights and ensured the continued development of indigenous peoples around the world. In line with the Declaration, the European Union seeks to promote the rights of indigenous peoples throughout the world.' (EU Statement - United Nations 3rd Committee: Indigenous Issues, 17th October 2011 http://www.eu-un.europa.eu/articles/fr/article_11492_fr.htm).

¹⁸⁰ Today, on the International Day of the World's Indigenous People, the European Union and its Member States reaffirm their commitment to indigenous peoples both in and outside the EU (Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of the International Day of the World's Indigenous People on 9 August 2011 (http://www.eu-un.europa.eu/articles/en/article_11278_en.htm))

¹⁸¹ Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of the International Day of the World's Indigenous People on 9 August 2011, 09.08.2011)

¹⁸² EC Statement - Program of activities for the International Decade of the World's Indigenous People, 1995-2004, 22.10.2004. (http://www.eu-un.europa.eu/articles/en/article_4011_en.htm)

developed its own framework aimed ‘to increase indigenous peoples’ rights and capacity to control their own social, economic and cultural development, while enhancing territorial rights and capacity for sustainable management of biological resources’¹⁸³.

¹⁸³ EEAS, http://eeas.europa.eu/human_rights/ip/index_en.htm

The EU's Political Approach to the Arctic

Relevance of Arctic Indigenous Peoples

4.1. Introduction

The analysis of EU policies affecting Arctic indigenous peoples must be considered within the broader issue of the EU's political approach to the Arctic. The grounds for such a connection is not justified only by obvious geographical reasons; rather, here they are faced as inextricable and interrelated actions that have reciprocally influenced each other within the climate change framework, and together have contributed to outline the EU's overall role in the Arctic.

The analysis here focuses on the twofold relevance of Arctic indigenous peoples for the EU, namely how the issue has gained relevance in EU policies through its approach to the Arctic, and how this approach has been shaped and has been receiving impetus, at least politically, through Arctic indigenous peoples and related issues. This analysis, along with the following on concrete actions affecting Arctic indigenous peoples, will provide an understanding of the EU's overall role in regards to both Arctic indigenous peoples and their role within the Arctic Governance.

The EU's overall political approach to the Arctic is given by a set of distinct but complementary political actions toward the region. The gradual development of a standalone policy on Arctic issues that has spoken of the EU's willingness to have an active role in the Arctic region is of course at the ground of such an approach and where indigenous peoples'

twofold significance is more evident and relevant. As considered in this section, the process of a gradual formulation of an Arctic policy has taken place during the last five years, and is still in search of a definitive shape. Moreover, this explicit commitment toward Arctic issues has allowed a second reading of some antecedent EU actions in an Arctic tone, actually moving backward the starting point of EU commitment toward the region (see for instance the EP in 2010: “It builds on this trend by claiming that “there has been a longstanding engagement of the EU in the Arctic by way of its involvement in Northern Dimension policy, the Barents cooperation and bilateral cooperation”¹⁸⁴).

Further, the current lack of a body explicitly devoted to managing and discussing Arctic Governance as such has implicitly accorded to regional, bilateral and multilateral relations greater relevance, especially when Arctic shared issues are explicitly considered. The EU currently has bilateral relations with all the Arctic states, many of those include mentions to specific Arctic-relevant issues; further, it is also participating in some multilateral and regional initiatives partially devoted to Arctic issues.

The complex puzzle of the EU’s political approach to the Arctic is here described following a chronological order to better underline the most relevant steps in the EU and Arctic indigenous peoples’ relations.

4.2. Northern Dimension

Northern issues and indigenous peoples became a direct concern for the Union upon the accession of Finland and Sweden in 1995. The “northern” enlargement, in fact, not only brought the EU as many members around the Baltic as border the Mediterranean¹⁸⁵, but also the first—and so far last—indigenous population living within the EU’s borders, the Saami. On the other side, with 1,300 more km of shared borders¹⁸⁶ the new enlargement put the Union even closer to the Russian Federation. Therefore, despite the EU’s traditional focus southward, the two Baltic States tried to get the whole of the EU involved and interested in Northern issues since their entry. Finland in fact proposed a multi-dimensional and multilateral policy to serve, *inter alia*, as an instrument to foster cooperation with Russia and other Nordic countries while dealing with specific “northern” issues. A need to develop a comprehensive framework aimed

¹⁸⁴ EP resolution, 2010:5.

¹⁸⁵ Wallace, 2000:476-477.

¹⁸⁶ Ministry for Foreign Affairs for Finland, 2012:4.

at dealing with this new view angle on the Baltic and Northern Europe arises early, and a proposal for a Northern Dimension (hereinafter ND) Policy was first inserted into the EU agenda in 1997, following the Finnish proposal¹⁸⁷. A first ND Action Plan for the years 2001-2003 was launched in 2000, after the European Council endorsed the concept in 1999¹⁸⁸ and renewed for the period 2004-2006. The most concrete actions in the two initial Action Plans was the establishment of two out of four partnerships aimed at implementing the ND objectives, the Northern Dimension Environmental Partnership (NDEP) and the Northern Dimension Public Health and Social Well-being (NDPHS) Partnerships. This framework had the additional advantage of having fostered a broader Nordic collaboration, especially with Canada, which has actively participated for instance in the NDEP and the NDHSP, while an ad hoc platform has been devoted to exploring areas of shared interests. However, the ND Policy and the the Canadian Northern Dimension Foreign Policy (hereinafter NDFP) highly differ on the conceptualisation of “North”. Whether the Canadians focused their NDFP on their understanding of “North”, e.g. the circumpolar areas and the Arctic regions, the EU and its partners’ NDAP the geographical scope rotates around Russia and the Baltic Sea¹⁸⁹.

The EU and partners saw in their ND a geographical scope different from the Canadian one, but also an opportunity to include more Arctic-tailored objectives. The possibility of an Arctic Window was put forward since the beginning, but was mostly ignored¹⁹⁰; it become more concrete only during the 2nd ND.

The four partners—the EU, Russia, Norway and Iceland—launched a renewed commitment at the Helsinki Summit in 2006, adopting the ND Political Declaration and the ND Policy Framework Document. Whether the new ND has enforced the focus on the EU-Russia relation, linking the ND with the EU-Russia “four common spaces” it also tried “focusing on issues of specific relevance in the North, such as the fragile environment, health and social issues and indigenous peoples’ issues”¹⁹¹.

¹⁸⁷ In September 1997 the Prime Minister of Finland, Paavo Lipponen, gave a speech at the Barents-Euro Council in Rovaniemi, introducing the concept of an EU policy for Northern Dimension. Late in December of the same year, the European Council called on the Commission to submit a Report on the subject. (The Northern Dimension, a Finnish Perspective, 2006)

¹⁸⁸ cf Airoldi, 2008

¹⁸⁹ cf. Aalto et al (eds), 2008.

¹⁹⁰ cf. Airoldi 2008; Clive Archer for GeoPolitics in the High North-line, “Arctic Strategy Documents- The European Union and the Arctic Region” at http://www.geopoliticsnorth.org/index.php?option=com_content&view=article&id=84&limitstart=5

¹⁹¹ Political declaration on the Northern Dimension Policy, 2006 (http://ccas.europa.eu/north_dim/docs/nd_political_declaration_2006_en.pdf)

The renewed ND is an external and cross-border policy framework between the EU and Russia, Norway and Iceland, aimed “at providing a common framework for the promotion of dialogue and concrete cooperation, strengthening stability, wellbeing and intensified economic cooperation, promotion of economic integration and competitiveness and sustainable development in Northern Europe”¹⁹².

Besides focusing on the Baltic region and the EU’s relation with Russia, the geographical scope of the NDAP is broad and highly flexible: along with the Baltic region and the European Northernmost areas, it involves all the surrounding Nordic-east countries and the Northwest part of Russia, Iceland and Greenland. The multi-layered scopes of the NDAP are implemented through four thematic partnerships:

- Environment (NDEP)
- Public Health and Social Well-being (NDPHS)
- Transport and Logistic (NDPTL)
- Culture (NDPC)

to which an ND Institute (NDI) and ND Business Council (NDBC) have been added to involve both academia and the business community in ND work.

References in the ND to the Arctic have been always sporadic and secondary, to advantage the Baltic and Northwest Russian areas. The last ND has tried to involve the Arctic in a more concrete manner, but it seems to not have developed into anything more concrete, probably because, *inter alia*, of the decision to focus on an Arctic Policy.

Notably, the early proposal of 1999 for an Arctic window “made a reference to the fact that “an Arctic Window would also increase attention to Arctic indigenous peoples in the Northern Dimension co-operation”¹⁹³.

Furthermore, the 2nd Action Plan contains the first enunciation of the concept—reiterated in all the process of formulation of an EU Arctic Policy—of the necessity to involve local populations and indigenous peoples in all the decision-making processes at all levels.

Besides many concerns expressed about whether the 2nd NDAP, and its Arctic Window had real influence on Northern issues, the ND has been continuously recalled in the EU’s Arctic policy documents as a highly pertinent and natural foreword to the development of an standalone Arctic policy. Furthermore, as stressed by some scholars, the ND has been considered the most

¹⁹² Northern Dimension Policy Framework Document, 2005 (http://ceas.europa.eu/north_dim/docs/nd_framework_document_2006_en.pdf)

¹⁹³ Airolidi, 2008:19

specific policy regarding the Arctic¹⁹⁴ before the development of the debate on establishing a self-standing one. The growing relevance of Arctic issues however, drove the EU to make a distinction between the High North, as dealt with in the ND and Baltic-focused policies, and the Arctic as such, proposing the idea to develop a standalone policy:

[the EP] Welcomes the fact that the 'High North' forms part of the EU's Northern Dimension policy, but is convinced that awareness of the Arctic's importance in a global context needs to be raised further by delivering a standalone EU Arctic policy¹⁹⁵.

4.3. Brief Background

Over the last decades EU interests were mostly embedded within its Trans-Atlantic and inter-Mediterranean relations¹⁹⁶. A completely new set of issues and interests, as described above, were brought by the accession of Sweden and Finland in 1995. In the meanwhile, the overall picture draft by the ACIA reports¹⁹⁷ about the foreseeable changes the Arctic region would undergo in a near future, started instilling some tensions among the circumpolar states and the EU. Many events took place in the high North; some of that, besides bearing nothing but a symbolic value, were read into destabilizing actions; while, great attention was given to the still unsolved disputes¹⁹⁸ regarding border delimitations in the Arctic. The events having received more echoes as attempts to establish new claims over the Arctic region were the Russia expedition to the North Pole and the Ilulissat meeting in 2008. In 2007, Russia, as part of the International Polar year 2007-2008 research program, planted its flag on the Ocean bottom in correspondence with the geographical North Pole point. The event ended up having “a political and propagandistic effect rather than a scientific and practical one”¹⁹⁹, provoking harsh reactions especially among the other Arctic states. However, it should be noted again that this action bears no legal value in regard to sovereignty claims. On the other hand and partially related with the Russian expedition, in the spring of 2008, Russia, Norway,

¹⁹⁴Cf. Despite this clear focus on the areas close to Russia, the Northern Dimension of the external policy was, prior to the Arctic Communication, the most specific policy regarding the Arctic, with the protection of Arctic ecosystems as one of the Northern dimension's priority sectors. Although the Northern Dimension policy is also intended to be a frame of reference for intensified transatlantic co-operation, transatlantic policy does not appear to play a major role (Best at al., 2009)

¹⁹⁵ EP Resolution on Arctic Governance

¹⁹⁶ Catellani, 2003: 3.

¹⁹⁷ ACIA 2004 and ACIA 2005.

¹⁹⁸ The main ongoing disputes regarding state border delimitations in the Arctic are: Russia vs USA on delimitations in the Bering Sea, Norway about Svalbard and related EEZs status, Canada vs Denmark (on behalf of Greenland) over Hans Island in the Kennedy Channel; Russia, Denmark (on behalf of Greenland) and Canada over the Lomonosov Ridge, the USA and Canada on the Northwest Passage.

¹⁹⁹ Alexandrov, 2009:112.

Denmark (on behalf of Greenland), Canada and the USA, (hereinafter “A5 countries”) on the ground of being the only states having shorelines on the Arctic Ocean, met in Ilulissat to discuss climate changes and resources development in relation with the Arctic Ocean. Surprisingly, the other members of the Arctic Council—already considered the symbol of the Arctic cooperation—were not involved in this initiative.

The EU, for its part, started embedding those tensions as security concerns. The core issue distressing the EU, highly dependent on energy-import, was the potential conflict over Arctic resources. In February 2008, the EU High Representative for the Foreign Common and Security Policy gave a speech on “The External Energy Policy of the European Union”²⁰⁰ in which the relations between the EU, Arctic, climate change and energy started arising. Having acknowledged the already mentioned events as first omens of plausible future conflicts over resources and having recognized the importance for the EU to have Energy security through and in its foreign policy, the High Representative shared its worries about a potential “conflict with Russia over Arctic energy resources”²⁰¹. According to this speech, the Arctic was perceived as a resources-rich region with a high conflict potential²⁰². Those concerns were reaffirmed in the following Paper on Climate Change and International Security, issued by the High Representative and the EU Commission to the European Council on March 2008²⁰³. The paper, considered the distinct threats²⁰⁴ posed by climate change effects, while recalling the EU commitment in fighting these effects, more closely analysed the Arctic situation. It considered that the growing accessibility to key natural resources and the opening of new waterways, as main consequences of the effects of climate change in the region, had increased the international geopolitical attention toward the Arctic, which may “challenge Europe's ability to effectively secure its trade and resource interests in the region and may put pressure on its relations with key partners”²⁰⁵. Enhancing capacities at the EU level, and EU multilateral leadership to promote global climate security and Cooperation with third countries

²⁰⁰ *The External Energy Policy of the European Union* - Speech by EU HR Javier Solana at the Annual Conference of the French Institute of International Relations (IFRI)1/2/2008 (English) - Nr: S042/08 (http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/discours/98532.pdf)

²⁰¹ Alexandrov, 2009:114.

²⁰² Alexandrov, 2009:112.

²⁰³ *Climate Change And International Security* Paper from the High Representative and the European Commission to the European Council, 14 March 2008 (English) – Nr: S113/08

²⁰⁴ The main threats pinpointed by the paper concern: conflicts over resources, Economic damage and risk to coastal cities and critical infrastructure, Loss of territory and border disputes, Environmentallyinduced migration, Situations of fragility and radicalization, Tension over energy supply and Pressure on international governance (S113/08)

²⁰⁵ *Climate Change And International Security* Paper from the High Representative and the European Commission to the European Council, 14 March 2008 (English) – Nr: S113/08, p. 8.

were the suggestions provided among the conclusions. Notably, within the latter field, the High Representative and the Commission asked “to develop an EU Arctic policy based on the evolving geo-strategy of the Arctic region, taking into account i.a. access to resources and the opening of new trade routes²⁰⁶”.

Later in August 2008, the EP representatives along with the elected representatives of the Arctic states and with the collaboration of Arctic indigenous peoples met in Fairbanks for the Eighth Conference of the Parliamentarian of the Arctic Region (hereinafter the ‘Eight Conference’) to discuss maritime policy, human health, renewable energy, and adaptation to climate change in the Arctic region. In the promotion of the Eight Conference’s objectives—as reported in the Statement (Fairbanks Statement)²⁰⁷—the EU was considered to be among the group of Arctic States bearing almost an equivalent role, and together were encouraged, involving their parliaments, to work further on the development of an Arctic agenda while being the spokespersons for its promotion in the international arena²⁰⁸. Furthermore, having acknowledged the intention of the European Commission to release a Communication on Arctic Policy in the autumn 2008²⁰⁹, the EU was involved in the role of promoting, along with the Arctic states, the Fairbanks Statement within the developments of the respective Arctic policies²¹⁰. On the other side, indigenous peoples, beside having had an overall active role as collaborators in outlining the main goals, were inserted within the Conference’s calls both as subjects, namely they were asked to have an active role in achieving some of the Conference’s objectives, and as part of the objectives, namely the Arctic states and EU were required to support indigenous peoples in many related activities.

Regarding human health in the Arctic, the Representatives asked States, regions and indigenous peoples to work together in finding the best practices to prevent alcoholism, drug abuse and suicides; further, they implicitly considered those problems as related both with the Arctic inhabitants and with indigenous peoples: indeed they asked to place the issue both in the UN Permanent Forum on Indigenous Issues and the World Health Organisation²¹¹. Further, regarding

²⁰⁶ *Climate Change And International Security* Paper from the High Representative and the European Commission to the European Council, 14 March 2008 (English) – Nr: S113/08, p.11

²⁰⁷ Statement from the Eighth Conference of Parliamentarians of the Arctic Region (12-14 August 2008)(Fairbanks Statement) is available at <http://www.arcticparl.org/conferences.aspx?id=2973>.

²⁰⁸ Fairbanks Statement, 2008 point 31.

²⁰⁹ Fairbanks Statement, 2008 point 29.

²¹⁰ Fairbanks Statement, 2008 point 28.

²¹¹ Fairbanks Statement, 2008, Points 4 and 6.

Climate Change adaptation, the participants were asked to support and integrate the summing reports from the “Indigenous Peoples Global Summit on Climate Change”²¹².

Along with indigenous peoples-related actions, the Conference, both in selecting the issues to deal with and in giving the imprinting of what to focus on, contained many elements dealt in the following developments of the European debate on Arctic issues. Regarding human health, attention was given to health preparedness in dealing with the sparsely populated areas in the Arctic and to the twofold effect (both negative and positive) of climate change²¹³. The second broad topic focused on the development of an Arctic maritime policy for safety at sea, highlighting the issues of pollution, safety (including search and rescue in case of accidents), technology and responsible management with special emphasis on the role of the Arctic Council’s Arctic Marine Shipping Assessment and the IMO’s guidelines. Regarding climate change, the Conference’s attitude was rather submissive and acknowledged again the ambivalence of its effects, and thus asked to bring international attention to both the fight against climate change and preparedness of Arctic states in dealing with new opportunities. Finally, as regards energy, the Conference focused on research development on renewable sources and environmental challenges.

As final considerations, the Conference, having underlined the relevance of the growing geopolitical and strategic importance of the Arctic, “asked to continue the discussion on legal regimes that impact the Arctic²¹⁴”. The preferential forum seemed to be again the Arctic Council, since it was asked to promote in particular ideas to strengthen the Council’s legal and economic base²¹⁵.

4.4. EU’s Documents on Arctic issues 2008-2013: Main Development

4.4.1. First Stage : EP Resolution on Arctic Governance, the Commission Communication on the European Union and the Arctic Region and the Council Conclusions

As often recalled by scholars, security implications related to climate change drove the EU’s first decision to develop an Arctic Policy²¹⁶. These worries in fact, along with the outcomes from the

²¹² Fairbanks Statement, 2008, point 17.

²¹³ Fairbanks Statement, 2008, point 31, points 2 and 7.

²¹⁴ Fairbanks Statement, 2008, points 32 and 36.

²¹⁵ Fairbanks Statement, 2008, point 32.

²¹⁶ cf. Offerdal 2011

Blue Book²¹⁷ and the Fairbanks Conference²¹⁸ were clearly reflected in the first resolution on Arctic Governance adopted by the EP on 9 October 2008. The EP, answering the call from the Conference to make parliaments play a proactive role on Arctic matters, forestalled the awaited Communication on Arctic Policy from the EU Commission, and called for the development of an EU Arctic Policy. This first communication by the EU explicitly dealing with Arctic governance, behind bearing no formal and legal value, approached the Arctic question justified both by security issues²¹⁹ and environmental and social concerns related to the effects of climate change.

The EP called on the Commission “to include an energy and security policy in the Arctic along with suitable subjects and working procedure in the fields of climate change, sustainable development, security of energy supply and maritime safety”²²⁰, and especially the latter was continuously remarked upon. The EP, in fact, while having underlined the relevance of the Arctic region in the external aspects of EU energy policy—as already recalled in the Energy Policy for Europe issued by the Council in 2007 (point 11)—warned about the *ongoing* race for natural resources in the region as the major source of security threats and international instability.

Despite this high security-oriented setting, indigenous peoples’ issues were considered as being a high connotative matter. Specifically, it should be noted that—besides having been mentioned at the first point of the Resolution, which *per se* gave a key relevance to the concept—general environment and natural habitat issues were subordinated to the concern for sustainability of the lives of the indigenous peoples:

1. [the EP] Is deeply concerned at the effects of climate change *on the sustainability of the lives of the indigenous peoples in the region*, in terms of both the general environment (melting icecap and permafrost, rising sea levels and flooding) and the natural habitat (the retreating icecap poses problems for polar bears’ feeding habits), and underlines that any international decisions relating to these issues *must fully involve and take account of all peoples and nations of the Arctic* [emphasis added].²²¹

The EP thus considered that climate change, besides being central in regard to such harsh implications for security matters, had to be dealt with in respect of the effects it was having *on the sustainability of the lives of the indigenous peoples in the region*, especially in terms of both general

²¹⁷ Blue Book refers to the EU Commission’s vision for an Integrated Maritime Policy for the EU released in October 2007. It was accompanied by a detailed Action Plan, an impact assessment and a report on outcomes of stakeholders consultation. [see EU Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Region *An integrated Maritime Policy for the European Union*, Brussels 10th October 2007, [COM (2007) 574 Final.]].

²¹⁸ The EP Resolution recalled also: the International Polar Year (2007-2008), the four Resolutions on ND, the ACIA Report .

²¹⁹ Offerdal, 2011:863.

²²⁰ 2008 EP resolution.

²²¹ 2008 EP resolution.

environment and natural habitat. This link was further specified through an explicit mention of the Inuit current situation:

[..] the changes in climatic conditions in the Arctic are already such that the Inuit people, for example, can no longer hunt in the traditional manner (sustainability) as the ice is too thin (general environmental issue) to hold their sleds, while wildlife such as polar bears, walruses and foxes are in danger of seeing much of their habitats disappear (natural habitat issue)²²².

In the EP's view, a framework capable of dealing concretely with those threats and changes would have required an international answer. This concept, besides only being mentioned here, has been often remarked by the Union, which main actions and concerns has been traditionally anchored to limiting the effect of climate changes. Indeed the Union, while having given high visibility of its individual achievement in this field, for instance in the reduction of greenhouse gas emissions, has always been conscious of the need for international co-operation to concretely tackle those effects. However, in this passage, it is important to note that the Union, on the ground that climate change effects in the Arctic specifically affect sustainability of lives of indigenous peoples, asked for a full involvement of all peoples and Nations of the Arctic.

On this ground the EP developed a core need for the EU's individual action to respect indigenous peoples and their livelihoods, which relevance was further underlined by the suggestion to include it among the driving concepts for an EU Arctic policy. More specifically, the EP called on the Commission to include four fundamental²²³ issues in the selection of the most appropriate policy for the Arctic:

- a) the state of play in relation to climate change, and adaptation to it, in the region;
- b) policy options that respect the indigenous populations and their livelihoods;
- c) the need to cooperate with our Arctic neighbors on cross-border issues, in particular maritime safety; and
- d) options for a future cross-border political or legal structure that could provide for the environmental protection and sustainable orderly development of the region or mediate political disagreement over resources and navigable waterways in the High North

As visible in these four concepts, this first communication briefly introduced another concept that became central in the following developments of the debate on an Arctic policy, namely the relevance of enhancing Arctic governance. The issue was first considered by the EP as

²²² 2008 EP resolution on Arctic Governance.

²²³ Within the resolution, the EP did not use the term "fundamental" in regard to the selected issues suggested for inclusion in the Commission's Communication; however, the great relevance accorded can be deduced by the text that "calls on the Commission to address, *at least*, the following issues in its communication"(EP Resolution on Arctic Governance, point 7; emphasis added).

specifically relevant for the protection of the environment and the maintenance of the Arctic as a low-tensions region. The latter was considered within the support expressed for the work of the Arctic Council along with the promotion of international cooperation in the field of research.

Important to note, the EP suggested the Commission to be prepared to pursue the opening of international negotiations for the adoption of an international treaty for the protection of the Arctic inspired by the Antarctic treaty²²⁴. This suggestion, which is *inter alia* “widely quoted and often incorrectly interpreted as an expression of the political will of the EU as such”²²⁵, was re-proposed in 2009 by a joint motion for a resolution on the international treaty for the protection of the Arctic²²⁶ by different EP groups, but “in the face of significant opposition from the commission and some member-states, was eventually abandoned”²²⁷.

The awaited communication by the EU Commission was eventually submitted to the EP and the Council in November 2008. The Commission considered as an *imperative*²²⁸ for the EU to address in a *coordinated and systematic manner* in cooperation with Arctic States, territories and other stakeholders, the multiplier threats posed by climate change. Whether the security implications related to the shifting of the geo-strategic dynamics in the Arctic were again the ground for the Commission’s decision to share the EP’s view on the need for the development of an EU’s own Arctic Policy, the Commission’s proposal for action was grounded on the three main policy objectives:

- *Protecting and preserving the Arctic in unison with its population*
- *Promoting sustainable use of resources*
- *Contributing to enhancement of governance in the Arctic*

²²⁴cf. “ that the Commission should be prepared to pursue the opening of international negotiations designed to lead to the adoption of an international treaty for the protection of the Arctic, having as its inspiration the Antarctic Treaty, as supplemented by the Madrid Protocol signed in 1991, but respecting the fundamental difference represented by the populated nature of the Arctic and the consequent rights and needs of the peoples and nations of the Arctic region; [believes], however, that as a minimum starting-point such a treaty could at least cover the unpopulated and unclaimed area at the centre of the Arctic Ocean”

²²⁵ Airolti 2008:20.

²²⁶ EP joint motion for a resolution on the international treaty for the protection of the Arctic, Session Document, 30.3.2009.

²²⁷ Weber and Romanyshyn, 2011:855.

²²⁸ cf. “It is imperative for the European Union to address them in a coordinated and systematic manner, in cooperation with Arctic states, territories and other stakeholders” 2008 Commission communication, p.3.

The individuation of these three priority areas has been a milestone in the following development of an EU Arctic policy; in fact, they still are the main EU core objectives in the region (with few changes on the third point). Further, the recognition of these three concepts as main policy objectives may be seen as the initial step for a constant and difficult research by the EU to fully understand and define its responsibilities (protection of the environment in unison with its population), interests (sustainable development) and way to accomplish them (enhance governance in the Arctic) in the region. Regarding the first of the policy objectives, the Commission recalled three main frameworks with high and previous relevance for the EU, namely environment, indigenous peoples and research. For each of these areas, the Commission outlined the consistent commitment and the key achievements already developed in the fields of environment, indigenous peoples' rights and research in order to set the connection with the Arctic areas. With respect to environment, the question of MS activities' footprints in the Arctic was developed simultaneously with a mention of EU actions aimed at fighting climate change and supporting sustainable development, confirmed, *inter alia*, by recalling the legal obligations deriving by international agreements which both EU and MSs are part of. On this ground, the Commission considered several proposals to shape the effectiveness of EU policies and environmental agreements on Arctic needs. The same approach was proposed with respect to indigenous peoples, since they are particularly affected by the environmental changes related to climate change. The Commission recalled the foregoing special measures that were already in place within the EU's framework to protect and provide financial support for indigenous peoples and their rights (the Commission recalled Protocol 3 of the Act of Accession of Sweden and Finland, EU development policy, EU regional policy, EIDHR). This topic has been further developed in the next paragraph, however here, it is important to note that the Commission confirmed the will of involving indigenous peoples' rights in a *regular* dialogue, a concept that was not that explicit in the Parliamentary resolution (compare: [the EP] *underlines that any international decisions relating to these issues must fully involve and take account of all peoples and nations of the Arctic*).

The third issue related to the protection of the environment, e.g. research, was considered as fundamental for a proper understanding of the Arctic and thus the ground upon which policy responses can be built. After a brief mention of the leading role of the Arctic Council in research programs devoted to the Arctic, the Commission again recalled the consistent and previous commitment in the issue, as (both the EU and MSs) major contributors to the Arctic research, and the crescent interest of Arctic issues within the Seventh Framework Program (hereinafter FP7).

The second point of the Communication more closely concerned the interests of the EU in the region, even though a little diluted into environmental concerns and thus not often very clear. Economic possibilities derived by an increased accessibility were highlighted even if with the consciousness of challenges and costs posed by the process. Four main areas directly drove the EU's interest in sustainable development in the Arctic, namely, hydrocarbon, fisheries, transport and tourism.

The focus on hydrocarbon was put on the possibility to enhance EU security of supply in regard to energy and raw materials in the future, while the relevance of fisheries at the time (and still now) was considered a potential related to the effects of climate changes, rather than a concrete and significant mainstream activity. Fisheries and related activities, however, have an indirect relevance for the EU, since the Union imports and consumes most of the total Arctic catch²²⁹. Transport and tourism objectives almost overlap, as the latter was mainly considered in terms of cruise ships. The EU has always demonstrated its core interests in developing an Arctic commercial navigation, as confirmed by the parallel development, almost in the same documents, of an Arctic policy and the proposal for an Integrated Maritime Policy, and further underlined by the choice to allocate most of the Arctic policy information within the framework of Maritimes and Fisheries affairs. All those four interests in the region are fully embedded in environmental consideration:

- Hydrocarbons: *Support for the exploitation of Arctic hydrocarbon resources should be provided in full respect of strict environmental standards taking into account the particular vulnerability of the Arctic*
- Fisheries: *The EU's main objective is to ensure exploitation of Arctic fisheries resources at sustainable levels whilst respecting the rights of local coastal communities*
- Transport: *It is in the EU's interest to explore and improve conditions for gradually introducing Arctic commercial navigation, while promoting stricter safety and environmental standards as well as avoiding detrimental effects*
- Tourism: *The EU should continue to support sustainable Arctic tourism, welcoming the efforts made to minimise its environmental footprint. Protection of the environment and benefits to local coastal communities should be primary considerations.*

The third and last of the policy objectives, namely *contributing to enhancement of governance in the Arctic*, was at the time still highly determined by threats to the stability of

²²⁹ cf. Chapter 5 of this study, "5.2.7 Common Fishery Policy".

the Region, a list of which opened the paragraph²³⁰. As a constant throughout the entire process of a gradual formulation of an EU Arctic Policy, key relevance was accorded to the existing legal frameworks. Indeed, the Commission recalled the UNCLOS (both for settlement of dispute and environmental provisions) as the proper legal framework and to the Arctic Council, as a successful actor *in preparing assessments, developing a regional identity and setting the Arctic agenda*. The EU's vision of cooperative Arctic governance includes as main goals:

- *security and stability*
- *strict environmental management, including respect of the precautionary principle*
- *sustainable use of resources as well as open and equitable access*

A note could probably be that the last point should have been formulated in a better way in order to not raise sovereignty concerns.

Besides this, the conclusions were rather general, having focused on the establishment of the *right balance between the priority goal of preserving the Arctic environment and the need for sustainable use of resources*, the communication provided enough elements to develop a more detailed reflection for a development of both an EU Arctic Policy and an Integrated Maritime Policy.

In December 2008, Draft Council Conclusions on the European Union and the Arctic Region were released, providing a first and provisory favorable opinion for the Development of an Arctic Policy of the third and last institution of the EU's decision-making triangle. Moreover, the Council took a step further, and, behind sharing the issues merged by the previous documents, considered the Commission's Communication as the first layer for an EU Arctic Policy. The Council also accorded great relevance of the 2008 Commission Communication for the contribution to the implementation of an Integrated Maritime Policy of the EU. The Draft Conclusion, on the ground that the whole of the EU could be affected by the repercussions of climate change effects in the Arctic, provided its favorable opinion to

²³⁰ "There is no specific treaty regime for the Arctic. No country or group of countries have sovereignty over the North Pole or the Arctic Ocean around it. There are several maritime borders where Arctic coastal states have not agreed upon the delimitation of Continental Shelf. Submissions to the UN Commission on the Limits of the Continental Shelf may result in overlapping claims. Moreover, there are different interpretations of the conditions for passage of ships in some Arctic waters, especially in the Northwest Passage" (Commission communication 2008, p. 9)

address those challenges in the relevant policy areas²³¹, including the protection of the livelihood of indigenous peoples, while preserving the Arctic in unison with its population. An Arctic multilateral cooperation with Arctic countries, territories and communities was considered as fundamental in order to achieve the EU's goals in the region, especially with respect to climate change.

The Council took one entire year to release its final conclusions. A more cautious approach emerges since the first reading, and seems, *inter alia*, to postpone further the ultimate formulation of a policy on Arctic issues through having underlined the consciousness of the need for further work and the gradual formulation of the approach (instead of policy).

The densest sentence is most probably the first one, where the Council “welcomes the gradual formulation of a policy on Arctic issues to address EU interests and responsibilities, while recognizing Member States’ legitimate interests and rights in the Arctic”²³². Notably, beyond the already mentioned enunciation of a “gradual formulation”, the Council has stressed the dichotomy of EU’ interests and responsibilities underlining again the difficult task, merged since the first EP Resolution, of balancing (economic) interest and environmental scopes—the latter now defined as *responsibilities*. As regard the legitimacy of interests and rights, it would be logical to refer to the special position of the MSs with Arctic territories, e.g. Sweden and Finland²³³ [and via Arctic MSs extendable to all MSs], however it could also be read as an implicit recall of rights and duties listed within the UNCLOS, and thus referring, for instance to the freedom of navigation, the rights of innocent passage or transit passage [and thus regardless of Sweden and Finland’s special position]. This latter consideration may be confirmed by the 16th point of the document:

16. With respect to the gradual opening, in the years to come, of trans-oceanic Arctic routes for shipping and navigation, the Council reiterates the rights and obligations for flag, port and coastal states provided for in international law, including UNCLOS, in relation to freedom of navigation, the right of innocent passage and transit passage, and will monitor their observance.

In the Council’s view, the core ground for an EU policy on Arctic issues should be based on:

- Effective implementation by the international community of adequate measures to mitigate climate change that are required to preserve the unique characteristics of the Arctic region;
- Reinforced multilateral governance through strengthening and consistent implementation of relevant

²³¹ cf “in areas such as environment, biodiversity, climate change, chemicals, maritime affairs, energy, research and observation, fisheries and transport, as well as the protection of the livelihood of indigenous peoples.” (Council Draft Conclusion 2008).

²³² cf. Airoldi, 2011:22

²³³ cf Airoldi, 2011: 35.

international, regional and bilateral agreements, frameworks and arrangements;

- The United Nations Convention on the Law of the Sea (UNCLOS) and other relevant international instruments;
- Formulating and implementing EU actions and policies that have an impact on the Arctic with respect for its unique characteristics, in particular the sensitivities of ecosystems and their biodiversity as well as the needs and rights of Arctic residents, including the indigenous peoples;
- Maintaining the Arctic as an area of peace and stability and highlighting the need for responsible, sustainable and cautious action in view of new possibilities for transport, natural resource extraction and other entrepreneurial activities linked to melting sea ice and other climate change effects.

As clearly emerges, no relevant changes have been brought in respect of the previous documents; on the contrary, the Council also recalled and confirmed the Commission's objectives, but this time with the consciousness of the need for further work.

The text followed with a long list of useful suggestions and proposals inherent to the relevant policy areas affecting the Arctic. Large-scale effort has been devoted to suggestions relative to the parallel development of an integrated Maritime policy, the role of the IMO, and of course, of UNCLOS. The Council particularly stressed the relevance to be accorded the existing legal and political framework, a foregoing attitude that has characterized all the EU institutions so far.

The Council concluded calling on the Commission and the MSs to examine the proposal to establish an Arctic Information Center in Finland and again on the Commission to present a report on progress by June 2011.

4.4.2 Second Stage: The EP Resolution on a sustainable Development for the High North and the 2012 Commission communication

Despite the EP entitling the resolution "Sustainable EU policy for the High North" specifically avoiding the term *Arctic*, this document holds a key relevance in defining EP's priority interest in the Arctic region. More specifically, this EP Resolution is the most detailed document regarding EU interest in the Arctic so far.

The EP acknowledged the progress in the development of the Policy considering the Communication by the Commission and the Council Conclusions formal steps for the formulation of an Arctic Policy, as first proposed by the Council in 2008.

The EP considered in the preamble of the resolution an unusually long list of references, from the UNCLOS to the UNDRIP 2007, and advanced many considerations aimed at reaffirming and clearing out some of the issues already raised in the previous EU Arctic-related documents. Then it structures the resolution as follows: first, the EP reiterates the grounds for EU action in the region, but considered under distinct perspectives (under the title "EU and the Arctic", 1-8). The second

overall theme regards the EU's interest in the new world transport routes (9-14). As a third theme, the EP dealt with natural resources (15-23). Special mention was given to climate change and pollution effects on the Arctic (24-30). A section was devoted to sustainable development (31-41) and eventually governance (42-55). The most relevant elements of the documents are here recalled as follows (with some commentaries) :

- *Territorial perspective*: The EP recalled in the Preamble that Denmark, Finland and Sweden are Arctic Countries, and both Finland and Sweden are partially located within the Arctic Circle, reiterated later in the first point “[the EP] *Recalls that three EU Member States—Denmark, Finland and Sweden—are Arctic States*. Interesting to note, the EP, in reminding us that the EU has large Arctic land areas in Finland and Sweden, stressed that they are inhabited by the only indigenous population group in Europe²³⁴, the Saami.

Notably, the EP has considered only the two Baltic States as partially located within the Arctic, but not Greenland, that withdrew from the Union in 1985. Precisely because this is correct, this sentence may raise a thorny question: what does the justification to consider Denmark an Arctic state thus rely on? Being an Arctic state and being an Arctic Council member in the specific case of Denmark should be not used as synonymous.

Furthermore, it was considered the position of Iceland, already bound to the Union via EEA and whose probable accession would provide an even more urgent need to coordinate Arctic issues (*an increased need for the EU to take account of the Arctic region in its [Icelandic] geopolitical perspective*) and enhance multilateral Arctic Governance via Arctic Council (with Iceland, the EU's AC members may be four out of eight; with Norway as an EEA it would be five out of eight). Once explicitly acknowledged that the EU has no Arctic Ocean coastlines so far, the EP foresaw the possibility to turn the EU into an Arctic Coastal entity via Iceland. This point however may be considered as erroneous or way too optimistic²³⁵. A brief mention was accorded also to Norway, bound to the Union via EEA, as a valuable partner especially in the ND.

²³⁴ Whether the Saami are the only indigenous peoples living within EU's borders, that does not hold true in regards of Europe. For example, Crimean Tatars homeland is in Crimea, Ukraine, and they currently live in different areas straddle Europe and Asia (cf. “The original home of the Crimean Tatars was the Crimean Peninsula. They were deported from the region by the Soviet central authorities in 1944. The deported Crimean Tatars resettled mainly in Uzbekistan, in some areas of Tadzhikistan and also in the Ukraine, Georgia and Azerbaijan. Beyond the ex-Soviet borders there are some Crimean Tatars in Romania and Turkey”, form “The Crimean Tatar”, The Red Book of the Peoples of the Russian Empire online (The Red Book of the Peoples of the Russian Empire, NGO Red Book, published in Estonian in 1991 and English in 2001, ISBN 9985-936922) now available only on-line at <http://www.eki.ee/books/redbook/index1.shtml>)

²³⁵ Geographically speaking, Iceland barely touches either the Polar Circle (only one little island called Grimsey is located farther north than the 66°33') or the Arctic Ocean. Politically speaking, which is probably the meaning given by the EP, the mention recalls the “A5 countries” (USA via Alaska, Canada, Denmark via Greenland, Russia and Norway), which notably did not involved Iceland. Iceland behind having strongly reacted against its exclusion, is currently struggling to demonstrate its legitimacy to be part of the A5. Thus, the EP's view as becoming an Arctic Coastal entity via Iceland is either erroneous or too optimistic.

The EP thus made it clear, for the first time, how the EU and the Arctic mutually affect each other via EU Northern Member states and candidate countries²³⁶: *the EU is affected by Arctic Policies and likewise has an impact on Arctic policies*. The reference to the EU's competences is cleared by the followed point which underlines that certain policies that are relevant to the Arctic are exclusive EU competences²³⁷, while others are shared with its MSs.

- *Foregoing and longstanding political engagement in the Arctic*. The EP recalled several times the EU's longstanding political engagement via ND. Beyond the ND being here defined as a focal point for regional cooperation in Northern Europe with the partnership of Russia, Norway and Iceland, the EP made it clear that it holds a specific Arctic window.

- *Relevance of the existing framework*: The EP gave strong emphasis to the recognition of the existing international, multilateral and bilateral legal frameworks as valuable and relevant for the Arctic (e.g. UNCLOS as a comprehensive set of rules). The EP in fact, besides welcoming the work of the IMO for a mandatory Polar Code for shipping in the Arctic waters, considered that in spite of that effort a faster solution for safety in the Arctic shipping might be found through coordination and harmonisation of national legislation.

- *Non-renewable resources*: The EP recalled that more than a fifth of the world's hydrocarbons may lie beneath the Arctic region, although more accurate research should establish the exact quantities. It further recalled the possibilities for oil and gas extractions (amount to be further investigated) but also minerals, forests, fish, and pristine landscapes for tourism.

- *Crescent geopolitical interest on resources*, The EP returned to using old-fashioned terminology and reminded us that an increased accessibility to the region, fostered by the crescent effects of climate change, are currently drawing global attention, for instance in China and South Korea. On the other side, the EP introduced a concrete possibility for the Union to explore and exploit non-renewable resources in Greenland and its continental shelf, via the renewed Partnership Agreements.

- *Legitimacy of interests*: the EP interpreted the "legitimacy of interests" (compare with the Council's conclusions above) within the Arctic waters to be accorded to any third stakeholder parties, as rights and obligations directly stem from international law (implicitly recalling the comprehensive set of rules provided by the UNCLOS, as the land rights are by means of international law under the sovereignty of the State concerned).

²³⁶ The allusion to candidate countries (plural) is not clear. Besides Iceland, which was already listed among the candidate countries in 2011, the others do not seem to fall into the category of "Northern Countries". Currently, the EU's enlargement focuses on: Croatia (acceding country), Iceland, Montenegro, Serbia, Macedonia and Turkey (Candidates countries), Albania, Bosnia Erzegovina and Kosovo (Potential Candidate Countries). [http://europa.eu/about-eu/countries/index_en.htm]

²³⁷ About the EU's competences and the Arctic, see next chapter.

EP conclusions were considered along with some *requests* (instead of the more usual “suggestions”). First to be noticed, the EP focused on developing the existing framework already fully or partially devoted to Arctic issues, rather than calling for an EU Policy for the Arctic²³⁸ (*to develop the existing Inter-service Group into a permanent inter-service to ensure a coherent, coordinated and integrated policy approach across key policy areas relevant to the Arctic, such as environment, energy, transport, and fisheries*). In the EP’s view, this structure would be co-led by the EEAS and DG MARE, namely where most of the EU’s interests lie. The coordinative task would be a matter of DG MARE; while the Arctic unit should be allocated within the EEAS. The EP’s request on policy allocation will be further discussed in the conclusions of this study.

Further, the EP didn’t mention the three policy objectives set out by the Commission and confirmed by the Council; rather it was preferred to consider and underline some pertinent or related issues. First, the fragility of the Arctic ecosystem requires both further scientific investigation (to which the *EU and MSs are major contributors* and results of which are available for use by the international community) and as steadfast as mandatory protection, which considers interest and need of the Arctic population and indigenous peoples. Relevant (and discussed further in the next section) is the request to actively cooperate in establishing co-funding and co-programs to develop research and technology with the other Arctic states (notably—along with the USA, Canada, Norway, Iceland and Russia—Greenland was mentioned instead of the more usual Denmark), while involving Arctic states, indigenous peoples’ organizations and Arctic research institutes to work directly with the Union.

Even more relevant, within the conclusion, the EP ask the EU’s MSs to be aligned with indigenous peoples’ international standards, especially with the ILO 169 ; while asking the governments of the Arctic region to adopt and endorse the UNDRIP 2007 , the latter with special mention to Russia.

The last joint communication by the High Representative for Foreign Affairs and the EU Commission concerning an EU Union policy toward the Arctic Region was released in June 2012. It answered the call made by the Council Conclusion 2009, and was meant to signal a real turning point in the EU’s formulation process of an Arctic Policy; indeed, in the words of the High Representative for Foreign Affairs and Security Policy, Catherine Ashton, the new policy is motivated by the EU’s desire “to show the world that the EU is serious about its commitments towards the Arctic region.”²³⁹ Almost four years after the first communication, providing its view on main goals and way forward, the Commission called again for an increased engagement in Arctic

²³⁸ Request to develop a coordinated EU Policy on the Arctic Region, in which priorities and the potential challenges and a strategy are clearly defined, was put forward in art.8.

²³⁹ Beyond EU’s institutions and media, Catherine Ashton’s words were reported by the Barents Observer online (<http://barentsobserver.com/en/arctic/eu-serious-about-arctic-06-07>), by the Arctic Portal (<http://arcticportal.org/news/25-other-news/797-the-eu-outlines-its-policy-for-the-arctic>),

issues, to be built upon the achievement gained so far.

Along with some action proposals and unlike the previous documents, this joint communication devotes extensive attention to reporting progresses achieved by the EU in the Arctic so far. In fact, besides the main text, two detailed reports were attached to the communication to provide in detail information of all the progress made in terms of Arctic-related activities²⁴⁰ and regarding space²⁴¹ and infrastructures. The analysis here focuses on the main text, while some key elements of the two twins documents are commented in the next chapter.

The Joint Communication opens up with a brief executive summary aimed at providing the ground for an increased EU engagement in Arctic issues. The EU was been here portrayed as having an important role to play in supporting a successful co-operation to meet Arctic challenges. Again, the first and more relevant element was considered the EU's engagement in fighting climate change, both in terms of being one of the stronger supporters of greater international efforts, and in terms of being on the cutting edge of standard-setting and research. The communication mentioned a list of objectives achieved in the region correlated by a kind of funding balance sheet; it recalled the progress made so far toward meeting the Kyoto targets (20% gas reduction incorporated by law) and its even stricter self-commitment (80-95% reduction of emission by 2050); the research already conducted into the footprint in the Arctic by EU's MSs and investments of FP7 with € 200 millions in international research activities in the Arctic, the €1,14 billion invested in social, economic and environmental development, and eventually EU experience in terms of maritime safety. The (strong) rationale to call for a stronger EU commitment to environmental protection and fight against climate change in the Arctic is here underlined by some key data²⁴² extracted by the 2011 SWIPA assessment²⁴³. However, as stated by Airoidi:

A distinct example is the description of EU policies on climate change, qualified as capable of having “a major impact in reducing Arctic pollution impacts from climate change.” While this formulation is rather opaque, what is clear is that neither the EU performance nor EU international action in reducing greenhouse gas emissions are presently particularly brilliant, and even less are they capable of making a major difference for the Arctic. The communication furthermore fails to mention that climate change is not a priority issue, to say the least, for important circumpolar states such as Canada, Russia, or, until concrete proof of a change of

²⁴⁰ EU Commission and the High Representative of the European Union for Foreign Affairs and Security Policy, Joint Staff Document on “The inventory of activities in the framework of developing a European Union Arctic Policy,” ref: SWD(2012) 182 final.

²⁴¹ EU Commission and the High Representative of the European Union for Foreign Affairs and Security Policy, Joint Staff Document on Space and the Arctic, 26/06/2012, ref: SWD(2012) 183 final.

²⁴² The Communication recalled: 2005-2010 has been the warmest period ever recorded in the Arctic; the Arctic ocean is projected to have a nearly ice-free summer within the next 30-40 years, Arctic glaciers, ice caps and Greenland ice sheet contributed over 40% of the global sea level rise observed between 2003 and 2008.

²⁴³ Arctic Monitoring and Assessment Programme, 2011 Assessment of the impacts of climate change on Snow, Water, Ice and Permafrost in the Arctic (SWIPA).

attitude, the US, and that any EU-sponsored ambitious climate policy would have little chance of support²⁴⁴.

The communication has not provided many significant changes; so the focus was again put on the peculiar vulnerability of the Arctic ecosystem, the consequent stresses on the environment and on the traditional livelihood of indigenous peoples, and the challenging necessity of safeguarding the environment while ensuring a sustainable development. Important to note as the most remarkable difference from the preceding communication, the Commission slightly reshaped the priority accorded to the protection of the environment. Therefore, if in 2008 a sustainable use of resources should have been balanced with the *priority goal* of preserving the Arctic environment²⁴⁵, in 2012 a particular emphasis is given to the protection of the environment as the cornerstone of the EU's policy towards the Arctic while developing a smart, sustainable and inclusive growth²⁴⁶, probably suggesting that "an uneasy awareness that a broader approach to growth, however smart, sustainable and inclusive, may not be easily compatible with the effective stewardship of the Arctic environment"²⁴⁷.

Furthermore, it was recalled that the EU is a major destination of resources and goods from the Arctic region, a point that would imply that EU policies and regulations would affect all the Arctic stakeholders. In addition, three out of eight (potentially four with Iceland) are Arctic Council Members, which provides even more reasons for the EU to have a proactive role in the region while engaging a stronger co-operation with other stakeholders. As regard the latter, the commission recalled the momentous opportunities an increased accessibility in the region may offer to the EU, of course stressing the highest environmental-standard-shaped management. Greater opportunities rely in oil and gas, opening of the Northern Sea Route, and iron. Notably, in the table reporting data about those economic possibilities, mention was made of the "approximately 4 million peoples living in the Arctic", and of the fact that "indigenous peoples make up about 10% of the total Arctic population", probably to underline the mutual benefit for the EU and the Arctic of a sustainable

²⁴⁴ Airoldi, 2012:2.

²⁴⁵ cf. "This will open new cooperation perspectives with the Arctic states, helping all of us to increase stability and to establish the right balance between the priority goal of preserving the Arctic environment and the need for sustainable use of resources" (Commission communication, 2008: 12).

²⁴⁶ cf. "EU action since 2008 has led to tangible results in the fields of environmental protection, research, and economic development, and the particular emphasis on the protection of the Arctic environment remains the cornerstone of the EU's policy towards the Arctic. However, given the evident speed of change in the Arctic, the time is now ripe to refine the EU's policy stance towards the region, take a broader approach, and link it with the Europe 2020 Agenda for smart, sustainable and inclusive growth while continuing to support every effort to ensure the effective stewardship of the fragile Arctic environment. In addition, the EU's contribution on Arctic issues should be supportive of the efforts of Arctic states and take account of the needs of indigenous and local communities" (Commission communication, 2012:5).

²⁴⁷ Airoldi, 2012:3.

development.

The commission considered that EU action since 2008 has led to tangible results as regard the three policy objectives set out in 2008 by the Commission. Notably, the third of the objectives, which formerly indicated a desire to “enhance cooperation”, was here re-proposed as a more neutral “international cooperation”. In truth, this re-interpretation was not set as a formal change; rather, the Commission and the High Representative changed the original quote. The entire second part of the communication was devoted to explaining the EU’s contribution to the Arctic since 2008 to meet the policy objectives set out in 2008:

- 1) Protecting and preserving the Arctic in unison with its population: under this section the EU Commission and the High Representative considered main activities and respective funds already in place aimed at accomplishing its goals in regard to climate change and environment, to support indigenous peoples and local populations, and to enhance research, monitoring and assessments.
- 2) Promoting sustainable use of resources: this short sub-section just cross-refers—without providing any further comments—to the “Communication on Commodities and Raw Materials” and the “EU Energy Policy: Engaging with Partners beyond our Borders” as regard hydrocarbons and raw materials. In the field of transport, the EU’s full compliance with international law and principles was again highlighted as set out within the UNCLOS (with special mention again to the right of innocent passage). Few references were made to the study “Legal Aspects of Arctic Shipping”, development of Trans-European networks and the renewed operational phase, aimed at developing northern infrastructures, of the ND Partnership on Transport and Logistics.
- 3) International cooperation: as we have already noted, the communication here refers to a generic international cooperation rather than a more demanding proactive role to enhance Arctic cooperation. On the ground that the EU and the Arctic mutually affect each other, the internal effort to establish a coherent and comprehensive approach to the Arctic is carried out following existing legal frameworks (UNCLOS) and in close cooperation with the IMO, the AC (considered the most important forum for international cooperation in the Arctic), Arctic states (emphasis on bilateral cooperation), autonomous territories, indigenous peoples, local populations and other stakeholders. Also, existing regional cooperation frameworks were considered as relevant, such as

the Barents Euro-Arctic Council and ND (as a common policy with Iceland, Norway and Russian Federation); special mention was given to the consideration of including indigenous peoples in deliberation in the latter policy area.

Eventually Greenland received special and explicit mention; in fact, the EU is aware of the relevance of Greenland both in terms of enhancing the EU's role in the Arctic and for fisheries, energy and raw materials.

As regard the way forward²⁴⁸, the document set three main modalities (knowledge, responsibility and engagement) rather than objectives and combined proposals with current implemented projects:

- 1) *Knowledge*: all the EU's next actions in the Arctic will be targeted on knowledge to "meet tomorrow's challenges through research". A robust scientific body is needed to better understand the changing scale and speed dynamics of climate changes, especially in relation to sustainable development and (increased) human activities. Research outcomes, especially in climate change, energy, resource scarcity, health and demographic change, water and food security will drive the EU's political decision-making. Information sharing among the EU, the Arctic states and other interested parties *is the best way of making sure that policy-makers are well informed and that the development of the Arctic can proceed in a manner that is responsible and brings benefits to Arctic States and local communities*. Further cooperation is also needed in enhancing monitoring and surveillance capabilities.
- 2) *Responsibility*: the EU's strong link with the Arctic is given by historical, economic and geographical perspectives; by being an importer of natural resources and by its wider concern and responsibility for the global environment. The EU may provide a responsible contribution to the Arctic through funding programs and safe and sustainable resources management. A brief recall was given to the existing funding frameworks and some little improvements. The proposals mainly refers to the shared interest with the other Arctic states to promote a sustainable use of all Arctic resources (for instance

²⁴⁸ In the Commission's communication the way forward was considered before the resume of goals for the 2008 political objectives.

mining, oil, gas, shipping, fish, but also tourism, eco-tourism or renewable energy) while not compromising the environment and benefitting its local population.

- 3) *Engagement*: the EU's developing Arctic policy will be refined in close cooperation with the EU's MSs, the five non-EU Arctic states (instead of the more usual "Arctic states" or "the other Arctic states") and local inhabitants, including indigenous peoples. Notably, this section is almost similar to the subsection on main goals achieved in international cooperation in the Arctic. Again, prominence was given to the existing legal framework (UNCLOS), and the primary role of the Arctic Council (and respective EU engagement: participation in the meeting as an ad hoc observer, active participation in its working groups, application for Permanent Observer status) in providing inter alia, a detailed understanding of the concerns of Arctic Partners. The EU's admission would complement EU engagement through the Barents Euro-Arctic Council and ND. Again bilateral relations with Arctic states, new perspectives related to Iceland's accession, Greenland Partnership, search for appropriate ways to inform and consult indigenous peoples, and involvement in international framework on Arctic issues were considered.

As argued by this brief analysis, beside the shift from 'environmental protection as a priority' to a 'particular emphasis on the protection of the environment', the main political goals toward the region have remained almost unchanged as they were set out in the 2008 Communication and no concrete new projects were proposed²⁴⁹, while the aim of taking a comprehensive approach to Arctic issues has yet to be achieved²⁵⁰. The Commission has maintained a multifaceted attitude toward the Arctic, a complex combination of self-congratulatory achievement and consciousness of more work needed, clear economic interests especially in non-renewable resources and high—even though a little pretentious—environmental "responsibilities".

4.5. Indigenous Peoples and EU Arctic Policy Communications

So far, indigenous peoples and related issues have been mentioned in all the documents

²⁴⁹ see also Steffen Weber, Cécile Pelaudeix, and Iulian Romanynshyn, 2010:158.

²⁵⁰ cf: "That aim has yet to be achieved, as the language of 2012 reveals: "Taking a comprehensive approach to Arctic issues, this new Joint Communication underlines the need for a coherent, targeted EU approach towards the Arctic, building on the EU's strengths, promoting responsible development while engaging more extensively in dialogue and cooperation with all Arctic stakeholders." (Airoldi, 2012:2).

concerning the EU's approach to the Arctic, including in those related to ND. This observation may suggest that all three EU institutions, the EP, the Council and the Commission have accorded to the issue a special relevance in the EU-Arctic relations.

Therefore, before getting the analysis of indigenous peoples' issues started, it would be useful to provide the legal and political frameworks devoted to indigenous peoples' rights explicitly recalled by the distinct EU institutions in their official communications (when available):

- The 2008 EP Resolution: this resolution was the first official document on an Arctic Policy as such released by an EU institution. Besides the concerns regarding indigenous peoples' special situation in the Arctic that were considered as a main driving concept for future developments of an EU Arctic policy, no indigenous-peoples-distinctive legal background was explicitly recalled. The only background reference regarding indigenous peoples made was the Ilullisat Conference on September 2008 (about climate change and its effect on indigenous peoples).
- The 2008 Commission communication: as relevant to define the EU internal framework devoted to indigenous peoples, the Commission recalled: Protocol 3 to the Act of Accession of Sweden and Finland; the key principle of full participation and free, informed consent of indigenous peoples as stated by the Joint Statement on EU development policy; and the rights of indigenous peoples as a thematic priority under the EIDHR. Further, the Commission considered the EU regional policy and its cross-border programs as an instrument (financially) benefiting indigenous peoples.
- Council Conclusion on Arctic issues: Extended text, reference for instance to the UNCLOS or IMO; but no mention of indigenous peoples' right frameworks
- the 2010 EP Resolution: this resolution has provided the most extensive literature so far. As regard indigenous peoples, the following documents have been explicitly recalled²⁵¹: United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007 (4°/38), International Labor Organization Convention 169 adopted on 27 June 1989 (16°/38), Draft Nordic Sami Convention of November 2005 (17°/38), the United Nations General Assembly Declaration 61/295 of 13 September 2007 on the Rights of Indigenous Peoples (18°/38), the United Nations Human Rights Council resolutions 6/12 of 28 September 2007, 6/36 of 14 December 2007, 9/7 of 24 September 2008, 12/13 of 1 October 2009 and 15/7 of 5 October 2010 (19°/38).
- The 2012 Joint communication: Like the previous Commission Communication, references to relevant legal frameworks can be found throughout the text. Mention is found within the

²⁵¹ The position of the document in the EP list that has been recalled is in brackets .

sub-section regarding the main progresses achieved by the EU in supporting indigenous peoples and local populations. The document refers to this as follows: “*The EU has been actively involved in working toward the adoption of the United Nations Declaration on the Rights of Indigenous peoples*”. The other references regards EU instruments rather than standards, thus it recalled the attempt to integrate human rights and indigenous issues (this term was preferred instead of “rights”) into all aspects of its internal and external policies, the political dialogues and the EIDHR (as financial support to civil society organizations working on indigenous *issues*).

Therefore, the analysis of the relation between EU and Arctic indigenous peoples within the framework of the EU’s approach to the Arctic have highlighted the following elements:

- *Indigenous peoples as a ground for the EU to act in the Arctic.*

As argued in this section, indigenous peoples’ issues have been considered as one of the grounds upon which the EU’s institutions have explained EU will to increase its presence in the region.

The interdependency between the Arctic and indigenous peoples was already suggested during the debate on Arctic Window to the ND. As already recalled, the ND partners started exploring the possibility of opening an Arctic window within the ND framework to deal more specifically with issues shared throughout the Arctic region and, among the proposals, it was explicitly considered that *an Arctic Window would also increase attention to Arctic indigenous peoples in the Northern Dimension co-operation*.

Whether security implications related to climate change effects definitively drove the decision to develop an Arctic policy, it is also true that, since the beginning, the EU has tried to balance economic interests and security issues with its environmental and social-economic concerns for the Arctic. However, in the first document released by the EP in 2008, environmental concerns related to climate change effects on the Arctic were conceptually subordinated to the concerns for sustainability of the lives of Arctic indigenous peoples. Therefore, considering the strong EU commitment toward indigenous peoples as described in the second chapter of this study, the choice made by the EP may have been fostered by the recent adoption of the UNDRIP (2007), which the EU has been strongly supporting. However, it is important to underline here that in the first EU official communication on an Arctic Policy, the conceptual bridge between the Arctic and the EU’s environmental concerns was grounded on the concerns for sustainability of indigenous peoples in the region and furthermore, as already recalled above, it was considered in the first point of the Resolution:

1. [the EP] Is deeply concerned at the effects of climate change on the sustainability of the lives of the indigenous peoples in the region, in terms of both the general environment (melting icecap and permafrost, rising sea levels and flooding) and the natural habitat (the retreating icecap poses problems for polar bears' feeding habits), and underlines that any international decisions relating to these issues must fully involve and take account of all peoples and nations of the Arctic [emphasis added by the author]²⁵²

In the following communications, concerns about the sustainability of indigenous peoples lives have been integrated in the broader policy objective to protect the Arctic environment in unison with its population. As analysed in the next point, the issue has maintained the role of explaining the EU's broad environmental concerns and efforts in the region witnessed by the EU's foregoing concerns on indigenous issues.

In the 2011 Resolution, the EP again suggested another interesting connection, including the Saami, with the geographical perspective aimed to justify the EU's presence in the Arctic. Along with the recall to Denmark, Sweden and Finland as Arctic Countries, the EP stressed that the EU's only indigenous peoples, the Saami, live in the Arctic region. Both the context of the sentence, e.g. in the paragraph explaining EU geographical presence in the Arctic, and both the particular way this sentence has been enunciated, e.g. stressing the fact that the EU's *only* indigenous people live in its Arctic areas, the EP seems to suggest an ulterior motive for confirming the EU's active presence in the Arctic:

whereas Denmark, Finland and Sweden are Arctic countries and both Finland and Sweden are partially located within the Arctic Circle; whereas the EU's only indigenous people, the Sami people, live in the Arctic regions of Finland and Sweden as well as Norway and Russia²⁵³

And:

Recalls that three EU Member States—Denmark, Finland and Sweden—are Arctic States; [...] moreover recalls that the EU has large Arctic land areas in Finland and Sweden that are inhabited by the only indigenous population group in Europe, the Sami

-Protecting the Arctic environment in unison with its population

The concern for the sustainability of Arctic indigenous peoples, set out by the EP in 2008, was inserted in the broader policy objective of protecting the Arctic environment in unison with its population, set for the first time by the Commission in 2008. In setting the issue, the Commission had the difficult task of connecting the EU's broad environmental scopes in the Arctic region and the EU's jurisdiction to act in the region. Therefore the EU's three policy areas benefitting the Arctic environment and at the same time suitable to serve as a bridge

²⁵² EP resolution on Arctic governance, 2008, point 1.

²⁵³ EP Resolution for a sustainable development of the High North, 2010.

between the Union and the Arctic in the framework of protection of the environment and climate change were individuated in the prevention and mitigation of climate change (reduction of EU emissions), research and indigenous peoples.

Therefore, indigenous peoples' issues could fit within the EU's environmental scope, since they *are particularly vulnerable to the increasing pressures of climate change and globalization*, and with the EU's capacity to act, since the EU had developed preexisting interests and related legal framework devoted to indigenous peoples. Indeed the Commission recalled in the Communication the main policies and actions already in place within the EU to protect and benefit indigenous peoples both internally (special provision under EU Community law, EU Development Policy and Regional Policy), and externally (EU Development policy, rights of indigenous peoples as a priority under the EIDHR). Therefore the special position indigenous peoples hold in international law and consequently within the EU, basically allowed the Union to concern itself with individuals living in countries outside the Union. Under this view, it could be argued that indigenous peoples' issues, along with the fight against climate change and research, allowed the Union to develop an environmental framework involving the whole Arctic and not only to its Arctic areas.

While the objective of protecting the environment in unison with its population has been confirmed in all the following communications, since the 2009 Council Conclusion, the EU's environmental scope in the Arctic has been explicitly considered as an EU responsibility. Furthermore, because of the high relevance of indigenous peoples' issues in the framework of protecting the Arctic environment, both the Council and the EP have suggested that a balance be sought between environmental scopes and indigenous peoples' needs:

[An EU Arctic Policy should be based on] formulating and implementing EU actions and policies that impact on the Arctic with respect for its unique characteristics, in particular the sensitivities of ecosystems and their biodiversity as well as the needs and rights of Arctic residents, including the indigenous peoples [Council Conclusions, 2009]

[the EP] stresses that the EU should pursue policies that ensure that measures to address environmental concerns take into account the interests of the inhabitants of the Arctic region, including its indigenous peoples, in protecting and developing the region; [EP 2011]

The Commission has not set such a clear connection; however, it should be noticed that was the first in setting the issue of protecting the environment *in unison* with its population all together. As considered in the next chapter, the EU seems to have failed in implementing this important principle, as witnessed by the ban on seal products.

- *Involve indigenous peoples into regular dialogues*

The concept of involving indigenous populations has been set since the 2008 EP resolution and reconfirmed throughout all the process even though in different terms. The first enunciation was rather general and only foresaw indigenous peoples' full involvement in all international decisions affecting them²⁵⁴. Therefore, the Commission took a step further and brought the concept of involvement of indigenous peoples within the Union's policy objectives, calling to engage indigenous peoples in a regular dialogue. The explicit use of the singular case and the adverb "regular" may suggest a continuous involvement of indigenous peoples alongside the development of an EU Arctic Policy rather than sporadic and limited episodes. The Commission, however, neither suggest an institutional framework where this dialogue should have taken place nor any concrete procedure to be implemented, but considered a specific calling-issue in which indigenous peoples and other local communities should have been involved in a dialogue soon, namely on traditional seal hunting. The EU in fact, as reported in the Communication, at the time was considering banning all commercial activities related to seal products—that, as well known, was approved the following year with dramatic effects on Arctic indigenous and local communities' existence—due to the growing concerns expressed by EU citizens about the negative effects those species were experiencing due to modern human activities.

The 2009 Council Conclusions welcomed the Commission's proposal on the ground of supporting sustainable development for indigenous peoples, including on the basis of their traditional means of livelihood. This further specification seems to recall the terms of the Consensus on Development²⁵⁵ and thus limits indigenous peoples' participation on cooperation, but on the other side, the Council adds *on the basis of respect for the rights of the indigenous peoples*, that would imply consultation on all policies directly affecting them. Furthermore, in the Conclusions the Council suggested including indigenous peoples on the deliberation of the NP.

The EP Resolution of 2011 called for a stronger commitment toward indigenous peoples. In fact, having considered the special position, recognized the rights of the indigenous peoples²⁵⁶ and in particular the legal and political situation of the indigenous peoples in the Arctic states and in their representation in the Arctic Council, the EP called for:

- greater involvement of indigenous people in policy-making
- development of special measures to safeguard culture, language and land rights, as they have been set in the ILO 169

²⁵⁴ EP Resolution on Arctic Governance 2008.

²⁵⁵ See chapter 2 of this thesis.

²⁵⁶ As considered in the beginning of the section, this resolution specifically recalls the UNDRIP 2007.

-regular dialogues between indigenous peoples and EU institutions

Beyond giving credit to the EP for the high-standards proposal advanced, it should also be noticed that the EP gets the point and seems to suggest that a more coherent and active involvement of indigenous peoples would be in line with the Arctic Council and Arctic States' practices²⁵⁷.

The 2012 Commission Communication set the issue more ambiguously. Whether the need to involve indigenous peoples was confirmed several times throughout the communication, this time the principles were diluted into a more general *constructive engagement and dialogue with Arctic States, indigenous peoples and other partners*²⁵⁸. At the same time, the Commission considered that:

It is critically important that the views of Arctic inhabitants are taken into account on issues of economic development. The EU will look at appropriate ways of ensuring that the representatives of Arctic indigenous peoples are informed and consulted on the EU policies that affect them, and are given appropriate platforms to present their particular concerns to EU institutions and audiences. With this aim, the Commission and the EEAS will step up their efforts to hold regular dialogues with indigenous peoples.

- Free (prior) and Informed Consent and Self Development

Since the Commission developed the concept of engaging indigenous peoples in a regular dialogue, principles such as free, informed consent or self-development were recalled. In the 2008 Communication, the Commission recalled inter alia that *a key principle of the Joint Statement on EU development policy is the full participation and free, informed consent of indigenous peoples*.

Therefore as an action toward indigenous peoples grounded on the EU's value, the commission proposed to *engage Arctic indigenous peoples in a regular dialogue and provide opportunities for self-driven development and the protection of their lifestyle*, clearly recalling the terms used in the Joint Statement on EU Development Policy. However, comparing the Communication and the Joint Statement on EU Development Policy, a key-concept is missing: in the joint statement in fact, the key principle for safeguarding indigenous peoples rights in development cooperation is to ensure their full participation and the free and *prior* informed consent of the communities concerned²⁵⁹. The concept is better clarified by the 2007 UNDRIP, as:

States shall consult and cooperate in good faith with the indigenous peoples concerned through

²⁵⁷ "Notes the special position and recognises the rights of the indigenous peoples of the Arctic and points in particular to the legal and political situation of the indigenous peoples in the Arctic States and in their representation in the Arctic Council; calls for greater involvement of indigenous people in policy-making" [EP, Resolution for a sustainable development of the High North 2010]

²⁵⁸ Commission Communication 2012.

²⁵⁹ "Consensus on development", point 103.

their own representative institutions in order to obtain their free, *prior* and informed consent *before adopting and implementing legislative or administrative measures that may affect them* [emphasis added]²⁶⁰.

The concept of ‘prior’ was missing in the Communication text. Notably, in the same paragraph the Commission anticipated that it was considering the banning of placing on the market, import, transit and export of seal products and, even if it should not have adversely affected indigenous communities, it was in any case called a consultation with indigenous and other local communities traditionally engaged in the hunting of seals. Besides this, the Regulation had neither been adopted nor implemented yet, a Proposal for a Regulation of the European Parliament and of the Council concerning trade in seal products was already being discussed, while dialogues with indigenous peoples were still a proposal for action.

In the 2009 Conclusion the Council therefore welcomed the proposal for a regular dialogue, acknowledging the importance of supporting sustainable development for indigenous peoples.

These principles were later re-proposed by the 2012 Joint communication, as *The EU will look at appropriate ways of ensuring that the representatives of Arctic indigenous peoples are informed and consulted on the EU policies that affect them.*

²⁶⁰ UNDRIP 2007, art.19.

Chapter 5

EU's Concrete Actions toward Arctic Indigenous Peoples & the Arctic

Once the political and institutional frameworks have been set, this study moves toward the analysis of EU's concrete actions affecting Arctic indigenous peoples and the Arctic. "Concrete actions" is a generic term used here to describe the complete set of EU provisions aimed to implement the political wills as has been described in the previous chapter. This study thus considers EU competences in the main policy areas²⁶¹, with contents either directly or potentially affecting the Arctic. For each of these, a brief introduction is given to consider the overall goals and legal limits as they have been accorded within EU primary law and the main implications for the Arctic. Based mainly on the works of Koivurova²⁶², Airoldi²⁶³ and the AFPA, the specific goal is to provide an overview on EU's legal competences and economic, political and environmental weight derived in the Arctic region. It is often said, especially in the media, that the Union bears very limited legal

²⁶¹ In this section the policy areas where the Union bears exclusive or shared competences. Issues like tourism, which falls under the policy areas where the EU bears the right to support, coordinate and supplement MSs' action are not described. For further information in these areas refer to Koivurova et. al, 2010, Airoldi 2008 and 2011, AFPA 2010.

²⁶² Koivurova et al, 2010; Koivurova et al. 2012.

²⁶³ Airoldi 2008 and 2010.

capacity in the Arctic²⁶⁴, which severely hampers its role in the region and is thus mostly described as an external Arctic actor²⁶⁵. Against this picture, the specific goal of this section is to show that the combination of possibly limited legal competences, but considerable economic and political weight (grounded on the coordination of duty, rights and economic interests of 27 states) makes the EU's presence in the Arctic considerable, and of course, improvable.

Then, grounded on the complexity of *traditional* living nowadays, this study moves toward proving that as long as EU has competences in the Arctic and those are addressed to protect the Arctic environment while promoting a sustainable development, indigenous peoples are either directly or potentially affected by all of these competences. This viewpoint is here supported by either providing relevant ethnographic data or recalling statements or documents issued by relevant arctic bodies (AC, IPOs, etc) for each of the policy areas concerned. Where available, existing projects are considered to provide possible ways of implementing the suggestions advanced.

Eventually, the analysis of “concrete actions” has been completed with a brief section regarding the implementation of proposals relative to EU Arctic as such. Special relevance has been accorded to implementation of regular dialogues with indigenous peoples.

5.1 EU Competences in relevant policy areas

EU's competences, e.g. those policy areas where the EU can act, have been developed through the years via different ways (treaties, jurisprudence, etc) and are now regulated by articles 2 to 6 TFEU. The MSs have not accorded the Union with the same degree of power for all the policy areas concerned; therefore three categories explain the limit of EU's actions in respect to MSs:

- Exclusive Competence:

When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so

²⁶⁴ For instance Deputy Oils and Energy Minister Per Rune Henriksen (Norway) stated “EU has no jurisdiction in the Arctic, no member country has Continental Shelf in the Arctic” to answer the recent EU proposal to a moratorium on oil and gas activities. The news spread in many media as follow: *Norway, EU has no jurisdiction in the Arctic* [Barents Observer, October, 3, 2012; <http://barentsobserver.com/en/energy/norway-eu-has-no-jurisdiction-arctic-03-10>]; *EU has no authority in the Arctic*” says Norway deputy oil Minister [Aenergy, 26th September 2012, http://www.aftenbladet.no/energi/aenergy/EU-has-no-authority-in-the-Arctic_-says-Norway-deputy-oil-minister-3037819.html#.UV6z9Ft5zbw]; Norway: EU has no jurisdiction in the Arctic [The Innoplex, 3rd October 2012, <https://www.theinnoplex.com/news/>]. Beside Norway statement, compare also with Kathrin Keils *The EU as a Prospective Permanent Observer to the Arctic Council: Footholds, Virtues, Concerns and Obstacles (Part 2)*, [31 October 2012, http://www.thearcticinstitute.org/2012/10/the-eu-as-prospective-permanent_31.html]: “First of all, the EU has overall only weak legal links to the Arctic region and is thus mostly described as an external Arctic actor.” and later on the text: “As no EU member state has any jurisdiction over Arctic waters, this rule would be a tricky one to violate, and yet still made it into an amendment”

²⁶⁵ Keil, 2012

themselves only if so empowered by the Union or for the implementation of Union acts [TFEU, art. 2.1]

- **Shared Competence:**

When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence. [TFEU, art. 2.2.]

- **Actions to support, coordinate or supplement:**

In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas [TFEU art. 2.5]

Therefore, the distinct policy fields where EU bears capacity to act have been described as follows:

- **Exclusive competences:**

1. The Union shall have exclusive competence in the following areas:

- (a) customs union;
- (b) the establishing of the competition rules necessary for the functioning of the internal market;
- (c) monetary policy for the Member States whose currency is the euro;
- (d) the conservation of marine biological resources under the common fisheries policy;
- (e) common commercial policy

2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope. [TFEU, art.3]

- **Shared competences:**

The Union shall share competence with the Member States where the Treaties confer on it as competence which does not relate to the areas referred to in Articles 3 and 6.

2. Shared competence between the Union and the Member States applies in the following principal areas:

- (a) internal market;
 - (b) social policy, for the aspects defined in this Treaty;
 - (c) economic, social and territorial cohesion;
 - (d) agriculture and fisheries, excluding the conservation of marine biological resources;
 - (e) environment;
 - (f) consumer protection;
 - (g) transport;
 - (h) trans-European networks;
 - (i) energy;
 - (j) area of freedom, security and justice;
 - (k) common safety concerns in public health matters, for the aspects defined in this Treaty.
3. In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programs; however, the

exercise of that competence shall not result in Member States being prevented from exercising theirs.

4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs. [TFEU, art.4]

▪ Action to support, coordinate and supplement the action of the MSs:

The Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States. The areas of such action shall, at European level, be:

- (a) protection and improvement of human health;
- (b) industry;
- (c) culture;
- (d) tourism;
- (e) education, vocational training, youth and sport;
- (f) civil protection;
- (g) administrative cooperation. [TFEU, art.6]

This distinction should be borne in mind in the following sectorial analysis, inasmuch as to determine the weight of EU on a given policy field.

5.2 EU Legal Competences affecting the Arctic and Arctic Indigenous peoples: sectorial analysis

5.2.1. Indigenous peoples in EU's primary law

As already considered, principles as rule of law, democracy or no discrimination have been the core ground upon which the EU has been building its commitment toward human rights, inclusive of indigenous peoples' rights²⁶⁶.

The only direct and explicit reference to indigenous peoples in EU's primary law is found within the framework of documents concerning the accession of the Republic of Austria, the Kingdom of Sweden, the Republic of Finland and the Kingdom of Norway to the European Union²⁶⁷, in the Protocol number 3 on the Sami people.

Basically, the two articles of protocol 3 restrict EU's internal market competences in regard to reindeer husbandry activity within traditional Saami areas, where exclusive rights may be accorded

²⁶⁶ See chapter 3 of this study.

²⁶⁷ Documents concerning the accession of the Republic of Austria, the Kingdom of Sweden, the Republic of Finland and the Kingdom of Norway to the European Union, O.J. C 241 , 29.08.1994, P 1-404.

to Saami peoples [art.1 of Protocol No. 3²⁶⁸]. Further amendments to the protocol, in the case of further development linked to Saami traditional means of livelihood, are foreseen in art.2 of Protocol No. 3²⁶⁹. It is important to read the consideration that drove the EU's decision to write down these two articles, namely "the dependence of traditional Sami culture and livelihood on primary economic activities, such as reindeer husbandry in the traditional areas of Sami settlement". As considered later, this approach is diametrically opposite to the one taken for the seal ban, which failed to understand the market economic relevance of traditional hunting for Inuit peoples.

5.2.2 Environmental policy

Environmental policy is a shared competence (art.4.2(e) TFEU) between MSs and the Union, mainly regulated under Title XX (art.191-193) of TFEU, *Environment*, and managed by Directorate General (hereinafter DG) ENV. EU Environmental Policy is aimed at a high level of protection of the environment, grounded on precautionary and preventive principles, and "polluters pay" (art. 191.2 TFEU).

Art.191 TFEU states the EU environmental policy shall contribute to the pursuit of the following objectives:

- preserving, protecting and improving the quality of the environment,
- protecting human health,
- prudent and rational utilization of natural resources,
- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change²⁷⁰.

To underline the crosscutting relevance of the topic and to enhance the effectiveness of policies devoted to the protection of the Environment, the EU has defined both environmental protection and sustainability as integration principles, confirmed within the TFEU:

- Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development [art.11 TFEU]
- The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of

²⁶⁸ cf. "Notwithstanding the provisions of the EC Treaty, exclusive rights to reindeer husbandry within traditional Sami areas may be granted to the Sami people" [art.1, Protocol No 3 to the documents accession of the Republic of Austria, the Kingdom of Sweden, the Republic of Finland and the Kingdom of Norway to the European Union].

²⁶⁹ cf. "This Protocol may be extended to take account of any further development of exclusive Sami rights linked to their traditional means of livelihood. The Council may, acting unanimously on a proposal from the Commission, and after consulting the European Parliament and the Committee of the Regions, adopt the necessary amendments to the Protocol" [art.2, Protocol No 3 to the documents accession of the Republic of Austria, the Kingdom of Sweden, the Republic of Finland and the Kingdom of Norway to the European Union].

²⁷⁰ Due of its relevance for EU, the issue of climate change has been dealt a part by the Union, which established an individual DG (DG CLIMA). (see the following sub-section).

protection, taking account in particular of any new development based on scientific facts. Within their respective powers, the European Parliament and the Council will also seek to achieve this objective. [art.114.3 TFEU]

and also in art.37 of the Fundamental Charter of the Rights of the European Union (hereinafter FCREU)²⁷¹:

- A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development. [art.37 FCREU]

Furthermore, as an additional measure aimed to guarantee the highest protection of the environment, art.193 TFEU states that MSs are not prevented "from maintaining or introducing more stringent protective measures" if compatible with the Treaties and notified to the Commission²⁷².

Beyond climate change, the Arctic is undergoing strong environmental stresses mainly due to anthropogenic pollution coming especially from outside the region. Persistent Organic Pollutants²⁷³ (POPs) are particularly harmful for the Arctic environment and wildlife, since they can travel long distances via oceanic and fluvial currents, wind or biological factors²⁷⁴, and deposit mainly in wildlife fatty tissues. In turn, they are dramatically harmful to the health of coastal indigenous peoples and other northern inhabitants, which mainly rely on traditional food consumption, rich in animal fat ²⁷⁵. For example, recent studies have confirmed that due mainly to dietary factors; certain

²⁷¹ Koivurova et al., 2010:24

²⁷² However, as noticed by Jans J. [quoted in Koivurova et al., 2010:25]: 'Without hard empirical data the strong impression is that MS's hardly make any use of these powers in the article 193 TFEU'.

²⁷³ Nine intentionally produced POPs to be banned are listed in Annex A of the Stockholm Convention: Aldrin, Chlordane, Dieldrin, Endrin, Heptachlor, Hexachlorobenzene (HCB), Mirex, Polychlorinated Biphenyls (PCBs), and Toxaphene; in Annex B the use of DDT is severely restricted; while in Annex C is to be minimized the release of unintentional produced POPs, namely Dioxin, Furans, PCBs and HCB. Characteristics and risks vary from POP to POP, however they share four properties: 1) they are highly toxic, 2) they are persistent, lasting for years or even decades before degrading into less dangerous forms; 3) they evaporate and travel long distances through the air and through water; and 4) they accumulate in fatty tissue. (UNEP, 2005:5)

²⁷⁴ Since POPs deposit in fatty tissues of animals, they can spread through the food-chain. This process includes humans, since POPs can pass the placenta barrier and deposit in the breast milk, mothers can bring the contamination to newborns (AMAP Factsheet 2000).

²⁷⁵ see e.g. "Interest in the presence of POPs in the Arctic environment arises in particular because of the concern that indigenous people and other northern residents depending on traditional food for all or part of their diet may be adversely affected by chronic exposure to these pollutants.

POPs are of special concern because:

- 1) they persist in the environment for long periods of time, which allows them to be transported large distances from their sources, are often toxic, and have a tendency to bioaccumulate; many POPs biomagnify in food chains;
- 2) many indigenous people in the Arctic depend on traditional diets that are both an important part of their cultural identity and a vital source of nourishment; alternative sources of food often do not exist; however, traditional diets are often high in fat and POPs tend to accumulate in fatty tissue of the animals that are eaten;
- 3) most northern residents have not used or directly benefited from the activities associated with the production and use of these chemicals; however, certain indigenous populations in the Arctic have some of the highest known exposures to these chemicals." [AMAP Factsheet, 2000]

populations of Inuit in Canada and Greenland are particularly exposed to POP contamination and carry higher levels of contamination in blood or breast milk compared to surrounding populations not relying that heavily on marine mammals consumption²⁷⁶.

In addition to chemical contaminant pollution, the Arctic region is also experiencing harsh pressures and a consistent decline²⁷⁷ in its biodiversity patterns²⁷⁸. The main causes are directly human-induced, for example landscape changes²⁷⁹, which alter natural habitats; over-exploitation of natural resources, especially fisheries; or as direct consequence of climate change, which is emerging as the most significant stressor of Arctic biodiversity, especially in regard to polar habitats²⁸⁰.

Protection of the Arctic environment in unison with its population and sustainability have been the foremost objectives of EU in the Arctic throughout all the documents related to the EU Arctic Policy²⁸¹. As described by the TFEU, EU's environmental action is twofold, therefore the EU on one side is actively undertaking actions aimed to develop a high protection of the environment²⁸², whilst on the other side, environmental protection and sustainability principles should integrate the EU's whole action toward the Arctic²⁸³.

Various international agreements are currently dealing with the most sensitive environmental issues relevant to the Arctic region, of which many have been ratified by the Union. Therefore a

²⁷⁶ AMAP, 2000.

²⁷⁷ The AFPA reports that the changes in the Arctic species include a 10% decline in terrestrial vertebrate during the last 34 years, while 8 of 12 subpopulation of Polar bear for which data are available, are all experiencing a population decline.

²⁷⁸ Among the main findings of the Arctic Biodiversity Trend 2010, it should be recalled: "Unique Arctic habitats for flora and fauna, including sea ice, tundra, thermokarst ponds and lakes, and permafrost peatlands have been disappearing over recent decades; Although the majority of Arctic species are not currently declining, some harvested species of importance to Arctic people or species of global significance are declining; Climate change is emerging as the most far reaching and significant stressor on Arctic biodiversity. However, contaminants, habitat fragmentation, industrial development, and unsustainable harvest levels continue to have impacts. Complex interactions between climate change and other factors have the potential to magnify impacts on biodiversity; Changes in Arctic biodiversity have global repercussions." (Arctic Biodiversity Trend 2010 (CAFF 2010:12-13).

²⁷⁹ Increased commercial activities and infrastructures (new harbors, pipelines, etc) development alter the landscape and consequently the natural habitats.

²⁸⁰ Many Arctic species completely rely on ice for their survival. Polar bears for example, rely on sea ice to hunt, breed, and in some case den. Due to changes in the sea ice patterns, polar bears are experiencing severe consequences. For example, without ice polar bear are unable to reach their preys therefore shorter hunting seasons are already causing, for example, a sensitive decline in stature and body mass, and lower reproductive rates. In addition, an increased number of polar bear has been observed swimming in open waters, even if polar bear typically swims short distances. As consequence, in 2004 U.S. Mineral Management Service found the bodies of four polar bears which have drowned after a storm while swimming in open waters; and in 2006 one exhausted and one dead polar bears were found in Svalbard. (Holleman, 2010). Similar problems are currently faced also by seals and other polar species.

²⁸¹ See Section 3 of this research.

²⁸² EU' active actions to fight climate change are discussed in the following paragraph.

²⁸³ As reported, inter alia, by the 2012 Commission communication (Inventory): "The Commission systematically assesses and takes account of environmental and other impacts in developing and implementing its policies, projects, plans and programs" (2012:5).

combination of implementation of international agreements requirements and EU's individual actions, has contributed to make a consistent part of EU's internal environmental positively affect the Arctic environment. The main fields are:

- *Biodiversity*: the Birds Directive²⁸⁴ and Habitat Directive²⁸⁵ are the cornerstones of Europe's nature conservation policy and currently form the grounds for biodiversity protection within the EU²⁸⁶. A fundamental instrument is the Natura 2000 network, that was established under the 1992 Habitat Directive with the aim to assure the long-term survival of Europe's most valuable and threatened species and habitats²⁸⁷. Natura 2000 works through the identification of areas specifically relevant to biodiversity, which can be designated by MSs as Special Areas of Conservation (SAC) under the Habitat Directive or Special Protection Areas (SPAa) designated under the Bird Directive. Where parts of the areas to be protected under Natura 2000 are considered nature reserve, many others allow human activities if sustainably managed. Through this system EU can comply with the requirement set out within the Convention on Biological Diversity (hereinafter CBD), which EU is party to as a Regional Economic Integration Organization (REIO) with the right to vote²⁸⁸. In line with CBD, in 2001 the EU set the objective of consistently reducing biodiversity loss within its territories by 2010, but in March 2010 the EU Ministers of the Environment had to admit that the objective had not been met. At the 9th meeting of the Conference of the Parties to the Convention on Biological Diversity, EU adopted the new target to halt biodiversity reduction by 2020²⁸⁹.
- *Chemicals*: Since the late 1970's, the EU has developed a consistent framework aimed to reduce waste and emission of harmful substances to the surrounding environment. Currently,

²⁸⁴ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103, 25.04.1979 P. 1 - 18 amended by the Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version), OJ L 20/7, 26.01.2009 (EN).

²⁸⁵ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992 (EN).

²⁸⁶ See e.g. : 'Broad nature protection policy was introduced in the EU with the 1992 "Habitats" directive (Directive on the conservation of natural habitats and of wild fauna and flora)' (Airolidi 2008:60); 'Birds Directive (2009/147/EC) and Habitat Directive (92/43/EEC) are the legislative basis for biodiversity protection in the EU' (Koivurova 2009:25).

²⁸⁷ See e.g. the EU Commission official website, Environment, Natura 2000 Network: http://ec.europa.eu/environment/nature/natura2000/index_en.htm

²⁸⁸ Within the CBD, art 31.2, right to vote for REIO is defined as follow: 'Regional economic integration organizations, in matters within their competence, shall exercise their right to vote with a number of votes equal to the number of their member States which are Contracting Parties to this Convention or the relevant protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa'.

²⁸⁹ See e.g. the EU Commission official website, Environment, Natura 2000 Network: http://ec.europa.eu/environment/nature/natura2000/index_en.htm

the most relevant actions positively affecting the Arctic environment are the Registration, Evaluation, Authorisation, and Restriction of Chemicals (REACH)²⁹⁰ enforced in June 2007 with the "aim to improve the protection of human health and the environment through the better and earlier identification of the intrinsic properties of chemical substances"²⁹¹, while enhancing competitiveness of the EU chemical industry; and the regulation on classification, labelling and packaging of substances and mixtures (CLP Regulation)²⁹². In addition, the EU has developed a mercury policy, aimed mainly to restrict the marketing of mercury by banning mercury exports, it also includes the safe storage of metallic mercury²⁹³. It has also confirmed its commitment to establish an international legally-binding instrument to cover the life cycle of mercury within its communication on an EU Arctic Policy²⁹⁴. Furthermore, the EU is party to the Stockholm Convention on Persistent Organic Pollutants (hereinafter the Stockholm Convention), as a "Regional economic integration organization"²⁹⁵ (REIO)²⁹⁶ with the right to vote²⁹⁷.

²⁹⁰ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, OJ L 396, 30.12.2006, P 1–849 (EN).

²⁹¹ EU Commission official website, Environment, REACH: http://ec.europa.eu/environment/chemicals/reach/reach_intro.htm

²⁹² Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006, OJ L 353/1, 31.12.2008, (EN).

²⁹³ see: Directive 2007/51/EC of the European Parliament and of the Council of 25 September 2007 amending Council Directive 76/769/EEC relating to restrictions on the marketing of certain measuring devices containing mercury, OJ L 257/13, 31.10.2007, P 13-15 (EN); and Directive 2007/51/EC of the European Parliament and of the Council of 25 September 2007 amending Council Directive 76/769/EEC relating to restrictions on the marketing of certain measuring devices containing mercury, OJ L 257/13, 31.10.2007, P 13-15 (EN).

²⁹⁴ **see** : The EU is committed to establishing a legally binding global instrument to cover the life-cycle of mercury use under the auspices of the United Nations Environment Program (UNEP), which is of particular importance to the Arctic region” Commission’s communication 2012:6.

²⁹⁵ “The Community participated actively in the negotiations of the UNECE Protocol on POPs and of the Stockholm Convention. Both the Stockholm Convention and the UNECE Protocol on POPs were explicitly made open for signature and ratification to Regional Economical Integration Organizations (REIO). The European Community is regarded as such an organization.” (Commission Staff Working Document, Community implementation Plan for the Stockholm Convention on Persistent Organic Pollutant, SEC (2007) 341, 9.3.2007.)

²⁹⁶ "Regional economic integration organization" means an organization constituted by sovereign States of a given region to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to this Convention.” (Stockholm Convention, art. 2 (b)).

²⁹⁷ ‘A regional economic integration organization, on matters within its competence, shall exercise its right to vote with a number of votes equal to the number of its member States that are Parties to this Convention. Such an organization shall not exercise its right to vote if any of its member States exercises its right to vote, and vice versa.’(Stockholm Convention, art. 23.2.

- *Marine Environment*: the EU is a contracting party to the Convention for the Protection of the marine Environment of the North-East Atlantic ‘the OSPAR Convention’, as a REIO entitled “to sign, ratify, accept, approve or accede to the Convention” and vote as long as its Member States have not done so (art. 20.2.). The main aim of OSPAR Convention is to prevent and eliminate pollution and to protect the maritime area against the adverse effects of human activities. Therefore EU, implementing OSPAR requirements, contributes to the protection of the North-East Atlantic. Currently several EU directives currently incorporates OSPAR requirements, as the Marine Strategy Framework Directive²⁹⁸ or the Water Framework Directive²⁹⁹.

The EU, as required by the TFEU and the FCREU, and continuously reaffirmed throughout the process of the EU Arctic Policy, considers environmental protection and sustainability as integrative principles to EU’s whole action towards the Arctic. This aspect has been analysed throughout this chapter, however it is important to note that currently the EU AFPA is so far the most comprehensive and concrete project financed by the EU aimed to assess Arctic environmental impacts from various activities originating in EU, while suggesting areas where the EU can reduce its footprint now and in the future (up to 2030)³⁰⁰.

The deep interconnection between the environment and Arctic indigenous peoples has been continuously recalled by the Union³⁰¹, which has advocated, inter alia, a necessity to balance its actions with the needs and rights of indigenous peoples³⁰². In fact, where a healthy environment is fundamental for the well-being of Arctic indigenous peoples, it is also true that "environmental goals and indigenous rights and interests are not fully congruent"³⁰³. As it will be considered, especially in regard to animal conservation, environmental protection and fauna conservation may

²⁹⁸ Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive)(Text with EEA relevance), 2008 OJ L164/19.

²⁹⁹ Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy L327/1.

³⁰⁰ See AFPA, 2010:2.

³⁰¹ See chapter 4 of this research.

³⁰² See again: ‘[An EU Arctic Policy should be based on] formulating and implementing EU actions and policies that impact on the Arctic with respect for its unique characteristics, in particular the sensitivities of ecosystems and their biodiversity as well as the needs and rights of Arctic residents, including the indigenous peoples [Council Conclusions, 2009].

³⁰³ AFPA 2009:91.

be in high contrast with indigenous peoples rights and needs³⁰⁴ to exploit natural resources. Furthermore, more than often, at the base of such a contrast, lies the “use of *knowledge*”. As environmental measures stem from scientific research and evidence, which determines areas or species requiring special protection, indigenous peoples have often advocated the inconsistency and/or the insufficient understanding of the natural ecosystem by the scientific method³⁰⁵. This latter aspect is of foremost importance for indigenous peoples, especially with regard to the European Environmental Agency (EEA)³⁰⁶, established in Copenhagen in 1993 under a regulation³⁰⁷ adopted by the EU in 1990 with the mandate to help the Community and MSs to make informed decisions about improving the environment; integrating environmental considerations into economic policies; moving towards sustainability, and to coordinate the European environment information and observation network (Eionet)³⁰⁸.

Whether Arctic indigenous peoples are more directly affected by environmental and sustainability actions as integrative principles compared to other competences³⁰⁹, the EU, having recognized the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources³¹⁰ may still enhance consistency in regards of indigenous peoples rights and needs in both its internal and international actions affecting the Arctic.

For instance, with regard to internal aspects, the AFPA has recognized that “EU biodiversity policy and the Natura 2000 network are not sensitive to the specific situation of the Saami population and may not include proper participatory mechanisms”³¹¹. Therefore the AFPA suggests that EU should develop a participatory mechanism which involves indigenous peoples located in designated Natura 2000 areas that overlap with Sapmi traditional land. Use of Indigenous Traditional Knowledge³¹²(hereinafter ITK) may be particularly relevant for the designation of the areas to be protected and on the measures to be adopted. Furthermore, a more proactive role by indigenous peoples would be

³⁰⁴ For instance, areas of the Canadian Arctic Archipelago, Greenland or Lapland are highly relevant for biodiversity protection, but, at the same time, they are also central for indigenous peoples use (EU Arctic Footprint, 2009).

³⁰⁵ See the example of the Eskimo Whale Commission described under the paragraph “Research”.

³⁰⁶ EEA has been briefly discussed in the section “Research” of this chapter.

³⁰⁷ Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (Codified version), OJ L 126, 21.5.2009, P 13–22.

³⁰⁸ <http://www.eea.europa.eu/about-us/who>

³⁰⁹ See the other sections of this chapter.

³¹⁰ Preamble, CBD.

³¹¹ AFPA, 2012:86.

³¹² See section “Research” of this Chapter.

in line with the CBD³¹³, especially in the promotion and wider application of ITK relevant to the conservation and sustainability of biological resources³¹⁴.

The most sensitive issue between indigenous peoples and the EU however, is in regard to fauna protection. The EU protects endangered species mainly internally via trade policy to influence international trade and externally by taking part in international agreements. As the ban on seal products has shown, the EU over the years³¹⁵ has failed to balance environmental scopes and indigenous rights and needs, which may have catastrophic impacts on indigenous peoples. But unfortunately, the EU do not seem to have fully understood the issue, as shown by the new case of polar bears which is likely to retrace the steps of the ban on seal products. In March 2013, under a US proposal, delegates at the sixteenth meeting of the Conference of the Parties of International Trade in Endangered Species (hereinafter CITES) in Bangkok, discussed (and rejected) upgrading polar bears status³¹⁶ and banning cross-border trade in polar bears and their parts. At the meeting, the EU tabled a new proposal which reflected its strong view that more needs to be done for the polar bear within the CITES framework³¹⁷. Notwithstanding, EU's proposal was less restrictive than the US's and aimed to reach a compromise³¹⁸. However, it received harsh criticism from indigenous

³¹³ See CDB art. 18 (4) The Contracting Parties shall, in accordance with national legislation and policies, encourage and develop methods of cooperation for the development and use of technologies, including indigenous and traditional technologies, in pursuance of the objectives of this Convention. For this purpose, the Contracting Parties shall also promote cooperation in the training of personnel and exchange of experts.

³¹⁴ See CDB art. 8 (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices:

³¹⁵ See section "Animal Welfare" below.

³¹⁶ The U.S. proposal asked *Ursus Maritimus* or Polar bear, which is already listed in Appendix II of CITES (species not necessarily threatened with extinction, but in which trade must be controlled in order to avoid utilization incompatible with their survival), to be uplisted in Appendix I (species threatened with extinction, trade in specimens of these species is permitted only in exceptional circumstances). Polar bear is currently protected by the 1973 treaty on Multilateral Conservation of Polar Bears Agreement (which was, inter alia, an early Arctic cooperation attempt- see chapter 1 of this research), which limits polar bear taking, but allows, inter alia, local people using traditional methods in the exercise of their traditional rights and in accordance with the laws of that Party [art. III (d)]; or wherever polar bears have or might have been subject to taking by traditional means by its nationals [art. III (e)].

³¹⁷ cf. EU Presidency press release: EU moves to improve conservation measures for Polar Bears, 07.03.2013, at <http://eu2013.ie/news/news-items/20130307polarbearconservationpr/>

³¹⁸ EU's proposal has been recapped by the EU Presidency Press release as follow:

- "The proposal by the EU and its Member States would mean that polar bear countries would have to:
- set sustainable export quotas for each subpopulation of the polar bear in the countries concerned,
 - provide comprehensive information to CITES on the status of polar bear populations at local and regional level, and on the sustainability of their enforcement, management and trade regimes, and
 - consider if a tagging system for polar bear hides would help to control illegal trade"

peoples. Terry Audla, president of the Inuit Tapiriit Kanatami³¹⁹ (hereinafter ITK)³²⁰, gave a speech³²¹ during the conference in which he made it clear that Canadian Inuit urged EU to reject the amendment. In fact, although he welcomed the EU's attempt to reach a workable compromise with other proposals, he criticized the Union because it had failed to reach a compromise with Inuit of Canada. On the grounds that EU was not able to acknowledge the rigorous management of CITES³²² and therefore the effectiveness of Canadian management of polar bears, and the EU had not considered recorded data which confirmed the healthiness of the polar bear population, ITK president stated that EU's proposal negatively affects indigenous peoples and targets³²³, punishes³²⁴ and attacks Inuit, their livelihood and their means of self-reliance³²⁵.

As for the case of seals, polar bear hunting is highly relevant for Arctic indigenous peoples, both for its cultural, social and spiritual implications, and as a source of cash income³²⁶. Therefore, as the ITK president recalled on the occasion of her intervention to the US proposal, a ban on trade may lead to severe consequences in the market which will affect indigenous peoples, even if their hunt is

³¹⁹ ITK was founded in 1971, it is the national representative organization for Inuit regions – Nunatsiavut (Labrador), Nunavik (northern Quebec), Nunavut, and the Inuvialuit Settlement Region in the Northwest Territories

³²⁰ As reported within the section “Animal Welfare”, the ITK is the same Canadian Inuit organization that brought EU before the EU Court of Justice to oppose the ban on seal products.

³²¹ Inuit Response to EU Proposal to Amend US Proposal to uplist Polar Bear at CITES, AMENDMENT TO PROPOSAL 3: NGO INTERVENTION, Terry Audla, President of Inuit Tapiriit Kanatami, 7.03.2013, retrieved at <https://www.itk.ca/media/speech/inuit-response-eu-proposal-amend-us-proposal-uplist-polar-bear-cites>. (hereinafter ITK intervention to EU amendment 2013)

³²² ITK supports CITES work, cf: “I would like to begin by congratulating CITES on 40 years of work. This is important work.” . ITK acknowledge the relevance of Inuit co-management with CITES cf “CITES is a tool to aid in the management of wildlife. Inuit joint-management of polar bears is one of the success stories of CITES. Do not undermine this work by making a decision that is contrary to science.” ((Inuit Response to US Polar Bear uplisting at CITES, PROPOSAL 3: NGO INTERVENTION, Terry Audla, President of Inuit Tapiriit Kanatami, 6.03.2013, retrieved at <https://www.itk.ca/media/speech/inuit-response-us-polar-bear-uplisting-cites>, hereinafter ITK intervention to U.S. proposal).

³²³ cf the text: “Both Proposal 3 and this EU proposal target Inuit who have worked their entire lives to conserve polar bear populations for themselves and for future generations.”(ITK intervention to EU amendment 2013)

³²⁴ cf the text “We’re being punished for being responsible and for conserving this resource prudently, conservatively and sustainably “(ITK intervention to EU amendment 2013).

³²⁵ cf “This is not about polar bears. It is a targeted attack on an Indigenous people and their means of self-reliance. And on that there can be no compromise.” (ITK intervention to EU amendment 2013).

³²⁶ See for example : “Each year around 600 polar bears are killed there [Canadian Arctic], mainly by native hunters. According to [Canadian] Inuit representatives, the pelts from around 300 bears are sold for rugs. Other parts including fangs and paws are also exported. The Inuit say they get an average of \$4,850 per pelt. They argue that this is a critical economic resource for a people that do not have much else.” BBC News, Science and Environment, “Polar bear trade ban vote defeated at meeting”, 13 March 2013, retrieved at <http://www.bbc.co.uk/news/science-environment-21703090> .

legal³²⁷. The EU, beyond having declared to be very concerned about ensuring a sustainable future for the culture and livelihoods of Inuit communities in the Arctic, has never mentioned indigenous peoples throughout the proposal. A brief reference was made with regard to traditional knowledge, as “other source of information” to be taken in consideration in the management of polar bears³²⁸, but, as recalled by the ITK president, the data currently available was not considered by EU in outlining its proposal.

In addition, EU and the other parties to CITES acknowledged that other factors may threaten polar bear more, especially climate change and the associated loss of Arctic sea ice. The EU in fact used the occasion to encourage the parties to take actions to mitigate the effects of climate change, a position shared with indigenous peoples³²⁹. Therefore, upon this ground, it would be logical, for example, to not develop industry in the Arctic areas³³⁰, rather than concentrate on the issue of hunting, but of course it is a matter of priorities.

Since both indigenous peoples rights and needs, and environmental protection are priorities for the EU, a more consistent and balanced position on the international arena should be advocated. EU political and economic weight may positively affect negotiations and therefore impacts on indigenous peoples. As the case of polar bear suggests, EU should undertake an action that goes further than simply acknowledging its concerns for indigenous peoples. For example, traditional knowledge should be better evaluated as it reflects a deep understanding of the local environment³³¹ and therefore indigenous peoples should be more involved before advancing proposals. On the

³²⁷ cf. “It is not about protecting polar bears. A vote in favour of this proposal will have no effect whatsoever on hunting quotas. That’s right. Our hunt is a legal harvest and will continue regardless of an uplisting. But if you choose to vote in favour of this proposal, you are choosing to significantly reduce the livelihoods of Canadian Inuit. Your decision will have a direct and immediate impact on our lives.” (ITK intervention to U.S. proposal).

³²⁸ “the sustainability and management of their polar bear harvest levels and notably how the input of the IUCN/SSC PB Specialist Group and other sources of information, including traditional ecological knowledge, and observed and projected impacts from climate change, are taken into consideration in the determination of those levels”; (European Proposal regarding *URSUS MARITIMUS* (Polar bear), 2013:2).

³²⁹ See ITK intervention in response to U.S. proposal: “This proposal is not about taking action on climate change. A vote in favour of this proposal will have absolutely no effect on greenhouse gas emissions. It is not about protecting polar bears. A vote in favour of this proposal will have no effect whatsoever on hunting quotas” (ITK intervention to U.S. proposal).

³³⁰ cf. “[Off-shore] Operational activities can be a significant source of pollution and physical impact and can have cumulative effects. For example, oil and gas flaring would release BC emissions, which can increase the rate of warming within the Arctic. Seismic exploration has been shown to affect the migration patterns of bowhead whales and reduces the accessibility of indigenous hunters to their game. It may also cause polar bears to abandon their dens and thereby increase cub mortality.” (AFPA, 2010: 43).

³³¹ A interesting commentary by an Inuit elder was reported by the BBC “After hearing the news [on the rejection of uplisting polar bears], an Inuit elder invited anyone claiming to be experts on polar bears to come north to study the bears in their habitats.” (CBC News Canada, “U.S. proposal to ban cross-border polar bear trade fails”, 7.03.2013, at <http://www.cbc.ca/news/canada/story/2013/03/07/polar-bear-trade.html>).

other side, indigenous people's rights and needs should be better balanced with environmental and other interests within EU's action in the international arena.

5.2.3 Climate Change

Climate change is explicitly mentioned in EU's primary law, although it falls under the area of Environmental policy, and is thus a shared competence between the EU and its MSs. Therefore EU and its MSs follow the same set of rules outlined for environmental protection and sustainability, inclusive of the possibility to enact stricter rules at the national level, if needed (art.193). Due to the high relevance of the issues, climate change is dealt with and managed by a stand-alone Directorate General (DG CLIMA) which was established in 2010³³² with the scope of "leads international negotiations on climate, help the EU to deal with the consequences of climate change and to meet its targets for 2020, as well as develops and implements the EU Emissions Trading System"³³³.

Mention of climate change is found within Title XX (Environment) of TFEU in which specific measures are required in order to deal with regional or worldwide problems, in particular *combating climate change*:

Union policy on the environment shall contribute to pursuit of the following objectives: [...]

- promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change. [art.191.1 TFEU]

EU's legal frameworks and initiatives are currently aimed to address two distinct but complementary aspects of climate change: reduction of anthropogenic sources (mitigation) and adaptation research³³⁴, even if the latter is still in its early stage. The long-standing commitment of the Union to fight climate change has been witnessed by its internal efforts in reducing anthropogenic greenhouse gas emissions and by its strong external action in pushing for higher international standards settings and national implementation of stricter rules.

EU Climate Change Policy is grounded on the European Climate Change Programme (ECCP II), of which the most important policy instrument is the EU Emission Trading System (ETS) review, a subgroup of ECCP II. EU's main action to reduce its GHG emissions is contained in the "Climate Action and Renewable Energy Package" (hereinafter CARE package) adopted in 2003³³⁵ and

³³² Before 2010, climate change issues were managed by DG ENVI.

³³³ web-site of DG CLIMA, http://ec.europa.eu/dgs/clima/mission/index_en.htm

³³⁴ see e.g. AFPA 2009.

³³⁵ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (Text with EEA relevance), 2003, OJ L 275/32.

amended in 2007 by a Package of Implementation measures for the EU's objectives on climate change and renewable energy for 2020³³⁶. The EU has set a binding target of reducing its total GHG emissions by 20% from 1990 levels by 2020, with a conditional target of 30% if other developed nations also make reductions commitments through an international agreement³³⁷. In addition, this package, known as the 20-20-20-package, aims to raise the share of EU energy consumption produced from renewable resources to 20%, and a 20% improvement in the EU's energy efficiency³³⁸.

Although the EU has recognized the Arctic as an area specifically threatened by climate change consequences, especially in documents regarding an EU Arctic Policy, and besides the high visibility given to EU's achievements related to its fight against climate change, the EU climate change policy has neither a specific Arctic focus³³⁹ nor has the Arctic been emphasized during international climate change negotiations such as those at COP 15 in Copenhagen 2009³⁴⁰. However, an important exception is given by EU's research policy, one of the most important policy sectors within the EU's climate change policy, and which has by far the most direct implications for the Arctic³⁴¹. As reported by the AFPA:

The EU has programmes in place for climate adaptation research under Framework Programme 7 (FP7), and has funded several Arctic-focused projects, including:

- DAMOCLES, an Arctic climate modelling programme
- Arctic Tipping Points, which focuses on changes in Arctic ecosystems and includes discussion of impacts on income and employment
- ArcRisk, which looks at the human health impacts of Arctic contaminants, and the impact of changes in the cycling of contaminants due to climate change³⁴²

However, beside the consistent funding allocation, estimated around 20 million per year³⁴³, “there

³³⁶ Directive 2008/101/EC of the European Parliament and of the Council of 19 November 2008 amending Directive 2003/87/EC so as to include aviation activities in the scheme for greenhouse gas emission allowance trading within the Community (Text with EEA relevance), 2009, OJ L 8/3.

³³⁷ AFPA, 2009:C-21.

³³⁸ DG CLIMA website, http://ec.europa.eu/clima/policies/package/index_en.htm

³³⁹ See e.g.: “Currently, climate change policy in Europe as based on the European Climate Change Programme (ECCP II) is divided into 5 subgroups: aviation, CO₂ and cars, carbon capture and storage, adaptation and EU Emission Trading System (ETS) review. All policies related to the subfields have EEA relevance, yet no specific Arctic focus” (Koivurova et al. 2009:36).”, “Although the topic of climate change, in general, is still of high relevance within the EU's policies, this does not apply necessarily in the case of the Arctic.” (Neumann and Rudloff, 2010:7).

³⁴⁰ Neumann and Rudloff, 2010:7.

³⁴¹ cf. Neumann and Rudloff, 2010:7.

³⁴² AFPA, 2009:C-30.

³⁴³ Commission communication (Inventory) 2012:5.

have not yet been any FP7 projects focused specifically on the climate change adaptation needs of the Arctic, though other projects have touched on this issue and may be gathering information valuable for adaptation efforts.”³⁴⁴

Direct and indirect effects of climate change on Arctic indigenous peoples is a very complex issue. For instance, the ACIA 2005, through individual case studies regarding different Arctic indigenous peoples, has underlined that indigenous peoples may be both positively and negatively affected by climate change effects, or both develop forms of resilience and adaptation, or “feel like strangers in their own lands, because —local landscapes, seascapes, and ice-scapes are becoming unfamiliar”³⁴⁵. In any case, “especially in a time of rapid social change, climate change may be regarded as simply another aspect of the variable and challenging Arctic”³⁴⁶. The study therefore highlights the importance to understand the context within which indigenous peoples observe, assess, interact and respond to the impacts of climate change.

Therefore the EU, within the field of climate change research, may hold a concrete and important opportunity to develop further the existing literature³⁴⁷ on Saami adaptation and resilience to climate change. As suggested by the ACIA 2005, indigenous peoples, and therefore Saami, should be actively involved and contribute with their own specific traditional knowledge to also explore other fields, as for example, the effects of climate change on reindeers and reindeer pastoralism.

In addition the EU, as a major contributor to Arctic research, should allocate more funds for financing similar projects regarding adaptation and resilience to climate change by Arctic indigenous issues and, on the grounds that currently available information derived from projects conducted in different ways, with different objectives and at different times, it should have the initiative for a centre aimed to collect indigenous peoples perspective on climate change.

Therefore, in the understanding that EU’s efforts to reduce emissions and mitigate climate change effects are of the foremost importance not only for the Arctic but also for the entire planet, EU’s support of research into climate change resilience and adaptation of indigenous peoples and local communities would be a more focused achievement to confirm EU interests in the Arctic. Even more importantly, outcomes from this research could be implemented within the approach to other policy areas, as for instance, in the management of fisheries or flora and fauna protection.

³⁴⁴ AFPA, 2009:C-30.

³⁴⁵ ACIA, 2005: 94.

³⁴⁶ ACIA, 2005:90.

³⁴⁷ Suggested in ACIA 2005, an existing important project regarding Saami peoples and climate change is the Snowchange program organized by the Environmental Engineering Department at Tampere Polytechnic in Finland (Mustonen and Helander, 2004)

4.2.4 Animal Welfare Policy

As briefly mentioned in the previous chapters, the EU ban on the importation of seal products is a major issue not only between EU and Arctic Indigenous peoples, but also in the broader context of EU-Arctic affairs³⁴⁸. The political implications of the ban will be examined in greater depth in the concluding chapter of this study; therefore this section is devoted to presenting the issues under a legal perspective.

The Animal Welfare policy area comes from the protocol on the protection of animal welfare in the treaty of Amsterdam³⁴⁹, and the concept was moved directly into the TFEU, art.13 as follow:

In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage.

Since animals are sentient beings, TFEU asks that full regard of animal welfare requirements be inserted as integrative principles in the implementation of agriculture, fisheries, transport, internal market, research and technological development, and space policies of both MSs and the Union. It should also be noticed that the formulation of the article sought a balance between the mainstream concept in the distinct policy areas and in respect to the "legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage" [art.13 TFEU].

With regard to the Arctic, EU animal welfare policy is currently mainly focused on seal and whale hunting, which are protected mainly via trade policy. Beyond a literature more than extensive is currently covering this issue under distinct viewpoints, it is highly relevant for this study to consider at least the main steps of a debate that started decades ago and is still having catastrophic impacts on Inuit peoples.

During the 1960s, environmentalist and animal lobbies started a harsh protest-movement against Canadian and Norwegian hunters that used to kill baby seals -especially in Northern Canada- with the help of the *hacapik*, a hunting tool made of a wooden club, a heavy hammer head and a hook to eventually drag the animal. Protests against the culling of harp and hooded baby seals in the Canadian territories, which drew high visibility thanks to the big-name participation of Brigitte Bardot, soon convinced Europe, where most of the consents were actually found and millions of

³⁴⁸ cf.: "The EU ban on seal products import has recently been one of the major issues in EU-Arctic affairs" (AFPA, 2010: C-53).

³⁴⁹ cf Koivurova et al.2010.

signatures were gathered. Noteworthy, Inuit, who traditionally hunt seals, were exempted by this first wave of protests, since Inuit hunters "do not hunt seal pups, nor do they kill any seal solely for its pelt"³⁵⁰. Furthermore, both indigenous peoples institutions, such as the IWGIA, and scholars, for instance Hovelsrud-Broda, argued that during the early stages of the anti baby-seal-hunting protests, Inuit and animal lobbies had shared some common points; indeed for IWGIA, both Inuit and animal lobbies were concerned about *the protection and preservation of wildlife habitats in all areas of the world, including the Arctic*³⁵¹; while Hovelsrud-Broda reported that Inuit were highly disappointed by industries' consistent food-waste (as the fur industry kept the skins but not the meat)³⁵².

Europe took the issue very seriously and therefore some states adopted voluntary restrictions on baby-seal skin imports while the EP approved several resolutions calling on the Commission to act against baby seal hunting. In order to answer these pressing requests from the EP, in March 1983 the EU Council eventually approved the Directive 83/129/EEC³⁵³, which prohibited the importation into MSs of skins and other products derived from baby seals. . It was grounded on a precautionary approach to seal-population status threatened by the current hunting activities (no reference to animal welfare was made). As regards Inuit, the Directive explicitly stated:

Whereas the exploitation of seals and of other species, depending upon their capacity to withstand such exploitation and with due respect for the balance of nature, is a natural and legitimate occupation and in certain areas of the world forms an important part of the traditional way of life and economy; whereas hunting, as traditionally practiced by the Inuit people, leaves seal pups unharmed and it is therefore appropriate to see that the interests of the Inuit people are not affected [Preamble, Directive 83/129/EEC]

Thus seal products originating from indigenous peoples hunting were explicitly exempted by the ban:

Article 3

This Directive shall only apply to products not resulting from traditional hunting by the Inuit people [Directive 83/129/EEC]

However, as an immediate effect of the Council Directive, the European market of seal furs and skins dramatically collapsed (see Figure 2).

³⁵⁰ Hovelsrud-Broda 1997b:35.

³⁵¹ IWGIA, 1992:11.

³⁵² Hovelsrud-Broda, 1997.

³⁵³ Council Directive 83/129/EEC Concerning the importation into Member States of skins of certain seal pups and products derived therefrom, O.J. L 091, 09.04.1983 P. 30-31.

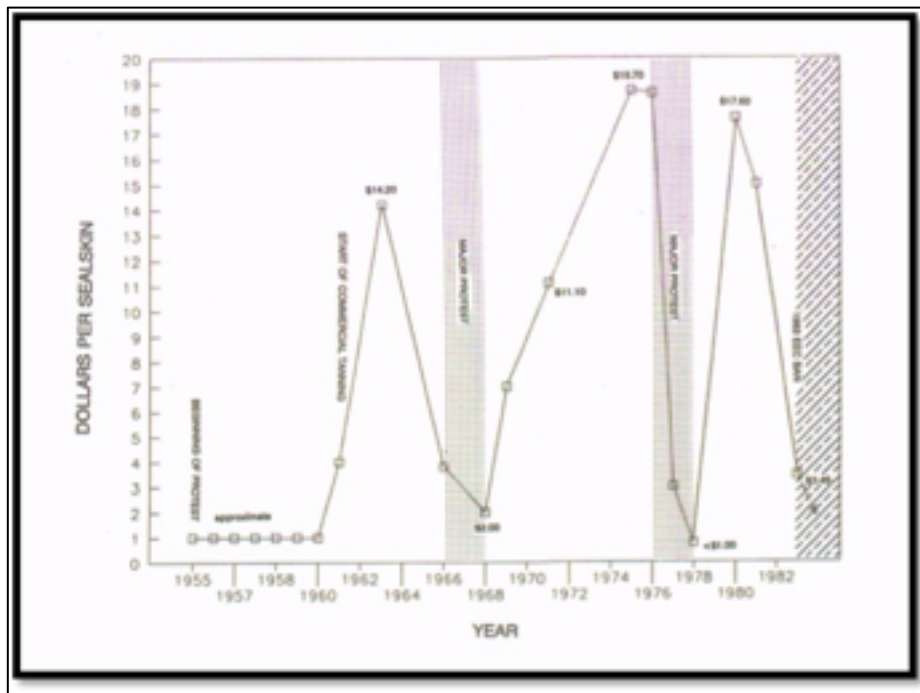


Figure 2: Seal skin price variations and animal rights protests. Source: Wezel, 1991:71

Figure 2 reports price variation on sealskins in relation to animal rights protests. As can be easily noted, during the harshest phases of the movement (1966-1968; 1976-1978 and after the EU ban on seal, 1983) prices dramatically collapsed. For example, after 1983 the price of a seal skin dropped from 17.60 to \$ 3.45.

Both Greenlandic and Canadian Inuit, even though not directly affected by the restrictions on baby seal furs – since *traditionally* they do not hunt baby seals- started experiencing dramatic side-effects, which

includes reduction of access to the technical means hunters require for local food production, alienation of traditional economy, growing socioeconomic differentiation in Northern communities, and a weakening of the country food base on which Inuit communities depend³⁵⁴.

and:

Inuit very quickly lost control over their local village economies. Seals, because they provided at once food and money, had given Inuit access to both traditional and modern resources., 83/229/EEC unraveled the bricolage that formed the modern subsistence adaptation by reducing access to money and thus complicating the circumstances of the traditional food economy³⁵⁵.

In the aftermath of the Council Directive 83/129/EEC and consequent market collapse, the Indigenous Peoples Survival (ISI) set up by Greenlandic, Alaskan and Canadians indigenous hunters, tried to assert their rights, especially regarding the economic relevance of hunting, but the animal welfare movement was gaining ever more consensus.

³⁵⁴ Wenzel, 1991:142.

³⁵⁵ Wenzel, 1991:123.

The time limit of the ban was extended several times³⁵⁶ during the following years, but it was only in 2009 that it underwent substantial changes that lead to the ban *all* products deriving from *all* seals. A little before 2009 and independently by Union law, the Netherlands and Belgium introduced stricter regulations on seal-products which basically extended the ban to adults seals and to any parts derived from seals (not only the skins). Because these national regulations may have caused disturbance of the internal market operations, the Union decided to harmonize the rules with the Protocol on the Protection and Welfare of Animals (after the Lisbon Treaty, art.13 TFEU) , as clearly stated in the Preamble (10):

To eliminate the present fragmentation of the internal market, it is necessary to provide for harmonized rules while taking into account animal welfare considerations. In order to counter barriers to the free movement of products concerned in an effective and proportionate fashion, the placing on the market of seal products should, as a general rule, not be allowed in order to restore consumer confidence while, at the same time, ensuring that animal welfare concerns are fully met.

Indeed, the approved EC Regulation No 1007/2009 on the trade of seal products (with EEA relevance), banned the import and the placing into the market of all seal products with the exemption of indigenous peoples:

The placing on the market of seal products shall be allowed only where the seal products result from hunts traditionally conducted by Inuit and other indigenous communities and contribute to their subsistence. These conditions shall apply at the time or point of import for imported products.

EU clearly did not learn the lesson from 1983, e.g. the high interdependency of legal action and market prices and in turn, the effects of price collapse on Inuit communities, and considered:

The fundamental economic and social interests of Inuit communities engaged in the hunting of seals as a means to ensure their subsistence should not be adversely affected. The hunt is an integral part of the culture and identity of the members of the Inuit society, and as such is recognised by the United Nations Declaration on the Rights of Indigenous Peoples. Therefore, the placing on the market of seal products which result from hunts traditionally conducted by Inuit and other indigenous communities and which contribute to their subsistence should be allowed. [Preamble (14)]

³⁵⁶ The time limit of the Council Directive 83/129/EEC was set in art. 2 '[t]his Directive shall apply from 1 October 1983 to 1 October 1985, unless the Council decides otherwise, by a decision taken by qualified majority on a proposal from the Commission, having regard to a report to be presented to the Council by the Commission before 1 September 1983'. In 1985, through the adoption of the Directive 85/444/EEC (O.J. L 259, 01/10/1985 P 0070-0070), the Commission extended the validity until 1st October 1989 (art.1 of the Directive 85/444/EEC: 'In Article 2 of Directive 83/129/EEC the date '1 October 1985' is replaced by '1 October 1989')', asking to report after two years ('the Commission will submit to the Council by 1 October 1987 at the latest') the conservation status and market response for the Inuit ('the developments in scientific data on the conservation and the population status of harp and hooded seals and, on the other hand, the development, which on the basis of information available is negative, of the market in seal skins derived from the Inuits' traditional hunting and of the market in other seal skins which are also excluded from the scope of Directive 83/129/EEC'). Therefore in 1989 the Council Directive 89/370/EEC (O.J. L 163, 14/06/1989, P 0037-0037) amended again the Directive 83/129/EEC, but this time extending indefinitely the validity (art. 2 'This Directive shall apply from 1 October 1983.'). Among the reasons recalled for the indefinite validity of the Directive there were: a written declaration by the EP calling for an indefinite extension, negative consequences to be expected from the expiry of the Directive 83/129/EEC, and increasing doubts with regard to the effects of non-traditional hunting on the conservation of harp seals in the East Atlantic, the Barents Sea and the White Sea (Preamble, Council Directive 89/370/EEC).

The text extensively reflects the emotional background lying at the ground of the ban, rather than more concrete scientific evidence of an endangered species:

The hunting of seals has led to expressions of serious concerns by members of the public and governments sensitive to animal welfare considerations due to the pain, distress, fear and other forms of suffering which the killing and skinning of seals, as they are most frequently performed, cause to those animals. [Preamble (4), EC 1007/2009]

This time indigenous peoples represented by ITK undertook a more active action and brought the EU before the EU's General Court , while Canada and Norway are challenging the legitimacy of the regulation through the World Trade Organization (WTO)³⁵⁷. Basically, ITK legal action claims that the EU regulation undermines traditional economic activities of indigenous peoples and the interests of Inuit communities were not weighted enough against certain moral convictions³⁵⁸. Among the several commentaries and implications stemming from this case, there are three cornerstones to the aim of the study.

Firstly, the ITK consideration that the *interests of Inuit communities were not weighed against certain moral conviction*³⁵⁹, is of foremost importance for the EU and the Arctic, since in the Arctic Policy formulation process, the necessity to balance environmental protection with the rights and needs of indigenous and local populations had been continuously asserted ³⁶⁰.

Secondly, EU has continuously stated that consultation with indigenous peoples on the issue had been regularly conducted³⁶¹. Beyond the critics already discussed in the previous chapter, whether or not these consultations have been conducted properly it is clear that EU has failed to understand its instrumental value. Consultation with indigenous peoples is not only an empty way to comply

³⁵⁷ For more detailed information on the cases, see Koivurova et oth. 2011.

³⁵⁸ Action brought on 11 January 2010 - Inuit Tapiriit Kanatami e.a. v Parliament and Council (Case T-18/10-InfoCuria).

³⁵⁹ cf. "Third, the applicants claim that the contested regulation unduly limits the subsistence possibilities of the applicants, relegating their economic activities to traditional hunting methods and subsistence. They contend that, despite this direct interference with their daily way of life, they have never been heard by the Council nor by the Parliament. Moreover, the applicants submit that the defendants did not weigh the interests of the Inuit Community in surviving in the Arctic against the moral convictions of some citizens in the Union and therefore violated the Article I of Protocol No I to the European Convention of Human Rights (ECHR) and Article 8 ECHR, read in light of Articles 9 and 10 ECHR and as explained in the Court's case law, as well as their fundamental right to be heard." (Action brought on 11 January 2010 - Inuit Tapiriit Kanatami e.a. v Parliament and Council (Case T-18/10-InfoCuria), available online: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dbe37ceb183bee42deaad5a35d5fe7913b.e34KaxiLc3qMb40Rch0SaxuKchr0?text=&docid=82780&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=10088>)

³⁶⁰ See chapter 4 of this research.

³⁶¹ E.g.: 'On the issue of sealing, there was widespread public consultation, including with indigenous peoples, prior to the adoption of EU Regulation 1007/2009 on trade in seal products'. Commission's communication, 2012:15.

with international standards, rather, it is supposed to provide the proper ground to reach common viewpoints.

Thirdly, it is often said that banning the sale of seal products underlines EU's lack of knowledge and interaction with Arctic populations³⁶². Against this picture and based on what said above, it is here argued that is not a lack of knowledge that is laying at the base, but rather a lack of priorities. EU's institutions, even though neither on a regular base or not particularly scrutinised, have met indigenous peoples, and indigenous peoples have managed to reach the institutions, if only through the European Court of Justice (ECJ). Furthermore, many scholars and report made within the Union have clearly acknowledged the relevance of the issue and the diverse effects of market prices collapse for traditional people. Therefore it could be argued that is rather an issue related with priorities than incompetence, and therefore improvable, for example, through the development of an Arctic policy.

5.2.5. Transport Policy

5.2.5.1 The Exxon Valdez Oil Spill

Before considering transport and energy policies, it is useful to recall a tragic episode that occurred in Alaskan waters in 1989; the Exxon Valdez oil spill. Unfortunately, the Exxon Valdez oil spill is a fitting sample -at the interconnection between transport and energy competence fields- to show the peculiar broad-spectrum of effects indigenous peoples may suffer in the aftermath of a major maritime accident. The specific after-response answer given by the authorities, indeed, might provide also some causes for reflections on how indigenous traditional knowledge may be turn useful for more adequate response. Eventually, as a side effect, this specific episode might provide a clear warning to the Arctic stakeholders that even the strictest safety measures may show severe handicaps when applied in the Arctic context, thus suggesting that the parallel development of adequate infrastructures may be needed even more than shipping security-measures. The EU, as explained in the following two chapters, may have an integral role in enhancing shipping safety and coordinating the Arctic infrastructure net, indirectly via quality standards requirements and directly via NDPTL and Greenland Partnership Agreements.

In March 1989, the oil-tanker Exxon Valdez grounded at Bligh Reef and spilled around 10,8 of crude oil into Prince William Sound. Even though no lives were lost³⁶³, the environmental and human impacts were immense. To evaluate the economic losses related to the accident, the Alaskan

³⁶² e.g. Keith, 2012

³⁶³ Besides no human lives were lost directly, during the accident, four peoples died during the cleaning up. [Final Report, Alaska Oil Spill Commission, available on line at <http://www.evostc.state.ak.us/facts/details.cfm>]

government funded several projects, with outcomes focused mainly on fisheries³⁶⁴, impacts on the tourism industry³⁶⁵, and birds and mammals losses³⁶⁶. With regard to regard indigenous peoples³⁶⁷, in many ways Alaskan natives were the most devastated of all the groups negatively impacted by the oil spill³⁶⁸. At the time of the accident, the Prince William Sound region was inhabited by the Alutiiq, an indigenous group with historical family connections to the Inuit, Aleuts, Athabaskans and Eyaks and Tlingits. In common with many Arctic populations, the Alutiiq had strategically settled their villages where fish and wildlife resources were plentiful since their traditional activities relied mainly on fishing, hunting, gathering and sharing. Centuries later, as the result of western arrivals and influence, first by the Russians and then by Americans, peoples from the Price William Sound started working in the formal western economy, especially the salmon industries, and living in (big) towns. Traditional activities, substantial economy, isolated settlements on one side and industries, formal/cash economy and towns on the other, have combined in that cultural, social and economic syncretism so widespread in the Arctic, described in general term in the first chapter of this study. And again, it is within the “subsistence” field - namely when the individual is closer to the environment- and related activity- namely re-distribution, sharing, support- where the social patterns emerge, cultural values are shaped and tradition has kept alive:

This is a way of life for us, not just subsistence. It's part of us. We are part of the earth. We respect it³⁶⁹.

When the Exxon Valdez grounded and started spilling oil, indigenous communities in the surrounding areas started experiencing new and dramatic problems. In the following years, for instance, a consistent decline in subsistence harvesting related with contamination of renewable resources, closure of traditional hunting and fishing spots, and an increased and widespread insecurity about traditional food healthiness dramatically changed food consumption and economy

³⁶⁴ Richard T. CARSON and W. Michael Hanemann, *A Preliminary Economic Analysis of Recreational Fishing Losses Related to the Exxon Valdez Oil Spill*, A Report to the attorney General of the State of Alaska, December 1992.

³⁶⁵ McDowell Group, *An Assessment of the Impact of the Exxon Valdez Oil Spill on the Alaska Tourism Industry*, A Report to the attorney General of the State of Alaska, August 1990.

³⁶⁶ Gardener Mallard BROWN, *Replacement Costs of Birds and Mammals*, A Report to the attorney General of the State of Alaska, December 1992.

³⁶⁷ The entire section on cultural impacts on indigenous peoples is based on Gill and Picou [1997:167-187].

³⁶⁸ Gill and Picou, 1997:167

³⁶⁹ Alaska AM Native in Cordova quoted in Minerals Management Service (MMS), 1993.

patterns³⁷⁰. Furthermore, as a direct consequence of the strong relation between subsistence activities and cultural patterns of indigenous peoples, as recalled throughout this research, Alutiiq experienced harsh cultural losses:

The cultural loss from subsistence disruption should not be underestimated. The meaning of such activities to participants identifies the core cultural relevance of subsistence behavior. In a 1992 follow up study of Alaska Natives in Cordova, 80 percent agreed that sharing subsistence food reminded them of their childhood, 71 percent agreed that sharing subsistence food reminded them of times spent with grandparents, and 77 percent agreed that sharing subsistence brought them closer to other people and reminded them of what was good about life (Picou and Gill 1995). Further, over 80 percent of the Alaska Natives agreed that collecting local foods was an important activity for them and 84 percent wanted their children to have the opportunity to participate in subsistence harvests³⁷¹.

Traumas experienced by indigenous peoples after the spill merged into several cases of chronic stress, worsened by lack of mental health structures and mental health workers in the area. The seriousness of the situation should not be underestimated, for instance the high social and economic costs to the community of related problems such as alcohol and drug abuse, social disruption and increased violence.

To conclude,

[t]he oil spill and its subsequent contamination disrupted culturally-based subsistence harvests and produced emotional responses and long-term psychological distress within Alaska Native communities. These impacts have continued and have been viewed as "the most lingering-and measurable-of the spill" (Piper 1993:106).

With regard to shipping safety, many observations were listed in the Alaska Oil Spill Commission Final Report. At the time of the accident, the Exxon Valdez was the second-newest ship of the Exxon Shipping Company's fleet and no unusual technical problems were reported when she left Alaska. Furthermore, the route from the Alaskan pipelines to California was proved to be safe, as no serious accident had occurred in 12 years with more than 8700 voyages. In fact, as textually considered by the Report:

Until the *Exxon Valdez* piled onto Bligh Reef, the system designed to carry 2 million barrels of North Slope oil to West Coast and Gulf Coast markets daily had worked perhaps too well.

Indigenous communities have been actively involved in the restoration program, after a call on the Trustee Council from traditional community residents was made to incorporate traditional

³⁷⁰ E.g. 'The village of Tatitlek harvested 644 pounds of wild resources per capita in 1988 and saw harvests decline to 215 pounds in 1989 and 153 pounds in 1990. There was an increase to 346 pounds in 1991 but harvests declined to 270 pounds in 1993. In Chenega Bay, harvests of wild resources for home use fell from 374 pounds per capita in 1985 (the year the village was last surveyed prior to the spill) to 148 pounds in 1989 and 139 pounds in 1990. There was an increase in 1991 and 1992, 345 pounds and 414 pounds, respectively, but, once again, harvests fell to 275 pounds in 1993.' [Gill and Picou 1997:174].

³⁷¹ Picou and Gill 1995:175

environmental knowledge in 1994. Several projects involved traditional communities and relied on traditional knowledge. Among these projects, the Alaska Predator Ecosystem Experiment (APEE) and the Sound Ecosystem Assessment (SEA) would not have been possible without the involvement of traditional knowledge. The goal of this research, was to provide an evaluation of the effective loss of forage fish (juvenile herring, sand-lance, capelin and eulachon) in the area, but no historical data was available. The research was thus based on local community interviews, which resulted in an accurate mapping of forage fish distribution prior to the accident. Other relevant research, for instance, involved Alaskan Native hunters conducting bio-sampling on harbour seals tissue.

5.2.5.2 Transport Policy

The implication and relevance of transport policy in the Arctic is a complex and multi-layered issue that would require a stand-alone study. The discussion here is not intended to be exhaustive; it provides some key political and legal elements that have general relevance for the Arctic and implication for Arctic indigenous peoples.

Transport policy is a shared competence (art.4.2.(g) of TFEU) between the MSs and the EU, regulated mainly through Title VI of TFEU (art. 90-100 TFEU), *Transport*, and managed by Directorate General (hereinafter DG) TREN and DG MARE, the latter as regards maritime transport.

Title VI aims to develop an EU common transport policy, the provisions of which apply to transport by rail, road and inland waterway (art. 100 (1) TFEU); however, the EP and the Council may lay down appropriate provisions for sea and air transport as well (art. 100 (2) TFEU). TFEU defines in detail the EU's competences in art. 91 as:

- (a) common rules applicable to international transport to or from the territory of a Member State or passing across the territory of one or more Member States
- (b) the conditions under which non-resident carriers may operate transport services within a Member State;
- (c) measures to improve transport safety;
- (d) any other appropriate provisions.

These competences also apply with regard to *freedom to provide transport services*, as accorded by art.58 TFEU:

1. Freedom to provide services in the field of transport shall be governed by the provisions of the Title relating to transport

Highly relevant is the 2nd paragraph of article 91, where the social dimension (standards of living and level of employment) embedded into transport development has been underlined:

2. When the measures referred to in paragraph 1 are adopted, account shall be taken of cases where their application might seriously affect the standard of living and level of employment in certain regions, and the operation of transport facilities.

As regards the Arctic, the most relevant aspects of EU's competences in the field of transport concerns, Arctic Maritime transport, witnessed, *inter alia*, by the great relevance that has already been accorded to a parallel proposal for an Integrated Maritime Policy.

EU's competences in this specific issue cover both marine and territorial aspects, namely, EU may exercise its competences with regard to both EU-flagged ships (marine aspect) and port surveillance and control (terrestrial aspect). Thus, the field is already regulated by the EU and has special and potential relevance for Arctic environment and shipping safety including: maritime safety and prevention of pollution from shipping, port state control and improving performance of Member States as flag states as well as liability of carriers or vessel traffic monitoring and information system (VTMIS)³⁷². As already noted within the political analysis, the EU accords to the United Nations Convention on the Law of the Sea (UNCLOS), a highly regulative power for Arctic waters. EU's interests in Arctic shipping look toward the advantages of using the Russian Northern Sea Route and the Canadian Northwest Passage to establish a Northern Sea Route (NSR) across the Arctic. For instance, as recalled by the Danish Arctic Strategy³⁷³, the distance in nautical miles between the European port of Rotterdam to Seattle, may be reduced by 25%, while the eastward route, from Rotterdam to Tokyo, by up to 33%. Furthermore, the Arctic Governance Report³⁷⁴ considers the advantages of avoiding routes with dangerous pirate threats (African Horn) and the costs of fees and waiting periods in passing through the Panama and Suez straits³⁷⁵ for both routes. As a common feature to every Arctic activity, the long list of advantages is counterbalanced by as many costs and risks. The Arctic Governance Report³⁷⁶ lists for instance the short time-frame during the year in which the NSR is actually navigable; the lower speed, need of special-built vessels, trained crews, poor weather conditions, unpredictability of water and ice conditions, and last but not least, very high insurance costs³⁷⁷. Arctic routes are currently used mainly for intra-Arctic (between Arctic ports) goods transport and fisheries activities, while ice-recession will very likely increase other shipping activities.

³⁷² Koivurova et al., 2010: 22.

³⁷³ Denmark, Greenland and the Faroe Islands: Kingdom of Denmark Strategy for the Arctic 2011-2020, Ministry for Foreign Affairs, 2011.

³⁷⁴ Garcés de los Fayos, 2012 (Arctic Governance Report)

³⁷⁵ Garcés de los Fayos, 2012:19

³⁷⁶ Garcés de los Fayos, 2012

³⁷⁷ Garcés de los Fayos, 2012:20.

The relevance of the human dimension, inclusive of indigenous peoples communities, has been highlighted by the Arctic Marine Shipping Assessment (hereinafter AMSA) 2009 Report. In 2009, the Arctic Council's working group Protection of the Arctic Marine Environment (hereinafter PAME) released the AMSA, a long report aimed to answer the call by the Arctic Council to "conduct a comprehensive Arctic marine shipping assessment as outlined under the Arctic Marine Strategic Plan (AMSP) under the guidance of Canada, Finland and the United States as lead countries and in collaboration with the Emergency Prevention, Preparedness and Response (EPPR) working group and the Permanent Participants [indigenous peoples] as relevant³⁷⁸." Designed to be circumpolar in breadth, but conscious of the local and regional perspectives, the AMSA 2009 Report has addressed the main environmental and human challenges related to shipping and infrastructure development in the Arctic. They result from a broad consultation of the global maritime community³⁷⁹, the support of indigenous peoples and the collaboration with EPPR and SDGW. Most, if not all, of the topics dealt by AMSA Report 2009 might provide a relevant perspective for an EU's own marine and shipping assessment, however only the human dimension of shipping assessment relevant to indigenous peoples has been considered here. AMSA Report 2009 gathered indigenous peoples' fears and expectations, along with new research inputs, directly from the field thanks to several town meetings held in various locations of the Arctic. In regard to environmental impacts and consequences, local indigenous communities main concerns were on shipping disturbance effects on sea-mammals. Indeed Inuit from Nunavut recalled how walrus were pushed away from usual spots as a consequences of increased shipping during the 1990's. Saami of Norway³⁸⁰ shared their fears about the effects of pollution and oil spills (and lack of response capabilities in the Arctic) on fish stocks. Hunters were concerned about the dangers of being in small boats if sea-traffic notably increased. Furthermore, a source of deep concern was the side effects of icebreakers and climate change effects. Unexpected open waters may represent an additional danger for human travel over ice by sledge or for animals which migrate over ice such as caribou, or may alter animal migration patterns and consequently, hunting. The only positive side-effect on animal behavior that was highlighted, concerned some species of sea-mammals that follow ships inside harbors, facilitating hunting activities (reported by Iqaluit Inuit). On the other

³⁷⁸ AMSA Report, 2009:2.

³⁷⁹ The global maritime community consisted of: shipping companies, ship designers, shipbuilders, ship classification societies, marine insurers, non-commercial partner- ships and shipping associations.

³⁸⁰ Another sample reported by AMSA: "Kola Saami are afraid that the increased shipping and construction of new pipelines will ruin the remaining wilderness areas of the Kola. Atlantic salmon spawning rivers, such as the Ponoï, are vital traditional fishing areas for the Saami and their productivity is directly related to the ecological status of the Russian sector of the Arctic Ocean. The Kola Saami are engaging in planning and decision-making to make sure that the people of the Sun Deer will be here now and forever "(AMSA, 2009:125).

side, the town meetings highlighted some potential benefits from an increased shipping activity, for instance less expensive services, potential job availability or increased tourist activities in the most remote areas. Besides the evaluation of direct costs and benefits, governance dynamics also merged during the meetings and were described as potential sources of emasculation. Local communities were concerned about “having little voice in shipping, development and other activities that have so much effect on their lives”³⁸¹ as one of the major threats to indigenous lives.

On this ground, the AMSA Report considered that indigenous and local coastal communities will be increasingly effected by shipping by its broad dimension intra-Arctic and trans-Arctic shipping and its local dimension-development of infrastructures. Thus, for the AMSA Report, a proper management of potential effects of shipping would require not only national and international measures, but also the participation of institutions such as shipping companies, regulatory agencies, local and regional organizations.

Considering the peculiar diverse effects transport may have in regard to indigenous peoples, the topic could be considered as fundamental for EU to achieve sustainable management of shipping activities. Noteworthy, the concept is not completely new for EU: in fact the AFPA:

Oil discharges, from accidents and normal vessel operations, can impact wildlife and their habitats through water and food chain toxification, and suffocation or starvation for many marine species. Oil spills can also impact wilderness areas and local communities dependent on healthy oceans. Other potential shipping impacts include waste dumping, navigation noise that can disrupt marine animal activities and migration, anchoring effects on the ocean floor, and destruction of ice-ways necessary for mobility of local communities and indigenous hunting activities. For example, indigenous communities have noted that increased shipping activity can noticeably reduce the presence of narwhals, requiring hunters to travel farther to find game. Some individuals have requested that certain sea ice passages be left undisturbed, and many indigenous peoples insist that the Arctic be free of contamination³⁸².

Although EU has only direct regulatory capacity over EU Member state flagged vessels and EU’s port authorities, other elements may indirectly contribute to improve EU’s maritime presence in the region. As reported by the EU Arctic Footprint, EU is the major worldwide energy market comprising about 27% of global imports. EU’s 855 oil-tankers represent 15% of the world total, and including the so-called flag of convenience (FOC) vessels, it is estimated EU reach almost 35% of the world total. Including Norway, the EU-owned fleet comprises 50% of the global fleet, of which 70% of oil tanker movements take place along the North Atlantic Coasts (inter alia where the most of the accidents occur). Furthermore, 25% of the Arctic total world commerce fleet is related to EU. All these elements put *Europe in a good position to regulate oil tankers both as flag states and Port*

³⁸¹ AMSA 2009:130.

³⁸² AFPA 2010:79

states³⁸³. It is therefore clear that a regulatory action by the EU may consistently (positively) affect the issue.

On this ground, the AFPA has considered some valuable policy options which may enhance environmental sustainability of EU's policies on transport. Here it is re-proposed with additional suggestions that focus more on indigenous peoples interests, on the grounds of the Exxon-Valdez oil spill and suggestion withdrawn by the AMSA Report.

Shipping infrastructures need to be developed. While it would be far more preferable if all the states and EU would work together to develop a proper management of infrastructures, EU may get this process started. EU, besides Finland and Sweden, could cooperate with Norway, Iceland and Russia within the Northern Dimension Policy and the specific partnership on Logistic and Transport (NDPLT). As suggested by the Arctic Footprint, EU may push for a closer cooperation with the ND partners in developing efficient and coordinated maritime infrastructures. Based on the consistent presence of indigenous communities, the ND partners (with the exception of Iceland which, has continuously declared its interest in indigenous rights and infrastructure development) could consider specific indigenous peoples needs and receive inputs through involvement of coastal communities, as merged by the AMSA report. Therefore it could analyze the possibility of avoiding for example, the development of infrastructure nearby important hunting spots and involving indigenous peoples in all stages of the decision-making process.

On the other side, EU and Greenland are bounded by a special relation under the Overseas Countries and Territories (hereinafter OCT)³⁸⁴ partnership which allows both parties to develop dialogues, achieve common goals, provide a basis for economic, scientific, educational and cultural cooperation and contribute to the development of Greenland. Furthermore and potentially even more relevant, EU is currently seeking to reach a new agreement with Greenland on raw materials (see "Common Energy Policy"), confirmed by the signing with the former Greenlandic Prime Minister a Memorandum of Understanding (MOU), a letter of intention which moved the parties closer to reach an agreement in the near future. Noteworthy, in exchange for having access to Greenland's raw materials, EU offered *joint infrastructures and investments or capacity building in exploration and exploitation of raw materials*³⁸⁵. Under this framework, EU could concretely develop shipping infrastructures in a coordinated manner with EU's territories and ND's Partners

³⁸³ AFPA, 2010:78.

³⁸⁴ twenty-one countries and territories, depending constitutionally on Denmark, France, the Netherlands, and the United Kingdom, while do not form part of the EU territory and not directly subject to EU Law, benefit from associate status (conferred on them by the Treaty of Lisbon), and from economic and social development funds (http://europa.eu/legislation_summaries/development/overseas_countries_territories/)

³⁸⁵ EU Rapid Press, European Commission signed today agreement of cooperation with Greenland on Raw Materials, 13th June 2012, REF: IP/12/600.

and thus serve as a bridge between Greenland and ND partners. Clearly, indigenous peoples special needs are particularly relevant for a territory such as Greenland, where around 80% of the entire population consider themselves as Inuit and most (with sensible regional differences) rely on the economic pattern defined as mixed economy. In the case that new services and/or infrastructure to support resource development in Greenland take place, EU will have direct competences to apply relevant standards and measures for a sustainable development. Therefore, observance of indigenous peoples special needs must be considered to comply with the overall goal of achieving a sustainable resources development and protection of the Arctic Environment in unison with its population. Furthermore, in that specific case, awareness and preparedness of indigenous issues may foster and enhance Greenland's will to reach a definitive agreement.

Whether EU's competences on standard setting relating to environmental protection and safety on the sea are limited to its area, it could be also noticed that without international cooperation any efforts may vanish. The Arctic states and the EU share on equal footing: because of the strong currents in Arctic waters, for example, an accident with a relatively large oil spill occurring within the area of the State's jurisdiction could easily effect the surrounding ones. It would be in the common interest therefore, to develop strict rules applying equally in all areas.

Firstly, the AFPA considers that EU may support the development of a strong International Maritime Organisation (IMO) Polar Code and promote a mandatory implementation amongst its MSs. Considering the volume of EU shipping activities in the Arctic, a mandatory requirement for EU flagged vessels would bring sensitive changes. Secondly, EU may support the designation of Particular Sensitive Sea Area (PSSA) under the IMO MARPOL³⁸⁶ on the basis that even a marginal increase in Arctic shipping may particularly threaten the Arctic ecosystem. To be qualified as a PSSA, any specific portion of sea, inclusive of high seas, must be considered particularly relevant for socio-economic, environmental or scientific reasons and, of course, highly vulnerable to marine shipping. It would be more politically realistic, as noticed by the AFPA, if the Arctic States themselves would advance proposals, "nevertheless, the EU and its Member States could advocate and support PSSA establishment and should capitalize on the experience from the establishment of PSSAs for the Wadden Sea and the Baltic Sea³⁸⁷". Considering the disruptive potential effects on indigenous coastal communities, measures could be introduced to limit the impacts of shipping on indigenous peoples. For instance, "seasonal passages" could be introduced to avoid shipping transit in areas and periods particularly relevant for wildlife (e.g. during mating, molt, birth), but it may

³⁸⁶ International Convention for the Prevention of Pollution from Ships (MARPOL) Adoption: 1973 (Convention), 1978 (1978 Protocol), 1997 (Protocol - Annex VI); Entry into force: 2 October 1983 (Annexes I and II).

³⁸⁷ AFPA, 2010:84.

consider limiting passage during certain hunting seasons. Again, if international co-operation would be preferable, EU could start in conducting studies and providing relevant data, for example on currents, wind and other factors which may contribute to spread into the Arctic oil and other harmful substances spilled within EU's EEZ, and consequently how relevant spots for the marine ecosystem or indigenous communities located outside may be potentially affect. For instance, EU may avoid shipping passage in those areas falling under its direct jurisdiction via MSs during certain relevant periods.

5.2.6 Common Energy Market and External Energy Policy

The introduction of explicit competences for EU in the energy field is one of the few substantial innovations brought by the Treaty of Lisbon. Prior to 2009, legislative actions and non-binding initiatives were developed under the environmental policy field (and thus as shared competences), basically addressing the promotion of renewable sources. A key initiative was developed in March 2006, when the Commission released a green paper on *A European Strategy for Sustainable Competitive and Secure Energy* that lead two years later, to a new Partnership and Cooperation Agreement with Russia on energy issues ³⁸⁸.

Therefore Energy Policy is now regulated by TFEU under Title III (art.194), Energy, as a shared competence between the EU and its MSs [art.4.2 (i)] and is mainly managed under a newly-devoted Directorate General, the DG ENER.

The new policy area, in the context of functioning in the internal market and protection of the environment, shall aim to:

- (a) ensure the functioning of the energy market;
 - (b) ensure security of energy supply in the Union;
 - (c) promote energy efficiency and energy saving and the development of new and renewable forms of energy; and
 - (d) promote the interconnection of energy networks.
- [art.194.1]

As outlined in art.194, the scope of EU's energy policy is twofold: on one side EU shall aim to promote efficiency, energy saving and renewable sources to comply with its environmental scopes, while on the other side, to ensure proper functioning of the energy internal market, guarantying security of supply. Both aspects have relevance within the framework of EU and the Arctic relation; the former as a key-element for climate change mitigation and environmental policy, while the latter

³⁸⁸ Koivurova et al., 2010.

as clear interest put forward by the EU. In this section only the latter; relevant element of energy management for climate change and environment are reported in the section concerned.

So far, the only survey available on Arctic undiscovered technically recoverable oil and natural gas resources has been released by the United States Geological Survey (USGS) in 2008³⁸⁹. Accordingly with the USGS, the Arctic area has an estimated 400 billion barrels of undiscovered, technically recoverable oil (of which 84% are located off-shore); 1,670 trillion cubic feet of technically recoverable natural gas, and 44 billion barrels of technically recoverable natural gas liquids. As highly dependent on energy-import, the EU has foreseen in the Arctic an attractive possibility to assure its security needs and to attenuate its dependency from energy holders³⁹⁰, especially in regard to hydrocarbons. On the other side, EU is perfectly aware of the challenges posed by the Arctic environment in terms of costs and sustainability, in fact the Union has continuously stressed the need to guarantee the maximum environmental standards in all resource activities taking place in the region.

Currently EU is mostly importing energy from the Arctic, rather than directly exploiting it, but its reliance on oil and gas imports has turned the Union into one of the largest energy markets in the world ³⁹¹. Similar to what has been said in regard of transport policy, EU's legal capacity is limited to its MSs' activities, but it has capacity to provide external supplies. EU is currently receiving 24% of the total output of the Arctic oil and gas production, while importing 60% of total Arctic extractive industries exports (for example diamond or metals). Moreover, the EU is the most important market for Norway (where EEA's obligation do not extend to energy policy). For instance in 2010, the UK, the Netherlands, France and Germany received together 84% of Norwegian natural gas and 65% of Norwegian oil exports, while the Italian ENI is working in the Norwegian Barents Sea holding a 65% share of the exploration license³⁹².

Indigenous peoples and resources extraction are not incompatible, but require special measures to be followed in order to achieve a sustainable development respectful of their rights and needs.

First of all, both the dynamics and consequences in the case of an accident nearby an indigenous community may be much more disruptive than the ones described in the Exxon Valdez sample. The quantity of oil or gas spilled in the Arctic waters may be much higher than in the case of shipping accidents. However, as an off shore activity, many of the points argued in relation to transport policy may be usefully considered in the case of off-shore extraction activity. For instance, the need

³⁸⁹ US Geological Survey (USGS), <http://www.usgs.gov>

³⁹⁰ EU imports energy mostly from Russia. The other partners are Middle East and Africa.

³⁹¹ EU Arctic Footprint, 2009: 38.

³⁹² Keils, 2012.

for infrastructure and the designation of PSSA are particularly relevant for wildlife reproduction and hunting, seasonal work, etc.

A large proportion of the unexploited reserves of oil, gas and hydrocarbons technically available in the Arctic region lie within indigenous peoples traditional areas; for instance, experts estimate that more than 20 billion barrels of oil are located off Greenland³⁹³. The topic is very complex and overlaps international law, human and indigenous peoples rights and national agreements between indigenous peoples and the states concerned. However, considering the general aim of this study, some key considerations are necessary here.

In April 2008 the ICC released the Circumpolar Inuit Declaration³⁹⁴, followed in May 2011 by *A Circumpolar Inuit Declaration On Resource Development Principles in Inuit Nunaat*. The Inuit core viewpoint on Arctic resources, sovereignty and rights may be described by art.3 of the Declaration on Resources Development:

3. A Circumpolar Inuit Declaration on Sovereignty in the Arctic
3.1 Resource development in *Inuit Nunaat* must be grounded in *A Circumpolar Inuit Declaration on Sovereignty in the Arctic*, adopted by the Inuit Circumpolar Council in April 2009. **3.2** *A Circumpolar Inuit Declaration on Sovereignty in the Arctic* identified many principles that are relevant to the governance and carrying out of resource development in *Inuit Nunaat*, including the importance of the rule of law and recognition of the rights of Inuit as an Arctic indigenous people under both international and domestic law.

In turn, the ICC Declaration of sovereignty in the Arctic states over resources (inclusive of non-renewable one) considers:

Central to our rights as a people is the right to *self-determination*. It is our right to freely determine our political status, freely pursue our economic, social, cultural and linguistic development, and freely dispose of our natural wealth and resources. [art.1.4]

[recalling the UNDRIP]the right to own, use, develop and control our lands, territories and resources and the right to ensure that no project affecting our lands, territories or resources will proceed without our free and informed consent (Art.25-32) [art.3.6]

Closer and even more relevant to the EU, is the Athabaskan viewpoint merged within the document *Europe and the Arctic: A View From the Arctic Athabaskan Council* released on the occasion of the Arctic Common Concern for the Arctic in 2008 (Ilulissat, Greenland)³⁹⁵:

The title of this conference mentions “common concern” for the Arctic. It is important, however, that as European states and the institutions of the EU develop a policy or dimension for the Arctic that “common concern” is not confused with “common property.” As Athabaskan peoples acquired legally recognized property rights in 1971 through the Alaska

³⁹³ ICC set to meet on resources development, 9th February 2011, retrievable at: http://www.nunatsiaqonline.ca/stories/article/108758_icc_set_to_meet_on_resource_development/

³⁹⁴ In April 2009, the ICC launched the Circumpolar Inuit Declaration on Arctic sovereignty, addressing *some of these questions from the position of a people who know the Arctic intimately. We have lived here for thousands and thousands of years and by making this declaration, we are saying to those who want to use Inuit Nunaat for their own purposes, you must talk to us and respect our rights*, as said ICC Chair Patricia Cochran in 2008 [ICC, Circumpolar Inuit Launch Declaration on Arctic Sovereignty, Tromsø, Norway, 28th April 2008].

³⁹⁵ AAC, 2008a.

Native Claims Settlement Act and more recently in Canada through various modern treaties, AAC is well aware of the difference [2008:6].

ICC and Athabaskan statements clearly suggest that any resource-extraction activity which takes place in the Arctic must involve indigenous communities as natural stakeholders and take particular care of their rights and needs. As presented here, the issue recalls the principle of indigenous property rights and the concept of free, prior and informed consent:

The concept of free, prior and informed consent is based on the rights of participation and consultation, self-determination, and indigenous property rights. The right to FPIC is a central issue in resource extraction projects, whose impact, according to the U.N. Commission on Human Rights' Special Rapporteur on indigenous peoples' rights, has been "one of the major problems faced by [indigenous people] in recent decades." The catastrophic consequences of unwanted and actively opposed development that stems from violations of the FPIC right are often lost in academic discussions³⁹⁶.

As clarified especially by ICC declarations, resource extraction and indigenous communities are not incompatible, rather they must follow ethical standards, respect sustainability principles, and benefit Inuit communities and culture:

[...] oil and gas activities should not take place in indigenous lands and territories without their prior, free and informed consent. Indigenous peoples also have the right to a fair share of the benefits from such activities in their lands and territories, and the right to just and fair compensation. Compensation should also include any measures to mitigate adverse environmental, economic, social or cultural impacts. These rights should be settled through appropriate negotiations and just and fair agreements with the indigenous peoples concerned³⁹⁷.

Failing to involve indigenous peoples or consider ways to benefit-sharing, may seriously hamper the objective of a sustainable development for the Arctic, as clearly stated by the ICC and the Athabaskan representatives.

Through proper management and governance, indigenous peoples may benefit from resource activities taking place in their region. The AHDR therefore suggest:

- 1) Address property right to resources
- 2) Incorporating traditional knowledge along with western science in the decision making,
- 3) Co-management and devolution to local and regional level,
- 4) Expanding our understanding of resource governance dynamics- particularly as it relates to resources development and climate change³⁹⁸

Another good example to follow has been suggested by the Arctic Offshore Oil and Gas Guidelines³⁹⁹ edited by the Arctic Council. It provides some key considerations of indigenous peoples and traditional knowledge and full and meaningful involvement in the decision-making

³⁹⁶ McGee, 2012:3

³⁹⁷ Fjellheim and Henriksen, 2006:29.

³⁹⁸ AHDR, 2004:135-136.

³⁹⁹ Arctic Council, PAME, Arctic Offshore Oil and Gas Guidelines, 2009.

process and integration of cultural and environmental considerations to achieve a sustainable development for the indigenous communities:

- incorporate local and traditional knowledge into the decision-making process including the initial siting studies and disposition of resource use rights. For example, ethnological expert studies are being used in Russia in which scientific and local knowledge are combined;
- pursue regulatory and political structures that allow for participation of indigenous people and other local residents in the decision making process as well as the public at large;
- urge and, where appropriate, require industry to integrate cultural and environmental protection considerations into planning, design, construction and operational phases of oil and gas activities;
- improve cross-cultural communication methods to ensure full and meaningful participation of indigenous residents including procedures to incorporate local knowledge;
- identify and appropriately manage oil and gas activities in ecologically and culturally sensitive areas; and
- for use in planning and decisions, identify species, which are resources for human use and their ecological requirements, and identify patterns of their use as resources⁴⁰⁰.

Notably, the European Commission Communication on the European Union and the Arctic Region (2008) addressed the possibility of endorsing the guidelines for oil and gas exploitation drafted by the Arctic Council⁴⁰¹, which include, inter alia, the above suggestions.

For the time being the EU, as a major energy importer, could call and lobby on its partners to develop a sustainable approach to resource extraction, inclusive of all those aspects inherent in indigenous peoples rights and needs. However, and even more relevant, EU might have the possibility to *directly* implement sustainable requirements, inclusive of indigenous peoples needs and rights, through a new Partnership with Greenland. As slightly merged in the previous subsection, EU is currently moving toward a “raw material diplomacy”, as referred to by the vice-commissioner Tajani. Reported by the Guardian on 31st July 2012:

Tajani said: "Greenland is hugely important in terms of natural resources, it has vast opportunities. We are currently working very hard with the prime minister of Greenland on this – we are working on our own agreement with Greenland on raw materials."

Just the month before, on 13th June 2012, the commissioner signed with Greenland a Memorandum of Understanding⁴⁰² (MOU), a letter of intent that would grant for EU access to Greenlandic raw

⁴⁰⁰ Arctic Council, PAME, Arctic Offshore Oil and Gas Guidelines, 2009.

⁴⁰¹ cf. “Assess possibilities of endorsing the guidelines for oil and gas exploitation drafted by the Arctic Council” Commission communication, 2008:7. In the following Commission communication 2012, it was more generally stated “the Commission and EU agencies also contribute to work on this issue under the Arctic Council's Protection of the Arctic Marine Environment Working Group), Commission communication, 2012:12.

⁴⁰² Europa Press Release Rapid, European Commission Signs today agreement of cooperation with Greenland on raw materials, REF: IP/12/600.

materials (at affordable prices) in exchange for monetary support for joint infrastructure and investments or capacity building in exploration and exploitation of raw materials (very similar to the terms for the fishery agreement). On the grounds of the special relationship established with the EU through its Overseas Countries and Territories status, the EU is trying to broaden cooperation fields with Greenland (strategically relevant for EU's position in the Arctic as well). The same day the EU Press released another document on Greenlandic raw material potential and EU strategic needs. Six⁴⁰³ out of fourteen EU's critical raw materials⁴⁰⁴ have been considered strategically abundant in Greenland with moderate presence for a further three elements. At the time, only four EU's MSs (Denmark, Germany, Czech Republic, and the UK) were operating in Greenland, covering only 15% of total exploitation activities. Greenlandic resources were thus considered strategically important for EU development.

However, the picture has changed and EU is currently experiencing a probable rejection of its mineral pre-agreement. As reported by Reuters⁴⁰⁵ and CNBC⁴⁰⁶ on March 2013 the former Greenlandic Prime Minister, Kuupik Kleist, warned EU he could scrap the preliminary agreement on EU's access to Greenlandic raw materials and evaluate other proposals, for instance from Beijing. The former Minister shared his difficulties to understand EU Commission's behavior, which at the time was still reticent in providing concrete interest in following up to the pre-agreement reached the year before.

"I have been to Brussels many times," Kleist added. "I don't have a thorough explanation why the big interest in Greenland and the Arctic area does not play out in really concrete activities from the European side⁴⁰⁷.

Greenland's future is currently in the hands of the newly elected government (March 2013), whose attitude toward resources extraction needs to be checked on practice. However, the newly elected Prime Minister, Aleqa Hammond, stated during her campaign that she would :

⁴⁰³ niobium, platinum group metals, rare earths and tantalum.

⁴⁰⁴ The 14 critical raw material for EU was listed for the first time in the EU Raw Material Strategy adopted in 2008 and renewed in 2011.

⁴⁰⁵ Greenland warns EU may miss out on its mineral wealth, Mar 7th 2013, retrieved at <http://www.reuters.com/article/2013/03/07/us-greenland-pm-idUSBRE92617I20130307>

⁴⁰⁶ CNBC, Interview, Greenland warns EU may miss out on its mineral wealth, Mar 7th 2013, retrieved at <http://www.cnbc.com/id/100534146>

⁴⁰⁷ CNBC, Interview, Greenland warns EU may miss out on its mineral wealth, Mar 7th 2013, retrieved at <http://www.cnbc.com/id/100534146>

pledged to toughen up on foreign investors looking to take advantage of the nation's wealth of natural resources⁴⁰⁸.

and

want(s) to introduce royalties on resources and want(s) to be more demanding when it comes to companies from abroad⁴⁰⁹.

As presented by this complex picture, many elements would be crucial for the discussion about EU and indigenous peoples. Again, as already considered within Transport Policy, Greenland is a peculiar legal entity seeking independence and inhabited by a strong majority of indigenous peoples, of which many still rely on that “Arctic” syncretism of traditional subsistence and formal economy. Therefore, Greenland may provide the concrete terrain over which EU could acquire implement its standard on sustainable development, inclusive of indigenous peoples’ rights and needs.

Furthermore, as the MOU seems to have an uncertain future, an increased awareness and preparedness of indigenous peoples’ special needs rights and requirements in the field of resource extraction would encourage a more demanding Greenland to cooperate with EU.

5.2.7 Common Fishery Policy

5.2.7.1 EU-Greenland Fishery Agreements

Before introducing EU common fisheries policy, it is necessary to briefly recall the EU-Greenland Partnership Agreement.

In 1985, few years after being accorded with the Home Rule Act⁴¹⁰, Greenland formalised its decision and withdrew from the EU, putting forward the wish of having full sovereignty over Greenlandic fisheries, but also due to an overall will of minimizing the direct influence from outside of Greenland⁴¹¹. Right after the withdrawal, Greenland entered into the OCT status under EU on the basis of its linkage with Denmark and therefore the EU and because of some structural and economic characteristics shared with developing countries⁴¹². However, the OCT status accorded to

⁴⁰⁸ Greenlanders votes to Get Tough on Investors, The Wall Street Journal, March 13, 2013. Retrieved at <http://online.wsj.com/article/SB10001424127887324077704578357792781721964.html>

⁴⁰⁹ Greenlanders votes to Get Tough on Investors, The Wall Street Journal, March 13, 2013. Retrieved at <http://online.wsj.com/article/SB10001424127887324077704578357792781721964.html>

⁴¹⁰ Greenland Home Rule was established on May 1st 1979, after a favorable referendum held on January 1979 among Greenland. (see e.g. Petersen, 2004)

⁴¹¹ “Fishery Partnership Agreement” article available at: <http://eu.nanoq.gl/Emner/EuGl/Fisheries%20Agreement.aspx>

⁴¹² Common features with developing country are, for example, lack of infrastructures, dependence on one economic activity, and relying on another State subsidies.

Greenland –namely the legal ground to develop special agreements with EU- was since the beginning subordinated to an agreement that would assigned fishing quota to the EU to be re-negotiated every 10 years as regard catch allowances and funds to be allocated. Upon this ground, EU could keep its fishery rights and Greenland could keep its financial contribution as before the withdrawal. The disproportionate amount of money payed by the EU was actually meant to keep providing Greenland with economic support, as had being doing before 1985.

In 1999 the Court of Auditors, stated that the allocation of funds for Greenlandic fishing quotas was disproportionately high for a very limited catch activity. The Court thus suggested to re-consider the relation with Greenland and proposed to discern funds allocated for cooperation and development from funds for fishing quotas. Upon this ground and in occasion of the renewal of the agreement in 2006, the Commission proposed a new Partnership taking into account the importance of fisheries and the structural development problems in Greenland and aimed “in particular at broadening and strengthening relations between the Community and Greenland and contributing to the sustainable development of Greenland”(art.1⁴¹³) and which objectives are:

- (a) to provide a framework for dialogue;
- (b) to achieve common goals by consulting on issues of common interest to ensure that the cooperation efforts have maximum effect in accordance with the priorities of both partners;
- (c) to provide a basis for economic, financial, scientific, educational and cultural cooperation founded on the principles of mutual responsibility and mutual support;
- (d) to contribute to the development of Greenland⁴¹⁴

As confirmed later in 2012 in occasion of the Mid-Term review,⁴¹⁵this new form of partnership was also relevant for several horizontal EU policy issues, as (inter alia⁴¹⁶) the geostrategic importance of Greenland as regards Arctic issues⁴¹⁷. Therefore it was recalled its particular location, its role at the Arctic Council, and its full support to the Commission application to become a permanent observer on the Arctic Council⁴¹⁸.

Therefore, the previous Fishery Agreement was split into two distinct agreements: a “new” Fishery Partnership Agreement, covering “only” fishery and related issues, and a Bilateral Partnership.

⁴¹³ Council Decision 2006/526/EC of 17 July 2006 on relations between the European Community on the one hand, and Greenland and the Kingdom of Denmark on the other OJ L208/8.

⁴¹⁴ art.1, Council Decision 2006/526/EC

⁴¹⁵ Mid-term review of the EU/Greenland Partnership 2007-2013 (2006/526/EC) 8 May 2012 (available at http://ec.europa.eu/europeaid/where/octs_and_greenland/documents/mtr_grl-eu_partnership_2007-2013_en.pdf)

⁴¹⁶ The mid-term review also recalled: climate change, Arctic issues, Natural resources including raw materials.

⁴¹⁷ the Mid-term review devoted a full paragraph to “Arctic issues” relevant in the relation between Greenland and the EU. cf Mid-term review of the EU/Greenland Partnership 2007-2013 (2006/526/EC) 8 May 2012, p 13-14.

⁴¹⁸ Mid-term review of the EU/Greenland Partnership 2007-2013 (2006/526/EC) 8 May 2012, p 13-14.

Under the latter, Greenland was allocated with E25M per year in order to improve its development, especially in the areas of education & training, mineral resources, energy, tourism and culture, research and food safety⁴¹⁹. Under the FPA, instead, EU and Greenland could negotiate specifically and exclusively on fishery quota and fishery sustainability issues. Thus, the amount was reduced to E15.8M (plus E2M from MSs licenses fees) per year, basically paying only fishing rights to Greenland. Further, EU introduced within the agreement the issue of sustainability for fisheries, setting apart the 25% of the total amount provided by the FPA in change of fishery rights to be allocated by Greenland in the continuous promotion of sustainable and responsible fishing.

5.2.7.2 Common Fisheries Policy

Within the Common Fishery Policy, EU bears exclusive competencies as regarding the management and conservation of marine biological resources (art.3.1. (d)) TFEU, *the conservation of marine biological resources under the common fisheries policy*, but shares its competencies with MSs in the definition and implementation of a common agriculture and fishery policy (art.4.2. (d) TFEU). The EU Common Fishery Policy is mainly based on Title III of TFEU (art.38-44), *Agriculture and Fisheries* and mainly managed by DG MARE (maritime affairs and fisheries). "Agricultural products" are defined as "the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products"[art.38.1 TFEU], over which EU has competencies to establish a functioning and stable internal market. In addition, EU competencies have been granted with an external dimension by the provision set in art.39 (d) under which the Union is required to assure the availability of supplies.

Even if the numbers of Arctic fish caught by EU member state flagged vessels are rather limited⁴²⁰, Arctic fisheries are highly relevant and directly affected by the EU since a "third of the fish caught in the Arctic Circle ends up on European plates"⁴²¹.

As regarding current activity, the EU's capture is around 4%⁴²² of the total Arctic catch (a percentage that can slightly increase if considering EU member states owned vessels operating under a flag of convenience (FOC)⁴²³ which represents only the 2,6% of EU's total catch worldwide. The most significant EU Arctic fisheries activity takes place off the coast of Norway and

⁴¹⁹ "Partnership Agreement" article available at: <http://eu.nanoq.gl/Emner/EuGI/Partnership%20Agreement.aspx>

⁴²⁰ See e.g. Koivurova, 2009; Airoidi, Neumann et others 2010.

⁴²¹ (21/01/2013) Speech by Commissioner Damanaki at the Arctic Frontiers Conference, Tromsø, Norway

⁴²² Neumann et Rudloff, 2010, EU AFPA 2010,

⁴²³ EU Arctic Footprint, 2010:51.

West Russia, namely within the Barents Sea and Norwegian Sea and partially within Greenland's EEZ. Since fishery patterns are undergoing substantial changes as a direct effect of climate change, there is a great potential of a more abundant fishing ground in the Arctic⁴²⁴, an increased and longer accessibility to fisheries areas or even availability of new fish stocks; all factors that may very likely increase EU's capture activity within the Arctic waters in a near future⁴²⁵.

On the other hand, EU's presence in the Arctic fishery market is more than relevant. The EU currently imports fish from many of the Arctic countries; therefore Norway currently covers around 20% of EU total fish-imports, Iceland around 6% and US around 4%. Important to note, the same data considered by the viewpoint of the Arctic states reveal the consistent economic importance of EU's trade: Iceland sells fish into the Union comprising 80% of its total exports, Norway around 60%, US 25%, Russia Federation 12% and Canada 10%⁴²⁶.

Arctic indigenous peoples may be increasingly affected by commercial fisheries especially if they develop as a consequence of climate change, both directly as substantial near-shore activities may be hampered and indirectly, since disproportionate variation of fish stocks may adversely impact marine mammals. Against the brief introduction on the high interdependency among hunting, fishing and gathering activities, it should be noted that the intensive debate over seal and other sea mammal hunting has implicitly diverted attention from and accorded to fisheries, a secondary role for the well-being of Arctic indigenous peoples. On the contrary, it should be made clear that fish is a central resource for Arctic indigenous coastal communities, since it is, for example, a valuable source of proteins, nutrient-dense⁴²⁷ and economically relevant for households⁴²⁸ as recalled for example by the ITK and ICC Canada.

⁴²⁴ AFPA, 2010:

⁴²⁵ see e.g. Neumann et Rudloff, 2010, Koivurova,

⁴²⁶ Rudloff, 2010:12.

⁴²⁷ Nutrient-dense country foods include many animals and plants, such as caribou, fish, birds, whales, seal and berries. Country food provides invaluable health benefits due to high levels of antioxidants, omega-3 fatty acids, monounsaturated fatty acids, protein and other micronutrients (11, 15, 16 & 17). In 2006, 65% of Inuit residing in northern Canada lived in homes where at least half of the meat and fish consumed was country food (5). A study involving Inuit adults found that on days when country food was consumed there was significantly more vitamin A, D, E and B6, riboflavin, iron, zinc, copper, magnesium, manganese, phosphorus, potassium, and selenium in the diet. These findings highlight the important relationship between country food access and Inuit health. (ITK and ICC Canada, 2012:5).

⁴²⁸ "In 2006, 65% of Inuit residing in northern Canada lived in homes where at least half of the meat and fish consumed was country food" (ITK and ICC Canada, 2012:5); "the cost of food for Inuit living in northern Canada is significantly higher compared to southern areas. A family of four in an isolated community in Nunavut would spend \$395 to \$460 a week to buy a basic nutritious diet. This equates to spending \$226 in a southern city such as Ottawa." (ITK and ICC Canada, 2012:8).

Despite this relevance, “subsistence fishing is ignored outright or blithely acknowledged only to be forgotten in the glare cast by management attention to commercial and recreational fishing”⁴²⁹ while “so far very little attention has been devoted to Indigenous peoples”⁴³⁰ within the international fisheries management.

Upon this ground, ICC Alaska released in June 2009 an interesting article on commercial fisheries and indigenous peoples:

Before commercial fishing is allowed, there is a need to understand how fishing will affect the Arctic Ocean and those who depend on it. There is very little information on fish stocks currently available and base line studies are necessary. There is a need to better understand how commercial fishing will affect the environment and the food chain that marine mammals depend on for life. There is a real possibility that marine mammals could be disrupted by fishing fleets as they feed, mate and migrate. Finally, it must be shown that commercial fishing will not adversely affect the Inuit hunting way of life⁴³¹.

As regarding the currently little amount of information available, Arctic indigenous peoples, especially ICC, has recalled the relevance of their consent and expertise as critical to progress on international issues involving the Arctic, such as, inter alia, commercial fishing⁴³².

Throughout the documents related to EU Arctic Policy, the EU has confirmed its support of “the exploitation of Arctic fisheries resources at sustainable levels based on sound scientific advice, while respecting the rights of local coastal communities”⁴³³; advocating a precautionary approach prior to the exploitation of new fishery opportunities and the establishment of a regulatory framework for those high seas areas not covered by any international conservation and management agreement. Besides direct capture activities of EU’s member states flagged vessels which are currently rather limited, EU still have distinct options to positively impact and improve sustainable exploitation of Arctic fisheries taking into consideration indigenous people's rights and needs.

- EU can regulate fish imports, as it must meet certain health and sourcing standards. On this ground EU should strengthen this market based instrument and require that fisheries

⁴²⁹ Shumann Macinko, 2006:707.

⁴³⁰ Koivurova and Moleenar, 2010:13.

⁴³¹ ICC Alaska [2009:1]

⁴³² Cf. ICC Declaration of Sovereignty, art.3.5 “Inuit consent, expertise and perspectives are critical to progress on international issues involving the Arctic, such as global environmental security, sustainable development, militarization, commercial fishing, shipping, human health, and economic and social development”

⁴³³ Commission Communication, 2012:10. In addition, see also the Commission Communication 2008: The EU’s main objective is to ensure exploitation of Arctic fisheries resources at sustainable levels whilst respecting the rights of local coastal communities; Put in place a regulatory framework for the part of the Arctic high seas not yet covered by an international conservation and management regime before new fishing opportunities arise. This will prevent fisheries developing in a regulatory vacuum, and will ensure fair and transparent management of fisheries in accordance with the Code of Conduct for Responsible Fishing. In principle, extending the mandate of existing management organizations such as NEAFC is preferable to creating new ones. Until a conservation and management regime is in place for the areas not yet covered by such a regime, no new fisheries should commence’. (Commission Communication 2008:7-8).

exploitation is conducted in a sustainable way. More specifically, EU can require that catches are made in respect to indigenous coastal communities and no new fish stocks are exploited until new data are available on sustainability for both the environment and indigenous peoples. Given the high volume of fish trade to the EU, this action may actively sensitise the Arctic states to introduce parameters which include indigenous people's needs to fish, while reducing adverse effects on coastal communities.

- EU fish catch activity within its MSs' waters may adversely affect Arctic stocks and other marine species, since different species can migrate into EU's waters ⁴³⁴. Therefore the EU should further regulate its MSs' activities introducing a parameter that (also) new scientific data on the effect of harvesting on subsistence communities and on food-chain for marine mammals is needed before new stock are harvested.

- On the ground of the EU-Greenland Partnership Agreement, and considering a foreseeable increase in fishing activities as consequences of climate change, the EU bears a concrete possibility to develop a fishery management sustainable also for indigenous coastal communities. Via Partnership agreement EU should finance studies aimed to understand the impacts of commercial fisheries on coastal communities and on the food-chains, in close cooperation with indigenous peoples and with the support of traditional knowledge, and therefore improve, for instance, food security. In a second step, outcomes from these studies should be integrated within fishery management.

- On the ground that bears exclusive competence for conservation of marine resources, EU, and not its MSs, is part of regional fisheries management organizations (RFMOs), of which the most relevant for the Arctic are: North-East Atlantic Fisheries Commission (NEAFC), the Northwest Atlantic Fisheries Organization (NAFO) and the North Atlantic Salmon Conservation Organization (NASCO). On this ground, and because "so far very little attention has been devoted to Indigenous peoples" in international negotiations on fisheries management, EU's support to indigenous peoples can potentially make the difference. Whether indigenous peoples "do not have rights and obligations under the international law of the sea in their own right" ⁴³⁵, their interests in the Arctic are confirmed by their role in the Arctic Council, while, in the specific field of fisheries, a growing literature is confirming both the value of their management and the necessity of including subsistence data within

⁴³⁴ cf.: "EU-flagged vessels can harvest stocks of fish or otherwise impact marine species outside the Arctic which are capable of migrating into Arctic waters. If any of these species are sources of protein for indigenous peoples, or are keystone species for an Arctic ecosystem, or are a tourist/recreational fishing attraction, such as sport fishing, in the Arctic, EU vessels can indirectly impact the Arctic." (AFPA, 2010:57).

⁴³⁵ Koivurova and Moleenar, 2010:13.

the fishery quotas. Therefore the EU should exercise its political and economic influence to push for an effective involvement of indigenous peoples within Arctic fisheries management and advocate a balanced approach to conservation and management which take into high consideration indigenous people's rights and needs. In addition, as both the EU and indigenous peoples seem to share the objective of develop more scientific information before new stocks are harvested, EU could include as a requirement for fisheries sustainability to include indigenous peoples needs.

5.2.8 Research

In the area of research, technological development and space the Union and its MSs share the following competences:

In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programs; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs [art.4.3 TFEU]

TFEU particularly stresses the need for coordination between national and Union level in research policy:

The Union and the Member States shall coordinate their research and technological development activities so as to ensure that national policies and Union policy are mutually consistent. (art.181.1 TFEU).

The Commission, while keeping the EP fully informed [art.181.2, second sentence] was appointed to support this harmonization process through:

[...] any useful initiative to promote the coordination referred to in paragraph 1, in particular initiatives aiming at the establishment of guidelines and indicators, the organization of exchange of best practice, and the preparation of the necessary elements for periodic monitoring and evaluation [art.181.2]

Definition of objectives, procedures and modes of how to conduct research is described within the XIX (art.179-190). Therefore, the overall goal of this policy area shall be exhaustively described as:

The Union shall have the objective of strengthening its scientific and technological bases by achieving a European research area in which researchers, scientific knowledge and technology circulate freely, and encouraging it to become more competitive, including in its industry, while promoting all the research activities deemed necessary by virtue of other Chapters of the Treaties [art.179.1 TFEU]

Because of the relevance of research in almost all the Arctic-related issues dealt here, this section focuses on the epistemological grounds and priorities of EU's research.

Progress in research relevant to the Arctic is listed throughout the entry "Research, Monitoring and

Assessment” of the Commission’s communication Inventory portioned into several sub-themes⁴³⁶, with a detailed list of Arctic-related programs launched and respective amounts allocated.

The Commission’s communication Inventory has considered the goal set in 2008 as:

The 2008 Communication proposed that research programs should address the state and evolution of the Arctic environment, enhance monitoring and surveillance capabilities and develop technologies that can be deployed under Arctic conditions

Since 2008 the Union has been stressing its commitment toward Arctic-related research activities in terms of funds allocation so much as to be presented as one of the most clear evidences of EU’s commitment toward the Arctic along with its achievements against climate change.

High and relevant interconnection between scientific research and policy-making processes have already been understood and integrated in the documents regarding EU Arctic policy proposals:

- EP resolution 2008: “[the EP] underlines the significance of the Arctic for the global climate in this respect, and hopes that the present support for research activities in that region will be continued beyond the International Polar Year.”
- Commission Communication 2008: “The European Community should maintain the Arctic as a priority area for research to close knowledge gaps and assess future anthropogenic impacts, especially in the area of climate change, and Policy responses should be based on assessments using the best available knowledge and understanding of the processes affecting the Arctic.”
- Council Conclusions 2009: “The Council calls for increased support for research on Arctic related issues, in particular to secure the legacy of the International Polar Year 2007-2008, and agrees that this should be adequately reflected in the work programs of the Seventh Community Framework Program for Scientific Research and in other community research and innovation activities.”
- EP resolution 2011: “[the EP] highlights that the EU is committed to devising its policy responses in the Arctic on the basis of the best available scientific knowledge and understanding of the processes affecting the Arctic, and is accordingly already devoting sizable research efforts to generating sound scientific evidence to support policy-making;²
- Joint Communication 2012: “The EU will therefore target its actions on knowledge: to further our understanding of the Arctic by investing in Arctic research, developing Arctic monitoring from space, supporting information and observation networks, while building know-how and technical expertise.”

As research effects the decision-making process, almost by definition it effects indigenous peoples. More specifically, "knowledge production is no innocent objective endeavor but also a part of the struggle over whose reality becomes dominant"⁴³⁷. In relation with research objectives, it may prove important to work with and for indigenous peoples, through integrating indigenous peoples' issues in the methodology and in the objectives of the research. Over this ground, it could be advanced that better-focused research planning, both in terms of methodology and objectives, may

⁴³⁶ Climate change, contaminant and health, infrastructure, Environmental technologies, International research and capacity building, Reporting, Monitoring and Mapping, European Environmental Agency, Space, and Soil.

⁴³⁷ Koivurova, 2008:153

achieve better-focused results.

In this regard, both integration of indigenous peoples knowledge into scientific research and setting better indigenous peoples tailored research activities seem to be already relevant for the EU, although in nuce. The EU in fact has briefly acknowledged those points for example through Commissioner Danamaki, head of the DGMARE, who pointed out:

In my speech to the conference, I reiterated our commitment to working with Arctic indigenous peoples to promote knowledge of Arctic issues, for example through research on climate change. We also need to take a responsible approach to our handling of the Arctic. And we need to do more to engage with those who live in the Arctic to make sure that our actions chime with their needs. In this vein, I invited Leona Aglukkaq to Brussels to continue our discussions and open up a meaningful dialogue⁴³⁸.

The issue of *working with indigenous peoples* directly regards methodology of research, therefore it could potentially be set among the guidelines, falling within the Commission tasks on research.

Noteworthy, the EEA⁴³⁹ has already taken a small first step aimed to integrate indigenous peoples knowledge into its scientific research within the environmental field:

In 2009 the EEA held informal discussions with Arctic indigenous peoples' groups to identify possible areas of using traditional knowledge in future EEA environmental reports and products. As a concrete follow-up, the EEA initiated a study into how decision-makers use or could use local and traditional knowledge when assessing the state of the environment and implementing decisions, which will be part of a larger study into using lay, local and traditional knowledge in general. In June 2011 the EEA hosted the first of a series of seminars, including participation of Arctic indigenous peoples, with the aim to explore further the use of traditional knowledge in the Arctic⁴⁴⁰.

The results from the EEA workshop (June 2011) were published in the summary report *Lay, Local, Traditional Knowledge and Citizen Science: Their Roles in Monitoring and Assessment of the Environment*⁴⁴¹. The workshop focused on the difficult relation between lay, local, traditional knowledge (LLTK), and Citizen Science (CS):

The cultural values of Western science and indigenous knowledge are often very different so science needs to discuss how to internalize indigenous knowledge. It is also significant to keep in mind that science is becoming more open, interdisciplinary, multi-disciplinary and generally not framed in rigid rules. It is up to the scientists to find ways to incorporate indigenous knowledge⁴⁴².

⁴³⁸ Maria Danamaky, THE ARCTIC: IT IS TIME FOR US TO TAKE ACTION, Maria Danamaky blog at eu.europa.eu. (<http://blogs.ec.europa.eu/damanaki/the-arctic-it-is-time-for-us-to-take-action/>)

⁴³⁹ See "Environmental Policy" in this chapter.

⁴⁴⁰ AFPA, 2010: 44.

⁴⁴¹ Adem, 2011.

⁴⁴² Adem, 2011:19.

Even if limited, it should be considered remarkable the attempt to deal with the longstanding epistemological conflict between traditional knowledge and science, particularly deep-rooted⁴⁴³ in the Old Continent.

On the other hand, it should be noted that in the Arctic there are examples of traditional knowledge integration into science. For instance, an interesting example is provided by the Alaskan Traditional Knowledge and Native Food Database, a project fund by the US Environmental Protection Agency and carried under the executive direction of Patricia Cochran. This database contains information for more than 300 Alaskan communities on the effects of contaminants in traditional food. The project has been carried out with the overall aim:

To help village tribal organizations, Native regional organizations, government agencies, and scientists to:

- Access existing information relevant to concerns about contaminants in subsistence foods;
- Achieve consensus on a process for setting research, monitoring, and clean-up priorities
- Communicate with each other to advance toward common goals⁴⁴⁴

Noteworthy in this project is how traditional ways of knowing and indigenous observation skills have been integrated to the systematic monitoring network:

IMBEST is a proposed systematic monitoring network comprised of Alaska Natives and other local resident from different geographic regions of the Bering Sea to collect and interpret observations of ecosystem change utilizing traditional ways of knowing and observation skills⁴⁴⁵.

Another fitting and just as interesting example of traditional knowledge integration into science may be provided by the Alaska Eskimo Whaling Commission (AEWC)^{446 447}. In 1977 the International

⁴⁴³ The anthropologists first reported about the *existence* of oral bodies of traditional knowledge among indigenous peoples (see for instance 1888 Boas' s report of Inuit observations on the relationship between sea ice type, ringed seal abundance and settlement patterns). Currently, one of the most calling challenges for anthropologist is to translate the liability and validity of traditional knowledge into western science. The anthropological literature regarding the conflict between traditional knowledge and science is really extensive. For insatnce, one of the most remarkable attempt to conciliate the debate was done by Ingold:

Intuitive understanding, in short, is not contrary to science or ethics, nor does it appeal to instinct rather than reason, or to supposedly 'hardwired' imperatives of human nature. On the contrary, it rests in perceptual skills that emerge, for each and every being, through a process of development in a historically specific environment. These skills, I maintain, provide a necessary grounding for any system of science or ethics that would treat the environment as an object of its concern. The sentient ecology is thus both pre-objective and pre-ethical [Ingold, 2000: 25]

⁴⁴⁴ Traditional Knowledge and Contaminants Project, Progress Report [2007:41]

⁴⁴⁵ ELOKA (Exchange for Local Observation and Knowledge of the Arctic) web-site: <http://eloka-arctic.org/collaborators/ansc.html>

⁴⁴⁶ This sample has been taken form Huntington, 2000.

⁴⁴⁷ Another similar sample reported by Huntington is the Alaska Beluga Whales Committee [Huntington, 2000: 1272-1273],

Whaling Commission (IWC) listed Bowhead whales among endangered species, soon after introducing a ban on harvesting which applied to the traditional activities of the Alaskan Eskimo communities as well. To oppose this ban, the Eskimo whalers formed the AEWC, whose main task was to provide evidence to contradict the severe measures imposed by the IWC. In fact the data collected through visual monitoring activities established the initial census of around 2000-3000 species. The migrating Bowheads were counted *from sites on high cliffs or pressure ridges in the shore-fast ice along the open lead through which the migratory path led*⁴⁴⁸. The Eskimo hunters considered that the number estimated by the IWC did not reflect the actual Bowhead population, and the postulate upon which the count was done was not valid. Therefore they counted again where the Bowhead's migrate and also where the ice lead was closed, but at alternative spots. Traveling around by sledge and boat when the lead was closed, allowed them to reach alternative spots where the Bowhead actually passed through instead of stopping their migration. Thanks to those observations, researchers counted again, this time with the support of acoustic and aerial components and fixed the total number on 6000-8000 Bowheads. As a consequence, the hunting quotas were considerably raised.

In addition, just a quick overview of the Arctic Council's research topics related to indigenous peoples, may provide a good sample on the broadness of possibilities which EU could integrate in its research policy field.

5.2.9 Economic, Social and Territorial Cohesion Policy

Cohesion policy is a shared competence (art.4.2.(c) TFEU) between MSs and the Union, regulated under XVIII Title (art.174- 178) of TFEU, "Economic, Social and Territorial Cohesion", and mostly managed by DG REGIO. Core significance of this policy area is explained in art.174 TFEU, which sets as the overall goal a harmonious development of the whole Union. This objective is meant to be achieved through three main policy objectives:

- 1) *the Union shall develop and pursue its actions leading to the strengthening of its economic, social and territorial cohesion* [art.174, TFEU]
- 2) *The Union shall aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favored regions* [art.174, TFEU]
- 3) Special attention to be paid toward specific regions [art.174 TFEU]

The Union conducts its cohesion policy mainly through the coordination of its actions with MSs (Member States shall conduct their economic policies and shall coordinate them in such a way as, in addition, to attain the objectives set out in Article 174.[art.175 TFEU]) and through several

⁴⁴⁸ Huntington, 2000:1272.

programs funded by Structural Funds (European Agricultural Guidance and Guarantee Fund, Guidance Section; European Social Fund; European Regional Development Fund), the European Investment Bank and other existing Financial Instruments [see art.175 TFEU]. Special relevance in providing financial support for objective achievements has been accorded to the European Regional Development Fund, which “is intended to help to redress the main regional imbalances in the Union through participation in the development and structural adjustment of regions whose development is lagging behind and in the conversion of declining industrial regions” [art.176].

Relevance of this policy area to the European northern areas is set within the overall objectives, i.e. in art.174, since special attention has to be accorded to those “regions which suffer from severe and permanent natural or demographic handicaps such as the northernmost regions with very low population density and island, cross-border and mountain regions” [art.174].

Considering the overall goals and objectives, only the Arctic indigenous peoples and the Arctic territories directly falling within the borders of EU, EEA and neighboring states are directly effected by actions carried under this policy area. In addition, it should be also positively noted that in setting the geographical scope of the distinct programs the Union has also applied cultural, social or other relevant criteria other than pure economic or geographical ones. This work resulted in some cross-border programs specifically relevant for indigenous peoples, with geographical and cultural criteria which benefit Sami people living within the traditional areas of Norway, Sweden and Finland.

The current EU Region policy program is about to expire at the end of the 2013. Discussion and proposals are already undergoing within the main EU’s institutions to define priorities and budget allocations for the next years (2014-2020); therefore this section refers to the programming years 2007-2013.

Cohesion Policy, based mainly on a consistent availability of funds, receives around one-third of the total EU’s budget through distinct financial instruments, for instance the European Fund for Regional Development (EFRD), European Social Fund (ESF) or the Cohesion Fund.

Many distinct programs funded through the Cohesion policy funding instruments have relevance for the northernmost areas of EU, and direct relevance for Sami Peoples. The most relevant programs are here described:

- INTERREGIO IV North: *this program’s primary goal is to strengthen competitiveness and solidarity within the program area.* The geographical scope of this program encompass all of Norrbotten county, the municipalities of Skellefteå, Sorsele, Malå and Norsjö in Västerbotten county, the Lappland, Northern Österbotten and Central Österbotten provinces

in Finland and the Norwegian counties Nordland, Troms and Finnmark⁴⁴⁹. Most of the above mentioned areas are characterized by low density population (e.g. Norrbotten (Sweden) 2.6 inh/km², Lappland 1.9 inh./km² (Finland), Finnmark (Norway) 1,5 inh./km²), and therefore those falling into those regions require special attention by means of primary law.

Efforts made in outlining the most culturally, socially, economically homogenous areas to deal with and thus enhancing cross-border cooperation, is also confirmed by the possibility of allocating around 20% of the fund's support to the adjacent areas or up to 10% in adjacent areas falling into a non-EU country. In the case of INTERREGIO IV North for instance, some areas have been added to the original geographical scope of the program because of the historical collaboration with the area selected by the program and because of additional competences, for instance trade or research necessary to foster program implementation⁴⁵⁰.

Noteworthy, as all the other INTERREGIO initiatives, the operational program is not planned in Brussels or in any of the central institutions, but directly in the areas concerned. Therefore, once the guidelines, rules and overall scopes have been centrally set, is a task of the state/region concerned to outline specific programs. Thus, INTERREGIO IV North program has been draft by the County Administrative Board with the co-operation of a joint committee of the representatives of the regions and the Saami parliament⁴⁵¹, whose task, inter alia, was to collect and provide the opinions from all the local stakeholders they represent. The operational program approved at the regional level has to be validated by the Commission before implementation⁴⁵².

- Sápmi-Borderless Development (*INTERREGIO IV North*: sub-program): *The primary goal is to develop Sami culture and trade and industry, keeping in mind ecological ideals and the element of long term usage of resources, with the help of all of the resources of Sami society.* This program is aimed to provide both for trade and cultural development and is grounded on the interrelation between trade, industry and culture:

In Sami society, the connection between trade and industry and culture is very important. The security and development of a culture is not solely reliant on manifestations such as

⁴⁴⁹ European Commission, Directorate-General for Regional Policy, European Territorial Cooperation, building bridges among peoples, 2007:5.

⁴⁵⁰ European Commission, Directorate-General for Regional Policy, European Territorial Cooperation, building bridges among peoples, 2007:5.

⁴⁵¹ Also a writer from the NOrdic Center for Spatial development attended the works to produce a document.

⁴⁵² Airolti, 2008:30

literature, language and art; it is also a matter of the utilization of certain natural resources and the practice of trade and industry which form the basis of the culture⁴⁵³.

This program has received around €10,5 million funds. The geographical scope of this program encompasses, in addition to the above mentioned, the Västerbotten county, Jämtland county and part of Dalarna county (the Idre Sami village area) in Sweden, North and Sörtöndelag counties as well as part of Hedmark shire council district (Elgå Reinbete region) in Norway⁴⁵⁴. In the drafting of this sub-program the chance to allocate funds in an area not belonging to an EU's state was taken. Therefore, an amount equivalent to around 10% of the total funding earmarked for the Sapmi-program was allocated to support cross-border cooperation with Saami peoples living in the Kola Peninsula. The area outlined, comprehensive of the Kola Peninsula, designates the region that Sami people have traditionally inhabited since time immemorial or, at least, a long time before the establishment of national borders. Nowadays, the total Sami population is around 79.000, of which 50.000 are in Norway, 20.000 in Sweden, 7000 in Finland and 2000 in Russia. In the report about the INTEREGGIO IV released by the Länsstyrelsen Norrbotten in 2007. Many elements aimed to justify the geographical scope of the Sapmi program were considered. For instance, a long story of broad cooperation among Saami peoples, strong bonds determined by language, cultural and ancestral heritage which crosses the current national borders, and last but not the least, one hundred years of political organizational history aimed at standing together in protection of their rights (especially in the practice of reindeer heading).

- *Northern Periphery Program (€59 million, of which EU €35 million)*. This program mainly aims to develop the economic, social and environmental potentials of the peripheral and remote communities located on the Northern margins of Europe. The rationale in the selection of beneficiaries, beyond being located on the northern periphery of Europe, relies on common and shared features such as harsh climatic conditions, sparse population and remoteness. The eligible areas within the EU are thus the following⁴⁵⁵:

⁴⁵³ European Commission, Directorate-General for Regional Policy, European Territorial Cooperation, building bridges among peoples, 2007:17.

⁴⁵⁴ European Territorial Cooperation, 200:5.

⁴⁵⁵ Table source: Northern Periphery Program 2007-2013, Operational Program, pg. 5

Partner Country	NUTS II Regions
Finland	Itä-Suomi Pohjois-Suomi Länsi-Suomi (inside Länsi-Suomi only the NUTS III region of <i>Keski-Suomi</i>)
Ireland	Border, Midland & Western (inside Border, Midland & Western only the NUTS IV regions of Donegal, Leitrim, Sligo, Galway, Mayo) Southern & Eastern (inside Southern & Eastern only the NUTS IV regions of Clare, Limerick, Cork, Kerry)
Northern Ireland	Northern Ireland (with the exception of the NUTS III regions of Belfast and Outer Belfast)
Sweden	Mellersta Norrland Övre Norrland,
Scotland	Highlands & Islands North Eastern Scotland (inside North Eastern Scotland only the NUTS IV region of North East Moray) South Western Scotland (inside South Western Scotland only the NUTS III region of Dumfries & Galloway) Eastern Scotland (region not eligible)

while the eligible areas outside the EU are⁴⁵⁶:

Faroe Islands	Entire territory
Iceland	Entire territory
Greenland	Entire territory
Norway	Finnmark, Troms, Nordland, Nord-Trøndelag, Sør-Trøndelag, Møre og Romsdal, Sogn og Fjordane, Hordaland, Rogaland, Svalbard

Like the INTERREGIO IV, geographically flexible criteria may apply in order to involve relevant surrounding areas, namely 10% of funds may be used to finance partners located outside EEA (in this case Russia or Canada); and up to 20% in relevant regional partners located within the EEA. However for this program, the flexibility criteria should be an exception⁴⁵⁷ and should benefit the programmed areas.

Cohesion Policy may bear strong potential for the achievements of EU's policy objectives in the Arctic. Besides this, the rationale driving the selection of the regions to be supported has to be considered on the grounds of economic, social or other disparities, and beside the proposal are gained bottom-up, the establishment of an EU Arctic policy may actively drive a more consistent

⁴⁵⁶ Supra, note 8.

⁴⁵⁷ Circumstances considerable as exceptions have been listed as: 1)The specific expertise of a certain partner from outside the eligible area is deemed crucial for the project and the expertise cannot be found in the program area 2)The external cooperation adds value to the project and the benefit accrues within the program area.3) The project would not be able to fulfill its objectives without participation of the external partner.4)The addition of the partner enhances the results of the project in a clear and easily justified way.5) Inclusion of the external partner facilitates a particularly strategic cooperation, as defined by the Program Monitoring Committee.

and coherent approach. Therefore, all the suggestions provided for the other policy areas may be implemented and researched in regard to Saami and Sapmi territory, as the effect of transport and resource extraction for the coastal communities or fisheries and thus actively support a sustainable development inclusive of indigenous peoples of the European Arctic.

Indigenous Peoples

Indigenous peoples issue have been presented here as crosscutting all EU's main policy areas affecting the Arctic. However EU itself and many scholars⁴⁵⁸ have considered achievement, progress and lacks of the last five years separately.

This section provides a brief review of EU's achievement toward indigenous peoples as they have been presented in Commission's communication Inventory. As it will be noticed, EU's commitment toward Arctic indigenous peoples so far seems to be mostly grounded upon a very consistent financial contribution rather than an active involvement.

The Commission's communication Inventory of activities in the framework of developing a European Union Arctic policy has devoted an entire subsection to describe EU's achievements to support indigenous peoples during the last five years. Once recalled the legal framework ("the EU engagement towards indigenous peoples takes place in the context of the United Nations Declaration on the Rights of Indigenous Peoples of 2007, the adoption of which was supported by the EU⁴⁵⁹", EU's political dialogues, EIDHR, multilateral fora, financial support) the instrument recalled the main achievements, here presented as follow:

- EIDHR: the only Arctic/Subarctic group currently benefitting from EIDHR is RAIPON, who is receiving a financial contribution of €120.000 for Capacity building: to pursue traditional livelihoods in Russia (EIDHR/2009/227865)
- The Sapmi-Borderless development (see paragraph 4.6.8) received €4.3 million for the years 2007-2013. The achievements relating to the contents of the program are not reported, but described generally as: *It supports the Sami population in Sweden, Finland, Norway and to some extent in Russia in developing its cultural life and industry in a sustainable manner.*
- Several regional projects aimed to finance Sweden, Finland and Norway (for instance the North Program as a whole) but it is not clear if any, or how much was set apart for indigenous peoples/local populations, nor the contents of the projects.

⁴⁵⁸ cf Koivurova et al, 2010, Airoldi 2008 and 2010, Heininen 2011 and 2012.

⁴⁵⁹ Commission's communication (Inventory), p.8.

- Kolarctic program as a cross-border project received a budget of €46.5 million, of which €23.2 comes from the EU budget (no contents provided).
- The Baltic Sea Region Programme¹⁹ (joint ETC/ENPI EU funding €217 out of €278 million). Contents and scope relevant for indigenous peoples are not clear.

A little pretentious, the Commission's communication Inventory reported that "The Commission has entered into a regular dialogue with the indigenous communities of the Arctic Region"⁴⁶⁰, while the EEA has conducted informal discussions on possible use of traditional knowledge. A mention was given to the seal ban, confirming "that there was widespread public consultation²², including with indigenous peoples, prior to the adoption of EU Regulation 1007/2009 on trade in seal products.⁴⁶¹" As considered in the next sub-section, the EU has met indigenous peoples just twice since 2008. Furthermore it was recalled that the Commission has been actively involved in indigenous peoples issues, as witnessed by its participation for instance to the Arctic Leaders' Summit in Moscow (April 2010). To conclude, the commission reported that health and well-being of indigenous peoples are in the agenda of the relative ND's working group, and a work plan was prepared to cover the follow items:

- Best Practices for Indigenous people parenting and associated counseling skills;
- Development of common indicators for Indigenous mental health services;
- Telemedicine: how it can benefit and enhance mental health services;
- Producing fact sheets and diagnostic of mental health status (Sámi, Inuit, First Nations, others) with a focus on these priority areas.

So far, the only concrete proposals to involve indigenous peoples in more proactive roles stems from the EU Arctic Footprint. The section devoted to indigenous peoples has been justified because "of particular EU interest in their special legal status and specific situation in many parts of the Arctic, especially in the aftermath of tensions over the EU Regulation on seal trade products⁴⁶²".

The policy options considered are :

- *Establishing an Indigenous peoples office in Brussels*
- *Establish a Working Group on Indigenous Peoples under the Northern Dimension policy*
- *Establish participatory mechanisms within EU biodiversity policy*
- *Support indigenous peoples in international fora*

⁴⁶⁰ Commission's communication (Inventory)p 9

⁴⁶¹ Commission's communication (Inventory) p9

⁴⁶² EU Arctic Footprint, 2010:86.

5.3 EU dialogues with Arctic Indigenous peoples – the first Arctic Dialogue Workshop

In accord with the “strong emphasis on the role and involvement of indigenous peoples of the Arctic”⁴⁶³ within the first layer of the EU Arctic Policy, the Commission organized the First Arctic Dialogue workshop with indigenous peoples that took place in Brussels during March 2010. Both parties highlighted the value of the meeting in exploring constructive options for dialogues with objectives and arrangements for further discussion. The meeting focused on the establishment of a constructive dialogue between the representatives of the relevant Commission services⁴⁶⁴ and the high level representative of Arctic indigenous peoples⁴⁶⁵, with the participation of the relevant EU and indigenous peoples organization or working groups” representatives⁴⁶⁶. During the meeting a thorny issue was put forward by the representatives of indigenous peoples about the participation of the Government of the Arctic States concerned. The commission’s justification was based on the willingness to ensure full transparency to the process, however the full discussion has not been reported in the document. This aspect is analyzed in the conclusive chapter of this study.

Indigenous representatives recalled the relevance of being effectively involved within every stage of the decision-making process of actions effecting them and indicated the most relevant areas and contents to be inserted within the following dialogues, for instance, enhancing global governance in the Arctic, incorporation of traditional knowledge into research and human health. Arguably, some of the indigenous peoples representative raised the issue of their disappointment with regard to the EU’s ban on seal products. The meeting took a further step and input for an EU’s more concrete approach were proposed by the spokesman. The proposals focused on principle setting (formal memorandum of understanding, developing a set of guiding principles) enhancing communication between parties (communication via Arctic indigenous peoples Secretariat, Indigenous peoples office in Brussels, working group on indigenous peoples issues under the Northern Dimension

⁴⁶³ European Commission, DG for Maritime Affairs and Fisheries, “The EU and the Arctic Region”, *EU – Arctic Indigenous Peoples Representatives meeting*, 25 January 2011, Tromsø.

(<https://webgate.ec.europa.eu/maritimeforum/>)

⁴⁶⁴ For the Commission, the representatives of the following DG attended the meeting: Maritime Affairs and Fisheries (3), External Relations (4) EuropAid (1), Environment (2), Development (1), Transport and Energy (1) and, Research (1); The foreign Ministry of Denmark, Sweden, Russia; the US Mission to the EU, Deputy Minister for Greenland Self governance, Greenland Representation; Permanent Mission of the Federation of Russia to the EU, Nordic Council of Ministers, Representative for the EP, Finnish Institute of International Affairs.

⁴⁶⁵ Arctic Athabaskan Council-Canada (1), Gwich’in Council International –Canada (2), Inuit Circumpolar Council-Greenland (1), Inuit Circumpolar Council (1), RAIPON (1), Saami Parliament’s General Assembly,

⁴⁶⁶ AC Indigenous Peoples Secretariat, BEACH Joint WG on Indigenous peoples Norway, Association of World Reindeer Herders, International Centre for Reindeer Husbandry, Norway, International WG for Indigenous Affairs, Denmark, the Norwegian Barents Secretariat, Canadian International Centre for the Arctic Region,

policy), on giving a more concrete political and legal relevance to the issue internally (Sami Parliament's role vis-à-vis Lisbon treaty) and promoting the rights of indigenous peoples within EU's external relations (inclusion of issues on Arctic Indigenous peoples in bilateral relationships and coordination with EU in international organizations).

Despite the Commission communication (Inventory) confirming the entry into regular dialogues⁴⁶⁷ between EU's institution, namely the Commission, and the Arctic indigenous *communities'* representatives, only two meetings⁴⁶⁸ appear to have been held so far. The issue of regularity, continuously advocate by the EU's documents inherent to an Arctic policy, would logically imply an institutional framework where they should take place.

⁴⁶⁷ Commission communication (Inventory) [2012:9]

⁴⁶⁸ Commission communication (Inventory) [2012:9]

6. Conclusions

The EU, the Arctic and Indigenous Peoples

Next Step

The EU ban on seal products has so far better illustrated how strong the legal and political influence is that the EU already exerts in the Arctic⁴⁶⁹; but on the other side, the cost the EU is paying in terms of credibility, trustworthiness and thus governance in the Arctic has been very high. Wide criticism of the EU's relations with indigenous peoples stems from all over the Arctic, first of all coming from indigenous peoples through their IPOs, but also from Arctic government representatives and even scholars.

An informal exchange of mails between the author and Arctic IPOs over the last few months has confirmed the link between the ban on seal products (and its effects on the market) and the establishment of a mainstream opinion among IPOs on the EU as being disrespectful of indigenous peoples cultures and an untrustworthy actor in the Arctic. What is noteworthy is that these views were shared also by these IPOs staffed by people who traditionally are not seal hunters, but who wanted to make clear their support to Inuit peoples. More than merely expressing opinions, Canadian Inuit through the ITK and others have taken active initiatives and brought the Union before the EU's General Court. Beyond some procedural errors contested, the ITK clearly claimed that in their view the ban is "both illegal and immoral"⁴⁷⁰, undermines traditional economic

⁴⁶⁹ Koivurova et al., 2011:08.

⁴⁷⁰ Galdu, Research Center for Right of Indigenous Peoples, official website, "Canadian natives, seal hunters claim win over EU ban", 20.08.2010, retrieved on February 2013 at: <http://www.galdu.org/web/?odas=4698&giella1=eng>

activities of indigenous peoples, and “does not weigh the interests of Inuit communities against certain moral convictions”⁴⁷¹.

For their part, Arctic states have actively supported indigenous peoples, raising the debate about the ban on seal products as a broader and deeper political issue. The Canadian government, after having reacted very strongly to the ban, for instance calling it a ‘disgrace’ being based on no rational facts⁴⁷², brought the EU before the WTO to challenge the legitimacy of the act also under international trade rules. Along with Norway, which decided to undertake a separate legal action against the EU before the WTO, these two countries believe that the EU’s regulations are without foundation, as recently observed by Norway’s Fishing Minister⁴⁷³.

Moreover, the ban is now currently and clearly affecting the EU’s admission as observer to the Arctic Council; one of the criteria for admission is respecting the ways of life of indigenous peoples in the Arctic, as is often recalled by Leona Akklugaq in commenting on the EU’s application as observer to the Arctic Council. The EU’s application to become an observer to the Arctic Council will be discussed and decided in the next Ministerial Meeting for the Arctic Council in Kiruna, Sweden in May 2013 and so far no certainty on a favourable vote (cast by Members’ consensus) for the EU stems from Arctic media opinions. Despite the decision being firmly ground on the criteria set out in 2011, as continuously assured by the Council Members, it is quite obvious that many unresolved political issues still remain unresolved with respect to the EU’s admission⁴⁷⁴.

The overall picture described above is mostly shared by scholars, which, while emphasising both the current influence, and the even greater potential of the EU in Arctic issues, consider that there is a lot of work ahead to improve the EU’s relationship with indigenous people⁴⁷⁵.

For its part the Union, as argued by this study, considers indigenous peoples as a relevant issue within the broader commitment to human rights. The topic was first inserted into the EU’s agenda in 1998 and has been gradually acquiring relevance though the following years. Indeed, the Union now seeks to integrate indigenous peoples’ issues into all aspects of its external relations, which include political dialogues, cooperation policy, funding instruments, and support in the international

⁴⁷¹ (Action brought on 11 January 2010 - Inuit Tapiriit Kanatami e.a. v Parliament and Council (Case T-18/10-InfoCuria)

⁴⁷² Comment released by the Prime Minister Stephen Harper, see, *Canada Launches Challenge To Eu Ban On Seal Products*, on 11.02.2011 Updatenews Canada, retrieved on February 2013, at <http://updatednews.ca/2011/02/11/canada-launches-challenge-to-eu-ban-on-seal-products/>

⁴⁷³ Norway and Canada club together on EU seal ban, 25th September 2012, The Local, retrieved on February 2013 <http://www.thelocal.no/page/view/norway-and-canada-club-together-on-eu-seal-ban#.UWGNP6t5zbw>

⁴⁷⁴ cf for example Keith, 2012.

⁴⁷⁵ cf. for example Koivurova, 2011 and Airoldi, 2012.

fora. Especially within the latter field, the EU is taking strong positions and confirming a deep commitment; therefore it has been actively supporting states' implementation of the principles included in the 2007 UNDRIP (non-binding instrument) and states' ratification of ILO 169 (binding), and furthermore, the EU has continuously acknowledged the relevance of the Indigenous Peoples Permanent Forum as "an important venue for the promotion of dialogue"⁴⁷⁶.

In the aftermath of the accession of Sweden and Finland, both the Arctic and Arctic indigenous peoples became a more direct concern for the EU. As described throughout the fourth chapter of this study, Arctic indigenous peoples have been considered a political crosscutting priority throughout the gradual process of a formulation of an EU Arctic Policy; therefore the Union, in preserving the Arctic environment in unison with its population, in developing a sustainable development and in enhancing international cooperation, has accorded to indigenous peoples special rights and positions. Upon this ground, and recalling the relevance the EU has accorded to the principles of participation and prior, free and informed consent in its cooperation and development policy, the Union has clearly underlined the importance of involving indigenous peoples into a regular dialogue to respect indigenous peoples' rights and therefore to discuss actions directly affecting them.

On the other hand, a closer analysis of EU actions affecting the Arctic, supported by relevant ethnographic data and statements released by the AC or Arctic IPOs, has revealed that as long as the EU has competences in the Arctic and those are addressed to protect the Arctic environment while promoting a sustainable development, indigenous peoples are directly affected as well. So far, however, indigenous peoples' issues have been considered seldom if ever in the implementation of the above policy areas, while the EU's action seem to be addressed mainly to a (consistent) activity of project funding.

So far the EU has involved indigenous peoples in sporadic dialogues, while no institutional channels have been established to facilitate communications between IPOs and EU institutions. In addition, when the dialogue workshop—the most concrete attempt to involve indigenous peoples so far—took place, the EU's attitude was excessively cautious and prudent; in fact, Arctic state governments were invited as well. Being criticized by the indigenous representatives that attended the meeting, the EU explained, was a measure to assure transparency of the process, indirectly confirming the difficulty the Union experiences in providing concrete means of involvement and communication with indigenous peoples. Especially in the aftermath of the ban on seal products, involving indigenous peoples into a regular dialogue, as advocated *inter alia* by the EU's institutions themselves, could be the first step toward reestablishing a trustworthy relation, especially in the

⁴⁷⁶ "EU at the UN Permanent Forum on Indigenous Peoples Issues, 10th May 2012" New York. http://www.eu-un.europa.eu/articles/en/article_12163_en.htm

consciousness of the great potential the EU bears for a sustainable development tailored on indigenous peoples as well.

Upon this ground, enhancing relations with Arctic indigenous peoples should be considered an absolute priority in the upcoming Arctic Policy discussions if the EU truly aims “to show the world that the EU is serious about its commitments towards the Arctic region”⁴⁷⁷. But of course, the EU should first hold an Arctic Policy.

6.1 EU and the Arctic: Need for the EU Arctic Policy

Indigenous peoples’ issues apart, the legal and political role of the EU in the Arctic is seriously misunderstood⁴⁷⁸. Due to supposed weak legal links to the Arctic region, the EU has often been described as an external Arctic actor with limited possibilities to play a significant role in the future of the region⁴⁷⁹. Therefore scholars have been wondering where the necessity for an Arctic policy by EU lies, while raising doubts about the EU’s ability to construct a common Arctic policy given the diversity of its member states⁴⁸⁰. Given the existing EU strong bilateral relations and presence in the regional fora, indeed, the same author suggested that the EU could simply include an Arctic dimension on already existing relevant cooperation agreements (energy, sustainable development, climate change, environmental protection, transport, infrastructure); a choice that, *inter alia*, “would surely do a better job than a one-size-fits-all Arctic Strategy”⁴⁸¹ and that would not interfere with coastal states’ national jurisdictions⁴⁸².

Furthermore, that view of the EU as an external or limited Arctic actor has been *inter alia* supported by a geographical perspective⁴⁸³ that has traditionally characterised the debate on who actually possesses “legitimate claims to recognition as stakeholders in the Arctic Affairs”⁴⁸⁴, thus, as

⁴⁷⁷ EU High Representative for Foreign Affairs and Security Policy, Catherine Ashton in “Knowledge, responsibility, engagement: the EU outlines its policy for the Arctic”, July 2012, Press release, reference: IP/12/739.

⁴⁷⁸ Koivurova et al. 2011:1.

⁴⁷⁹ Cavalleri et al. 2012.

⁴⁸⁰ cf. Keils 2012.

⁴⁸¹ Keils 2012.

⁴⁸² Keils here referred to the case of developing an “Arctic strategy over an area covered by national jurisdictions”, probably having in mind the EU’s proposals on treaties and moratoria.

⁴⁸³ The geographical criteria, beyond being pertinent, has long revealed its colonial political power grounded beneath. The Arctic territories lying within the Arctic states in fact for thousands of years had been mostly inhabited by indigenous peoples while long being ignored by the central powers. A renewed interest toward the high north has arisen at different moments across the Arctic and this seldom if ever has been a peaceful process for the population already established. Now, those territories are the ground to claim a seat in the Arctic benefit-sharing.

⁴⁸⁴ Young, 2010:169.

discussed in the Arctic fora, emphasis is mostly given on the Union having no shoreline in the Arctic ⁴⁸⁵.

Last but not least, uncertainty regarding the EU's application acceptance as Observer to the Arctic Council seems to have contributed in failing the EU's role in the Arctic. In addition to Canadian concerns about indigenous peoples, the article entitled "No European Membership at the Arctic Council", published online on the Heritage Foundation site by Luke Koffey⁴⁸⁶, suggested that the U.S should cast a negative vote on the ground that the EU is a supranational body and thus does not fulfil the Arctic Council's rules for admission (which accept intergovernmental organisations instead). In the words of the author, the EU's admission would "set a dangerous precedent of allowing supranational organizations to be represented in the Arctic Council"⁴⁸⁷. Beyond Koffey's article being only a personal opinion (not reflecting the U.S.'s official position) and highly impregnated by anti-EU criticism⁴⁸⁸, the issue of the EU's structure has already been raised in academic debate, even though in different terms. As noted by Keith, EU presence in the Arctic Council might potentially overstep its observer competencies and practically speaks through Denmark, Sweden and Finland's voices on the ground of art. 34.1 TEU⁴⁸⁹.

Against this picture, this study has supported the view that a combination of (limited) legal competences, but considerable economic and political weight (grounded on the coordination of duty, rights and economic interests of 27 states) has made the EU's political presence in the Arctic significant and therefore improvable. Influence in the Arctic is rather evident in several fields⁴⁹⁰; furthermore, as a major consumer of Arctic resources and a significant contributor to Arctic pollution, the EU can indirectly regulate third parties' activities and thus actively act to raise sustainability and environmental standards in the region. Last, but not the least, the EU might have

⁴⁸⁵ Koivurova et al. 2011:1.

⁴⁸⁶ "No European Membership at the Arctic Council", 5th April 2013, <http://www.heritage.org/research/reports/2013/04/no-european-union-membership-in-the-arctic-council>

⁴⁸⁷ "No European Membership at the Arctic Council", 5th April 2013, <http://www.heritage.org/research/reports/2013/04/no-european-union-membership-in-the-arctic-council>.

⁴⁸⁸ The author describes the EU as: "The U.S. should ensure that undemocratic, unelected, unaccountable, and supranational organizations such as the EU Commission do not receive an undeserved voice on Arctic issues when any legitimate concerns the EU may have on Arctic issues can be addressed by the European countries already in the Arctic Council." ("No European Membership at the Arctic Council", 5th April 2013, <http://www.heritage.org/research/reports/2013/04/no-european-union-membership-in-the-arctic-council>).

⁴⁸⁹ 'Member States shall coordinate their action in international and at international conferences. They shall uphold the Union's position in such forums. The High Representative of the Union for Foreign Affairs and Security Policy shall organise this coordination....In International organisations and at international conferences where not all the Member States participate, those which do take part shall uphold the Union's position'. [art.34.1 TEU].

⁴⁹⁰ See e.g. Airoldi, 2008 and 2011, Koivurova, 2011, Heininen 2010 and 2011.

concrete possibilities in a near future to implement its competences in Greenland territories through a renewed partnership (see fifth chapter), which very likely will increase its competences on the whole region as the Arctic Ocean will be more accessible⁴⁹¹.

In addition, the focus on Arctic governance neither can be confused with the entry into the Arctic Council as Observer, nor can be hampered by a hypothetical refusal cast by its members. The EU has accorded to the issue a disproportionate prominence⁴⁹², where Observer status is actually a minor role within the Arctic Council works⁴⁹³. Already experienced by the UK, which holds Observer status in the Arctic Council, “[M]ost of [the UK’s role as a permanent observer] is in the advocacy area of trying to support what they [the Arctic Council member states] are doing among themselves“⁴⁹⁴. Therefore, whether accepted or rejected, the EU is making and will make decisions that will influence the Arctic and its population⁴⁹⁵; and will exercise its competences while its political and economic role will weigh in the Arctic anyway, via other multilateral fora or via bilateral relations⁴⁹⁶. Therefore, currently the EU simply “is not [yet] an Arctic actor”⁴⁹⁷.

Furthermore, the perspective that set aside the Union as having no Arctic shoreline fails to see the holistic picture of Arctic cooperation and governance. Therefore, resources extraction or other activities taking place because of jurisdiction derived by having shoreline in the Arctic Ocean and thus reserved for the Arctic five, is just a part of the broader context of Arctic participation and cooperation which include, inter alia, trade, transport, or indigenous peoples’ rights and thus allow more participant than the “A5”. Upon this ground, some other scholars even suggest that geography plays an additional legitimating factor for the EU’s concerns in the Arctic, since it is hard to not have stake in the region when three of its member states—Finland, Denmark/Greenland, and

⁴⁹¹ Koivurova et al. 2012.

⁴⁹² Airoidi, 2012:4.

⁴⁹³ However, some authors suggest a more active role accorded to Observers cf: “The paramount emphasis in defining observers’ roles could be grounded in their ability to contribute at the working level, which would eventually reveal their intentions and interests in regard to observing the AC”(Graczyk and Koivurova, 2012).

⁴⁹⁴ Jane Rumble quoted by Keith, 2012. Original quotation available at <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmenvaud/171/120705.htm>

⁴⁹⁵ Keils 2012.

⁴⁹⁶ Koivurova et al, 2011.

⁴⁹⁷ Heininen, 2011.

Sweden—participate in the main governmental forum for circumpolar cooperation, the Arctic Council while Norway and Iceland are close to the EU via EEA⁴⁹⁸.

Under this light, this study considers that the time is now ripe for the EU to give the ultimate shape to a foregoing process that has lasted so far five years, and thus develop its Arctic policy. The specific case of indigenous peoples and the EU has suggested that a lack of clear priorities crosscutting all the others may seriously hamper the achievement of objectives in the region and not least, waste consistent amounts of money. The financial contribution allocated for indigenous peoples through the several projects—and publicised with great pomp by the Union—beyond having benefitted indigenous groups in sectorial fields, has failed to provide a consistent and coherent approach to the issues; in fact, indigenous peoples still struggle to see in the EU a trustworthy partner in the Arctic. Rather, a more focused and mainstreamed knowledge of complexity of indigenous peoples' traditional ways of living reflected in EU policy implementations may lead to better and more achievements.

6.2 Proposal for the Allocation of EU Arctic Policy

Bearing in mind that the EU Arctic policy is still a policy in the making, so far the institutional epicentres seem to have been located within the DG MARE, where most of the information is now available to the public, and the EEAS (former RELEX), both reflecting where most of the EU's interests lie. EU bodies are continuously pushing back the individuation of only one institutional focal point; rather, they seem to prefer a co-leading assignment, as explicitly underlined by the EP in the 2011 resolution:

[The EP] recommends assigning the co-lead of this structure to the EEAS and DG MARE, the latter acting as a cross-sectoral coordinator within the Commission; further recommends creating an Arctic unit in the EEAS accordingly;

Lack of identification of only one institutional focal point may deepen confusion on the EU's scope in the region. As highlighted for instance by the article regarding the presentation of Arctic frontiers 2013- A changing Arctic⁴⁹⁹, participants in the conference speculated “why the European Union chose to send the Commissioner for Maritime Affairs, instead of for example the EU Arctic Forum

⁴⁹⁸ cf. “Geography serves as an additional legitimating factor for the EU's concerns in the Arctic. Indeed, it is hard not to have a stake in the region when three of its member states—Finland, Denmark/Greenland, and Sweden—participate in the main governmental forum for circumpolar cooperation, the Arctic Council. Norway and Iceland are parties to the European economic area agreement, which links them closely to the EU's policies.” (Weber and Romanyshyn, 2011:850)

⁴⁹⁹ Arctic frontiers 2013- A changing Arctic, published on line at <http://www.arcticpeoples.org/news/item/554-arctic-frontiers-2013-a-changing-arctic> on 31st January 2013. Notably, the article recalled that “European Union relations with indigenous peoples of the Arctic have not been so good.”

Secretary General, Steffen Weber”. These speculations may reflect some difficulties in understanding the EU’s institutions abroad, but also show a need to identify a specific EU interlocutor for Arctic policies, something that is currently missing.

This study suggests the EEAS as the proper allocation for an EU Arctic Policy. First of all, a proper approach to the Arctic capable of achieving the objectives of protection of the environment, sustainable development and enhancing (Arctic) international cooperation, requires an accurate coordination of all the relevant policy areas concerned. As argued by the analysis proposed in the fifth chapter of this research, the distinct policy areas are highly interdependent and crosscut each other’s, often making problematic the individuation of only one competence area to deal with a specific issue. Therefore, Maritime Affairs and Fisheries may heavily unbalance the multidimensional characteristic of the approach to the Arctic, while on the contrary, the EEAS may provide the proper framework capable of cross-cutting all the relevant policy areas and thus enhancing coherence and consistence of the approach.

Second, setting the policy in the EEAS may foster international cooperation with the other Arctic states. Allocation of the EU Arctic Policy in the framework of EU foreign affairs may underline that the Arctic is not an EU individual interest; rather, it is a responsibility and opportunity to be shared with other partners, avoiding major national jurisdiction concerns. Furthermore, it would be aligned with all the other Arctic states’ Arctic strategies, which have been developed and proposed by the respective Ministers of Foreign Affairs⁵⁰⁰ or have a Foreign Affairs dimension⁵⁰¹. Allocating the Arctic policy in the EEAS would not hamper the EU’s efforts to develop specific programs and objectives aiming to develop its portion of the Arctic, rather it would bestow a more uniform approach.

Last, but not least, considering the Arctic policy as part of EU external relations, integration of indigenous peoples’ issues would result in this policy being easier to achieve, rather than if it were located within the scope of Maritime and Fisheries Affairs.

6.3 Involvement of Indigenous Peoples within the EU Arctic Policy: a proposal for an EU Permanent Forum on Indigenous Issues.

The AFPA correctly claims that “participation in decision-making processes affecting indigenous peoples is not only an important means of securing their rights and interests, but also constitutes a

⁵⁰⁰ see Heinenen, 2011 and 2012.

⁵⁰¹ Canada first developed its Arctic Strategy under the Minister of Indian Affairs; however it was connected with a statement of External Dimension.

human right in itself”⁵⁰². While in perfect agreement with this viewpoint, it should be recognized that an important issue arises when defining the EU competence areas affecting Arctic indigenous peoples. The EU documents relative to an EU Arctic Policy have formulated the issue in general terms⁵⁰³, and do not provide any clear suggestions on which EU competences affect Arctic indigenous peoples. In fact, whether explicit mentions have been provided in regards to the importance of supporting sustainable development for indigenous peoples⁵⁰⁴, the overall approach is rather grounded on a general enunciation of establishing a broad dialogue on the basis of respect for the rights of indigenous peoples⁵⁰⁵.

Upon this ground, the AFPA for instance has suggested including, as possible topics for a future EU-indigenous peoples dialogue: ‘biodiversity, animal products, climate change and its socio-economic impacts, promoting rights of indigenous peoples in international law, global governance in the Arctic, trans-boundary pollutants, and opportunities for enhancing the effectiveness of EU policy on indigenous peoples in connection with environment’⁵⁰⁶.

Against this picture, the fourth chapter of this study has tried to show that the whole set of EU competencies already affecting the Arctic affect Arctic indigenous peoples as well. Therefore, on the basis of respect for the rights of indigenous peoples, as advocated by EU institutions, a dialogue between the EU and Arctic indigenous peoples should comprise all the topics inherent to the future EU Arctic Policy.

Furthermore, this study has argued that a more coherent and consistent approach to indigenous peoples’ issues, grounded in their active involvement in all the decision making-process of the future EU Arctic Policy, could be highly relevant to the achievement of the EU’s development interests and environmental scopes. If the Union fails to include indigenous peoples’ issues in all

⁵⁰² AFPA, 2010:98.

⁵⁰³ See e.g.: ‘Proposal for action: -Engage Arctic indigenous peoples in a regular dialogue’ (Commission Communication, 2008:5).

⁵⁰⁴ see e.g.: The Council underlines the importance of supporting sustainable development for indigenous peoples, including on the basis of their traditional means of livelihood, (Council Conclusion 2009:2); It is critically important that the views of Arctic inhabitants are taken into account on issues of economic development. The EU will look at appropriate ways of ensuring that the representatives of Arctic indigenous peoples are informed and consulted on the EU policies that affect them, and are given appropriate platforms to present their particular concerns to EU institutions and audiences. With this aim the Commission and the EEAS will step up their efforts to hold regular dialogues with indigenous peoples (Commission Communication, 2012:11).

⁵⁰⁵ see e.g.: “and welcomes the Commission proposal to engage in a broad dialogue with Arctic indigenous peoples on the basis of respect for the rights of the indigenous peoples” (Council Conclusion 2009:2); “Intensify its constructive engagement and dialogue with Arctic States, indigenous peoples and other partners” (Commission, 2012:4); “The Commission has entered into a regular dialogue with the indigenous communities of the Arctic. On 9 March 2010, the Commission hosted an “Arctic Dialogue” workshop. The initiative was well received by participants who underlined the importance of involving indigenous peoples’ representatives in decision making” (Commission, 2012:14).

⁵⁰⁶ AFPA, 2010:99.

the competences areas affecting the Arctic, it will fail to achieve the objectives of protecting the environment while creating a sustainable development. A proper management of indigenous peoples' issues is a key element in achieving EU interests in the Arctic, set as protecting the environment in unison with its population, promoting a sustainable development and being part of the (Arctic) international cooperation. Especially in the aftermath of the unfortunate seal ban of 2009, a stronger and more concrete commitment toward indigenous peoples may help the EU to gain in credibility and trustworthiness among the Arctic IPOs, with a consequence of enhancing the EU's role in the (Arctic) international cooperation, inter alia within the Arctic Council. Furthermore, as underlined in the fifth chapter, it could present concrete advantages in a springing and more demanding Greenland, where the need for new incomes coming from non-renewable resources will have to be balanced with a sustainable development of its indigenous population.

Upon this ground, it could be argued that Arctic indigenous peoples should hold a special position for the EU. As recalled in the third chapter of this study, the EU has developed a consistent framework aimed at supporting and enhancing indigenous peoples' rights worldwide, which takes place in the context of the United Nations Declaration on the Rights of Indigenous Peoples of 2007, and is implemented through its political dialogues with third countries and regional organizations, supporting them in the multilateral fora and through EU cooperation and development policies.

However, as regards indigenous peoples in general, due to many factors, including for instance geographical separation or limited legal capacity, it is unlikely the EU's external competencies can directly affect indigenous peoples worldwide, except for its development and cooperation policy. Even if more research is needed for instance on sustainability for indigenous peoples of EU trade activities and commercial agreements⁵⁰⁷, EU capacity to affect indigenous peoples worldwide with competences other than cooperation and development or derived via special agreement is rather limited.

Against this picture, it could be argued that Arctic indigenous peoples are affected by the whole set of EU competences already affecting the Arctic. A combination of factors have determined EU special influence on Arctic indigenous peoples. As often repeated, despite having no Arctic Ocean shorelines, the EU is partially located within the Arctic region via two of its MSs, Sweden and Finland, and via EEA with Norway and Iceland. Whether its territorial presence in the Arctic is

⁵⁰⁷ For instance, last March the Asian Human Right Commission received information regarding peaceful protest against the adoption of the EU Free Trade Agreement with India. Notably, "Protestors are concerned over the lack of transparency in the Bill, violation of the rights of the indigenous people, and the threat increased imports would make to local businesses and livelihoods; and "Indigenous Indians also voiced concern over the building of the Tipaimukh Dam in Manipur. The building of the proposed dams would cause flooding of huge forest areas and agricultural lands of the indigenous peoples, likely causing displacement of indigenous Indians from their homes." (INDIA: Indians in the Northeast protest the European Union Free Trade Agreement, March 14th 2013, retrievable online at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-042-2013>).

often described as limited ⁵⁰⁸, it is also true that this geographical partial inclusion, but complete proximity, has contributed to emphasize its functional presence and political and economical role in the region. Indeed the EU already has strong legal competences in Arctic-relevant policy fields, which very likely will increase in the near future, and which already affect Arctic indigenous peoples. Therefore, as witnessed predominantly by the ban on seal products, many EU competence areas, other than Development and Cooperation, directly affect Arctic indigenous peoples.

Furthermore, due to the unicity of the environmental conditions of the Arctic, and the delicate balance of species and ecosystems, where for example the disruption of one link in the food chain—for instance, through over-exploitation—could severely affect the rest of the system⁵⁰⁹, while suggesting a holistic approach to the Arctic environment, this latter observation suggests that negative impacts to the region may stem from distinct EU competence areas. In turn, these impacts would seriously affect the Arctic population, but particularly indigenous peoples, whose economic, social and cultural existence highly depends on the well-being of the environment.

Therefore, the EU both via its direct competences over its Arctic territories located within its MSs and to some extent, both via competencies derived by special relations established with Arctic states and especially with Greenland, and via its economic weight in the region, play a significant role in the delicate balance of the Arctic, which directly affects Arctic indigenous peoples as well.

On the other side, failing to include Arctic indigenous peoples issues within the future EU Arctic Policy may seriously hamper the EU's capacity to achieve its objectives in the region.

As a final remark, it could be noted that the EIDHR, the main EU instrument to support indigenous peoples rights currently benefits Arctic indigenous peoples only partially; in fact only RAIPON has been receiving EU funds so far⁵¹⁰, while most of the projects' funds reported within the Commission communication (Inventory) of activity benefit Saami people.

Therefore, considering the high degree of relevance of indigenous peoples' rights within the EU's overall actions, and the special position Arctic indigenous peoples hold, it could be argued that the EU's concrete actions towards Arctic indigenous peoples are highly inconsistent.

Upon this ground, this study therefore suggests that the EU may have to find a way to better integrate indigenous peoples issues within its Arctic policy and implement its strong political will—developed throughout its documents relative to its Arctic Policy—to establish a regular dialogue

⁵⁰⁸ See e.g. Koivurova et al., 2011:8.

⁵⁰⁹ cf for example Chapin and Hamilton, 2009.

⁵¹⁰ see: "In addition, the Commission gives direct support to civil society organizations working on indigenous issues, in particular through the European Instrument for Democracy and Human Rights (EIDHR); the latest contribution concerning Arctic/sub-Arctic indigenous peoples is EIDHR/2009/227865 - Capacity building, to pursue traditional livelihoods in the Russian Federation with €120 000". (Commission communication (Inventory) 2012:8).

with Arctic indigenous peoples' representatives.

A suggestion on how to achieve these objectives may come from the UN system, whose efforts to enhance indigenous peoples' rights are on one hand more than well-established, and, on the other hand, are shared and supported by the EU. Therefore, considering in particular the support the EU gives to the UN Permanent Forum on Indigenous Issues, as an *important venue for the promotion of dialogue*, and whose mandate is:

The Permanent Forum is an advisory body to the Economic and Social Council with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. The Permanent Forum will :

- provide expert advice and recommendations on indigenous issues to the Council, as well as to programmes, funds and agencies of the United Nations, through the Council
- raise awareness and promote the integration and coordination of activities related to indigenous issues within the UN system
- prepare and disseminate information on indigenous issues

The EU could draw inspiration and establish its own EU Permanent Forum on Indigenous Issues to the Arctic Policy, as an advisory body to integrate indigenous peoples' issues into the future EU Arctic policy. Therefore, the mandate of the forum should be shaped on the EU's interest toward Arctic indigenous peoples and for instance be modified as follows:

The EU Permanent Forum is an advisory body to the EU Arctic Policy with a mandate to discuss indigenous issues related to the protection of Arctic environment in unison with its population, promoting a sustainable development and enhancing international cooperation on Arctic issues. The Forum shall:

- provide expert advice and recommendations on indigenous issues related to the distinct policy fields affecting the Arctic
- raise awareness and promote the integration and coordination of activities related to indigenous issues within the EU Arctic Policy
- prepare and disseminate information on indigenous issues

The three objectives outlined in the mandate of the 'EU Permanent Forum' perfectly fit with the specific needs of the EU in order to develop a consistent and well-established commitment toward Arctic indigenous peoples.

Therefore, under the first of the objectives proposed, the EU Permanent Forum could provide expert advices and recommendations on how to integrate indigenous peoples' issues in the distinct policy areas inherent to the EU Arctic Policy, especially suggesting how and to which extent these competencies affect Arctic indigenous peoples.

Under the second one, valuable suggestions could be explored, for instance, on how to coordinate EU projects aimed at supporting indigenous peoples, or it could help to identify research areas relative to indigenous peoples, avoiding duplication with other Arctic institutions.

The third one could be of foremost importance, as it bears the potential to get the whole of the EU more involved and conscious of Arctic indigenous peoples' issues. A consistent activity of information production, regarding for instance indigenous peoples' values, cultures, society or livelihoods, may increase awareness not only within the EU institutions, but also within the European public in general, if properly circulated. This aspect does not hold a secondary role within the works of the EU Permanent Forum; rather, it can be of foremost relevance since it can help to offer, for example, a viewpoint that counterbalances the one mainstreamed by environmental lobbies during the last decades.

More important, an advisory body completely devoted to the discussion of indigenous peoples' issues related with the EU Arctic policy would provide the perfect allocation for the establishment of a regular dialogue with Arctic indigenous peoples and therefore comply with the political will "to engage in a broad dialogue with Arctic indigenous peoples on the basis of respect for the rights of the indigenous peoples"⁵¹¹.

As a premise inspired by the UNPFII, an advisory body as the EU Permanent Forum on Indigenous issues should be composed by a number of Arctic indigenous peoples' experts (therefore not only lawyers but also anthropologists, political scientists etc.), serving in their personal capacity as independent experts on indigenous issues, from MSs and from EU, working in close cooperation with Arctic indigenous representatives, which in turn participate as observers or stakeholders.

As argued in the AFPA proposals, indigenous peoples' representativeness may be severely hampered by shortage of financial availability of IPOs. Whether travelling within the EU for Sami peoples may not represent a major issue, it may be difficult or even impossible for Indigenous representatives of RAIPON, for instance. Therefore considering the goals and objectives of an EU Permanent Forum on indigenous issues, a specific funding instrument may fit with the objective and at the same time be available to support those expenditures, namely the EIDHR. The EIDHR, which structure and objectives have been described throughout this study, have the main goal to support democracy and human rights in all third countries (thus is not limited to the developing ones), therefore could be used to support indigenous peoples to participate at the works of the EU Permanent Forum.

The EU's structure may allow different options to integrate an advisory body as the EU Permanent Forum on Indigenous Issues. Whether the mandate should remain unchanged, and therefore provides expert advices on indigenous issues related to distinct policy fields, raises awareness and promote activities and policies, and prepares and disseminate information on indigenous peoples, its structure and influence upon the EU legislative institutions may widely vary. In the understanding

⁵¹¹ Council Conclusion 2009:2.

that many possibilities may exist, this study suggest the establishment of a devoted EU Agency, with the main aim to provide assistance and expertise to the EU Arctic policy. EU decentralised agencies⁵¹², which “have become an established part of how EU operates”⁵¹³, are independent legal entities under European public law (distinct from EU institutions), which have an important role in implementing EU policies, with different technical, scientific, operational tasks. They are aimed to respond to individual policy needs, in fact they were set up on case-by-case basis over the years via regulations⁵¹⁴. Therefore, an EU Agency for indigenous peoples should be established via regulation to provide assistance and expertise to the EU Arctic Policy. As suggested by the joint statement on decentralised agencies (which however is not binding), the Management Board should be comprised of one representative of each MSs, two representative from the Commission, (where appropriate) one representative from the EP, and (where appropriate) a fairly limited number of stakeholders representatives. Therefore, Arctic indigenous peoples expert from MSs, the two representative from the Commission, one from the EP and representative of Arctic indigenous peoples as stakeholders and experts on the issue, may constitute the Management Board. The natural allocation of this agency would be Finland, where already many institutions devoted to Arctic issues exist, and because more accessible for Arctic indigenous peoples.

To conclude, considering the EU’s political efforts to support indigenous peoples’ rights worldwide and the EU’s overall objectives in the Arctic, many advantages may come from the establishment of an advisory body for indigenous peoples’ issues as the EU Permanent Forum.

First of all, on the ground that the EU’s commitment towards indigenous peoples is based on *the indivisible, universal values of human dignity, freedom, equality and solidarity, the principles of democracy and the rule of law*, considering that EU support of indigenous peoples’ rights takes place in the context of the United Nations Declaration on the Rights of Indigenous Peoples of 2007, which the EU supports along with the ILO 169 and the UNPFII, the latter “as an important venue for the promotion of dialogue”⁵¹⁵; considering the EU’s strong reputation in the world because its “foreign policy is based on values, and the Union being the biggest provider of humanitarian and

⁵¹² Currently there are different 31 agencies operating in different EU countries (Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralized agencies, 2012 available at http://europa.eu/agencies/documents/joint_statement_and_common_approach_2012_en.pdf).

⁵¹³ Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralized agencies, 2012 available at http://europa.eu/agencies/documents/joint_statement_and_common_approach_2012_en.pdf.

⁵¹⁴ cf for example the regulation establishing the European Environmental Agency: “Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (Codified version), 2009, OJ L 126.”

⁵¹⁵ EU statement to the UN Permanent Forum on Indigenous Peoples Issues, 10th May 2012, New York. http://www.eu-un.europa.eu/articles/en/article_12163_en.html.

development aid in the world”⁵¹⁶, the EU Permanent Forum will be in line with the EU’s core principles and especially with the EU’ s international commitment in promoting indigenous peoples’ rights. In addition, the establishment of the EU Permanent Forum would provide a strong example worldwide on how to actively integrate indigenous peoples’ issues within the decision-making process of policies directly affecting them.

Second, the structure suggested could provide a way to avoid interferences with third states’ jurisdiction or external and too invasive interference with EU affairs. As described above, in fact, the members of the EU Permanent Forum would be Arctic indigenous peoples’ experts from MSs and the EU, while indigenous peoples participation would be guarantee via observers status or as natural stakeholders.

At the same time, Arctic indigenous peoples, through their expert advice on how to integrate indigenous peoples’ issues may actively influence the decision-making process of the EU Arctic Policy and help the EU to shape a policy better tailored to Arctic indigenous peoples’ rights and needs.

Fourth, it would facilitate co-operation and communication between EU institutions and IPO representatives, and where a regular and permanent dialogue has been established.

Furthermore, since the Union so far has been relying on its achievements and reputation in the field of climate change to gain a ringside seat at the table of Arctic governance, it must be noted that EU’s current climate change policy is not focused on the Arctic⁵¹⁷, while “is not a priority issue, to say at least, for important circumpolar states such as Canada, Russia, or until proof of change of attitude, the U.S., and that any EU-sponsored ambitious climate policy would have little chance of support”⁵¹⁸. On the contrary, indigenous peoples issues could be a clear shared interest with the Arctic Council and some Arctic states, as Canada, but also an important example for these which not always comply with indigenous peoples rights (as in the case of Russia and RAIPON) .

The EU Permanent Forum on indigenous issues therefore would be a major “Arctic” achievement, on the cutting edge of implementation of indigenous peoples’ rights standards.

⁵¹⁶ Catherine Ashton’s speech at the UN, HR-VP Ashton: “EU should do more to "punch its weight" politically”, 2.12.2009, Ref: EP09-058E.

⁵¹⁷ See fifth chapter of this study.

⁵¹⁸ Airoidi, 2012:1.

Bibliography

AAC (Arctic Athabaskan Council), 2007, *Improving the Efficiency and Effectiveness of the Arctic Council: A Discussion Paper*, Publication by the Arctic Athabaskan Council. March.

AAC (Arctic Athabaskan Council), 2008a, *Europe and the Arctic: A View From the Arctic Athabaskan Council*, Publication by the Arctic Athabaskan Council released for the Nordic Council of Ministers Arctic Conference: Common Concern for the Arctic. Ilulissat; Greenland. September 9-11, 2008a.

AAC (Arctic Athabaskan Council), 2008cb *Letter "Europe and the Arctic"* to Mr. Jose Manuel Barroso. September 29th, 2008b.

AAC (Arctic Athabaskan Council), 2010 *"Dialogue with Arctic Indigenous Peoples" Response from Mr. Barroso Office*, February, 4th,.

AALTO Pami, BLAKKISRUD Helge, SMITH Hanna (eds), *The New Northern Dimension of the European Neighborhood*, Brussels, Centre for European Policy Studies, 2009.

AC (Arctic Council), 1991a, *Arctic environmental protection strategy. Rovaniemi, 14 June 1991*, (<http://www.arctic-council.org/index.php/en/about/documents/category/4-founding-documents?download=53:aeps>, accessed 24 February 2013).

AC (Arctic Council), 1991b, *Declaration on the protection of the Arctic environment. Rovaniemi, 14 June 1991*, (<http://www.arctic-council.org/index.php/en/about/documents/category/4-founding-documents?download=53:aeps>, accessed 24 February 2013).

AC (Arctic Council), 1996, *Declaration on the establishment of the Arctic Council [Ottawa Declaration]. Ottawa, 19 September 1996* (<http://www.arctic-council.org/index.php/en/about/documents/category/5-declarations?download=13:ottawa-declaration>, accessed 25 February 2012).

AC (Arctic Council) 2009 *Arctic Offshore Oil and Gas Guidelines*, prepared by Protection of the Arctic Environment Working Group, (available on http://library.arcticportal.org/1551/1/offshore_oil_and_gas_guidelines.pdf, accessed 15th March 2013).

ACIA (Arctic Climate Impact Assessment), 2004, *Impacts of a Warming Arctic: Arctic Climate Impact Assessment*, Cambridge, Cambridge University Press. (available on <http://www.acia.uaf.edu>)

ACIA (Arctic Climate Impact Assessment), *Arctic Climate Impact Assessment. Cambridge: Cambridge, University Press.* <http://www.acia.uaf.edu>.

AHDR (Arctic Human Development Report), 2004, EINARSSON Níels, LARSEN Joan Nymand, NILSSON Annika, and. YOUNG Oran R (eds.), Akureyri, Stefansson Arctic Institute.

AIROLDI Adele, 2008, *The European Union and the Arctic: Policies and Actions*, Copenhagen, Nordic Council of Ministers.

AIROLDI Adele, 2010, *The European Union and the Arctic: Main development July 2008- July 2010*, Copenhagen, Nordic Council of Ministers.

AIROLDI Adele, 2012, *The EU and the Arctic: Which Way Forward?*, Working Paper, (Weatherhead Center for international Affairs, Harvard University) November (available at <http://www.wcfia.harvard.edu/node/8196>, accessed 13 March 2013).

ALEXANDROV Oleg, *Labyrinths of the Arctic Policy: Russia needs to solve an Equation with Many Unknowns*, in *Russia Global Affairs*, Vol. 7, No.3, p.110- 118, 2010.

ALFREDSSON Gudmundur, KOIVUROVA Timo (eds.), David LEARY (special ed.) *The Yearbook of Polar Law. Volume 1*, Brill: Martinus Nijhoff Publishers, 2009.

ALFREDSSON Gudmundur, KOIVUROVA Timo (eds.), LOUKACHEVA Natalia(special ed.), *The Yearbook of Polar Law. Volume 2*, Brill: Martinus Nijhoff Publishers 2010.

ALFREDSSON Gudmundur, KOIVUROVA Timo (eds.), HOSSAIN Kamrul (special ed.), *The Yearbook of Polar Law, Volume 3*, Brill: Martinus Nijhoff Publishers 2011.

AMAP (Arctic Monitoring and Assessment Program) (AC), *Oil and gas assessment overview final report*, 2008. (available at : <http://www.amap.no/oga/>, accessed on February 2013)

AMAP (Arctic Monitoring and Assessment Program) (AC), *Factsheet #1 Persistent Organic Pollutants (POPs)*, October 2009 (available at: <http://amap.no/documents/index.cfm?action=getfile&dirsub=/Fact%20Sheets%20-%20ACAP&FileName=pop-fs1.pdf> accessed on January 2012)

ASLAKSEN Iulie, DALLMANN Winfried, HOLEN Davin L., HØYDAHL Even, KRUSE Jack, POPPEL Birger, STAPLETON Mary and INGA Turi Ellen, 2008, *Interdependency of subsistence and market economies in the Arctic*, p. 75-98, in in GLOMSRØD Solveig and ASLAKSEN Iulie (eds.) *The Economy of the North 2008*, Oslo–Kongsvinger, Statistics Norway.

BLOOM Evan T., 1999, *Establishment of the Arctic Council*, in *The American Journal of International Law*, Vol. 93, No. 3 (Jul., 1999), p. 712-722, Washington DC, American Society of International law.

BORLASE Harry, 2010. *Consistencies and Inconsistencies in the National Strategies of the Arctic Littoral States*; Master's Degree Thesis at University of Akureyri, Iceland.

BONE Robert M., *The Canadian North. Issues and Challenges*, 3rd, Canada, Oxford University Press, 2012.

BROWN Gardener M., 1992, *Replacement Costs of Birds and Mammals, A Report to the attorney General of the State of Alaska*, Juneau, AK: State of Alaska Attorney General's office.

CAFF (Conservation of Arctic Flora and Fauna)(AC), *Arctic Biodiversity Trend*, 2010.

Richard T. CARSON and W. Michael Hanemann, *A Preliminary Economic Analysis of Recreational Fishing Losses Related to the Exxon Valdez Oil Spill*, Juneau, AK: State of Alaska Attorney General's office.

CASSESE Antonio, 1995, *Self-Determination of Peoples: A Legal Reappraisal*, Cambridge, New York: Cambridge University Press.

CATELLANI, Antonio, 2003, *Outlining the Northern Dimension: toward regional cooperation in Northern Europe*, in: *The European Union's Northern Dimension*, Laboratoria, CeSPI, Rome.

CITES, European Union Proposal regarding URSUS MARITIMUS (POLAR BEAR) at Sixteenth meeting of the Conference of the Parties Bangkok (Thailand), 3-14 March 2013, <http://www.cites.org/eng/cop/16/inf/E-CoP16i-44.pdf>

COBO, José Martinez, 1986, *Study of the problem of discrimination against indigenous populations*, UN documents E/CN.4/Sub.2/1986/7/Add.4.

COCHRAN Patrician, 2009, *A Circumpolar Inuit Declaration On Sovereignty in the Arctic*, Adopted by the Inuit Circumpolar Council. April, 2009.

DAVIS Anthony, JENTOFT Svein, 2001, *Rights and Privileges in Fisheries: A Comparative Case Study of the Challenge and the Promise of Aboriginal Peoples Fishing Rights for Fisheries Management Systems*, Mimeo, Department of Planning and Community Studies, University of Tromsø.

Defenders of Wildlife, *Sea Bear under Siege. Polar bears and Climate Change in Alaska*, Marybeth Holleman (author), Washington, 2010.

Denmark, Greenland and the Faroe Islands: Kingdom of Denmark Strategy for the Arctic 2011-2020, Ministry for Foreign Affairs, 2011.

DOMBROWSKY Kirk, *Subsistence Livelihood, Native Identity and Internal Differentiation in Southeast Alaska*, in *Anthropologica*, 49(2), p 211-229, 2008.

EBINGER Charles K. and ZAMBETAKIS Evie, 2009, *Geopolitics of the Arctic Melt*, in *International Affairs* 85: 6 (2009) 1215–1232.

EGERTON Paul, 2008, *Enhancing the Coordination and Integration of European Research Activities in the Arctic Region and Perspectives for International Science Cooperation*, in *Conference Report 'Common Concern for the Arctic'*. Conference arranged by the Nordic Council of Ministers 9-10 September 2008, Ilulissat, Greenland.

FAIRHURST John, 2007, *Law of the European Union*, 6th edition, UK, Pearson Longman.

FREEMAN, Milton M.R. (ed.), 2000, *Endangered Peoples of the Arctic*, Greenwood Press, Westport.

FJELLHEIM Rune S., HRNRIKSEN John B., 2006, *Oil and Gas Exploitation on Arctic Indigenous Peoples' Territories, Human Rights, International Law and Corporate Social Responsibility*, Gáldu Čála – Journal of Indigenous Peoples Rights No. 4/2006.

GARCÍA-ALIX Lola, 2003, *The Permanent Forum on Indigenous Issues*, Copenhagen, IWGIA.

GILL Duane A. and PICOU J. Steven, 1997, *The Day the Water Died, Cultural Impact of the Exxon Valdez Oil Spill*, in *The Exxon Valdez Disaster: Readings on a Modern Social Problem*, Picou J. Steven (ed) Dubuque, Iowa.

GRACZYK Piotr and KOIVUROVA Timo, 2013 *A new era in the Arctic Council's external relations? Broader consequences of the Nuuk observer rules for Arctic governance*, in *Polar Record*, p 1-12.

HEININEN Lassi, 2004, *Circumpolar International Relations and Geopolitics*, in AHDR (Arctic Human Development Report) p.207-225, Akureyri: Stefansson Arctic Institute.

HEININEN Lassi, 2011, *Arctic Strategies and Policies: Inventory & Comparative Study*, The Northern Research Forum, Iceland and The University of Lapland, Finland, February.

HEININEN Lassi, 2012a, *Arctic Strategies and Policies: Inventory & Comparative Study*, 2nd, The Northern Research Forum, Iceland and The University of Lapland, Finland.

HEININEN Lassi (ed), 2012b, 2012 Arctic Yearbook, Akureyri, Iceland, Northern Research Forum. Available on line at <http://www.arcticyearbook.com>, 2004, *Circumpolar International Relations and Geopolitics*, in AHDR (Arctic Human Development Report) p.207-225, Akureyri: Stefansson Arctic Institute.

HEININEN Lassi, and HEATHER Nicole, 2007. "The Importance of Northern Dimension Foreign Policies in the Geopolitics of the Circumpolar North". *Geopolitics*, Volume 12, Issue 1, 2007, 133-165.

HOVELSRUD-BRODA Grete K., *The seal: Integration of an East Greenlandic Economy*, Ph.D. dissertation, Brandeis University, Waltham, MA (not published) 1997 (a).

HOVELSRUD-BRODA Grete K., *Arctic Seals Hunting Households and the Anti- Sealing controversy*, in *Research in Economic Anthropology*, 18:17-34, 1997 (b).

HOVELSRUD-BRODA Grete K., *The Integrative Role of Seals in an East Greenlandic Hunting Village*, in *Arctic Anthropology*, vol.36, Nos. 1-2:37- 50, 1999.

HUNTINGTON Henry P, 2000, *Using Traditional Ecological Knowledge in science, Methods and Applications*, in *Ecological Applications*, Vol. 10, No. 5 p. 1270-1274.

(ICC) Inuit Circumpolar Council, April 2009, Inuit leaders from Greenland, Canada, Alaska, and Russia today launched a Circumpolar Inuit Declaration on Arctic Sovereignty, Press release from the Inuit Circumpolar Council. April 28, 2009.

(ICC Alaska) Inuit Circumpolar Council Alaska, *Drum*, Vol.2, Issue 2, June 2009.

Ilulissat Declaration, 2008. Ilulissat: Arctic Council (Arctic Ocean conference, Ilulissat, Greenland 27–29 May 2008). URL: <http://arctic-council.org/filearchive/> Ilulissat-declaration.pdf

Inuit Tapiirit Kanatami (ITK) speech to the XVII meeting CITES Bangkok "Inuit Response to EU Proposal to Amend US Proposal to uplist Polar Bear at CITES", PROPOSAL 3: NGO INTERVENTION, Terry Audla, President of Inuit Tapiirit Kanatami, 6.03.2013, (<https://www.itk.ca/media/speech/inuit-response-eu-proposal-amend-us-proposal-uplist-polar-bear-cites>)

(ITK) Inuit Tapiirit Kanatami, speech to the XVII meeting CITES Bangkok "Inuit Response to US Polar Bear uplisting at CITES", PROPOSAL 3: NGO INTERVENTION, Terry Audla, President of

Inuit Tapiriit Kanatami, 6.03.2013, retrieved at <https://www.itk.ca/media/speech/inuit-response-us-polar-bear-uplisting-cites>.

JULL, Peter, 1999, *Indigenous Internationalism: What should we do next?*, p 12-17 in Indigenous Affairs, 1/1999 (January-March), Copenhagen, International Work Group for Indigenous Affairs (IWGIA).

KACZOROWSKA Alina, *European Union Law*, Rutledge-Cavendish, 2009.

KESKITALO Carina, *International Region-Building: Development of the Arctic as an International Region*, *Cooperation and Conflict* 2007 42:187,

KOIVUROVA Timo, 2010, *Limits and possibilities of the Arctic Council in a rapidly changing scene of Arctic governance*, *Polar Record* 46 (2), p. 146–157, Cambridge, Cambridge University Press.

KOIVUROVA Timo and HEINÄMÄKI Leena, 2006, *The participation of indigenous peoples in international norm-making in the Arctic*, *Polar Record* 42(221), p.101–109, Cambridge, Cambridge University Press.

KOIVUROVA Timo, KOKKO Kai, DUYCK Sebastien, SELLHEIM Nikolas, and STEPIEN Adam, 2012, *The Present and Future Competences of the European Union in the Arctic*, *Polar Record* 48 (4), p.361–371, Cambridge, Cambridge University Press.

KOIVUROVA Timo and MOLENAAR Erik J., 2009, *International governance and regulation of the Marine Arctic*, Oslo, WWF International Arctic Programme.

KOIVUROVA Timo, and VANDERZWAAG Danjel, 2007, *The Arctic Council at 10 years: retrospect and prospects*, *University of British Columbia Law Review* 40(1), p.121– 194.

KRUSE Jack et others 2007, *Survey of Living Conditions in the Arctic*, SLiCA. In: Møller, V., Huschka, D, and Michalos, A.C. (eds.). *Barometers of Quality of Life Around the Globe*. Springer Social Indicators Research Series. Springer, Dordrecht, The Netherlands.

LINDROTH Marjo, *Indigenous-State relations in the UN: establishing the indigenous forum*, 42 *Polar Record* (222): 239-248 (2006).

LOUKACHEVA Natalia, 2008, *The Arctic Promise: Legal and Political Autonomy of Greenland and Nunavut*. Toronto: University of Toronto Press, 2008.

LOUKACHEVA Natalia, 2009, *Indigenous Peoples' Internationalism: In Search of a Legal Justification*, in *Polar Record* 45 (232), p 51-58 Cambridge, Cambridge University Press.

LOUKACHEVA Natalia (ed), 2010, *Polar Law Textbook*, Copenhagen, TemaNord.

MANZELLA Gian Paolo, *The turning Points of EU Cohesion Policy*, European Policies Research Centre , University of Strathclyde, United Kingdom, 2009.

McDowell Group, *An Assessment of the Impact of the Exxon Valdez Oil Spill on the Alaska Tourism Industry* , A Report to the attorney General of the State of Alaska, August 1990.

McGEE Brant, *The Community Referendum: Participatory Democracy and the Right to Free, Prior*

- and *Informed Consent to Development*, in Berkley Journal of International Law, Vol. 27| Issue 2, 2012.
- Ministry for Foreign Affairs of Finland, Northern Dimension, Helsinki, EDITA, 2012.
- Minerals Management Service (MMS), Social Indicators Study of Alaskan Coastal Villages: IV Postspill Key Informant Summaries Schedule C Communities, Part I (OCS Study MMS 92-0052). Anchorage, AK: U.S. Department of the Interior, 1993.
- OFFERDAL Kristine, *The EU in the Arctic, In pursuit of legitimacy and influence*, pp. 861-877, in International Journal, Autumn 2011.
- OSHRENKO Gail and YOUNG Oran (ed.), *Arctic Politics. Conflict and Cooperation in the Circumpolar North*, University Press of New England, 1992.
- ÖZDEN Melik and GOLAY Christophe, 2009, *The Rights of Peoples to Self-Determination, and to permanent sovereignty over their natural resources seen from a human rights perspective*, Part of a series of the Human Rights Programme of the Europe-Third World Centre (CETIM). Available on line at <http://www.cetim.ch/en/documents/bro12-auto1-A4-an.pdf>, accessed on 12th October 2012.
- PAINE Robert, *Herds of the Tundra: A portrait of Sami Reindeer Pastoralism*, 1994.
- PARKER Richard D. and MADJD-SADJADI Zagros, *Emerging legal concerns in the Arctic: sovereignty, navigation and land claim disputes*, in Polar Record 46 (239), p 336-348, Cambridge, Cambridge University Press, 2010.
- PETERSEN, Robert, 2003, *Settlement, kinship and hunting grounds in traditional Greenland*, Copenhagen, Meddelelser om Grønland, Man and Society, 27- 2003.
- Parliamentarians of the Arctic Region, Report of the eighth conference of parliamentarians of the Arctic Region, Fairbanks, USA, 12–14 August 2008, 2008 (available at http://www.arcticparl.org/files/files%20from%208th%20conference/Conference_Report_Fairbanks_final.pdf accessed on February 15th 2013)
- Parliamentarians of the Arctic Region Statement from the Eighth Conference of Parliamentarians of the Arctic Region, Fairbanks, USA, 12–14 August 2008, 2008(Fairbanks Statement) (available at <http://www.arcticparl.org/conferences.aspx?id=2973> accessed on February 15th 2013)
- ROTHWELL Donald R., 2007 *The Polar Regions and the Development of International Law*, New York, Cambridge University Press,. (http://www.cambridge.org/gb/knowledge/isbn/item1153020/?site_locale=en_GB)
- SCHNEIDERMAN David (ed), 1999, *The Quebec Decision: Perspectives on the Supreme Court Ruling on Secession*, Toronto, Lorimer & Company Ltd.
- SCHUMANN Sarah, MACINKO Seth, *Subsistence in coastal fisheries policy: What's in a word?*, in Marine Policy 31, p. 706–718, 2007 (URL www.sciencedirect.com)
- SØVND AHL PEDERSEN Tove, 2009, *The relevance of EU policies on indigenous peoples in EC cooperation with Greenland and the Arctic*, speech on the 29th of October at Seminar on EU and the Arctic 2009 (available at <http://eu.nanoq.gl/Emner/EuGI/Seminar%202009.aspx>, accessed on 12th October 2012)

TENNBERG Monica, 2010, *Indigenous Peoples as International Political Actors: a Summary*, in Polar Record 46 (238), p. 264-270, Cambridge, Cambridge University Press

THORNBERRY Patrik, *Indigenous People and Human Rights*, Manchester University Press, 2002.

(UNDG) United Nations Development Group, 2008, Guidelines on Indigenous Peoples' Issues, February 2008.

(UN DESA) UN Department of Economic and Social Affairs, Division for Social Policy and Development Secretariat of the Permanent Forum on Indigenous Issues, 2004, *The Concept of Indigenous Peoples*, Background paper prepared by the Secretariat of the Permanent Forum on Indigenous Issues, Workshop on data Collection and disaggregation for Indigenous Peoples, New York, 19-21 January 2004.

(UNPFII) United Nations Permanent Forum on Indigenous Issues , 13 September 2007: "About UNPFII and a brief history of indigenous peoples and the international system"; UNPFII-website: <http://www.un.org/esa/socdev/unpfii/en/history.html>, accessed on 06.12.2012.

WALLACE William, 2000, *From the Atlantic to the Bug, from the Arctic to the Tigris? The Transformation of EU and NATO*, in International Affairs 76, p 475-493.

WATTER Lawrence, 2004 *Indigenous Peoples, and Environmental Law*, An Anthology, Nurham, Carolina University Press.

WEBER Steffen, ROMANYSHYN Iulian, Breaking the Ice. The European Union and the Arctic, International Journal, Vol. LXVI, No.4, p. 849-860, Toronto, Canadian International Council, 2011.

WEGGE Njord, *The political order in the Arctic: power structures, regimes and influence*, in Polar Record 47 (241), p. 165–176, Cambridge, Cambridge University Press, 2010.

WENZEL George W., 1989, *Sealing at Clyde River, N.W.T.: A Discussion of Inuit Economy*, Studies/ Inuit/Studies 13(1):3-23,

WENZEL George W., 1991, *Animal Rights, Human Rights: Ecology, Economy and Ideology in the Canadian Arctic*, Toronto: University of Toronto Press.

WOLFE Robert J. and WALKER Robert J., *Subsistence Economies in Alaska: Productivity, Geography, and Development Impacts*, Arctic Anthropology. Vol. 24(2):56-81, 1987.

YOUNG, Oran R., 1992, *Arctic Politics: Conflict and Cooperation in the Circumpolar North*, University Press of New England. New Hampshire; USA.

YOUNG, Oran R., 1998, *Creating regimes: Arctic accords and international governance*, Ithaca and London, Cornell University Press.

YOUNG Oran R., 2009, *Whither the Arctic? Conflict or cooperation in the circumpolar North*, in Polar Record, 45 (232): 73–82.

YOUNG Oran R., 2009b, *The Arctic in Play: Governance in a Time of Rapid Change*, in The International Journal of Marine and Coastal Law, 24 (2009), p 423-442.

YOUNG Orang R., 2010, *Arctic Governance - Pathways to the Future*, in *Arctic Review on Law and Politics*, vol. 1, 2/2010 p. 164-185.

ZAGAMÉ Paul et al., *Macroeconomic assessment for the EU Climate Action and Renewable Energy Package*, Paris, ERASME, Ecole Centrale Paris

EU Documents, Policy Documents and Reports

Action brought on 11 January 2010 - Inuit Tapiriit Kanatami e.a. v Parliament and Council (Case T-18/10-InfoCuria), available online: http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30dbe37ceb183bee42deaad5a35d5fe7913b.e34KaxiLc3qMb40Rc_h0SaxuKc_hr0?text=&docid=82780&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=10088 , accessed March 2013.

ADEM Chigdem, *Summary Report of the EEA Workshop Lay, Local, Traditional Knowledge and Citizen Science: Their Roles in Monitoring and Assessment of the Environment*, 27-28 June 2011, European Environmental Agency (EEA)(retrieved at <http://root.ew.eea.europa.eu/lltk/about/report-workshop/lltk-and-citizen-science-meeting-report.pdf>)

BEST Aaron, CZARNECKY Ralph, KOIVUROVA Timo MOLEENAR Erik J. 2009, *Comparative policy analyses: U.S., EU and transatlantic Arctic policy, Final Report*, 30 April 2009, Arctic-TRANSFORM, retrieved on 27th October 2012 at <http://arctic-transform.org/download/IndigPeoBP.pdf> (Arctic TRANSFORM is funded through the European Commission Directorate General for External Relations as a pilot project for transatlantic methods for handling common global challenges <http://ec.europa.eu/external_relations/index.htm> with Grant Agreement No. SI2.484596).

(AFPA) EU Arctic Footprint Policy Assessment, Final Report, Berlin, Ecologic Institute, 2010.

Charter of Fundamental Rights of the European Union, 2010.

Consolidated Version of the Treaty on European Union, 2010 O.J. C 83/01.

Consolidated Version of the Treaty on the Functioning of the European Union, 2008 O.J. C 115/4

Documents concerning the accession of the Republic of Austria, the Kingdom of Sweden, the Republic of Finland and the Kingdom of Norway to the European Union, O.J. C 241 ,29.08.1994, P 1-404.

(EEC) Council Directive 83/129/EEC Concerning the importation into Member States of skins of certain seal pups and products derived therefrom, O.J. L 091, 09.04.1983.

(EEC) Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, OJ L 206, 22.7.1992.

(EC) Council Regulation (EC) No 975/1999 of 29 April 1999 laying down the requirements for the implementation of development cooperation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms, Brussels 1999.

(EC) Council Regulation (EC) No 976/1999 of 29 April 1999 laying down the requirements for the implementation of Community operations, other than those of development cooperation, which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries, Brussels 1999.

(EC) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93, Brussels 2006.

(EC) Regulation (EC) No 1007/2009 of the European Parliament and of the Council of 16 September 2009 on trade of seal products (Text with EEA relevance), OJ L 286, Brussels 2009.

(EC) Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version), OJ L 20/7, 26.01.2009 amending Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, OJ L 103, 25.04.1979 P. 1 - 18 Brussels 2009.

(EP) European Parliament, 2008, European Parliament resolution on Arctic governance, 9 October 2008. Brussels: European Parliament.

(EP) European Parliament 2010b. REPORT on a sustainable EU policy for the High North Committee on Foreign Affairs. Plenary sitting. Rapporteur: Michael Gahler.

(EP) European Parliament, 2010, European Parliament resolution on a sustainable EU Policy for the High North, 2011, Brussels: European Parliament

EU Rapid Press, European Commission signed today agreement of cooperation with Greenland on Raw Materials, 13th June 2012, REF: IP/12/600.

European Commission, Working Document of the Commission of May 1998 on support for indigenous peoples in the development co-operation of the Community and the Member States, European commission, 1997.

European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and Committee of the Region *An integrated Maritime Policy for the European Union*, Brussels 10th October 2007, COM (2007) 574 Final. European commission, 2007

European Commission, 2007 EIDHR (European Instrument for Democracy and Human Rights), Compendium 2007-2010. Brussels, European commission, 2007.

European Commission, Communication from the commission to the European parliament and the council, *The European Union and the Arctic region*, 20 November 2008. Brussels, European commission, 2008.

European Commission 2012, High Representative for Foreign Affairs and Security Policy, Joint communication by the Commission and the High Representative for Foreign Affairs and Security Policy on *Developing a European Union Policy towards the Arctic Region: Progress since 2008 and next steps*, 26.06.2012, Brussels, European commission.

European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy, 2012 Joint Staff Document on “The inventory of activities in the framework of developing a European Union Arctic Policy,” ref: SWD(2012) 182 final.

European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy, Joint Staff Document on Space and the Arctic, 26/06/2012, ref: SWD(2012) 183 final.

European Council, 1997, 2012th Council meeting - DEVELOPMENT - Luxembourg, 5 June 1997.

European Council, 1998, Council Resolution of 30 November 1998 on Indigenous peoples within the framework of the development cooperation of the Community and the Member States, Luxembourg, 30 November 1998.

European Council, Action Plan for Northern Dimension with External and Cross- border Policies of the European Union 2000- 2003. Doc. No. 9401/00 NIS 78. Brussels, 14 June 2000.

European Council, 2009, Council Conclusions on Arctic Issues at 2985th FOREIGN AFFAIRS Council meeting, Brussels, 8 December 2009.

European Union Guidelines on Human Right Dialogues with third countries, adopted by the Council in 2001 and rewied on 19th January 2009, (available at: http://eeas.europa.eu/human_rights/guidelines/dialogues/docs/16526_08_en.pdf, accessed on September 2012)

GARCÉS DE LOS FAYOS, Fernando, 2012, *Arctic Governance, balancing challenges and development*, Directorate-General For External Policies Of The Union Policy Department, European Parliament's Delegation with Switzerland, Iceland, Norway and the EEA (SINEEA).

High Representative and the European Commission to the European Council, Climate Change And International Security Paper 14, March 2008 (English) – Nr: S113/08 http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/reports/99387.pdf

KOIVUROVA Timo, TERVO Hanna, STEPIEN Adam, 2008, *Background Paper, Indigenous Peoples of the Arctic*, Arctic-TRANSFORM, retrieved on 15th October 2012 at <http://arctic-transform.org/download/IndigPeoBP.pdf> (Arctic TRANSFORM is funded through the European Commission Directorate General for External Relations as a pilot project for transatlantic methods for handling common global challenges <http://ec.europa.eu/external_relations/index.htm> with Grant Agreement No. SI2.484596).

KOIVUROVA Timo, Kai KOKKO, Sebastien DUYCK, Nikolas SELLHEIM, Adam STEPIEN, 2010, *EU Competencies Affecting the Arctic*, Directorate-General for External Policies of the Union, Policy Department, European Parliament, AFET, August 2010. (<http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>)

NEUMANN Antje and RUDLOFF Bettina, 2008, *The Cases of Climate Policy and Fisheries*, Directorate-General for External Policies of the Union, Impacts of EU Policies on the High North Policy Department. European Parliament, AFET, August 2010.

North Norway European Office, North Norway and the EU's Arctic Policy, November 2012.

Northern Dimension Policy Framework Document, 2005 (http://eeas.europa.eu/north_dim/docs/nd_framework_document_2006_en.pdf)

Political declaration on the Northern Dimension Policy, 2006 (http://eeas.europa.eu/north_dim/docs/nd_political_declaration_2006_en.pdf)

The External Energy Policy of the European Union - Speech by EU HR Javier Solana at the Annual Conference of the French Institute of International Relations (IFRI) 1/2/2008 (English) - Nr: S042/08 (http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/discours/98532.pdf)

Treaty on European Union (Maastricht text), 1992 O.J. C 191/1.

Documents

Convention concerning Indigenous and Tribal Peoples in Independent Countries, No 169. International Labour Organisation. Available at <http://www.ilo.org/ilolex/english/subjlst.htm>

Convention on Biological Diversity of 5 June 1992, available at: <http://www.cbd.int/doc/legal/cbd-un-en.pdf>, accessed on 09.02.2013.

Declaration on the Rights of Indigenous Peoples. Adopted by the UN General Assembly on 13th September 2007. A/RES/61/295. Available at <http://daccessdds.un.org/doc/UNDOC/GEN/N06/512/07/PDF/N0651207.pdf?OpenElement>

Polar bear agreement 1973, The 1973 agreement on the conservation of polar bears, International Legal Materials 13, 1974.

Internet Sources

Indigenous Peoples Organization websites:

(AAC) Arctic Athabaskan Council (website: www.arcticathabaskancouncil.com)

(AIA) Aleut International Association (website: www.aleut-international.org)

(CCI) Inuit Circumpolar Council (website: www.inuitcircumpolar.com)

(GGI) Gwich'in Council International (website: www.gwichin.org)

(SC) Saami Council (website www.saamicouncil.net)

(RAIPON) Russian Association of Indigenous Peoples of the North, Siberia and Far East (website <http://www.raipon.org/RAIPON/tabid/302/Default.aspx>)

From European Union @ United Nations (<http://www.eu-un.europa.eu>)

“About the EU at the UN Overview: the European Union at the United Nations” available at http://www.eu-un.europa.eu/articles/articleslist_s88_en.htm, accessed on january 2013.

“Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of the International Day of the World's Indigenous People on 9 August 2011”, available at http://www.eu-un.europa.eu/articles/en/article_11278_en.htm accessed on January 2013.

“EC Statement - Program of activities for the International Decade of the World's Indigenous People, 1995-2004, 22.10.2004” available at http://www.eu-un.europa.eu/articles/en/article_4011_en.htm accessed on January 2013.

“EU’s declaration on the International Day of the World’s Indigenous Peoples, 9th August 2012”, available at http://www.eu-un.europa.eu/articles/en/article_12500_en.htm accessed on January 2013.

“EU HR Ashton welcomes USA joining UN Declaration on the Rights of Indigenous Peoples”, available at http://www.eu-un.europa.eu/articles/en/article_10527_en.htm accessed on January 2013.

“EU Presidency Statement - United Nations 3rd Committee: Promotion and Protection of Human Rights, 24th October 2007”, available at http://www.eu-un.europa.eu/articles/en/article_7442_en.htm available at accessed on January 2013.

“EU statement at ECOSOC on the Permanent Forum on Indigenous issues, 8th May, 2012” available at http://www.eu-un.europa.eu/articles/fr/article_12153_fr.htm accessed on January 2013.

“EU statement at UN Permanent Forum on Indigenous Peoples Issues, 8th May 2012, New York”, available at http://www.eu-un.europa.eu/articles/fr/article_12153_fr.htm accessed on January 2013.

“EU statement at UN Permanent Forum on Indigenous Peoples Issues”, 10th May 2012, New York. available at http://www.eu-un.europa.eu/articles/en/article_12163_en.htm, accessed on January 2013.

“EU Statement - United Nations 3rd Committee: Indigenous Issues, 18th October 2010” available at http://www.eu-un.europa.eu/articles/en/article_10226_en.htm accessed on January 2013.

“EU Statement - United Nations 3rd Committee: Indigenous Issues, 17th October 2011” available at http://www.eu-un.europa.eu/articles/fr/article_11492_fr.htm accessed on January 2013.

“EU Statement - United Nations 3rd Committee: Indigenous Peoples, 22nd October 2012”, New York, available at http://www.eu-un.europa.eu/articles/en/article_12747_en.htm accessed on January 2013.

“Statement on behalf of the European Union by Mr. Nicolas Burniat, Permanent Representation of Belgium to the United Nations, at the Third Committee of the 65th Session of the General Assembly, Agenda item 65 a Indigenous Issues (October, 2010),” available at http://www.eu-un.europa.eu/articles/en/article_10226_en.htm accessed on January 2013.

Others:

Arctic frontiers 2013- A changing Arctic, published on line at <http://www.arcticpeoples.org/news/item/554-arctic-frontiers-2013-a-changing-arctic> on 31st January 2013.

Barents Observer, “Hard-Fought new life for RAIPON”, [Barents Observer, March, 15th 2013, <http://barentsobserver.com/en/society/2013/03/hard-fought-new-life-raipon-15-03> accessed on 15th March 2013].

Barents Observer, “Norway, EU has no jurisdiction in the Arctic” [Barents Observer, October, 3, 2012; <http://barentsobserver.com/en/energy/norway-eu-has-no-jurisdiction-arctic-03-10> accessed on 12th December 2012].

“Arctic Strategy Documents- The European Union and the Arctic Region” [Clive Archer for GeoPolitics in the High North on-line at http://www.geopoliticsnorth.org/index.php?option=com_content&view=article&id=84&limitstart=5 accessed on 12th December 2012].

Canada Launches Challenge To Eu Ban On Seal Products, on 11.02.2011 Updatenews Canada, retrieved on February 2013, at <http://updatednews.ca/2011/02/11/canada-launches-challenge-to-eu-ban-on-seal-products/>

“Convention No.169” , article from ‘International Labour Organization-Promoting job, protecting people’ website, available at <http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>, accessed on 17th December 2012.

“EU has no authority in the Arctic” says Norway deputy oil Minister [Aenergy, 26th September 2012, <http://www.aftenbladet.no/energi/aenergy/EU-has-no-authority-in-the-Arctic--says-Norway-deputy-oil-minister-3037819.html#.UV6z9Ft5zbw>, accessed on 18th December 2012].

“EU has no jurisdiction in the Arctic” [The Innoplex, 3rd October 2012, <https://www.theinnoplex.com/news/>]accessed on 18th December 2012]

KEILS Kathrin, 2012, *The EU as a Prospective Permanent Observer to the Arctic Council: Footholds, Virtues, Concerns and Obstacles* (Part 1), The Arctic Institute, Center for Circumpolar Security Studies, retrieved on 22nd February 2013 at: <http://www.thearcticinstitute.org/2012/10/the-eu-as-prospective-permanent.html>

“Greenland warns EU may miss out on its mineral wealth, Reuters, Mar 7th 2013, retrived at <http://www.reuters.com/article/2013/03/07/us-greenland-pm-idUSBRE92617I20130307>

Greenlanders votes to Get Tough on Investors, March 13, 2013. Retrieved at <http://online.wsj.com/article/SB10001424127887324077704578357792781721964.html>

ICC set to meet on resources development, 9th February 2011, retrievable at: http://www.nunatsiaqonline.ca/stories/article/108758_icc_set_to_meet_on_resource_development/ accessed 12th october,2012.

IISD 2000. “Sila Alangotok:” Inuit Observations of Climate Change. International Institute for Sustainable Development (IISD), Winnipeg. Video available online <http://>

www.iisd.org/casl/projects/inuitobs.htm

Indians in the Northeast protest the European Union Free Trade Agreement, March 14th 2013, retrievable online at: <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-042-2013>).

Interview, Greenland warns EU may miss out on its mineral wealth, CNBC Mar 7th 2013, retrived at <http://www.cnbc.com/id/100534146> accessed 8th March 2013.

Leona Aglukkaq official website, <http://www.leonaaglukkaq.ca/about/about-leona/>, retrieved on 15th March 2013.

“No European Membership at the Arctic Council”, 5th April 2013, <http://www.heritage.org/research/reports/2013/04/no-european-union-membership-in-the-arctic-council>

Norway and Canada club together on EU seal ban, 25th September 2012, The Local, retrieved on February 2013 <http://www.thelocal.no/page/view/norway-and-canada-club-together-on-eu-seal-ban#.UWGNP6t5zbw>

“Polar bear trade ban vote defeated at meeting”, 13 March 2013, retrieved at <http://www.bbc.co.uk/news/science-environment-21703090> .

Stewart Arnold and Dr Elizabeth Monaghan, “Can the EU become an 'actor' in the Arctic?” Public service Europe, analysis, opinion, debate, /<http://www.publicserviceeurope.com/>, Sept. 26th 2012.

Survey of living conditions in the Arctic: Inuit, Saami, and the Indigenous Peoples of Chukotka (SLiCA), Index of tables. March 2007. At www.arcticlivingconditions.org

“The Crimean Tatar” The Red Book of the Peoples of the Russian Empire, (published in Estonian 1991, English 2001) available at http://www.eki.ee/books/redbook/crimean_tatars.shtml accessed on 29 thMarch 2012.

Toronto Sun online, “EU seal ban to factor in its Arctic Council Bid”, February 6th 2013,available at <http://www.torontosun.com/2013/02/06/eu-seal-ban-to-factor-in-its-arctic-council-bid> accessed on 1st March 2013

UNEP, “Ridding the world of POPs: a guide to the Stockholm Convention on Persistent Organic Pollutants, , 2005” http://www.pops.int/documents/guidance/beg_guide.pdf

Минюст РФ зарегистрировал Устав Ассоциации, 14.03.2013. retrived at <http://raipon.info/component/content/article/1-novosti/3998-2013-03-14-14-17-37.html>, accessed on 4th April, 2013.

Деятельность Ассоциации коренных малочисленных народов приостановлена, Moscow, 8.11.2012, retrived at http://www.asi.org.ru/asi3/rws_asi.nsf/va/WebPages/4EDF2863EDF6B5D844257AB000394651Rus, accessed on 4th April, 2013.

