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Operational conditions of Arctic indigenous peoples' effective participation in the future Arctic governance

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We dedicate this work to Olga Letykai Csonka, Henriette Rasmussen and Michèle Therrien, honorary members or friend of NGO Le Cercle Polaire.

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1. GENERAL PRESENTATION

Assessing the "operational conditions of Arctic indigenous peoples' effective participation in the future Arctic governance" asks for prior clarifications on the subject of the assessment, namely the "Arctic indigenous peoples". Neither the geographical reference area (the "Arctic") nor the categorization of specific ethnic groups ("indigenous people") are precisely defined and commonly shared by national institutions, agencies or authorities concerned. It gets even more complicated when combining the two amorphous denominations in one, some northern ethnic groups sharing the very same traditional way of life, language and culture as other ethnic communities officially recognized as "indigenous peoples" of the North may not be considered so, either because they haven't been granted the status of "indigenous peoples" (for example, the Karelians, northern peoples residing in the Republic of Karelia, Russian federation) or because they are located outside the administrative definition of the North (for example, the Inuit of Nunavik and the Inuit of Nunatsiavut in Canada).

In **section 2, subsection 1**, a brief review of the current defintions of the Arctic zone based on physical and geographical characteristics as a first step, and of the one based on administrative and political considerations in the various countries concerned, as a second step, lead to the general conclusion that none of these definitions taken alone can afford to claim for universality and above all, can capture the complexity and the diversity of the North circumpolar region**. Sub-subsection 2.1.2** is devoted to a short discussion on a major feature of the geography of the North circumpolar region, namely, the socio-cultural dimension involving approximately 40 different ethnic groups who have inhabited the region for over a thousand years, which has to be included as a main component in the geographical definition work on the Arctic region. The Arctic may not be a well-defined geographical zone, it is anyhow identified by the United-Nations Permanent Forum on Indigenous Issues as one of the seven "sociocultural regions" determined to give broad representation to the world's indigenous peoples.

Alongside the issue of a geographical definition of the Arctic, it is recalled **in sub-subsection 2.1.3** that since the establishement of the intergovernmental forum the "Arctic Council" in 1996, the adjective "Arctic" has come to designate an Arctic Council Member State (the term "Arctic State" is used) and by extension, the area resulting from the juxtaposition of northern segments of the so-labelled "Arctic states" without any shared criteria for delineating the northern territories in question. It is emphasized that the conception of an "eight-state Arctic" promoted by the Arctic Council is a political definition serving policy purposes with secondary concerns for a proper geographical definition. It is argueed that the so-called "Arctic" (A8) is primarily the result of a "region-building process" initiated and developed by this unique and sui generis regional cooperation body that is the Arctic Council.

Of particular importance for our study is the inclusion of indigenous peoples' organizations in the political panel of the Arctic Council leading to a conception of the Arctic not only based on Member States but also on indigenous communities organizations as key political actors. We conclude this subsubsection by emphasizing that this political representation of the Arctic may not reflect certain aspect of this complex reality, notably regarding the social, political

and cultural aspects of the North circumpolar region which are currently being studied by social scientists.

In **subsubsection 2.1.4**, we present the definition of the Arctic area adopted in this study, based on the geographical context established by the Arctic Human Development Report (2004), the first social science-driven report prepared for the Arctic Council which constitutes a unique resource on the state of human development in the Arctic at the beginning of the XXIst century. We make ourselves clear on this choice, argueeing that Arctic Council Working Groups offer a top level scientific expertise and that the present study is aimed at being part of a shared framework reflection on Arctic issues predominantly developed by Arctic Council Working Groups and especially, in this case, by the Arctic Monitoring Assesment Programme.

Subsection 2.2 adresses the issue of definition of "indigenous peoples" who happen to have various denominations within the countries concerned ("tribal peoples", "first peoples", "native peoples", "ethnic groups", "aboriginals"…). In **sub-subsection 2.2.2**, it is recalled that no official definition of "indigenous people" has been adopted by any UN-system body and that the most fruitful approach accordinding to UN is to identify rather than to define "indigenous peoples". Identification of IPs is based on several objective criteria (culture, knowledge, identity…) and on a subjective but fundamental criterion, the self-identification. In **sub-subsection 2.2.4**, we present the definition of IPs adopted in this study provided by the non-governmental human rights organization International Work Group for Indigenous Affairs. It is emphasized that a provisional characterization of indigenous peoples does not intend to define "indigenousness" but rather to provide a tool for the process of identification and recognition of the indigenous peoples, would they be already officially recognized as such or still striving to obtain an official status.

In light of the working definitions adopted in section 2**, section 3** is devoted to a detailed presentation of the indigenous peoples in the Arctic region. **Subsection 3.2** examines the population in the Arctic with particular emphasis on the small proportion of Arctic inhabitants at national and regional scales and, on the difference between two types of Arctic residents: the indigenous peoples who established themselves in the Arctic millennia ago; and the peoples from a European background whose presence in the Arctic is much more recent and who remain closely connected to societies south of them. It is recalled that apart from Canada's Nunavut territory and Greenland/Denmark, a small minority of the Arctic inhabitants is composed of indigenous peoples and their communities. We conclude this sub-subsection by underscoring the lack of official statistics due to the fact that several Arctic countries do not identify indigenous peoples specifically (as an example, there is no available demographic data for the Sami) nor they all identify people or other ethnicities.

Subsection 3.3 seeks to provide an overview of the groups of indigenous peoples in the Arctic region, based on limited official statistics and on social-sciences studies (indigenous societies, indigenous cultures, indigenous languages…). This subsection appears to be the trickiest part of our study for it reveals all at once, the ambiguities mentioned earlier regarding the administrative definition of the Arctic varying from one country to another, and the

conflict between a descriptive/scientific sense and an official/legal meaning of the expression "indigenous peoples", reflecting the level of recognition of "indigenous peoples" at national/regional level within the various Arctic countries. Once again, the methodological requirement of the present assessment - providing a provisional characterization of IPs - cannot be separated from the political goal of this characterization work, namely the identification of "indigenous peoples" and their fight for recognition of their specific identity.

Section 4 entiled "Arctic governance and the indigenous peoples" is devoted to a close examination of the level of political participation and recognition of indigenous peoples' communities at international, national and regional levels in the light of international human rights and indigenous peoples' rights standards. **Subsection 4.1** briefly recalls that if assimilation were the common characteristic of official minority policy in the north circumpolar region, the recognition of the unique position of indigenous peoples and increased indigenous participation in political processes has become over the last decade a major trend in Arctic nations with significant contrasts between them, following indeed a worldwide trend of general democratization and strengthening of human rights. **Subsection 4.2** is a full examination of the international framework for the protection of indigenous peoples and the recognition of indigenous peoples' rights. It is underlined that in the field of international human rights, there are two types of approach for ensuring the rights of indigenous peoples: applying general principles of equality and non-discrimination to indigenous peoples and/or developing international instruments that specifically protect indigenous peoples.

Emphasizing that many important indigenous peoples' rights are not framed in specific indigenous peoples' rights treaties, but are part of more general treaties, like the Universal Declaration of Human Rights, **sub-subsection 4.2.1** provides a thorough review of the core international human rights treaties and their monitoring bodies, and a list of international instruments of general application that contain explicit references to IP's rights.

Given that IPs find themlselves in minority situations, they should benefit from minority rights standards. **Sub-subsection 4.2.2** is devoted to a short review of international minority rights standards and a short discussion of the legal consequences arising from qualifying a group as "indigenous people" instead of as "minority" under international law. It is shown that it is necessary to differentiate between minorities and indigenous peoples, by looking at their claims and at the individuals and collective rights enshrined in the UN Declaration on Minority and in the UN Declaration on the Rights of Indigenous Peoples. Specifics characteristics (connections to lands, self-identification…) and specific claims (right over land and resources, participation in decision making…) of IPs are are not reflected in minorities rights standards and that is why international instruments entirely devoted to indigenous peoples' rights are the most suitable international framework for assessing and promoting indigenous peoples needs and expectations. An interesting finding of this comparative analysis is to show that international minority standards follow a rather integrationist approach while indigenous peoples' standards have a more separatist approach.

Sub-subsection 4.2.3 provides a comprehensive presentation of the two indigenous-specific international instruments: the 1989 ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries and **t**he 2007 United Nations Declaration on the Rights of Indigenous Peoples, including a discussion on their ratification/adoption, and if so, their implementation by Arctic States, followed by a comparative analysis of these only two international instruments. We also provide a detailed presentation of the three UN bodies that are mandated to deal specifically with indigenous peoples' issues: the Permanent Forum on Indigenous Issues (UNPFII), the Expert Mechanism on the Rights of IPs and the Special Rapporteur Rights of IPs. Special attention is accorded to the UNPFII which recognizes the "Arctic" as one of the seven socio-cultural regions determined to give broad representation to the world's indigenous peoples. A noteworthy finding of this sub-subsection is that the UNPFII, as a subsidiary body of ECOSOC, does not recognize the political definition of the Arctic developed by the Arctic Council.

Subsection 4.3 entitled "Arctic States'relationship with IPs" examines the degree of legal recognition and protection afforded to the indigenous peoples in the seven states concerned. On the basis of a brief historical overview of the relationship between each state and its indigenous communities, we provide an evaluation of the level of recognition of indigenous peoples' rights in each country concerned, based on the Multiculturalist Policy (MCP) index for Indigenous Peoples developed by the Queen's University including nine forms of public policy intended to recognize or accommodate the distinctive status of IPs.

In **subsection 4.4**, we provide a brief description of the main Arctic Indigenous Peoples' organizations. **Subsection 4.5** deals with a review of the level of cooperation with indigenous peoples' organizations in the three regional cooperation bodies, the Arctic Council, the Barents Euro-Arctic Council and the EU Northern Dimension, leading to the conclusion that the Permanent Participant status granted to IP's organizations by the Arctic Council is the most satisfying model of IP's political participation in regional bodies.

Section 5 is devoted to the relationship between the EU and the indigenous peoples. **Sub-subsection 5.1.1** begins by screening the EU's primary law (the Treaty on the EU and the Treaty on the Functioning of the EU) which is the primary source of human rights development in the EU and then, **sub-subsection 5.1.2** provides a detailed analysis of the EU Human Rights Policy with special focus on the EU Strategic Framework and Action Plan on Human Rights and Democracy (2012-2014). **Subsection 5.2** examines the EU policy on Indigenous Peoples underlining that the EU seeks to integrate indigenous issues into all aspects of its external policies. Special attention is given to the EU corporate social responsibility policy developed by the EU in line with the UN Guiding Principles on Business and Human Rights. In **subsection 5.3**, we conduct an in-depth analysis of the evolution of the EU policy on the Arctic Region on the basis of an examination of the seven EU official documents, from the European Parliament Resolution on Arctic governance of 9 October 2008 (which surprisingly, disappeared from the EEAS Arctic Policy database) to the Council conclusions on developing a European Union Policy towards the Arctic Region of 12 May 2014. We review in chronological order the seven official EU documents aimed at drawing up the EU Arctic policy with particular focus to indigenous peoples' issues and the way they are

addressed in each document succeeding to previous documents, in the context of the EU-Arctic policymaking process, which is announced to be completed for December 2015.

Section 6 is a proposal for an EU action plan on strengthening IP's political participation in the Arctic governance system combining several EU internal and external policy orientations at different level (international organizations, UN bodies, regional cooperation bodies, bilateral work, NGOs…):

- Human rights for the protection of IPs;
- Minority rights for the protection of IPs;
- Recognition of IP's rights;
- Corporate social responsibility Policy for a better respect of IP's rights;
- Protection of IPs as one of the key objectives of the EU Arctic policy;
- IP's rights treated as a cross-sectoral issue in the various sectors of the EU Arctic policy;

1. DEFINITIONS

2.1 THE ARCTIC REGION

2.1.1 Delineating the North circumpolar region

The Arctic owes its name to the "Arctic Circle", the parallel 66° 33' North, which demarcates an area centered on the geographic North Pole. According to a common definition, "*Everything north of the Arctic Circle is known as the Arctic*". From this perspective, the Arctic consists of an ocean surrounded by continental landmasses and islands which apart from the central Arctic ocean, falls under the jurisdiction or sovereignty of 8 States: United States of America, Russian Federation, Norway, Sweden, Denmark (Greenland), Finland, Canada and Iceland[1]. This definition is of great importance as the criterion of latitude determines several physical characteristics of the so-defined area (midnight sun, polar night, permanent or semi-permanent ice, cold winters and cool summers…) but it does not reflect neither the physical and geographical nor the social and political aspects of the North circumpolar region.

As stated in the Arctic Human Development Report (2004), the first social science-driven report prepared for the Arctic Council which constitue a unique resource on the state of human development in the Arctic at the beginning of the XXIst century: "*There is nothing intuitively obvious about the idea of treating the Arctic as a distinct region. Unlike more familiar regions, such as Southeast Asia, the Middle East, or South America, the Arctic consists largely of segments of nation states whose political centers of gravity* [metropoles, economic centers, national population, GDP...][2] *lie for the most part, far to the Sou*th"[3]. The question is then to clarify these "segments of nation states" which are to be considered as part of the Arctic region.

There are several definitions of the Arctic region based on physical and geographical characteristics (the tree line, the Arctic polar front, the 10 degrees Celsius isotherm in July…). Each of them is relevant to a specific field. For example, if we are to adopt the reasonable criterion of the year-on-year average of maximum sea ice extent for delineating the Arctic marine area, we will depict a marine area including some mid-latitudes seas (the Gulf of Saint Lawrence, the Sea of Okhotsk and the Baltic Sea) and excluding some high-latitudes seas (the Norwegian Sea, the Western part of the Barents Sea). This result is clearly inconsistent with the criterion of latitude. We then see that a geographical definition of the Arctic may not consist in a single criterion but a combination of criteria.

There are also several definitions of the North based on administrative and political considerations within different countries. For example, it seems reasonable to adopt the 60th parallel North as the southern boundary of "Canada's North" and it is actually the administrative boundary of the three northern Canadian territories[4]. Applying this criterion to Fennoscandia would lead to the inclusion of Oslo (59° 54' N) and Helsinki (60° 10' N) in the Arctic region[5] which does not make sense, in respect to several natural criteria of "articity"

and come into conflict with the Norwegian administrative or common delimitations of "Northern Norway" ("*Nord-Norge*") and the Finnish definition of "Northern Finland".

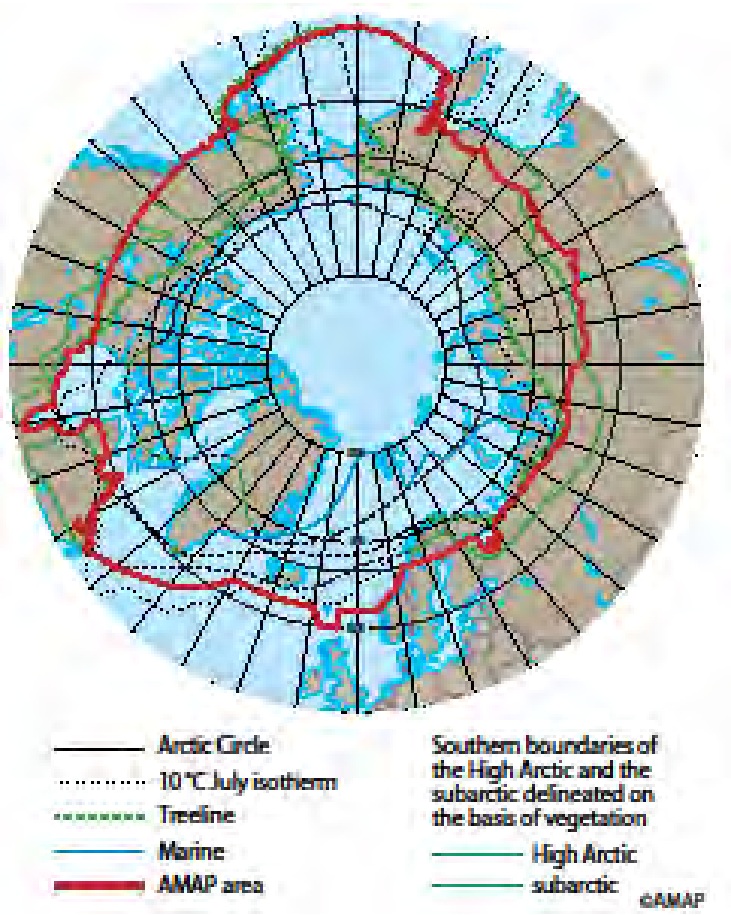

Figure 1: Definitions of the Arctic region. Source: AMAP (1998).

In order to fix the geographical context of the present study, it is important to have in mind the administrative or common delimitations of the various northern territories ("segment of nation states") within the different Arctic States. We provide a short presentation of northern or Arctic territories within the countries concerned:

Canada

In the federal government's Northern Strategy of Canada (2004), it is stated that "The Strategy affects the three northern territories — Yukon, Northwest Territories and Nunavut — which collectively cover nearly 4 million square kilometres, well over one-third of Canada. Although it could be argued that much more of the country is also "northern," the territories are the only exclusively northern parts of the country, as provinces with northern portions also shade into the more developed lands of southern Canada".

The Russian Federation

In the Russian Federation, the administrative definition of Arctic territories is explicitly based on a national plan of economic development priorities. In autumn 2013, the Russian Government approved large-scale program of social and economic development of the

Russian Arctic Zone. It is based on the Arctic Strategy of the Russian Federation, known as the *Strategy of the Russian Arctic Zone Development and National Security until 2020*, signed by President Vladimir Putin in February 2013. The bold and ambitious program calls for realization of a number of huge investments projects in the territories -that are actually rich in natural resources- included in the Arctic Zone. The borders of the Arctic Zone of Russia are not yet legally defined. This is to be soon approved by the deputies of the State Duma. As for today, the Arctic zone of Russia includes: Murmansk oblast, Nenets autonomous okrug, Yamalo-Nenets autonomous okrug, Chukotsky autonomous okrug and part of municipalities of Arkhangelsk oblast, Krasnoyarsky krai and Sakha republic. As a consequence of this federal redefinition, the Komi Republic and the Republic of Karelia are no more part of the Russian arctic zone.

USA

Having a look at the US region of the Arctic as defined in the 2013 *National Strategy for the Arctic Region*, we see that all of the Bering Sea, which extends southward to about 53° North Latitude, is part of the Arctic[6] for internal U.S. planning and budgeting purposes while the rest of the North circumpolar region is demarcated with the parallel 66° 32' North.

Figure 2: Arctic Boundary. Source: ARPA (2009).

As shown on figure 1, the US region of the Arctic is defined as: "all United States territory north of the Arctic Circle" and "all United States territory north and west of the boundary formed by the porcupine Yukon and Kuskow Rivers, at contiguous seas, including the Arctic Ocean and the Beaufort, Bering and the Chuchki Seas, and the Aleutian chain". The so-defined US Arctic zone covering both continental and maritime areas is presented in the 2013 *Department Defense Arctic Strategy* as the delineation of US national security interests in the Arctic set out in the 2009 *National Security Presidential Directive*, *Arctic Region Policy*.

Norway

From a different perspective, the Norwegian government has surprisingly chosen not to mention in its official and public documents on the Arctic any delineation of its northern territories. Indeed, the Norwegian term "Nord-Norge" (Bokmål) - "*Nord-Noreg"(Nynorsk)* and "*North Sámi* » (*Davvi-Norga*)- designates the three northernmost counties (out of 19), namely, Nordland, Troms and Finnmark, usually referred to (in English) as "Northern Norway".

It is noteworthy that in the English wording of the official and public documents on the Arctic region, primarily the *Norwegian Government's High North Strategy* (2006) and the *The next step in the Government's High North Strategy* (2009), these proper names are not mentioned and the sole geographical or administrative term referring to the Arctic is "High North" taken as the English synonym for the Norwegian term "*nordområdene*" (i.e. the northern areas). As pointed out by O. Gunnar (2014) the term "High North" is an "elastic concept in Norwegian Arctic policy": "*the usage of the term has displayed a pattern of elasticity relative to shifting political circumstances*"[7], concluding that the term is not properly speaking*"a geographical place-name, nor a defined territorial denotation but first and foremost a flexible political concept*". As a matter of fact, in the official Norwegian documents on the Arctic, "*the High North is not precisely defined nor is it limited to Norwegian territory*"[8].

Figure 3: Counties of Norway (18, 19, 20).

Surprisingly, the Norwegian (Bokmål) terms "*Arkistk*" ("Arctic", adj.) and "*Arktis*" (Arctic, n.) are excluded from the official wording. The Norwegian government has chosen to present its "*Nord-Norge*" in its official and public documents, as an area inextricably "*linked to developments in the Arctic and the wider circumpolar area*"[9] and the official wording "High North" basically refers to the economic projection sphere of Norway in the "northern areas"[10] whose center of gravity is indeed located in the East Arctic.

Let us then bear in mind that the term "High North" has no immediate corresponding counterpart in academic or political discourse outside Norway: "*Terminologically and*

conceptually, there is a distinct lack of shared understanding when Norwegians and non-Norwegians exchange views on policy issues related to areas which could be referred to as the Arctic/the Sub-Arctic/the European Arctic/the High North/the Far North or the Circumpolar Regions"[11].

Finland

The provinces or counties ("*läänit"*) of Finland do not exist anymore. The regional partition of Finland is the modern "*maakunta*". Legally speaking, they are municipal entities. "Northern Finland" is the northernmost part of Finland. Administratively it comprises Finnish Lapland ("*Lapin lääni"*) and the "provinces" of Kainuu and Northern Ostrobothnia. In the Finland's strategy for the Arctic Region[12], the government of Finland states that: "*Although Finland has no coastline on the Arctic Ocean*, *much of its territory lies north of the Arctic Circle*" and "*Lapland, Finland's northernmost* [and largest] *province, is an essential projection of Finland's Arctic image*". More precisely, we will see later that according to the Barents Regional Council, the northernmost parts of Finland include: Kainuu, Lapland, Oulu Region and North Karelia.

Figure 4: Northern Finland (Lappi).

Iceland

The case of Iceland is a bit controversial when applying rigourously the criteria of latitude to delineate the Arctic area. It is usually said that the Arctic Circle crosses Iceland at its northernmost point, on the island of Grimsey which is part of the town of Akureyri. This is approximately true since Grimsey's island is located at 66° 32' 30'' North[13]. The articity of this country can not be based solely on the existence of a five square kilometers island. Iceland is therefore advocating for a more flexible definition of the Arctic region and is even claiming for a geographical qualification of "Arctic coastal State". The following statements: "*Securing Iceland's position as a coastal State within the Arctic region*", "*Promoting*

understanding of the fact that the Arctic region extends both to the North Pole area proper and the part of the North Atlantic Ocean which is closely connected to it"; affirming that "*The Arctic should not be limited to a narrow geographical definition but rather be viewed as an extensive area when it comes to ecological, economic, political and security matters*"; are presented as national priorities in the *Parliamentary Resolution on Iceland's Arctic policy* (2011).

Denmark

From a purely geographical perspective, the "arcticity" of Denmark is clear: "by virtue of Greenland", the Kindom of Denmark is "centrally located in the Arctic". As stated in the *Kingdom of Denmark Strategy for the Arctic 2011–2020*, "*the Kingdom consists of three parts - Denmark, the Faroe Islands and Greenland - and, by virtue of Greenland, is centrally located as a coastal state in the Arctic*". We will see later on that, since the Faroe Island have had home rules and Greenland have had self-government Act, the institutional situation of Denmark regarding Arctic Issues is more complex than with other Arctic States.

Sweden

The Northern land of Sweden (*Norrland*) roughly comprises the modern counties of Gävleborg, Jämtland, Norrbotten, Västerbotten and Västernorrland (see Figure 2). Norrland is subdivided into Northern Norrland (*norra Norrland*) and Southern Norrland (*södra Norrland*). The Northern Norrland typically covers the historical provinces of Norrbotten, Västerbotten and Lappland, namely the modern counties of Norrbotten and Västerbotten, respectively located above or crossed by the Arctic Circle.

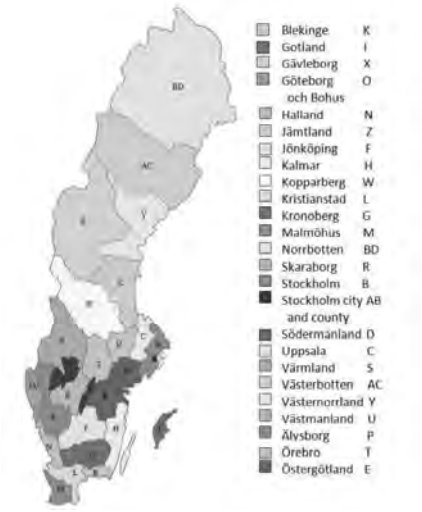

Figure 5: Counties of Sweden (BD, AC).

Without mentioning any administrative definition of their northern territories, *Sweden's Strategy for the Arctic region* (2011) has adopted a political definition of the Arctic Region based on the Arctic Council panel: "*In connection with the establishment of the Arctic Council, the various members adopted a common political definition. According to this definition, the Arctic includes all areas north of the Arctic Circle and the associated eight*

Arctic states, i.e. Canada, Denmark/Greenland, Finland, Iceland, Norway, Russia, the United States and Sweden".

Following this brief overview of administrative definitions of Northern territories in common usage or in force in the Arctic States, it is then clear that the Arctic - as a region consisting largely of segments of nation states - can not be delineated with a simple criteria. As mentioned in the Arctic Social Indicators report (2009), a follow-up to the AHDR (2004): "O*ne way to address the dilemma of definition is to allow shades of gray: some places might be "more Arctic"(by any particular criteria) than others, but their differences are best viewed as matters of degree, not of kind*"[14].

Last but certainly not least, the Arctic is also a socio-cultural region composed of various indigenous communities, approximately 40 different ethnic groups who have inhabited the region for over a thousand years. Ranging from the Inuit and Athasbascans of the North American Arctic through the Saami of Fennoscandia and the Kola Peninsula and on the "Small-Numbered Indigenous Peoples of the North, Siberia and the Far East", the Arctic indigenous Peoples live in all above mentioned countries apart from Iceland. As we will see later, the Arctic is identified by the United-Nations Permanent Forum on Indigenous Issues (UNPFII) as one of the seven sociocultural regions determined to give broad representation to the world's indigenous peoples.

The issues of land, territory and access to natural resources remain central to observing the human rights and fundamental freedoms of indigenous peoples. The nature and importance of those relationships is fundamental for both the material subsistence and the cultural integrity of many indigenous peoples[15]. The Permanent Forum has commented on the significance of the relationship between indigenous peoples and their lands: "*Land rights, access to land and control over it and its resources are central to indigenous peoples throughout the world, and they depend on such rights and access for their material and cultural survival. In order to survive as distinct peoples, indigenous peoples and their communities need to be able to own, conserve and manage their territories, lands and resources »*[16].

For sure, the human dimension is of great importance for our study, if not the whole subject of the study, but it is also an essential component that must be taken into account in the geographical definition work on the Arctic region. To the question: "What is the Arctic?", the Sweden's Arctic Strategy answers that "*the Sami people form the link between Sweden and the Arctic*", the Kingdom of Denmark answers that "*by virtue of Greenland* [whose population is made up of 89 % Kalaallit Inuit], *the Kingdom* of *Denmark is centrally located in the Arctic*" and Finland affirms that: "*the northernmost municipalities of Finland are part of the Saami Homeland*", to quote only a few of them.

As it is case with the concept of "nordicity" developed in the 1960s by the Canadian geographer L.-E. Hamelin[17], a concept of "articity" should take into account human components, and more specifically, indigenous peoples' communities, along with natural components. The idea of "the Arctic as a homeland" for a diverse group of indigenous peoples versus "the Arctic as a Northern Frontier" was popularized by Thomas Berger[18]

(1977) to capture the distinction between those who see the circumpolar Arctic as a storehouse of natural resources of interest to industrialized societies to the south and those who reside in the Arctic and see themselves as the current representatives of peoples who have lived in the region.

Figure 6: Sameland. Source: Nordiska musset, 2007

An interesting example of a socio-cultural factor shaping the geography of the Arctic beyond the division of the area into "segments of nation states" is the case of "*Sápmi*" or "*Samiland*" (See Fig. 6), the cultural region traditionally inhabited by the Sami peoples which stretches over four countries (Finland, Norway, Sweden and Russia). As an example, in 1751, a treaty (the "Lapp Codicil") was signed between Sweden and Norway to allow the pastoral and nomadic people to cross the border in accordance with their traditional way of life: "*The Sami need the land of both states. Therefore, they shall, in accordance with tradition, be permitted both in autumn and spring to move their reindeer herds across the border into the other state*"[19]. Closer to our time, in their Action Plan for the period 2013-2016, Indigenous Peoples from the Barents Euro-Arctic Region refer to "The indigenous peoples' dimension": "*Indigenous peoples' transnational character represents a considerable challenge. This means that the framing of politics, which affect indigenous peoples, must also contain a perspective relating to foreign politics*"[20].

Generally speaking, the idea of a "Northern Homeland" constitutes a major feature of the present Arctic's political and legal landscape. At national and international levels, Arctic indigenous people organisations have become key political players.

To sum up, out of the various definitions of the Arctic based on either physical-geographical characteristics or political and administrative considerations within different countries, "none of these definitions is particularly satisfactory"[21] and none of them can afford to claim for universality: « *It is clear that any definition of the Arctic is contingent on the observer's perspective and purpose, and in each definition there are places where the border may appear arbitrary* »[22]. Some experts have come to question the appropriateness of treating the Arctic as a region at all: "*the idea of the Arctic as a coherent region with a policy agenda of its own is little more than an artificial construct*"[23]. This comment certainly applies to the

Cold-War period but today, the circumpolar North has become an arena of regional and in a less extent, international cooperation and the so-called Arctic has emerged as a distinct region in public policy discussion. It will be argued below that the public reference to the Arctic as a whole is primarily the result of a "region-building process"[24] initiated and developed by a unique and sui generis regional cooperation body, namely the Arctic Council.

2.1.2 The political definition of the Arctic region

As regards the identififcation of the Arctic as a region, a major step was taken in 1996 with the establishment of the intergovernmental forum of the Arctic Council whose objective is to deal with Arctic issues on a regional scale, meaning the Arctic taken as a whole. The need for a coherent and a shared (or negotiated) representation of the North circumpolar region emerged and became feasible through cooperation, coordination and interaction between scholars and officials from directly concerned States and, a point worth underlying, Arctic indigenous communities, without forgetting undirectly concerned states with the status of "(permanent) observer".

The conception of an "eight-state Arctic"

Without solving the question of the delineation of the North circumpolar region, the Declaration on the Establishment of the Arctic Council (commonly known as the "Ottawa Declaration" [25]) officially designates the States which shall be referred to as "Arctic States" by virtue of their status of members of the Arctic Council: Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America. Incidentally, it is interesting to note that Iceland has long been described as a subarctic State in scientific literature[26] which shows, if that were necessary, that the Arctic Council membership was not strictly based on geographical considerations. The Arctic Council has then defined the currently prominent conception of an "eight-state Arctic" ("A8") and in turn, the term "Arctic State" refers to the status of member state of the Arctic Council.

According to the Strategy for the Arctic region (2011) of Sweden, "*As a result of this regional practice, it can be said that this political definition of the Arctic has significant status in international law*". The "Arctic region" can therefore be described as the result of a "region-building process" in a political organization, namely, the Arctic Council where the delineation issue served policy purposes.

As seen above, there is no common or shared definition of Arctic territories ("segments of nation state") and we can therefore say that the epithet "Arctic" refers principally to the status of member states of the Arctic Council with secondary concerns for a proper geographical definition. As a result of this political process supported by wide-ranging public communication and multinational academic works, "the circumpolar Arctic has emerged as a policy-relevant region, indeed as a "region" at all, over the last 20-30 years"[27] in the international society.

Beside member status, the Ottawa Declaration grants special status to organizations of Arctic indigenous peoples. In the two-page declaration, there are 8 explicit references to the

"*indigenous peoples of the Arctic and their communities*". The founding declaration officially designates three organizations of indigenous peoples as "Permanent Participants" (PPs) of the Arctic Council. This special category has been created to "*provide for active participation and full consultation with the Arctic indigenous representatives*" (Art. 2) within an intergovernmental forum. Unlike the list of "States members", the permanent participation is open to other Arctic organizations of indigenous peoples with majority Arctic indigenous constituency, representing:

(a) a single indigenous people resident in more than one Arctic State"; or
(b) more than one Arctic indigenous people resident in a single Arctic State.

It should be noted that the sub-paragraph (a) of Article 2 provides for political representation of transnational indigenous communities, an important feature of some indigenous peoples of the Arctic region. The declaration indicates that "*the determination that such an organization has met this criterion is to be made by decision of the Council*"[28] and that "*the number of Permanent Participants should at any time be less than the number of members*"[29], meaning less than 8. We then see that the political definition of the Arctic Region is based on the so-called "Arctic States" and that the identification of "Arctic indigenous peoples" is itself based on their political representation in the northern territories of the Arctic States.

The inclusion of indigenous people organizations in the political panel of the Arctic regional cooperation body can be seen as a major step in the historical process of recognition of the unique position of the indigenous peoples in the North circumpolar region. The political participation of indigenous peoples is actually what makes the Arctic Council a unique regional cooperation body. As noted in the AHDR (2004): "A unique and innovative feature of the Arctic Council is the role it accords to the Permanent Participants. Although they are not treated as formal members, the indigenous peoples' organizations […] are engaged in all activities of the Council on a basis of de facto equality"[30]. It is of particular importance for our study to then understand that the current representation of the Arctic region based on the eight-states, is also based on Arctic indigenous organizations. That is to say that the official representation of the Arctic region is also determined by the political representation of indigenous communities in the so-labelled "Arctic States".

The conception of an "A8+" Arctic

During the sixth ministerial meeting of the Arctic Council in Tromsø, in April 2009, chaired by Norway, indigenous peoples representatives made a comment regarding the current expression "A8" (for "8 Arctic Council State members") which is commonly used to define the Arctic Council panel without any consideration to the permanent participants. The chairman, the Norwegian minister for Foreign Affairs, Jonas Gahr Store, suggested that State members representatives would by now use the expression "A8+" to name the AC panel. We will examine later the political meaning of this expression "A8+"[31]. Let us bear in mind that the Arctic Council has defined the currently prominent conception of an "A8+" Arctic where the symbol "+" refers to the "indigenous peoples of the Arctic and their communities". Since 1996, this conception enshrined in the Ottawa declaration has allowed three new Arctic indigenous organizations to gain a permanent participant status at the Arctic Council.

The Arctic Council has played and continues to play a unique role in constructing and negotiating a common representation of the Arctic. However, a political representation as such, may not reflect certain aspect of this complex reality, notably regarding the social, political and cultural aspects of the North circumpolar region which are currently being studied by social scientists.

The Arctic Council is an intergovernmental forum for regional negotiations (multilateral agreements, declarations, joint statements…) but it is primarily a unique framework for scientific expertise on Arctic issues. It is worth remembering that the Arctic Council has been established on the foundations of the Arctic Environmental Protection Strategy (AEPS) initiative[32] (sometimes referred to as the "Finnish Initiative") which was adopted in 1991 by the eight directly concerned States and has been the strategy for the five Arctic Council working groups[33]. The Arctic Monitoring and Assessment Program (AMAP), one of the cornerstone programs of the Arctic Council, is of particular interest for the present discussion.

2.1.3 Geographical context of this study

The Arctic Council's AMAP Working Group has defined a regional extent of the Arctic region based on a compromised among various definitions. "*AMAP has not attempted to define the Arctic per se but rather to provide guidance relevant for all areas of science about the core area to be covered by AMAP assessments*"[34] including "Human Health in the Arctic"[35] (2009) which has a certain affinity with the subject of the present study. This definition was reaffirmed with some modifications[36] in the Arctic "Human Development Report" issued in 2004 which has a very close affinity with the present study. Regarding the top-level expertise of AMAP and being attentive that the present study should be part of a shared framework reflection on Arctic issues, we will adopt the geographical context established by AMAP and modified by AHDR.

The AMAP Arctic boundary essentially includes the terrestrial and marine areas north of the Arctic Circle (66°32'N), and north of 62°N in Asia and 60°N in North America, modified to include the marine areas north of the Aleutian chain, Hudson Bay, and parts of the North Atlantic Ocean including the Labrador Sea, excluding the Baltic. In more detail, the AMAP area lies between 60° N and the Arctic Circle, with the following modifications:

- In the North-East Atlantic, the southern boundary follows 62° N, and includes the Faroe Islands. To the west, the Labrador Sea and Greenland Sea are included in the AMAP area.
- In the Bering Sea area, the southern boundary is the Aleutian chain.
- Hudson Bay and the White Sea are considered part of the Arctic for the purposes of this assessment.
- In the terrestrial environment, the southern boundary in each country is determined by that country, but lies between the Arctic Circle and 60° N. Eight countries have land within the area of AMAP's responsibility: Canada, the Kingdom of Denmark, including Greenland and the Faroe Islands, Finland, Iceland, Norway, Russia, Sweden, and the United States of America (Alaska).

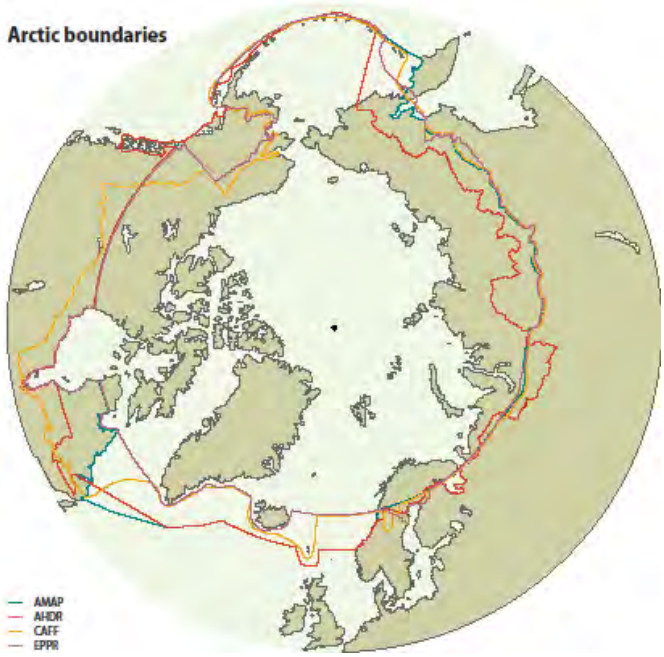

Figure 7: Boundaries of the Arctic Council Working Groups. Source: GRID-Arendal (2013).

The AHDR needed to be based largely on northern political units, as that is how the majority of socio-economic data and information on northern societies is organized[37]. In the AHDR, the AMAP definition was expanded to advance the southern boundaries in Labrador (Canada) and the Russian federation:

> The AHDR Arctic encompasses all of Alaska, Canada North of 60°N 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 demarcated by our demographers, encompasses the Murmansk Oblast, the Nenets, Yamalo-Nenets, Taimyr, and Chukotka autonomus okrugs, Vorkuta City in the Komi Republic, Norilsk and Igsrka in Krasnoyarsky Kray, and those parts of the Sakha Republic whose boundaries lie closest to the Arctic Circle.

The "AHDR Arctic" was then designed to cover the socio-cultural region of the Arctic composed of various indigenous communities and other Arctic inhabitants.

2.2 INDIGENOUS PEOPLES

2.2.1 Common definition

Called "Tribal Peoples", "First Peoples", "Native Peoples", "Ethnic Groups", "Aboriginals"… Indigenous and tribal peoples constitute at least 5000 distinct peoples with a population of more than 370 million peoples living in 70 countries. Spread across the world, indigenous and tribal peoples are located in Americas (for example, the Lakota in the USA, the Mayas in Guatemala or the Aymaras in Bolivia) in the North circumpolar region (the Inuit and the Aleutians), in the northern Europe (The Saami), in Australia (the Aborigines and Torres Strait Islanders) and in New Zealand (The Maori)[38].

According to a common definition, they are the descendants of those who inhabited a country or a geographical region at the time when people of different cultures or ethnic origins arrived. The new arrivals later became dominant through conquest, occupation, settlement or other means. This does not constitute, properly speaking, a definition of the indigenous people but according to the United Nations, it does constitute "*the most fruitful approach to identify rather than define the indigenous peoples*", regarding the broad diversity of the concerned groups. As a matter of fact, no official definition of "indigenous people" has been adopted by any UN-system body. For example, this position is clearly expressed in a guide book issued by the International Labour Organization (ILO) programme on indigenous and tribal peoples:

> The diversity of indigenous and tribal peoples cannot easily be captured in a universal definition, and there is an emerging consensus that a formal definition of the term "indigenous peoples" is neither necessary nor desirable. Similarly, there is no international agreement on the definition of the term "minorities" or the term "peoples" [39].

2.2.2 The UN approach of Indigenous Peoples

The official approach adopted by the UN Permanent Forum on Indigenous Issues (UNPFII) - an advisory body focused on indigenous issues established by the UN in 2000 - is based on several distinct characteristics which are clearly different from those of other segments of national populations:

- Self- identification as indigenous peoples at the individual level and accepted by the community as their member.
- Historical continuity with pre-colonial and/or pre-settler societies
- Strong link to territories and surrounding natural resources
- Distinct social, economic or political systems
- Distinct language, culture and beliefs
- Form non-dominant groups of society
- Resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities.

This approach combined at least three main aspects: identity, culture and knowledge, and political participation in which we can recognize elements of both negative and positive discrimination.

"Political participation" is clearly defined as a criterion of negative discrimination by the UNPFII:

> "Indigenous peoples often have much in common with other neglected segments of societies, i.e. lack of political representation and participation, economic marginalization and poverty, lack of access to social services and discrimination. Despite their cultural differences, the diverse indigenous peoples share common problems also related to the protection of their rights. They strive for recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources"[40].

Where "culture and knowledge" is presented by UNPFII as a valuable discrimination:

> Indigenous peoples are the holders of unique languages, knowledge systems and beliefs and possess invaluable knowledge of practices for the sustainable management of natural resources. They have a special relation to and use of their traditional land. Their ancestral land has a fundamental importance for their collective physical and cultural survival as peoples. Indigenous peoples hold their own diverse concepts of development, based on their traditional values, visions, needs and priorities[41].

Regarding the third aspect, namely "Identity", UNPFII makes two conflicting statements:

- IP's identity is "based on the fundamental criterion of self-identification"[42]
- "In many cases, the notion of being termed "indigenous" has negative connotations and some people may choose not to reveal or define their origin"[43].

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) adopted in 2007 is one the two international instruments entirely devoted to the indigenous and tribal peoples' rights. UNDRIP identifies "indigenous peoples" as being the beneficiaries of the rights contained in the Declaration, without defining the term. The preamble of the Declaration, however, makes reference to certain characteristics normally attributed to indigenous peoples, such as their distinctiveness, dispossession of lands, territories and natural resources, historical and pre-colonial presence in certain territories, cultural and linguistic characteristics, and political and legal marginalization. Also, article 33, para.1, states that*:*

> Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

While clearly pointing out that no definition has been officially adopted, the UN considers for practical purposes the meaning provided by the Special Rapporteur of the UN Sub-Commission for Human Rights, Josè Martinez Cobo, the most accepted and quoted[44]:

> 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[45].

2.2.3 The ILO's definition of Indigenous (and Tribal) Peoples

The International Labour Organization has a longstanding engagement with the situation of indigenous and tribal peoples. In 1989, a convention entirely devoted to indigenous and tribal peoples' rights was adopted by the ILO Conference. This Convention includes a definition of "*Indigenous and Tribal Peoples in independent countries*"[46] in Article 1(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) people in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation 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.

In Article 1(2), ILO Convention No. 169 also makes use of a self-identification criterion:

> 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.

As mentioned in the guide book (2009) to the ILO Convention No. 169 issued by the technical cooperation programme on indigenous and tribal peoples (PRO 169), in the section entitled "Identification of indigenous and tribal peoples": "*The Convention does not strictly define who are the indigenous and tribal peoples but rather describes the peoples it aims to protect*". The guide book gives clear explanations about the coverage of C169:

> The elements outlined in Article 1(1) constitute the objective criteria of the coverage of ILO Convention No. 169. It can objectively be determined whether a specific indigenous or tribal people meets the requirements of Article 1(1) and recognizes and accepts a person as belonging to their people.
>
> Article 1(2) recognizes the self-identification of indigenous and tribal peoples as a fundamental criterion. This is the subjective criterion of Convention No. 169, which attaches fundamental importance to whether a given people considers itself to be indigenous or tribal under the Convention and whether a person identifies himself or herself as belonging to this people.

ILO Convention No. 169 is the first international instrument to recognize the importance of self-identification and its "*coverage is based on a combination of the objective and subjective criteria. Thus, self-identification complements the objective criteria and vice-versa*"[47].

2.2.4 Definition adopted for this study

It is noteworthy that the term "Indigenous" is not commonly used in all Arctic countries. In Alaska, "native" is the common term where the Constitution of Canada uses the term "Aboriginal"[48]. "First Nations" is also a common term in Canada to name the "Indians peoples (both Status and non-Status)"[49]. A definition of "indigenous people" without the numerical qualification does not exist in the Russian legislation. Out of a 185 ethnic minorities in the Russian federation[50], 40 of them are legally recognized as "Small-Numbered indigenous peoples of the North, Siberia and the Far East" (See Appendix 1) since 2006 while some others are still striving to obtain this status. This status is tied to the conditions that a people has no more than 50,000 members, maintains a traditional way of life, inhabits certain remote regions of Russia and identifies itself as a distinct ethnic community. As another example, in Canada, out of more than 200 ethnic origins reported in 2011[51], three cultural groups (Metis, First Nations and Inuit) have "Aboriginal" status according to the Constitution Act of 1982.

In this study, we will use the nominal group "indigenous peoples" (or "Indigenous People") without regard to the great variety of the legal, political, cultural and economical diversity among the Peoples of the North. Following once again, the AHDR[52], we will adopt the definition provided by the non-governmental human rights organization International Work Group for Indigenous Affairs (IWGIA)[53]:

> Indigenous peoples are those peoples who were marginalized when the modern states were created and identify themselves as indigenous peoples. 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 group(s),
> • They are being discriminated in the political system,
> • They are being discriminated within the legal system,
> • Their cultures diverge from that of the remaining society,
> • They often diverge from the mainstream society in their resource 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 population.

It is then clear, that a provisional characterization of indigenous peoples does not intend to define "indigenousness" but rather to provide a tool for the process of identification and recognition of the indigenous peoples, would they be already officially recognized as such or still striving to obtain an official status. This aspect is of particular importance for our study for it makes necessary to call for social sciences not only national statistics. From a methodological perspective, one could say that if a scientific assessment on indigenous peoples cannot be conducted without any provisional characterization of its subject –which actually includes a self-identification criteria-, this methodological requirement cannot be separated from the political goal of this characterization work, namely the identification of "indigenous peoples" and their strive for recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources.

As a matter of fact, the first United Nations publication of the state of the world's indigenous peoples[54] issued by the Secretariat of the UNPFII in 2010 reveals alarming statistics on poverty, health, education, human rights and political participation:

> While indigenous peoples make up around 370 million of the world's population – some 5 per cent – they constitute around one-third of the world's 900 million extremely poor rural people. Every day, indigenous communities all over the world face issues of violence and brutality, assimilation policies, dispossession of land, marginalization, forced removal or relocation, denial of land rights, impacts of large-scale development, abuses by military forces and a host of other abuses.

Despite international recognition and acceptance of the Universal Declaration of Human Rights which guarantees the fundamental rights of all human beings, in practical fact Indigenous Peoples' human rights remain without specifically designated safeguards. To this day, Indigenous Peoples continue to face serious threats to their basic existence due to systematic government policies. In many countries, Indigenous Peoples rank highest on such underdevelopment indicators as the proportion of people in jail, the illiteracy rate, unemployment rate, etc. They face discrimination in schools and are exploited in the

workplace. In many countries, they are not even allowed to study their own languages in schools. As an example among many others, in the United States, a Native American is 600 times more likely to contract tuberculosis and 62 per cent more likely to commit suicide than the general population[55]. As mentioned in the IWGIA's definition IPs: indigenous peoples are peoples "being discriminated in the political system" and "within the legal system". That is to say that "being discriminated" is part of the definition of IPs.

3.INDIGENOUS PEOPLES OF THE ARCTIC

3.1 HISTORICAL BACKGROUND

Human colonization of the Arctic is relatively recent. Within the past and present population of the Arctic, one can roughly distinguish two broad types which correspond to two waves of colonization of the Arctic: one by the indigenous peoples who established themselves in the Arctic millennia ago; another one by the peoples from a European background whose presence in the Arctic is much more recent and who remain closely connected to societies south of them.

One major change in the Arctic population occurred since World War II in connection to sovereignty and defense issues. The subsequent Cold War perpetuated political interest and military presence in the north circumpolar region. Apart from the increased military activity, other factors have brought about a major change in Arctic societies and cultures during the second half of the 20th century. One of them was the rush to exploit non-renewable resources of the North and no less importantly another one was the paternalistic policies of welfare states notably exemplified by the policies of Norwegianization[56], Russification[57] and Canadianization[58] which involved: relocations of wholes groups of peoples including nomadic peoples in settled communities; health care services causing rapid growth of population, mandatory schooling education, to name some of the main measures of these various assimilation policies. In its first phase, this period of time has been described as the "*dark years of directed change*" or "*state encroachment on Arctic cultures and societies*"[59].

In the 1950s, the population of the entire circumpolar region was increasing. In Greenland, the growth was mostly the result of natural increase (birth rates being higher that the death rates) while in Alaska and Northern Russia, the growth was mainly due to in-migration, in connection to the development of northern resources and sovereignty/defense issues. Canada has demonstrated a similar pattern since World War II with very rapid growth in its north in the 1950s and the 1960s. In Finland's Lapland and Sweden's Norrbotten regions, the peak of Arctic population growth occurred in the 1960's where in northern Norway, it happened later in the 1990's.

By the 21st century, Canada, Alaska, Greenland and Iceland were the only Arctic States with Arctic populations still increasing[60]. Much of this overall pattern is driven by natural increase rather than net migration. In some regions, such as in Canada, there is evidence that fertility rates among the Inuit are starting to decline, but they still remain more than double that of the country as a whole.

Population Dynamic of Arctic Region 1940-2000

Population (in 1,000)

Arctic Regions	1940	1950	1960	1970	1980	1990	2000
USA: Alaska (Censuses)	72.5	128.6	226.2	300.4	401.9	550	626.9
Canada*	NA	33	51.2	81.4	100.2	115.8	120.6
Denmark: Greenland	21.4 1945	23.6 1951	33.1	46.3	49.8	55.6	56.1
Iceland	121.5	144	175.7	204.6	229.2	255.7	282.8
Denmark: Faroe Islands	29.2 1945		34.6	38.6		47.4	46.2
Norway		221.8	237.2	243.2	243.8	239.5	239.1
Sweden	216	241.5	261.8	255.9	267	262.3	257.2
Finland	137	167.1	205.1	197.1	194.9	200.7	191.8
Russia (Censuses)	523.8 1939		1,128 1959	1,508.7 1970	1,948.1 1979	2,598.5 1989	1,981.1 2002

Notes:
* Canada's Arctic population excludes Nunavik in Quebec due to historical availability issues. Its 2001 population stands at 9,630, which can be added to the 2001 count above.

Figure 8: Population Dynamic of Arctic Region (1940-2000). Source: AHDR, 2004

Another important aspect of the Arctic demography is the increasing number of indigenous people who have settled down in larger centers away from their home areas, during the past few decades. Oslo, Stockholm and Helsinki are sometimes referred to as the largest Saami villages in the Nordic countries[61]. The Saami in Finland number about 10 000 of whom close to 50 per cent live in the Saami Homeland. There are over 180 000 inhabitants in Finnish Lapland[62].

According to a recent study[63], about 7.000 Greenlanders live in Denmark which is equivalent to about 15% of the Greenlanders in Greenland. In 2001, about 10% of Canadian Inuit lived outside the Arctic[64]. In 2003, about 10% of the 274,000 inhabitants of Anchorage were Native or part Native people, which corresponds to almost 17% of the total Native population of the State[65].

3.2 ARCTIC POPULATION OVERVIEW

The Arctic region is a vast area with approximately 13.4 million square kilometres of land within the AMAP boundary[66]. About 4 million people live in the Arctic[67] with nearly half of the Arctic population located in the northern territories of Russia. Taken as a whole, the Arctic land mass represents one of the most desolate and sparsely populated areas in the world with an average population density of 0.3 people per km^2. The extremely sparse population is considered as the main feature making the Arctic different from the rest of the world[68].

Among the 8 Arctic countries, some are completely located within this region, namely Iceland, Greenland and the Feroe Islands and the others, Canada, Finland, Norway, Russian Federation, Sweden and the United States have just a small portion of their national population residing within their respective Northern territories. As mentioned above, "*the Arctic consists largely of segments of nation states whose political centers of gravity*

[metropoles, economic centers, national population, GDP...][69] *lie for the most part, far to the South*". Figure 4 shows the percentage of country's population living in northern territories.

	Canada	Denmark	Iceland	Finland	Norway	Russia	Sweden	USA
Country's Population	35 540 419	5 655 750	288 000	5 470 820	5 136 700	143 800 000	9 716 962	316 100 000
Arctic population by country	130 000	57 700	288 000	180 000	380 000	1 980 000	264 000	649 000
%	0,3	1	-	7	7	1	2	0,2

Figure 9: Percentage of country's population living in the Arctic.
Source: National Census Authority/UNEP-Grid

Arctic Country/Region	Square (1,000 sq km)	Date	Population Size (1,000)	Population Density (per 100 sq km)
Total	12575		4058.0	32
USA: Alaska	1516	1.7.2003	648.2	43
Canada: Arctic regions	4191	15.5.2001	130.3	3
Denmark: Greenland	2176	1.1.2003	56.7	3
Iceland	103	31.12.2002	288.5	280
Denmark: Faroe Islands	1	31.12.2002	47.7	3410
Norway: Arctic regions	107	1.1.2003	462.7	431
Sweden: Arctic regions	99	31.12.2002	253.6	257
Finland: Arctic regions	93	31.12.2002	187.8	202
Russia: Arctic regions	4289	9.10.2002	1982.5	46

Figure 10: Population of Arctic Regions and Countries circa 2003.
Source: AHDR, 2004.

As shown in figure 4, the demographic situation varies a lot from one Arctic country to another in the circumpolar region. Another noteworthy aspect of the Arctic demography is the big contrast between vast inhabited territories and relatively big cities. It is estimated that about two thirds of the total Arctic population live in relatively big settlements of more 5000 inhabitants[70]. However, the size of communities varies greatly across the Arctic. Some regions (e.g. Alaska and Russia) have the vast majority of their population in large urban centers or cities, while others (e.g. Canada) have a large share of the population living in small or very small communities. In many of the circumpolar countries, the indigenous populations generally live in the smaller communities.

Out of the 4 million people living in the Arctic, 10% are indigenous peoples[71]. Figures 5 and 6 represent the proportion of indigenous peoples in each Arctic territory.

Indigenous Population of the Arctic Region

Arctic Region or Country	Date	Population (1,000) Total	Indigenous	Share of indigenous (%)
USA (Alaska)	Census 2000	627	38 (119)*	15.6 (19.0)
Canada: Arctic region	Census 2001	130	86	66.9
Denmark: Greenland	2003	57	50	88.1
Iceland	2003	288	NA	
Denmark: Faroe Islands	2003	48	NA	
Norway: Arctic region	2003	483		
Sweden: Arctic region	2003	254	5??**	~5
Finland: Arctic region	2003	188		
Russia: Arctic region	Census 2002	1982	~5??***	>?

Notes:
* Just American Indians & Alaska Natives (American Indians & Alaska Natives and some other race
** Estimate for Nordic Saami (RN14), 1998
*** Estimate author (T. Bogoyavlenskiy, Census 1989 = ?.0)

Figure 11: Indigenous population of the Arctic Region. Source: AHDR, 2004.

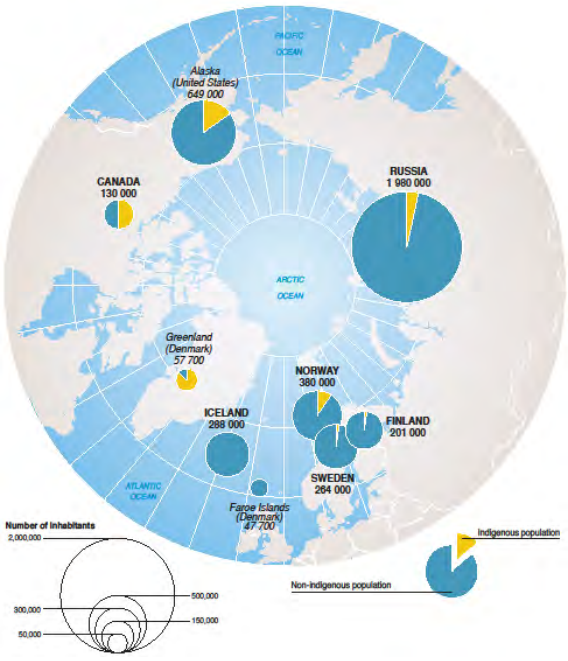

Figure 12: Population distribution in the circumpolar Arctic, by country (including and population). Source: UNEP-Grid[72]

Generally speaking, the majority of the Arctic population (~ 90%) is non-indigenous where a minority of the Arctic inhabitants is composed of indigenous people and their communities. This general statement applies also to Arctic States considered separately with the exception of Greenland/Denmark and the northern Canada. The proportion of the population that is indigenous ranges from 85% in Canada's Nunavut Territory and 88% in Greenland, to 2.5% in the Saami region of Fennoscandia and the Kola Peninsula, in Russia, to 0% in Iceland and the Faroe Islands[73]. To give another example, there are over 180.000 inhabitants in Finnish Lapland of whom 4-5 000 are Saami people[74]. Most of the 2000 Saami living in Russia are located in the Murmansk Oblast where they make up only 0.15% of the whole population, according to the all-union census iof 1989.

	Canada	Denmark	Iceland	Finland	Norway	Russia	Sweden	USA
Arctic population by country	130 000	56 700	288 000	180 000	380 000	1 980 000	264 000	735 132
IPs living in the Arctic	39 378 (Inuit Nunaat)	51 349 (Kalaallit Nunaat)		4-5000 (Lappi)	42-50 000	2 000 (Sami)	20 000	110 000 (American Indian and Alaska Native)
%		89%	-					14,7%

Figure 13: Percentage of Arctic indigenous population by country. Source:

As a matter of fact, several Arctic countries do not identify indigenous peoples specifically nor do they all identify people of other ethnicities. For example, in the Arctic territories of Finland, Sweden and Norway where the Saami live and are originally from, ethnicity is not registered in official statistics. So there is no available demographic data for the Saami. As stated in AHDR (2004): "*the diverse populations within the Arctic regions need to be more specifically identified in official data collection system within each country*"[75] and in the conclusive chapter of ASI (2009), it is underlined that: « *Differentiating indigenous and non-indigenous populations is commonplace in North America, uncommon in Scandinavia and varying over time in Russia* »[76].

Having in mind the general statement of the ILO's programme on indigenous and tribal peoples (PRO 169) mentioned above, underlying the lack of accurate statistics on the situation of indigenous peoples and argueing that even basic demographic information regarding their numbers and locations are sometimes missing in official statistics[77], we then see that the situation of indigenous peoples of the Arctic seem to be not much better than the world average one in term of identification, the latter being indeed a prerequisite for the recognition process of the special status of Indigenous peoples engaged (or not) at different levels by federal, regional or local governments.

3.3 GROUPS OF INDIGENOUS PEOPLES OF THE ARCTIC

As a consequence of the vast majority of Arctic residents being non-indigenous "who remain closely connected to societies south of them", the Arctic region is dominated by languages that originated far south of the Arctic. Russian is the most widely spoken language in the Russian Arctic; English is the most commonly spoken language in Alaska; and the same applies to the Norwegian in Northen Norway, the Finnish in Finnish Lapland and the Swedish in the Swedish counties of Norrbotten and Västerbotten.

As mentioned above, this situation is also linked to a major factor of social change in the Arctic which occurred during the recent colonization of the Arctic through paternalistic policies of welfare states involving notably, mandatory schooling for all Arctic residents.

One result of the increasing contact between indigenous and outside langages in the Arctic has been the development of a number of pidgin and contact languages[78], as well as of one "mixed language," namely Copper Island Aleut[79].

Over 40 indigenous languages "which had characterized the linguistic space of the Arctic for centuries or even millennia", many are characterized by a dramatic loss of speakers when some others are in relatively good shape.

Language Name/s	Total Population	Number of Speakers	Language Retention (% of total population)	Language Family	Country/ies Spoken
Ahtna	500	80	16	Athabaskan branch of Na-Dene	USA
Aleut	2,200	305	14	Aleut branch of Eskimo-Aleut	Russia, USA
Alutiiq	3,000	400	13	Yupik group of Eskimo branch of Eskimo-Aleut	USA
Central Alaskan Yupik	21,000	10,000	48	Yupik group of Eskimo branch of Eskimo-Aleut	USA
Chipewyan	6,000	4,000	67	Athabaskan branch of Na-Dene	Canada
Chukchi	15,000	10,000	67	Chukotko-Kamchatkan	Russia
Deg Hit'an (Ingalik)	275	40	15	Athabaskan branch of Na-Dene	USA
Dena'ina	900	75	8	Athabaskan branch of Na-Dene	USA
Dogrib	2,400	2,300	96	Athabaskan branch of Na-Dene	Canada
Dolgan	7,000	5,700	81	Turkic branch of Altaic	Russia
Enets	200	50	25	Samoyedic branch of Uralic	Russia
Even	17,000	7,500	44	Tungusic branch of Altaic	Russia
Evenk	30,000	9,000	30	Tungusic branch of Altaic	Russia
Eyak	50	1	2	Eyak branch of Na-Dene	USA
Faroese	47,000	?	100	Germanic branch of Indo-European	Faroe Islands (Denmark)
Finnish	ca. 5,000,000	?	100	Finno-Ugric branch of Uralic	Finland, Sweden, Norway
Gwich'in	3,000	700	23	Athabaskan branch of Na-Dene	Canada, USA
Hän	300	15	5	Athabaskan branch of Na-Dene	Canada, USA
Hoïkwechuk	200	12	6	Athabaskan branch of Na-Dene	USA
Icelandic	290,000	?	100	Germanic branch of Indo-European	Iceland
Inuit	90,000	74,500	83	Inuit group of Eskimo branch of Eskimo-Aleut	Canada, Greenland (Denmark), USA
Koyukon	900	400	44	Athabaskan branch of Na-Dene	Canada
Karelian	131,000	62,500	48	Finno-Ugric branch of Uralic	Russia
Kerek	400	2	1	Chukotko-Kamchatkan	Russia
Ket	1,100	550	50	Ketic	Russia
Khanty	21,000	12,000	57	Finno-Ugric branch of Uralic	Russia
Komi	344,500	242,500	70	Finno-Ugric branch of Uralic	Russia
Koryak	9,000	2,700	30	Chukotko-Kamchatkan	Russia
Koyukon	2,300	300	13	Athabaskan branch of Na-Dene	USA
Mansi	8,200	3,100	38	Finno-Ugric branch of Uralic	Russia
Nenets	35,000	28,500	81	Samoyedic branch of Uralic	Russia
Nganasan	1,300	500	38	Samoyedic branch of Uralic	Russia
Norwegian	ca. 4,500,000	?	100	Germanic branch of Indo-European	Norway, Sweden
Saami group	57,200	26,100	46	Finno-Ugric branch of Uralic	Finland, Norway, Sweden, Russia
Sakha (Yakut)	382,000	358,500	94	Turkic branch of Altaic	Russia
Selkup	3,600	1,570	44	Samoyedic branch of Uralic	Russia
Siberian Yupik	2,400	1,370	57	Yupik group of Eskimo branch of Eskimo-Aleut	Russia, USA
Slavey	5,200	3,900	75	Athabaskan branch of Na-Dene	Canada
Swedish	ca. 9,000,000	?	100	Germanic branch of Indo-European	Sweden, Finland
Tagish	400	2	1	Athabaskan branch of Na-Dene	Canada
Tanacross	220	65	30	Athabaskan branch of Na-Dene	USA
Tlingit	11,000	575	5	Tlingit branch of Na-Dene	USA, Canada
Tutchone	2,500	400	16	Athabaskan branch of Na-Dene	Canada
Tanana	940	210	22	Athabaskan branch of Na-Dene	USA, Canada
Upper Kuskokwim	160	40	25	Athabaskan branch of Na-Dene	USA
Yukagir	900	70	8	Yukagir	Russia

Source: Krauss (1997: 32-34, except for Dolgan, Karelian, Komi, and Sakha; All-Soviet Census for 1989. No language retention data available for Faroese, Finnish, Icelandic, Norwegian and Swedish (population figures: Nordic Statistical Yearbook 2002). (95)

Figure 14: Indigenous languages in the Arctic region. Source: AHDR (2004)

As shown on figure 15, these 40 "Arctic" languages can be aggregated to 7 language families, including the Indo-European family.

Figure 15: Arctic peoples subdivided according to languages families. Source: AHDR

Beside geographically isolated languages (Ketic and Yukagir), the Eskimo-Aleut languages family spoken by the Inuit and the Uralic languages family spoken by the Saami are the two most transnational Arctic languages. Eskimo Aleut languages are spoken in the four following countries: Russia, Alaska, Canada and Greenland; where Uralic languages are spoken in Russia (Kola peninsula), Norway, Finland and Sweden.

Today, most of the Arctic region falls within States where a majority of the inhabitants live outside the Arctic. The Arctic indigenous societies and cultures are presented below in accordance with their geographical location in the northern territories of the Arctic States[80]:

Alaska	**Inupiat, Yup'ik, Alutiiq and Athapaskans**
North Canada	Inuit, Inuvialuit, Dene, and Athapaskans
Greenland/Denmark	Kalaallit, Inughuit
Fennoscandia	Saami
Russian Federation	Saami, Chukchi, Even, Evenk, Nenets, Nivkhi, Itelmen and Yukaghir, Yup'ik

Figure 16: Arctic indigenous societies. Source: Nuttal (2000)

Without going into much detail, we make a brief presentation below of Arctic indigenous communities or groups in the seven Arctic States:

Alaska/United States of America

Broadly speaking, Native Americans living in the contiguous United States constitute tribes or nations with diverse cultural and ethnic characteristics that can be grouped geographically. Alaska Natives and Native Hawaiians are considered distinct from Native Americans in the contiguous United States. The United States presently recognizes and maintains what it refers to as government-to-government relations with approximately 566 American Indian and Alaska Native tribes and villages, around 230 of these being Alaskan Native groups[81].

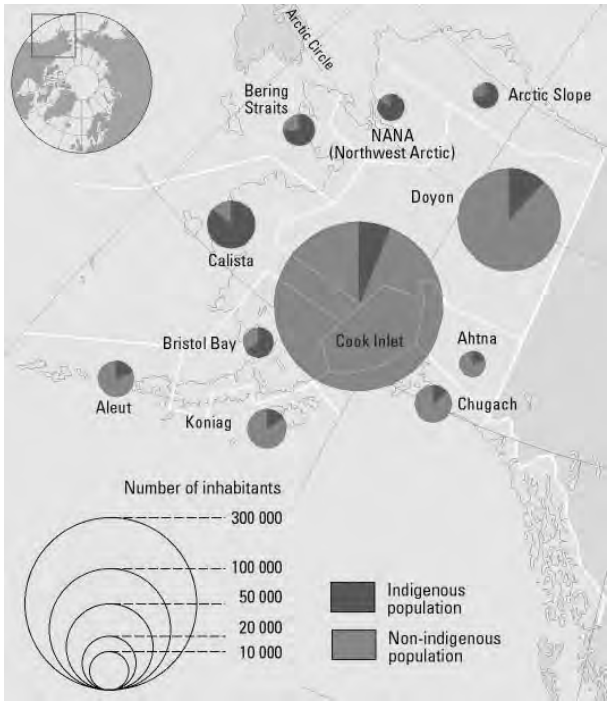

Figure 17: Total and indigenous populations of the Arctic: Alaska. Source: UNEP/GRID-ARENDAL

Inupiat

The Alaskan Inuit or "Inupiat" are the most diverse of all the Inuit populations. They inhabit the Arctic tundra plains of Alaska's North Slope, the boreal forest of the northwest, and the coastal lowlands of the Bering Sea. The majority of Inupiat live in the Northwest Arctic Borough and the North Slope Borough[82].

Yup'ik

The Yup'ik live along the coasts and rivers of southwest Alaska.

Alutiiq

The Alutiiq live in the south around Cook Inlet, the Kenai Peninsula, Kodiak Island and the Alaska Peninsula.

Athapaskans

Alaska's Athapaskan peoples inhabit a huge expanse of coniferous forest both above and below the Arctic Circle. The various Alaska's Athapaskan groups have been known as the

Koyukon, Ingalik, Tanacross, Ahtna, Han, Tanana, Denaina, Gwitch'in, Holikachuk and upper Kuskowim.

North Canada

Over 1.4 million of Canada's overall population of approximately 32.9 million (4.3 per cent) are indigenous, or in the terminology commonly used in Canada, aboriginal. Around half of these are registered or "status" Indians (First Nations), 30 per cent are Métis, 15 per cent are unregistered First Nations, and 4 per cent are Inuit. There are currently 617 First Nations or Indian bands in Canada representing more than 50 cultural groups and living in about 1,000 communities and elsewhere across the country[83].

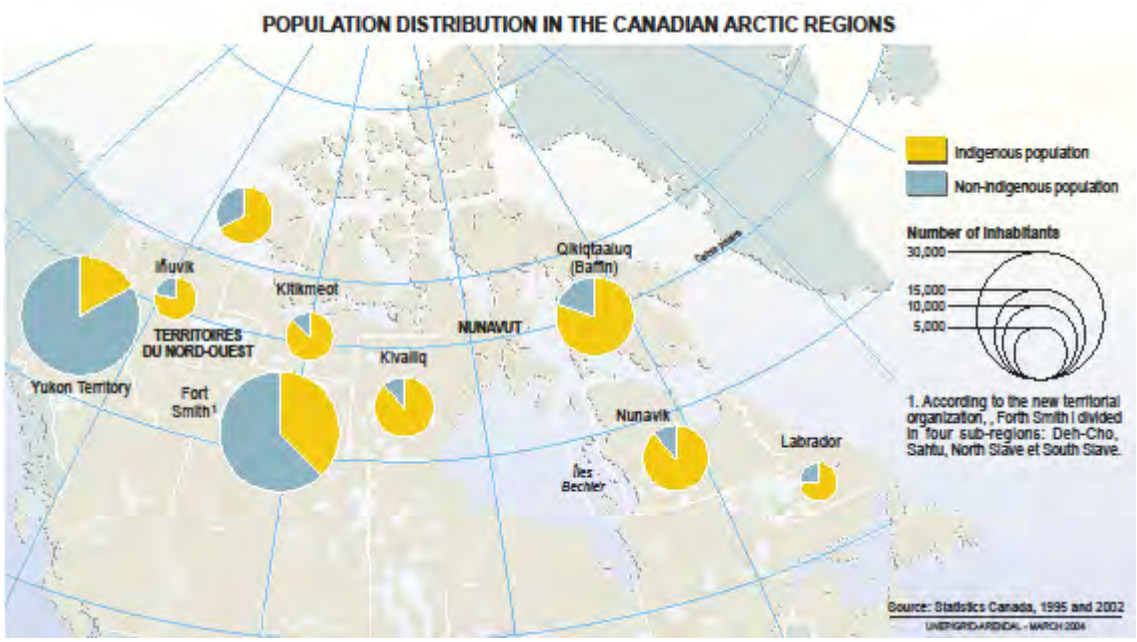

Figure 18: Population distribution in the Canadian Arctic. Source: UNEP/GRID-ARENDAL, 2004.

Inuit

Inuit are the single "Aboriginal people" of Arctic Canada. About 40 000 Inuit live in 53 communities in: Nunatsiavut (Labrador); Nunavik (Quebec); Nunavut; and the Inuvialuit Settlement Region of the Northwest Territories. These Inuit regions cover one-third of Canada's land mass. Among these four regions, Nunavut has the largest Inuit population, with 27,070. Inuit living in Nunavut account for about half (49%) of the total Inuit population in Canada and represent 85% of Nunavut's population[84]. Canadian Inuit live across the entire length of the Canadian North, from the Mackenzie Delta region close to the border with Alaska, to Baffin Island and further South in Quebec and Labrador. It is noteworthy that one third of Canada's Inuit population being located above the parallel 60° North (Nunatsiavut and Nunavik) are excluded from the canadian Northern Strategy.

Inuvialuit

The Inuit of the Mackenzie Delta region in the Northwest Territories prefer to call themselves "Inuvialuit", while Inuit is used as a term of reference in the Canadian North.

Athapaskans

In Canada, the various Athapaskan are spread on a vast territory covering the Yukon territory, the Northwest territory and south into northern British Columbia, Alberta, Saskatchewan and Manitoba. Groups include the Dogrib, Sahtu, Kaska, Tagish, Gwich'in, Witsuwit'in, Dunne-za, Slavey, Dene Tha, and Chipewyan. Many northern Athapaskans call themselves Dene or Dena, which means "human beings" and speak languages that belong to the Athapaskan branch of the Na-Dene family of languages (in general usage, "Athapaskan" or "Athabascan" or "Athabaskan" is a linguistic label for these related languages)[85].

Dene

In the Northwest Territories, Dene nation has become the preferred self-designation to refer to Athapaskan peoples collectively.

Greenland (Denmark)

According to a joint declaration co-signed by Denmark and Greenland: "there is only one indigenous population of Greenland, the Inuit"[86]. Approximately 89% of Greenland's population (57 965) is Inuit. They consist of three major groups: Kalaallit of west Greenland, who speak Kalaallisut; Tunumiit of east Greenland, who speak Tunumiisut and Inughuit of north Greenland, who speak Inuktun.

Kalaallit

The term is a political rather than a linguistic or regional designation. It assumes than a Greenlandic national identity supersedes regional linguistic and cultural differences among Greenlanders.

Inughuit

"Inughuit" is the contemporary ethonym of the most northernly group of Inuit. The Inughuit locate their traditional homeland in northwest Greenland. The Inughuit land is often referred to as the Thule region. They have been largely isolated from the nation-building processes that had united Inuit in south and west Greenland as Kalaallit, or Greenlanders and remain an ethically distinct population.[87]

Russian Federation

The Russian Federation is one of the most ethnically diverse countries in the world, and includes over 160 distinct peoples. Russian federal legislation protects the "numerically small indigenous peoples" or "small-numbered indigenous peoples of Russia", defined as those who live in territories traditionally inhabited by their ancestors; maintain a traditional way of life and economic activity; number fewer than 50,000; and identify themselves as separate ethnic communities[88]. These ethnic groups are designated as nationalities[89]. Out of them, 40 are legally recognized as "*Small-Numbered Indigenous Peoples of the North, Siberia, and the Far East*."[90] The total number of indigenous peoples living at the territory of the Russian Federation estimates at around 200.000 people. The most numerous is Nenets people (44.600 according to the 2010 census)[91], the least numerous peoples comprise of less than a hundred

representatives. Indigenous populations cover a vast territory of more than 60% of the total area of the Russian Federation[92].

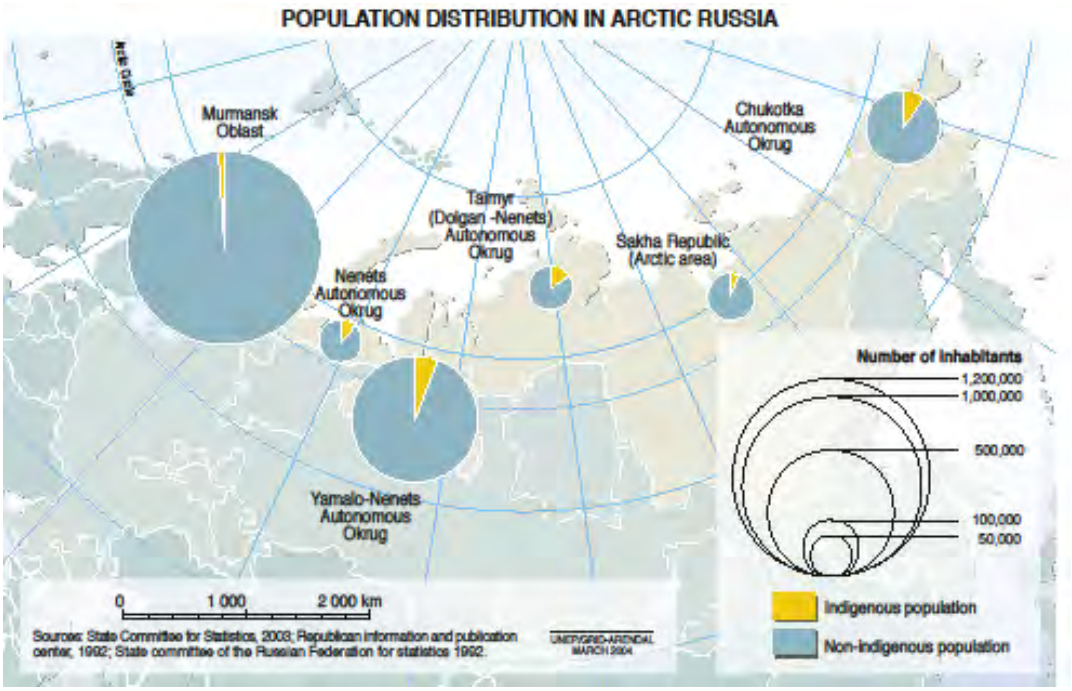

Figure 19: Population distribution in Arctic Russia. Source: UNEP/GRID-AREDAL, 2004.

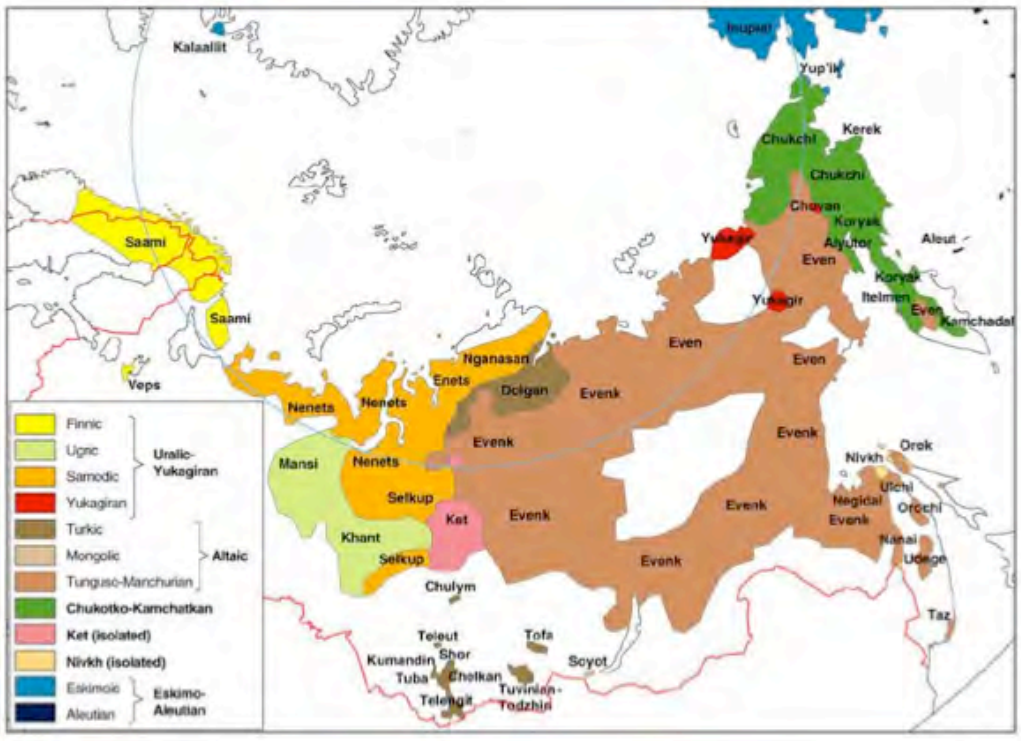

Figure 20: Indigenous Peoples in the Russian Federation.
Source: The Arctic Portal, http://portlets.arcticportal.org/russia

Nenets

The Nenets are an indigenous Uralic people of Russia's Far North. According to the most recent census, they number fewer than 50,000 and reside mostly in the Nenets Autonomous Okrug (Nenetsiya), the Yamalo-Nenets Autonomous Okrug (Yamaliya), and the Dolgan-Nenets Municipal District (Taymyriya)[93].

Chukchi

The Chukchi are the titular minority of the Chukotka Autonomous Okrug, but also reside in the Sakha, Magadan**,** and Kamchatka regions of the Russian Far East**.** In total, there are only some 15,000 Chukchi, making them one of the smallest national minorities in the Russian Federation. Chukchi are divided between maritime (Chukchi "Anqallyt") and reindeer herding (Chukchi "Chauchu") groups.

Evenks

Formerly known as the Tungus, the Evenks are an indigenous Paleo-Siberian population of approximately 35,000, widely scattered across some 2.5 million square kilometers. The Evenki language is a member of the northern branch of the Manchu-Tungus family, distantly related to Manchu. The Evenks reside in a huge swath of Siberian taiga from the Ob River in the west to the Sea of Okhotsk in the east, and from the Arctic Ocean in the north to Manchuria in the south.

Even

The Evens or Eveny were formerly known as *Lamuts* (Even: "Sea People"). They number fewer than 20,000, and are found mostly in Magadan and Kamchatka. Evens are ethnically and culturally related to the Evenks; about one-third of the population speaks Even, a Tungusic language related to the Evenks language.

Itelmen

The Itelmen also called "kamchadal" are a small group of Paleo-Asiatic people inhabiting the Kamchatka peninsula in eastern Siberia.

Yukaghirs

The Tundra Yukaghirs live in the Lower Kolyma region in the Sakha Republic; the Taiga Yukagirs in the Upper Kolyma region in the Sakha Republic and in Srednekansky District of Magadan Oblast. Currently Yukagir live in the Yakut-Sakha Republic and the Chukchi Autonomous region of the Russian Federation

Nivkhs

The Nivkhs (also Nivkh, Nivkhi, or Gilyak; ethnonym: Nivxi; language, нивхгу - Nivxgu) are an indigenous ethnic group inhabiting the northern half of Sakhalin Island and the region of the Amur River estuary administered by Russia. Nivkh were mainly fishermen, hunters, and dog breeders. The Nivkh were semi-nomadic living near the coasts in the summer and wintering inland along streams and rivers to catch salmon. The land the Nivkh inhabit is characterized as Taiga with cold snow-laden winters and mild summers with sparse tree cover.

Saami

Beside the northern parts of Norway, Sweden, Finland, the Northern Saami live in the northwestern part of Russia, in the Kola Peninsula part of the Murmansk Oblast. During the Soviet times, they were forced to settle in the town of Lovozero. They now herd reindeer across much of the peninsula.

Yupik

The Yupik are the indigenous peoples inhabiting western coastal Alaska from Prince William Sound north to Norton Sound, and St. Lawrence Island and the coast of the Chukchi Peninsula of Siberia.

Fennoscandia

The Sami

The Sami people traditionally inhabit a territory known as Sápmi, which spans the northern parts of Norway, Sweden and Finland, and the Russian Kola Peninsula. This vast area of the Nordic and northwest Russian Arctic includes the Norwegian counties of Nordland, Troms and Finnmark, the Swedish counties of Vasterbotten and Norrbotten, the county of Lappi in Finland and parts of the Russian Kola peninsula. Although the Sami are divided by the formal boundaries of these four States, they continue to exist as one people, united by cultural and linguistic bonds and a common identity. The Sami have the oldest languages and cultures of these countries, long pre-dating the present-day States, and today there are nine language groups divided across the national borders of the Nordic and Russian States. The Sami population is estimated to be between 70,000 and 100,000[94], with about 40-60.000 in Norway, about 15-20.000 in Sweden, about 9.000 in Finland and about 2.000 in Russia. Sami people constitute a numerical minority in most of the Sápmi region, except in the interior of Finnmark County in Norway and in the Utsjoki municipality in Finland[95].

	Finland	Norway	Russia	Sweden
Total Sami population	9 000	40-60 000	2 000	15-20 000
Sami Homeland	Enontekiö, Inari and Utsjoki and the northern parts of the municipality of Sodankylä	Finmark	Murmansk Oblast	Norrbotten county, Vasterbotten county, Jämtland.
Sami population in Sami Homeland	4-5000	?	2000	?

Figure 21: Sami population distribution in Northern territories.

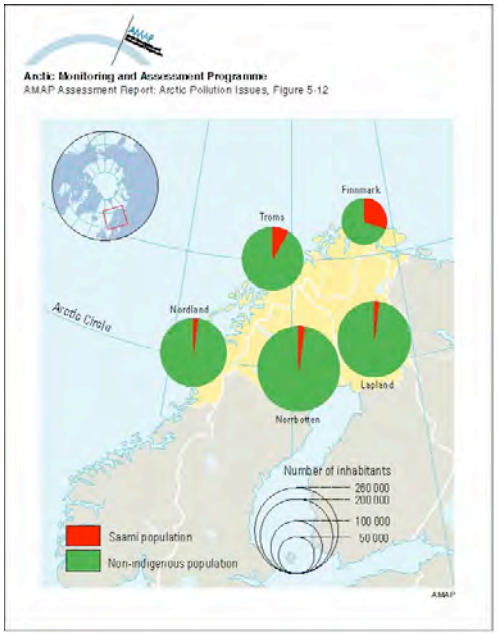

Fig. 22: Total and Sami populations of Arctic areas of Fennoscandia. Source: AMAP, 2007

4. THE ARCTIC GOVERNANCE AND THE INDIGENOUS PEOPLES

4.1 MAIN TRENDS IN GOVERNMENTAL POLICIES ON ARCTIC IPs

Political structures in the "Arctic" are the result of a historical development that has been fruitfully described in term of "nation-building" processes involving "state formation and territorial consolidation followed by standardization and cultural integration"[96]. As mentioned in the AHDR (2004): "*The Arctic was seen as a frontier, and colonialism and assimilation became the main strategies of the states bordering on the Arctic in their nation-building processes*"[97]. This regional process of "nation building" has been stimulated in the mid-1950s with the pre-eminence of defense/sovereignty interests in the north circumpolar region.

Nation building processes lead to a closer integration of a state and its population and subsequently, to claims for self-government by indigenous peoples which gave rise to a wide range of arrangements with indigenous communities including, in some Arctic States, self-governing autonomous regions. As will be seen later, the timing of this political process has not been the same in all parts of the Arctic. In this long-term and still ongoing process of Arctic nation-building which began with policies of assimilation aimed at integrating indigenous peoples into main stream society, some important examples exist showing that the pendulum has swung between assimilation and recognition of the unique position of indigenous peoples.

General democratization and strengthening of human rights have forced the states to change their expansive colonial policies with various responses depending on history and state system. In brief, if assimilation were the common characteristic of official minority policy in the north circumpolar region, recognition of the unique position of indigenous peoples and increased indigenous participation in political processes has become over the years a major

trend in Arctic nations building processes with significant contrasts between Arctic nations. And over the years, "nation-building" came to refer also to the "efforts of indigenous peoples to increase their capacities for self-rule and self-determined community and economic development"[98].

4.2 INTERNATIONAL FRAMEWORK

In the field of international human rights, there are basically two types of approach for ensuring the rights of indigenous peoples:

- **Approach 1**: Applying general principles of equality and non-discrimination to indigenous peoples which led to the requirement of special measures to rectify historical discrimination. This approach underlines that indigenous peoples are "peoples" for the purpose of the right of self-determination, including the right not to be deprived of their natural resources and their own means of subsistence. The relative efficiency of this approach led to another one.

- **Approach 2**: Establishing international instruments that specifically protect indigenous peoples.

In international discussions on the protection and promotion of Indigenous Peoples' human rights, some States have argued that a more conscientious application of human rights standards would resolve the issue. On the other hand, Indigenous Peoples argue that such international human rights standards have consistently failed to protect them thus far. What is needed, they argue, is the development of new international documents addressing the specific needs of the world's Indigenous Peoples. Although the Universal Declaration of Human Rights is designed to protect the human rights of all individual human beings, international law concerning collective human rights remains vague and can fail to protect the group rights of Indigenous Peoples[99].

4.2.1 International standards of Human Rights

The promotion and protection of human rights is one of the main purposes of most global and regional organisations. On 10 December 1948, the United Nations General Assembly adopted of the Universal Declaration of Human Rights (UDHR)[100].

The Declaration has been drafted as "*a common standard of achievement for all peoples and nations*". For the first time in human history, it spells out basic civil, political, economic, social and cultural rights that all human beings should enjoy. It has over time been widely accepted as the fundamental norms of human rights that everyone should respect and protect.

The Universal Declaration of Human Rights states that all human beings are "equal in dignity and rights." (Article 1) Everybody is entitled to the rights in the Declaration, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (Article 2).

The UDHR, together with the International Covenant on Civil and Political Rights (see below) and its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights (see below), form the so-called "International Bill of Human Rights".

UN's Human Rights Bodies

The Office of the High Commissioner for Human Rights (OHCHR) works to offer expertise and support to the different human rights monitoring mechanisms in the United Nations system: UN Charter-based bodies and bodies created under the international human rights treaties.

The UN Charter-based bodies are: the former Commission on Human Rights, the Human rights council, the Universal periodic Review, the Special Procedures of the Human Rights Council and the Human Rights Complaint Procedures.

The "Human Rights Council" is an intergovernmental body which meets in Geneva 10 weeks a year is composed of 47 elected United States members States. The Human Rights Council is a forum empowered to prevent abuses, inequity and discrimination, protect the most vulnerable, and expose perpetrators.

The "Universal Periodic Review" is a unique process which involves a review of the human rights records of all UN Member States[101].

"Special Procedures" is the name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. All report to the Human Rights Council on their findings and recommendations, and many also report to the General Assembly. They are sometimes the only mechanism that will alert the international community to certain human rights issues, as they can address situations in all parts of the world without the requirement for countries to have had ratified a human rights instrument.

The "Complaint Procedure" addresses communications submitted by individuals, groups, or non-governmental organizations that claim to be victims of human rights violations or that have direct, reliable knowledge of such violations.

Human Rights Treaties

A series of international human rights treaties and other instruments adopted since 1945 have conferred legal form on inherent human rights and developed the body of international human rights. Other instruments have been adopted at the regional level reflecting the particular human rights concerns of the region and providing for specific mechanisms of protection.

There are two main types of instrument: treaties and declarations. Treaty-based standards are binding under international law upon the States that have ratified them. Standards set forth in declarations, codes of conduct, standard minimum rules, basic principles, model rules, etc., are not subject to signature or ratification; States adopt them by vote in international fora

(such as the General Assembly, the International Labour Conference, etc.). Technically they constitute recommendations to Member States. They are sometimes referred to as "soft" law rather than the hard law of treaties and custom.

There are nine core international human rights treaties. Each of these instruments (9 human rights treaties and the optional Protocol to the CAT) has established a committee of experts to monitor implementation of the treaty provisions by its States parties and some of the treaties are supplemented by optional protocols dealing with specific concerns:

Acronym	Human Rights Treaties	Adoption	Monitoring Body
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination.	21 Dec 1965	CERD
ICCPR	International Covenant on Civil and Political Rights.	16 Dec 1966	CCPR
ICESCR	International Covenant on Economic, Social and Cultural Rights.	16 Dec 1966	CESCR
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women.	18 Dec 1979	CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	10 Dec 1984	CAT
CRC	Convention on the Rights of the Child.	20 Nov 1989	CRC
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.	18 Dec 1990	CMW
CPED	International Convention for the Protection of All Persons from Enforced Disappearance.	20 Dec 2006	CED
CRPD	Convention on the Rights of Persons with Disabilities.	13 Dec 2006	CRPD

Figure 23: The core international human rights treaties and their monitoring bodies.
Source: United Nations Human Rights (www.ohhr.org)

International Instruments for the Protection of IP's Human Rights

Indigenous Peoples' rights overlap with many other human rights. Many important Indigenous Peoples' rights are not framed in specific Indigenous Peoples' rights treaties, but are part of more general treaties, like the Universal Declaration of Human Rights or the Convention on the Prevention and Punishment of the Crime of Genocide[102]. As an example, scholars argue that the right to self-determination is clearly articulated in Common Article 1 of both ICCPR and ICESCR, which states that: "[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." As such, groups or communities of indigenous peoples, as peoples, have the right to self-determination[103] which is considered to be the founding principle of indigenous peoples' rights[104].

In recent years, international bodies that have been mandated with the protection of human rights - the UN Committee on the Elimination of Racial Discrimination (CERD), the UN

Human Rights Committee (HRC), the International Labour Organization's Committee of Experts (CEACR) or the Inter-American Commission on Human Rights (IACHR) - have paid particular attention to indigenous peoples' rights. These bodies have contributed to the progressive development of indigenous peoples' rights by interpreting the general application of human rights instruments in a manner that accounts for and protect the collective rights of indigenous peoples.

We provide below, a non-exhaustive list of international instruments of general application that contain explicit references to IP's rights:

Convention on the Prevention and Punishment of the Crime of Genocide (1951)
Genocide means any of the following acts which have the intention of destroying, in whole or in part, a national, ethnical, racial or religious group: "killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent birth within the group; forcibly transferring children of the group to another group." (Article 2)

International Covenant on Civil and Political Rights (1996)
This Covenant outlines the basic civil and political rights of individuals. There are also provisions for collective rights. "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 practice their own religion, or to use their own language." (Article 27)

International Covenant on Economic, Social and Cultural Rights (1966)
This Covenant describes the basic economic, social, and cultural rights of individuals. It also has provisions for collective rights.

Convention on the Elimination of All Forms of Racial Discrimination (1966)
"Racial discrimination" is defined as "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." (Article 1)

Convention on the Rights of the Child (1990)
The Convention contains regulations and suggestions relevant to Indigenous Peoples on the non-discrimination of children (Article 2), the broadcasting of information by the mass media in minority languages (Article 17), the right to education, including education on human rights, its own cultural identity, language and values. (Article 29) Article 30 states that children of minorities or indigenous origin shall not be denied the right to their own culture, religion or language. (Article 30)

Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

This Declaration deals with all minorities, which includes many of the world's Indigenous Peoples. It only concerns individual rights, although collective rights might be derived from those individual rights. The Declaration deals both with states' obligations towards minorities as well as the rights of minority people. Topics that are dealt with include the national or ethnic, cultural, religious or linguistic identity of minorities (Article 1); the free expression and development of culture; association of minorities amongst themselves; participation in decisions regarding the minority (Article 2); the exercise of minority rights, both individual and in groups (Article 3); and education of and about minorities. (Article 4)

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This Declaration deals with all minorities, which includes many of the world's Indigenous Peoples. It only concerns individual rights, although collective rights might be derived from those individual rights. The Declaration deals both with states' obligations towards minorities as well as the rights of minority people. Topics that are dealt with include the national or ethnic, cultural, religious or linguistic identity of minorities (Article 1); the free expression and development of culture; association of minorities amongst themselves; participation in decisions regarding the minority (Article 2); the exercise of minority rights, both individual and in groups (Article 3); and education of and about minorities. (Article 4)

Rio Declaration on Environment and Development**,** and Agenda 21 (1992)
These two documents are connected to the Earth Summit in Rio de Janeiro. They were adopted by 178 governments at the United Nations Conference on Environment and Development (UNCED) held in Rio de Janerio, Brazil, 3 to 14 June 1992. In them, the special relationship between IPs and their lands is acknowledged. IPs have a vital role in environmental management and development because of their traditional knowledge and practices (Rio Declaration, Principle 22). In order to fully make use of that knowledge, some IPs might need greater control over their land, self-management of their resources and participation in development decisions affecting them (Agenda 21, Chapter 26).

Convention on Biological Diversity (1992)
The Convention calls upon its signatories to "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;" (Article 8(j))

Vienna Declaration and Programme of Action (1993)
The Vienna Declaration is the closing declaration of the 1993 World Conference on Human Rights held in Austria. It "recognizes the inherent dignity and the unique contribution of indigenous people [sic] to the development and plurality of society and strongly reaffirms the

commitment of the international community to their economic, social and cultural well-being." (I.20) Furthermore, the declaration called for the completion of the draft Declaration on the Rights of Indigenous Peoples, the renewal and updating of the mandate of the Working Group on Indigenous Populations and the proclamation of the International Decade of Indigenous Peoples. (II.28 – 32)

Report of the International Conference on Population and Development (1994)
At the Conference it was agreed that the perspectives and needs of Indigenous Peoples should be included in population, development or environmental programs that affect them, that they should receive population- and development-related services that are socially, culturally and ecologically appropriate. (Paragraph 6.24) Another important decision was that Indigenous Peoples should be enabled to have tenure and manage their land, and protect the natural resources and ecosystems on which they depend. (Paragraph 6.27)

Durban Declaration and Programme of Action (2001)
The Durban Declaration and Programme of Action has a specific section dealing with Indigenous Peoples issues. Perhaps more important than all the recommendations is the fact that the Declaration is the first United Nations document that uses the phrase "Indigenous Peoples" rather than "Indigenous People".

European Union (EU)

Council Resolution on Indigenous Peoples within the Framework of the Development Cooperation of the Community and Members States (1998)
This resolution provides the main European Union guidelines for support of Indigenous Peoples. It calls for the integration of Indigenous Peoples' interests in all levels of development cooperation and the full and free participation of Indigenous Peoples in the development process. The resolution states: "Indigenous cultures constitute a heritage of diverse knowledge and ideas, which is a potential resource for the entire planet."

Organization for Security and Cooperation in Europe (OSCE)

OSCE High Commissioner on National Minorities
The Office of the OSCE High Commissioner on National Minorities was established in 1992 to identify and seek early resolution of ethnic tensions that might endanger peace, stability or friendly relations between OSCE participating States. The High Commissioner has no specific Indigenous Peoples mandate, but treats Indigenous Peoples like any other national minority.

Organization of American States (OAS)

Proposed American Declaration on the Rights of Indigenous Peoples (1997)
The draft Declaration outlines the human rights that are specific to Indigenous Peoples. Items covered include, among others, the right to self-government, indigenous law and the right to cultural heritage. A Working Group of the OAS is still discussing the Declaration.

World Bank

World Bank Operational Directive (1991)

This Operational Directive outlines the World Bank's definition of and interest in Indigenous Peoples. It also addresses economic issues (technical assistance and investment project mechanisms) concerning Indigenous Peoples. The Bank's narrow definition of Indigenous Peoples and ambiguity concerning its role in their economic development has resulted in much criticism from Indigenous Peoples' human rights advocates. Consequently, the World Bank is currently in the process of revising it.

4.2.2 Minority rights and IPs

In principle, indigenous peoples, most of whom find themselves in minority situations, should benefit from minority rights standards set up by the United Nations Declaration on the Rights of Persons Belonging to National Ethnic, Religious or Linguistic Minorities ("UN Declaration on minorities") adopted[105] by the General Assembly in 1992. The only United Nations instruments dealing directly with "rights of persons belonging to minorities" in general are:

- The UN Declaration on minorities
- ICCPR (Arcticle 27)

The minorities referred to in article 27 of ICCPR are minorities within such a State [ratifying State], and not minorities within any province. A group may constitute a majority in a province but still be a minority in a State and thus be entitled to the benefits of article 27. A fundamental difference between minorities and indigenous peoples is that while the former may be satisfied by reaching de facto and de jure equality within the legal structures of the majority of the population, the latter would not accept such an assimilation into the institutions of the majority, assuming they do not constitute the majority.

It is possible to state that a minority exists only in relation to a majority within the State, while an indigenous group does not need any numerical evidence to be characterised as such, as it will be clear from the following review of definitions of indigenous peoples. They constitute majorities in some States, such as Bolivia and Guatemala, and in their own territories. Nevertheless, it is true that the numerical element has some weight, since Latin-American countries where the indigenous population is numerically equal or superior to the Latin population have enshrined certain indigenous rights in the Constitution, including the right to administer justice according to indigenous rules.

We give below a short overview of the legal consequences arising from qualifying a group as "indigenous people" instead of as "minority" under international law[106]. It will be shown that it is necessary to differentiate between minorities and indigenous peoples, by looking at their claims and at the individuals and collective rights which are enshrined in the UN Declaration on Minority and in the UN Declaration on the Right of Indigenous Peoples (2007) that will be discussed in more detail later in our study.

Individuals rights vs. collective rights

Generally, the first important difference, which may be considered to be the one from which all the others follow, is the absence of a collective rights approach in the declaration on minorities. Like article 27 of the Covenant, the declaration applies to "persons belonging to minorities". Each right is granted to individuals belonging to a minority. On the contrary, as will be seen later in detail, the UN declaration on the rights of Indigenous Peoples contains mainly group rights, "rights of peoples" and "collective rights".

Self-determination

The second striking difference is the absence of the right to self-determination in the declaration on minorities, while the UNDRIP has it enshrined in article 3 and in two declaratory paragraphs.

Land rights

A third difference is that the declaration on minorities does not protect land rights, a fundamental factor of indigenous peoples' culture and survival. The special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspect of this relationship. Land rights are indigenous-specific rights, which clearly differentiate indigenous peoples from minorities.

Integrationist approach versus separatist approach

A fourth difference can be pointed out in the more "integrationist" approach of the declaration on minorities, as opposed to the more "separatist" approach of the UNDRIP. The declaration on minorities seems to fit minorities' rights into the international human rights law framework. Differently, the UNDRIP seems to seek a separate place or, as some commentators suggest, a "special regime" for the protection of the rights of indigenous peoples.

Right to participation and consent

A fifth difference is the special position given to indigenous peoples' participation and consent to all measures affecting them. Articles 18 and 19 of the UNDRIP states that: "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights" and "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".

It is then possible to list a certain number of characteristics which are generally considered to identify a minority instead of an indigenous people and viceversa, accepted as such by the experts in this field, be they Governments representatives, United Nations Special Rapporteurs, indigenous representatives, NGOs.

Characteristic features of the definition of minority are: the size of the group, its distinctiveness from the rest of the population and its non-dominant position within society.

Characteristic features of the definition of indigenous people are: the element of priority in time, the link to ancestral territories, the inter-generational aspect of their culture and the self-identification element.

It is generally accepted that they share with minorities the non-dominance element and the distinctiveness from the rest of society. Moreover, while it is now understood that indigenous peoples constitute "peoples" in the international law meaning of the term, the situation is not so clear for minorities. The solution adopted by many scholars has been to consider minorities as peoples only in certain circumstances[107].

In conclusion, there is a need to differentiate between minorities and indigenous peoples because of the specific rights that indigenous peoples want to see recognised as theirs. Current international law is developing towards the protection of land rights and self-determination as rights that belong to indigenous peoples. This view has been firmly expressed in a report on Minority rights issued in 2010 by the Office of the High Commissioner for Human Rights:

> Minorities do not necessarily have the long ancestral, traditional and spiritual attachment and connections to their lands and territories that are usually associated with self-identification as indigenous peoples. Minorities have traditionally highlighted their rights to have their existence as a group protected, their identity recognized and respect for their cultural, religious and linguistic pluralism safeguarded. While also highlighting such rights, indigenous peoples have also traditionally advocated recognition of their rights over land and resources, self-determination and being part of decision-making in matters that affect them. [...] the United Nations Minorities Declaration contains a more general right to participate in decision-making and requires that the legitimate interests of persons belonging to minorities should be taken into account in national planning and programming[108].

Specifics characteristics (attachment and connections to lands, self-identification…) and specific claims (right over land and resources, participation in decision making…) of IPs are are not reflected in minorities rights standards and that is why "approach 2" mentioned above, is the most suitable international framework for assessing and promoting indigenous peoples needs and expectations. It is likely that ascribing certain populations to the qualifier "minority" instead of "indigenous peoples" would significantly change the protection of their collective rights as "distinct societies". This is not to say that indigenous rights are better protected than minorities' rights, but because of IP's specificities, the protection of indigenous peoples' rights would not benefit from a new interpretation of the term "indigenous" that would place them all under the category of minorities.

That being said, it should be borne in mind that, as we will see below, only 22 countries in the world have ratified the single legally binding international instrument devoted to IP's rights (ILO Convention No. 169) while ICCPR has 168 contracting Parties, ICESCR, 162 Parties and the ICERD, 177 Parties, to name a few among the core international human rights treaties listed above. International Instruments for Human Rights and their monitoring bodies, along with other treaties like the Convention on the Prevention and Punishment of the Crime of Genocide (1948), are therefore of great significance for the world political process of recognition of Indigenous Peoples' Human Rights, without forgetting, as mentioned earlier,

that many important Indigenous Peoples' rights are not framed in specific Indigenous Peoples' rights treaties, but are part of more general treaties.

4.2.3 International Standards of IP's Rights

There are basically two indigenous-specific international instruments:

- ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169, from 1989).
- The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

4.2.3.1 The ILO Convention No. 169

Background

The International Labour Organization (ILO) is devoted to promoting social justice and internationally recognized human and labour rights, pursuing its founding mission that labour peace is essential to prosperity. Its main aims are to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues. The ILO is the only tripartite U.N. agency with government, employer and worker representatives. It accomplishes its work through three main bodies (The International Labour Conference, the Governing body and the Office) which comprise government', employers' and workers' representatives.

At present, the ILO has 185 member States. 199 conventions are in the process of being ratified, within the following categories: 8 Fundamental Conventions, 4 Governance Conventions (priority) and 177 Technical Conventions.

ILO's longstanding engagement with the situation of indigenous and tribal peoples led to the adoption in 1957 of the first instrument entirely devoted to indigenous and tribal peoples' rights, the "Indigenous and Tribal Populations Convention" (Convention No. 107). In the 1980s the Convention was revised and replaced in 1989 by the "Convention concerning Indigenous and Tribal Peoples in Independent Countries", the Convention No. 169, adopted by the Conference in 1989 and entry into force on the 5th of September 1991. C107 is no longer open for ratification, but remains in force for 17 countries.

From ILO's C107 to C169

ILO Convention 107 is widely regarded as a pioneering document. However, it was also a reflection of the time. As such, it advocated largely assimilationist goals and was written from a perspective that saw Indigenous cultures as lower on the evolutionary scale than those of European origin. For example, Convention No. 107 describes indigenous populations as "at a less advanced stage" (Article 1.a) than the colonizers and suggests that "the process of losing their tribal characteristics" is inevitable. Regarding land rights, Article 12.1 of C107 states that Indigenous populations "shall not be removed without their free consent from their habitual territories, except in accordance with national laws and regulations for reasons relating to national security, or in the interest of national economic development or of the

health of the said populations". Critics argue that such clauses enable nation-states to continue their oppression of Indigenous peoples without consequence.

In the years following its adoption, the limitations of ILO Convention No. 107 became evident and indigenous peoples themselves began to call for new international standards, prompting the ILO to begin work on revising the Convention. In 1989, C107 was revised and renamed. Rather than support an archaic colonial endeavor like "integration", C169 takes the more reasoned approach that the existing cultures and institutions of indigenous peoples should be respected. It also presumes the right of indigenous peoples to continued existence within their national societies, to establish their own institutions and to determine the path of their own development.

Convention No. 169 is the only international treaty open to ratification, which specifically provides protection for indigenous and tribal peoples. The Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples adopted in 2007 are mutually reinforcing instruments providing the framework for the universal protection of indigenous and tribal peoples' rights.

ILO Convention No. 169 recognizes and respects the cultures and ways of life of indigenous peoples, rights to land and natural resources, and rights to determine priorities for development. The Convention sets out responsibilities of governments to protect such rights by ensuring participation in decision-making and the ability to maintain and continue traditional livelihoods in connection with indigenous territories with provision of compensation for removal from lands traditionally occupied.

Over the last fifteen years, the ILO has established the largest technical cooperation programme on indigenous peoples (PRO 169) within the UN System, with 20 full time staff working specifically on indigenous peoples' issues in more than 25 countries across Latin America, Asia and Africa. The ILO plays a leading role in coordinating UN initiatives on indigenous peoples and is currently hosting the Technical Secretariat of the United Nations Indigenous Peoples' Partnership (UNIPP), a rights-based initiative created in 2010 by the ILO, OHCHR, UNDP, UNICEF, and UNFPA for the realization of indigenous peoples' rights at the country level.

ILO 169 is both a legal and a technical instrument because: "it does not simply state rights, as most human rights instruments do, but goes beyond by providing technical guidance on how to implement those rights, and which measures, precautions, or safeguards to take in order to ensure full enjoyment of those rights"[109].

Standards set by ILO's C169

ILO's Convention No.169 consists of 44 articles organized in ten categories that outline the minimum standards of the rights of IP. The Convention No. 169 is based on two fundamental concepts, participation and consultation, and deals with a variety of indigenous peoples' issues - self-identification, education, culture, health care, working conditions, rights to land…- which can be grouped together under five main standards: lands rights, rights to

natural resources and benefit sharing, participation in decision making and consultation, representative institutions and impact assessment.

Lands Rights

ILO's C169 deals with land rights issues in Articles 13 to 17 and affirms the cultural and spiritual values that indigenous peoples attach to their land, in particular the collective aspects of this relationship. Article 14 calls for recognition of indigenous people's right of ownership and possession of the lands and territories they traditionally occupy, including lands not exclusively occupied by them. Article 17 respects the customary procedures for the transmission of land amongst indigenous peoples, and calls for the protection of indigenous peoples from those who seek to take advantage of ownership and possession, and customs relating to land.

ILO Convention No. 169 recognizes that indigenous peoples own those lands which they traditionally occupy, including natural resources and the total environment, and have the right to continue their traditional uses of other lands that are not occupied but used for subsistence and traditional activities.

The recognition of land rights in ILO's C169 is based on traditional occupation, comprising both individual and collective aspects. Rights to land and natural resources are "*fundamental to securing the broader set of rights related to self-management and the right to determine their own priorities for development*" (Article 11).

Pursuant to ILO's C169 governments are required to establish procedures to identify indigenous peoples' lands and protect their rights of ownership and possession and to establish mechanisms to resolve land claims.

The Convention provides safeguards to prevent removal from their lands without free and informed consent, and where unavoidable should only be a last resort on the basis free and informed consent. In the event consent cannot be obtained, appropriate procedures will be in place to ensure effective representation of the peoples concerned who retain the right to return to their traditional lands as soon as possible. Forced relocation from land requires compensation and/or lands to be provided of an equal quality and legal status (Article 10).

Rights to Natural Resources and Benefit Sharing

ILO's No. 169 stipulates that Indigenous Peoples have the "*right to the natural resources pertaining to their lands*" (Article 14.1 and Article 15.1), including the "*right to participate in the use, management and conservation of these resources*".

The exception to the general principle occurs in cases where the State retains the ownership over mineral, sub-surface or other resources. In such situations, ILO's C169 establishes a series of safeguards to ensure that indigenous peoples are adequately consulted and that they participate in the benefits and receive fair compensation for any damage incurred.

The provisions on natural resources (Art. 15) are to be applied in conjunction with the general provisions on consultation and participation (Art. 6 and 7). The Convention highlights the need to ascertain whether and to what extent indigenous peoples' interests will be prejudiced prior to any exploration and exploitation of natural resources on their lands.

Participation in Decision Making and Consultation

The fundamental principles of consultation and participation underpin ILO's C169 which recognizes the right of indigenous peoples to decide priorities for development on the lands they occupy and otherwise use, and to participate in the formulation, implementation and evaluation of plans and programs for national and regional development which may affect them directly (Article 7.1).

Although ILO's C169 recognizes the right to consultation and participation in decision-making, including any changes in policy or legislation that would affect them, it does not confer a right of veto to resource extraction projects or alienation of their lands.

Representative Institutions

States that ratify ILO's C169 agree to respect "*the integrity of the values, practices and institutions*" of indigenous peoples, and to support the "*full development of these peoples' own institutions*". Any other measures that may affect indigenous peoples directly must be preceded by consultations with "representative institutions" of the peoples concerned and undertaken "in good faith" with the objective of achieving agreement or consent to then proposed measures (Article 4). Laws or programs adopted or developed to implement the convention itself must be developed in "cooperation" with indigenous peoples. Any "special measures" for the protection of indigenous peoples "shall not be contrary to the freely-expressed wishes of the people's concerns" (Article 4).

Plans for overall economic development of areas inhabited by indigenous peoples shall be developed with their participation and cooperation, and with a priority to improve the conditions of life, work, health and education levels (Article 7.2). Conservation and other measures to protect the environment of territories occupied by indigenous peoples shall be developed in cooperation with people concerned (Article 7.4).

Impact Assessment

ILO's C169 acknowledges that minerals and sub-surface minerals are owned by the State but forbids any mining without prior consultations including cooperative impact assessment with the peoples concerned to assess the social, spiritual, cultural and environmental impact of planned activities and that the results of these studies shall be considered as fundamental criteria for the implementation of the activities (Article 7.3).

Impact assessment applies to actual exploitation of resources and also the exploration phase. This implies that indigenous peoples must be informed, consulted and participate from the very outset in a planned intervention in the assessment of social, spiritual, cultural and environmental impacts.

Implementation of ILO 169

As mentioned above, ILO 169 does not simply state rights, as most human rights instruments do, but goes beyond by providing technical guidance on how to implement those rights. Once it ratifies the Convention, a country has one year to align legislation, policies and programmes to the Convention before it becomes legally binding. Countries that have ratified the Convention are subject to supervision with regards to its implementation. It is to be noted that with its focus on consultation and participation, Convention No. 169 is also a tool to stimulate dialogue between governments and indigenous and tribal peoples.

Regular monitoring of ILO convention

States are required to report on measures taken to ensure the implementation of ratified ILO Conventions on any problems encountered in their implementation, at intervals of one to five years. The ILO body examining the application of ratified Conventions is the Committee of Experts on the Application of Conventions and Recommendations (CEACR). The CEACR engages in a process of ongoing dialogue with governments on the application of ratified Conventions, and this regular supervision can be effective in identifying implementation and information gaps and suggesting measures and mechanisms for improved implementation. Workers' and employers' organizations can submit information concerning the application of ratified Conventions to CEACR.

Information concerning the CEACR's examination of States' reports comes in two forms: Observations, which are the CEACR's public comments on the application of ILO Conventions; and Direct requests. These are sent directly to the government in question, and generally ask for more information on specific subjects.

Special Procedures

There are also procedures to deal with more serious situations, and alleged violations. The most commonly used complaints procedure in the ILO system is: Representations. These are governed by article 24 of the ILO Constitution. A Representation alleging a Government's failure to observe certain provisions of ratified ILO Conventions can be submitted to the ILO by a workers' or employers' organization

IP's participation in the supervision of ILO convention

Last but not least, there are several ways in which indigenous peoples can ensure that their concerns are taken into account in the regular supervision of ILO Conventions by the CEACR:

- By sending information directly to the ILO on a new policy, law, or court decision.
- Usually, workers' organizations –as ILO constituents- have a more direct interest in indigenous issues. Indigenous peoples can strengthen their alliances with workers' organizations (trade unions) and ensure the issues of their concern are raised.
- Technical cooperation is another way that the ILO can assist governments and indigenous peoples in making progress towards the implementation of ratified Conventions.

As stated by ILO, although considerable progress has been made with regards to the implementation of the Convention No. 169, the supervisory bodies of the ILO have also noted a number of implementation challenges, particularly with regards to the coordinated and systematic action required as well as the need to ensure consultation and participation of indigenous peoples in decisions that affect them. The ILO is making a series of god practices studies

Ratifications of ILO 169

Today, 22 ratifications of C169 have been registered by the International Labour Office and as far as the Arctic States are concerned, only Norway (19 Jun 1990) and Denmark (22 Feb 1996) have formally ratified this Technical Convention. Norway was actually the first state among all to ratify C169. It is also of interest to note that the previous "Convention concerning the Protection and Integration of Indigenous and Tribal and Semi-tribal Populations in Independent countries" (C107) still in force, had not been ratified by any of the "Arctic countries".

The ILO's member States which have ratified C169 are the following one: Argentina, Bolivia, Brazil, Central African Republic, Chile, Colombia, Costa Rica, Denmark, Dominica, Ecuador, Fiji, Guatemala, Honduras, Mexico, Nepal Netherlands, Nicaragua, Norway, Paraguay, Peru, Spain and Venezuela. It is indeed clear that these countries have a great concern with the issue of indigenous and tribal peoples at a national level. Other countries like France[110] and the United Kingdom, with significant commercial investments on indigenous lands, have still to sign and ratify the Convention. As a matter of fact, most of the nations that have ratified Convention 169 are in Latin America, where enforcement is weak[111].

Regarding the Arctic States, 13 years after the entry into force of C169, Canada, Finland, Island, Russian Federation, Sweden and the United States of America have not yet ratified this convention which is of great significance for them, apart indeed from the case of Iceland. The same comment applies to many other ILO's member States like Australia, Burkina Faso, Cameroon, Iran, Estonia, Philippines, New-Zealand, to name only a few, directly concerned with the issue of Indigenous and tribal peoples.

The Vienna Convention on the Law of Treaties provides the possibility for a Party to denounce the convention under certain conditions[112]. For example, 12 ILO's Conventions have been denounced by Canada, 31 have been denounced by Finland, 33 by Norway, 20 by the Russian federation and none by the United States of America. In the case of C169, none of the ILO State members have denounced C169 that is also to say, none of the Arctic States.

As we will see below, the most controversial aspect of C. 169 is "land rights" issued in Articles 13 to 17. Indigenous peoples' right to "ownership and possession of the lands and territories they traditionally occupy, including lands not exclusively occupied by them" (Art. 14), as well as other natural resources, is an important and highly disputed issue in contemporary international law. There is a delicate balance between the sovereignty and territorial integrity of states, on the one hand, and the promotion and protection of minority culture and identity, on the other. The Nordic countries, especially Norway, Sweden and

Finland, have faced a situation where traditional state sovereignty and indigenous peoples' demands for greater self-determination have compelled the States to investigate and clarify issues related to land rights.

In summary, there are about 370 millions indigenous and tribal peoples spread out in 70 countries and among the 185 ILO member States, 22 of them have ratified the only international treaty open to ratification, which specifically provides protection for indigenous and tribal peoples. In spite of the relative effectiveness of international law, this observation is a usefull indicator - but not the only one - of the world level of recognition of indigenous peoples' rights.

Ratifications by Arctic States

All of the Arctic States took part in the negotiations leading up to the adoption of the ILO C. 169 in 1989. A number of indigenous groups played active role within the delegations of their respective states, including the Nordic Saami, the Inuit, and the Assembly of First Nations from Canada. The Norwegian parliament ratified this convention in 1990, the first ILO member-nation to do so. Denmark ratified it in 1996. Finland and Sweden are actively considering ratification. According to L. Sillanpää (2006), "Federal countries such as Canada, the United States and Russia, face special problems in coordinating the provisions of C 169 with the regional concerns of their provinces, States and Okrugs"[113].

Let us briefly comment on the various arguments raised by Arctic States Representatives in favour or against ratification of C.169:

Canada

In July 2007, Canada's indigenous communities became very concerned when the country joined six other States and signed a letter to the UN calling for redrafting of key provisions of ILO's C169. Canada's Assembly of First Nations, along with ecumenical groups, indigenous NGOs and human rights bodies sent an open letter reminding the Conservative government that by seeking to redraft ILO 169, Canada was failing to honour its international obligations as an elected member of the Human Rights Council. Moreover it was reversing its own positions, and arguing against content it had participated in drafting originally. In September 2007 Canada ended up being among the four countries that cast a negative vote in the General Assembly. Among its range of concerns was that the ILO 169 article related to providing redress for property taken without free, prior and informed consent could be interpreted as promoting the reopening of settlements already reached between States and indigenous peoples[114].

Denmark

Very soon after the introduction of Home Rule, Greenland became actively involved in the revision and update of 1957 Convention No. 107. In 1996, at the request of Greenland, Denmark ratified the ILO Convention No. 169. The proposal to ratify ILO convention 169 was introduced to the Danish Parliament by the Greenlander member Hans Pavia Rosing, former President of ICC. Denmark and Greenland subsequently jointly promoted the implementation of ILO Convention No. 169 by providing funding and experts[115].

Sweden

Sweden has signed the C169 instrument and continues to study ratification. Sweden's decision not to ratify the ILO Convention is due to practical and political reasons. The central part of ILO Convention 169 sets out the provisions maintaining that indigenous peoples (e.g. the Sami) are entitled to own and use their traditional land and water areas, as well as the natural resources in and occasionally under these areas. If Sweden were to recognise the Sami's right to their land and water areas, this would in turn mean that people who are not Sami, but who currently use the Sami areas, would be forced to move a little. For example, non-Sami people would not be able to fish and hunt as much as before in Sápmi. Furthermore, the forestry industry would similarly not be able to fell forest in the Sami areas without the permission of the Sami. If Sweden were to sign up to ILO Convention 169, the state would also be forced to give up certain land areas and natural resources that Sweden currently believes belong to the state, which would naturally cost money.

Finland

In Finland, the discussion surrounding the historical land rights of the indigenous Sami and the possible ratification of International Labour Organization (ILO) Convention No. 169, concerning the rights of indigenous peoples, has been debated for a long time. Although ILO Convention No. 169 deals with a variety of indigenous peoples' issues, Articles 13-19 regarding rights to land and especially Article 14 have been a central obstacle for States considering ratification, as well as for States that have already ratified the Convention[116]. Article 14 requires States to recognize "*the rights of "ownership and possession of the peoples concerned over the land they traditionally occupy*".

In Finland and in Sweden, the ILO 169 is read as it were a detailed Act of law, when the international convention envisaged is of universal application. Any international convention, including ILO 169, contains flexibility as to how to it is implemented to match with the realities of different countries and regions. ILO convention says explicitly in its article 34: "The nature and scope of the measures to be taken to give effect to this Convention shall be determined in a flexible manner, having regard to the conditions characteristic of each country[117]".

As underlined by the Finnish professor T. Koivurova, the Norwegian model of implementing the ILO 169 shows that the ILO convention can be interpreted flexibly: "*What we in Finland and Sweden can learn from Norway is that the ILO 169 was not interpretated only to protect the rights of Sami, but the State transferred most of its lands and waters in Finnmark to all the population groups livings there, Kvens, Norwegians and Saami*"[118]. Another important thing according to T. Koivurova, is to realize is that "decision-making powers and land ownership were effectively transferred from Oslo to Finnmark".

Norway

Speaking of the Norwegian model, it is interesting to note that in conjunction with the ratification of ILO 169, the Norwegian Government's assessment was that the Saami usufructuary rights to land in Norway, applicable at the time, satisfied the conditions of the

Convention. Later, the Royal Saami Rights Commission appointed by the Norwegian Government, came to a different conclusion. In 2005, a Finnmark Act[119] was approved by the Norwegian Parliament which reorganised the land rights situation in Finnmark county. In July 2006, the new land management gave power to a newly created body, the Finmark Estate, over land ownership in the region[120]. The new institution is comprised of the three representatives of the Saami Parliament and three representatives of the Northern counties.

Even though such development was welcomed, as it provides indigenous peoples with more control over their territories, the Finmark Act was proposed in complete opposition to decisions and comments of the Saami parliament[121]. Regarding this legislation, the Committee on the Elimination of racial Discrimination (CERD) in its 2003 Concluding Observations on Norway's Report has expressed its concern "that the recently proposed Finmark Act will significantly restrict the control and decision making powers of the Saami population over the right to own and use land and natural rescources in the Finmark County"[122]. The ILO Committee of Experts has urged "the Government and the Sami Parliament to renew discussions on the disposition of land rights in Finmark, in the spirit of dialogue and consultation embodied in Articles 6 and 7 of Convention No. 169"[123]. According to the Irish academic J. Gilbert, the Finmark Act "illustrates the fact that even though the Saami parliament has a say at the national level, the national Parliament may not even follow the advice provided by the Saami Parliament in matters concerning them. This put into perspective the limits of the cultural autonomy offered to the Saami population through the establishment of a national autonomous institution regarding their rights to land"[124]. In the end, the issue of "ownership and possession" does not appear to have been resolved in Norway[125].

Russian Federation

The Soviet joined the ILO's C107 but never ratified it. The official representatives of the Soviet Union participated in the meetings on the revised convention. After its adoption Soviet and later Russian authorities showed interest in ratifying Convention 169[126]. In 1998, this process was initiated but the procedure was never completed[127]. The position of Russian State towards ILO's C169 is that the latter does not go along with Article 69 of the Constitution of the Russian Federation (1993) according to which: "*the Russian Federation shall guarantee the rights of the indigenous small peoples according to the universally recognized principles and norms of international laws and international treaties and agreements of the Russian Federation*". Article 72.1.1 of the Russian Constitution guarantees protection of traditional living environment for small ethnic communities; however the same article outlines the usage of land and natural environment is in joint jurisdiction of the Russian Federation and its subjects, without any explicit mention of "small-numbered indigenous peoples". The rights of indigenous peoples are still not properly defined in Russian law, so as the procedures for their implementation[128]. The main obstacle for ratification ILO 169 is the issue of lands rights. Other issues may prevent the ratification procedure, as for example ILO 169 Article 16 that mentions the necessity of compensations for forced relocations of indigenous. The question of compensations was never outlined in Russian legal practice[129].

United States of America

The United States had not ratified ILO Convention 169.

Ratification by States without IPs

In line with the Corporate Social Responsibility (CSR) ethics developed by the UN Global Compact[130] initiative launched in year 2000 and others guidelines[131] elaborated by the Organization on Economic Cooperation and Development (OECD) or the UN Human Rights Council's Guiding Principles on Business and Human Rights, to encourage business to align itself voluntarily with a series of key labour, environmental and human rights principles, the ratification of ILO 169 by States whose economic actors have some activities on indigenous and tribals lands is seen as a way of reinforcing the self-regulation regime which for the time being, prevails in business ethics. In 2013, the Global Compact produced a business reference guide[132] to the UN Declaration on the Rights of Indigenous Peoples. The Guide describes the consultation process as one that has the objective of reaching a mutually satisfactory agreement. It may be argued that investors would benefit from a clear and binding commitment to the provisions of the UN Declaration on the Rights of Indigenous Peoples. One author, for example, suggests that an obligation to comply with the Declaration may give a competitive advantage to companies and tend to "*build positive relations with local communities and avoid the insecurity and bad publicity that can result from conflict*" [133] (Foster, 2012).

Regarding the ratification of ILO C. 169 by States indirectly concerned with IP's issues, it is of interest to mention that in 2012, the U.K. and the German governments have rejected ILO 169 for equal reasons. Germany's ruling party declared it could not sign the Convention because it makes a German company responsible for its activities on tribal lands. ILO 169 defines only the U.N.'s *minimum* standards, and sets out the *least* that should be done to protect tribal people from the harmful interference of outsiders. According to *Survival international*, a globe's foremost organization working for tribal peoples rights, "Companies unwilling to comply with these standards should not be in tribal areas at all, not only for the sake of tribal peoples, but for themselves as well"[134].

As an example, the Organization for Economic Cooperation and Development (OECD) has guidelines for multinational companies that now include "human rights due diligence." No company whose operations may affect a tribal community can claim to have done due diligence if it does not measure its plans against 169. Ratifying the Convention would remind a country's corporations of what "due diligence" actually is. Germany's response makes a strong business case for ratification. Far from being hindered by ratification, a company's ability to demonstrate that it complies with 169 is its best safeguard against a legal challenge.

The U.K.'s rationale for not ratifying C.169 was similar to Germany justification. Prime Minister David Cameron defended his position by saying the law could not be implemented, "as the U.K. has no indigenous people to whom the Convention can apply." However, two other countries, Spain (15 Feb 2007) and Netherlands (2 Feb 1998) ratified the Convention despite being in a similar position. U.K. MP Martin Horwood, who chairs the all-party parliamentary group for tribal peoples, openly criticized Mr. Cameron, saying the Prime

Minister's decision, "completely underestimated the importance and impact U.K. ratification would have had on U.K. companies, on U.K. policy and on the international community."

Finally, it should be borne in mind that Spain is only the fourth European country to have ratified C. 169, after Norway, Denmark and Nerthelands.

A controversial aspect of ILO 169

Beside the issue of "ownership", another controversial aspect of the ILO convention is the issue of the subject of the rights covered by Article 4: "Who are the subjects or beneficiaries (States, Indigenous Peoples, Individuals) of these rights?", a question which shows that the dichotomy between objects and subjects in international law is highly relevant in the context of ILO C.169. A possible solution may be found in a census that is to be carried out in, at least, areas of historical land rights. The census is a recommended expedient of the Committee of Experts of the ILO (CEACR) when states have difficulties determining the right holders of ILO Convention No. 169. On several other occasions, the Committee has requested that the census be undertaken in order to determine the Convention's right holders. The 2003 case of Argentina serves as an example[135]. Censuses have already been conducted in Bolivia, with the assistance of the United Nations Development Programme[136], and Colombia[137]. Regarding Norway[138], the Committee has noted that there are no plans for further censuses targeting a specific indigenous criterion.

The Norwegian Government uses the figures of the Saami Parliament's electoral lists to determine the Saami population, although higher numbers are sometimes presented. In regard to Article 1 of ILO C169, the Committee highlights four different aspects: 1/ A census is an official way for a state to determine the number of its indigenous people(s); 2/ A census should include a specific "indigenous component"; 3/ A census should be based on the self-identification of a person; 4/ The indigenous persons concerned should be consulted in the formulation of questions, which would provide guidance for the indigenous census.

However, it is clear that, according to the views expressed by the Committee, the identification of indigenous peoples is a crucial aspect in regard to these persons' human rights situation. The implementation of Article 1 may be regarded as a challenging task for states, while also serving as the origin for the realization of other rights[139].

4.2.2.2 The UN Declaration on the Rights of Indigenous Peoples

Background

In 1982, UN Special Rapporteur of the Subcommission on the Prevention of Discrimination and Protection of Minorities, José R. Martinez Cobo, released a study about the systemic discrimination faced by Indigenous peoples worldwide. His findings were released as the "Study of the Problem of Discrimination against Indigenous Populations"[140].

The UN Economic and Social Council (UNECOSOC) responded to these findings by creating the Working Group on Indigenous Populations (WGIP), comprised of five independent

experts as well as Indigenous advisors, in order to focus exclusively on Indigenous issues worldwide. Its role was to make recommendations to the Commission of Human Rights through the Subcommission[141].

In consultation with Indigenous representatives from around the world, the WGIP began to draft a declaration of Indigenous Rights in 1985. The initial draft was developed over eight years, and was submitted in 1993 to the "Subcommission on the Prevention of Discrimination and Protection of Minorities" (presently, the "Subcommission on the Promotion and Protection of Human Rights"), who approved it the following year. Upon its approval, the draft declaration was sent to the Commission of Human Rights, which established another working group consisting of human rights experts and over 100 Indigenous organizations[142]. The draft declaration was subject to a series of reviews to assure U.N. member states that it remained consistent with established human rights, and did not contradict nor override them.

There was much tension between U.N. member states and Indigenous peoples' representatives during the drafting, due to competing interests. Many U.N. member states worried that accepting the UNDRIP as drafted would undermine their own political autonomy. Of particular concern were the articles affirming Indigenous peoples' right to self-determination. However, many Indigenous representatives refused to change the draft, arguing that the document simply extended to Indigenous peoples the rights already guaranteed to colonialists[143]. As human rights lawyer James Sa'ke'j Youngblood Henderson observes, "[Member states] worried about the implications of Indigenous rights, refusing to acknowledge the privileges they had appropriated for themselves."[144]

The Working Group's final draft represented a compromise between UN member states and Indigenous representatives (see, for example, Article 46, which, among other things, protects the political unity of an existing state). In 2006, the draft was accepted by the UN Human Rights Council, and the following year, it was adopted by a majority of the UN General Assembly on September 13, 2007.

The Universal Declaration of Human Rights was drafted in 1946 after horrific atrocities of WWII but Indigenous people were not invited to participate. The UNDRIP protects collective rights that may not be addressed in other human rights charters that emphasize individual rights, and it also safeguards the individual rights of Indigenous people.

In his role as UN Special Rapporteur on the rights of indigenous peoples, James Anaya states: "The standards affirmed in the Declaration share an essentially remedial character, seeking to redress the systemic obstacles and discrimination that indigenous peoples have faced in their enjoyment of basic human rights."

The Declaration states that the rights it contains "constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world." (Article 43). The UNDRIP contains 24 preambular paragraphs and 46 articles.

The "minimum standards" set out by UNDRIP

The rights to equality and non-discrimination

Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of civil, political, economic, social and cultural rights. The Declaration provides that indigenous peoples and individuals are free and equal to all other peoples and that indigenous individuals have the right to be free from any kind of discrimination in the exercise of their rights (Article 2).

Distinct identity and cultural integrity

The Declaration provides for the protection of the distinct identity and cultural integrity of indigenous peoples through:

- The right to maintain and strengthen their distinct cultural institutions (Article 5)
- The right to belong to an indigenous community or nation in accordance with the customs of the community or nation concerned (Article 9)
- The right to practice, revitalize and transmit their cultural traditions and customs (Arcticle 11)
- The right to control their education systems and institutions providing education in their own languages (Articles 14 et 15)
- The right to promote, develop and maintain their institutional structures, customs, spirituality, traditions and juridical systems (Article 34)
- The right to maintain, control and develop their cultural heritage and traditional knowledge (Article 35)
- The right not to be subjected to forced assimilation or destruction of their culture (Arcticle 8-1)

Collective rights

The first of the UNDRIP's 46 articles declares that "*Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law*." Indigenous peoples often organize their societies as a group. Given the collective character inherent in indigenous cultures, individual rights are not always adequate to give full expression to indigenous peoples' rights. The Declaration through Article 1 gives prominence to collective rights to a degree unprecedented in international human rights law.

The right to self-determination, autonomy, self-government

Indigenous peoples' rights to autonomy and self-government are reflected throughout the Declaration, but chiefly in Articles 3 and 4. These provisions affirm that: "indigenous peoples have the right to self-determination […] in exercising their right to self-determination, have the right to autonomy and self-government in matters relating to their internal and local affairs".

The right to maintain and strenghten distinct institutions

The Declaration also recognizes that indigenous peoples have the right to promote, develop and maintain their institutional structures (Article 5) and to practice and revitalize their cultural traditions and customs (Article 11).

Participation and consultation

The Declaration contains more than 20 provisions affirming the right of indigenous peoples to participate in decision-making, articulated as, inter alia, (1) the right to self-determination; (2) the right to autonomy or self-government; (3) the "right to participate"; (4) the "right to be actively involved"; (5) the duty of States to "obtain their free, prior and informed consent"; (6) the duty to seek "free agreement" with indigenous peoples; (7) the duty to "consult and cooperate" with indigenous peoples; (8) the duty to undertake measures "in conjunction" with indigenous peoples; and (9) the duty to pay due "respect to the customs" of indigenous peoples[145].

Article 18 of the Declaration establishes that: "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".

The Declaration requires States to 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 Article 19).

Free, prior and informed consent (FPIC)

Free, prior and informed consent is more than consultation. States have the obligation to have consent as the objective of consultation before any of the following actions are taken:

- The adoption of legislation or administrative policies that affect indigenous peoples (Article 19)
- The undertaking of projects that affect indigenous peoples' rights to land, territory and resources, including mining and other utilization or exploitation of resources (Article 32).

In certain circumstances, there is an obligation to obtain the consent of the indigenous peoples concerned, beyond the general obligation to have consent as the objective of consultations. For example, the Declaration explicitly requires States to obtain consent of indigenous peoples in cases of:

- The relocation of indigenous peoples from their lands or territories (Article 10)
- The storage or disposal of hazardous materials on indigenous peoples' lands or territories (Article 29)

In relation to the practical application of the principle of free, prior and informed consent, the following guidance has been provided[146]:

> **Free**, should imply that there is no coercion, intimidation or manipulation, and **Prior** should imply consent being sought sufficiently in advance of any authorisation or commencement of activities and respective requirements of indigenous consultation/consensus processes. **Informed** should imply that information is provided that covers a range of aspects, [including, inter alia] … the nature, size, pace, reversibility and scope of any proposed project or activity; the reason/s or purpose of the project …; the duration; locality or areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail. This process may include the option of withholding consent. Consultation and participation are crucial components of a **consent** process.

It is noteworthy that the UNDRIP is the only international instrument to contain a textual expression of "free, prior, and informed consent".

Rights to lands, resources and territories

The Declaration provides broad recognition of the rights of indigenous peoples to land, territories and natural resources, including:

- The right to strengthen their distinctive spiritual relations with lands and resources Article 25)
- The right to own, use, develop and control the lands, territories and resources that indigenous peoples possess by reason of traditional ownership (Article 26)
- The right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent (Article 28)
- The right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources (Article 29)
- The right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources (Article 32)

The Declaration requires States to take measures to uphold and promote the rights of indigenous peoples relating to lands, territories and resources, such as imposing restrictions on the storage or disposal of hazardous materials in the lands or territories of indigenous peoples (Article 29) and placing restrictions on the use of lands and territories of indigenous peoples for military activities (Article 30).

Development with culture and identity

The concept of development with culture and identity recognizes that indigenous peoples may assess the well-being of their communities and the appropriate use of their lands, territories and resources in a manner that is distinct from non-indigenous communities[147]. The Declaration provides a comprehensive normative framework for advancing development with

culture and identity, centred on Articles 3 and 32. These articles recognize the right of indigenous peoples to determine and develop priorities and strategies regarding the development of their lands, territories and resources, based on their right to self-determination.

Redress and compensation

The Declaration recognizes various rights relating to redress and compensation for the violation of indigenous peoples' rights to lands, resources and territories. Article 28 details the rights of indigenous peoples for redress and compensation where their lands, territories and resources have been taken, used or damaged without consent. This right provides a remedy for indigenous peoples who no longer possess their lands and territories so that:

- Where possible, lands, territories and resources that indigenous peoples no longer possess are returned
- Alternatively, fair compensation should be paid, which could include the provision of other lands, territories and resources, monetary compensation, development opportunities (i.e. employment opportunities) or any other benefits to which indigenous peoples agree.

Adoption of UNDRIP

The UNDRIP was adopted by 144 countries, with 11 abstentions (Azerbaijan, Bangladesh, Bhutan, Burundi, Colombia, Georgia, Kenya, Nigeria, Russian Federation, Samoa and Ukraine) and 4 countries (Canada, the USA, New Zealand, and Australia) voting against it. Australia, New Zealand, Canada, and the United States initially refused to sign the UNDRIP. The four countries share very similar colonial histories and, as a result, have common concerns.

Each nation argued that the level of autonomy recognized for Indigenous peoples in the UNDRIP was problematic and would undermine the sovereignty of their own states, particularly in the context of land disputes and natural resource extraction. Some governments claimed that the UNDRIP might override existing human rights obligations, even though the document itself explicitly gives precedence to international human rights (Article 46). The UNDRIP may however provide guiding principles that national courts could use to judge a government's actions in cases involving Indigenous rights.

Canada, the United States, Australia and New Zealand have all pointed to their track records in upholding human rights, including the recognition of Indigenous rights within their own national governance systems, as a justification for their reluctance to endorse the UNDRIP. They have noted that many nations that have signed on to the UNDRIP do not appear to uphold these minimum standards. While many agree that much work remains to be done internationally, critics have questioned the four nations' claims to their fulfillment of international standards. Ojibwe political scientist Sheryl Lightfoot, for example, observes that such compliance is often concentrated in "soft rights," such as rights to language and culture, while systematically denying "hard rights," such as rights to land[148].

Since 2009 Australia and New Zealand have reversed their positions and now support the Declaration, while the United States and Canada have announced that they will revise their positions. In Australia's April 2009 official statement, for example, Member of Parliament Jenny Macklin called the Declaration "historic and aspirational." In April 2010, New Zealand's Minister of Maori Affairs, Dr. Pita Sharples, described her government's change of heart this way: "In keeping with our strong commitment to human rights, and Indigenous rights in particular, New Zealand now adds its support to the Declaration both as an affirmation of fundamental rights and in its expression of new and widely supported aspiration".

The United States government announced its decision to review its stance on the Declaration in April 2010, and at various times, President Barack Obama has expressed interest in supporting it. In November 2009, Obama signed a presidential memorandum to begin consultations with tribal leaders, non-governmental organizations and government representatives on how the UNDRIP may be effectively implemented in the United States. In April 2010, the United States announced that it would hold a formal review of the UNDRIP, and, in December 2010, after several months of consultations, Obama announced that the US fully endorsed the UNDRIP. While Obama also emphasized the document as aspirational, he also stated: "I want to be clear: what matters far more than words, what matters far more than any resolution or declaration, are actions to match those words"[149].

Indigenous representatives from Canada had been involved in the creation of the Declaration since the 1970s, and upon its drafting, Canada supported its principles, albeit cautiously. Despite Canada's presence on the U.N. Human Rights Council, which endorsed the document, the Conservative government initially voted against the UNDRIP and refused to sign it. Chuck Strahl, then minister of Indian Affairs, explained the government's reasoning: "By signing on, you default to this document by saying that the only rights in play here are the rights of First Nations. And, of course, in Canada, that's inconsistent with our Constitution"[150]. According to Sheryl Lightfoot, Canada's statement does not mean a change of position, but rather a carefully crafted attempt to change public perception of their position without actually committing to the Declaration"[151]. Strahl further maintained that Canada already respects Indigenous rights, as laid down in the Charter of Rights and Freedoms and the Constitution, which he said reflects a much more tangible commitment than the "aspirational" UNDRIP[152].

In November 2010, Canada announced it would officially support the UNDRIP. While this move was celebrated by many as a positive step forward, the continued use of qualifiers in official speeches have left many skeptical of Canada's true commitment.

Much like New Zealand's official statement of endorsement, the Canadian government suggests that existing policy toward Indigenous peoples is satisfactory, and that its endorsement of the UNDRIP will not change Canadian laws: "Although the Declaration is a non-legally binding document that does not reflect customary international law nor change Canadian laws, our endorsement gives us the opportunity to reiterate our commitment to continue working in partnership with Aboriginal peoples in creating a better Canada"[153].

On April 20, 2010, United States Permanent Representative to the United Nations Ambassador Susan E. Rice announced at the United Nations Permanent Forum on Indigenous Issues that the United States had decided to review the U.S. position on the UN Declaration on the Rights of Indigenous Peoples. The United States undertook a formal review process, during which the U.S. Department of State and other Federal agencies engaged in consultations with federally-recognized tribes and dialogues with interest non-governmental organizations and other stakeholders. On December 16, 2010, at the 2010 White House Tribal Nations Conference, President Obama announced that the United States supports the UN Declaration on the Rights of Indigenous Peoples. The President stated that the aspirations the Declaration affirms, including the respect for the institutions and rich cultures of Native peoples, are aspirations we must all seek to fulfill. The President's statement was accompanied by a written Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples[154].

UNDRIP and Convention No. 169

UNDRIP reaffirms the importance of the principles and approaches provided for under Convention No. 169. It also provides a fresh impetus for promoting the ratification and implementation of Convention No. 169. Convention No. 169 and UNDRIP have much in common and should be considered as complementary and mutually reinforcing. It is therefore of particular interest for our study to make a brief comparative analysis[155] of the only two international instruments entirely devoted to the indigenous peoples' rights.

Rationale or purpose

Both instruments were adopted to correct historical social injustices, particular discriminations and life on margin of societies of IPs. They both aim to make IPs enjoy all rights and freedoms on the same footing with the rest of the populations, while maintaining their culture and way of life.

Specificities by each instrument include:

• The ILO Convention No. 169 makes reference to the considered obsolete assimilationist approach by ILO Convention No. 107. Particular exploitative working conditions of indigenous workers triggered the interest and led to a number of ILO standards, such as the 1929 Convention on Forced Labour.

• The UNDRIP makes reference to treaties, agreements and other constructive arrangements between States and IPs; and militarization of indigenous lands; situation of IPs that varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration.

Legal nature

The UNDRIP enjoys strong moral weight that it derives from the overwhelming support by countries and IPs organisations worldwide. Unlike Convention No.169, UNDRIP is a Declaration adopted by the General Assembly of the United Nations. Declarations are not

subject to ratification and do not have legally binding status. A Declaration adopted by the General Assembly reflects the collective views of the United Nations which must be taken into account by all members in good faith. Despite its non-binding status, the Declaration has legal relevance. For instance, it may reflect obligations of States under other sources of international law, such as customary law and general principles of law[156].

Content

The provisions of UNDRIP and ILO Convention No. 169 are compatible and mutually supplementary, though UNDRIP addresses additional subjects that were not included in the Convention, such as the militarization of indigenous lands and the protection of traditional knowledge. Further, UNDRIP expressly affirms IPs' right to selfdetermination.

Individual and collective rights

The two legal instruments are grounded in fundamental human rights and freedoms from discrimination for IPs, as guaranteed for all other human beings. ILO Convention No. 169 asserts explicitly that in many parts of the world IPs are unable to enjoy their fundamental human rights to the same degree as the rest of the population of the States. UNDRIP has many specific provisions directing States to adopt measures to eliminate discrimination. These measures should facilitate correction of text books and educational materials in order to provide "a fair, accurate, and informative portrayal" of the indigenous society and cultures (Article 31). The concept of collective right of IPs in UNDRIP, as distinguished from individual right, is significant in view of the discussion during the drafting of UNDRIP wherein contentious issues were raised concerning limitations on individual human right as distinguished from collective right.

Self-identification and self-determination

All two instruments affirm the right of IPs to their development as a distinct people and as a member of society and of their respective States. ILO Convention No. 169 does not use the term "self-determination". Instead it uses "self-identification" and "self-reliance and development". The UNDRIP uses the term "self-determination" in articles 3 and 4 but these two should be read in conjunction with article 46 which states that "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."

The reference to "genocide"

Among the three, only UNDRIP mentions "genocide" and affirms the protection of IPs against it. All three affirm the right of IPs to the preservation of their own cultural identity while at the same time recognizing their right to participate in the affairs of their respective States.

Military exercises

ILO Convention No. 169 is explicit on the issue by stating that "adequate penalties shall be established by law for unauthorised intrusion upon, or use" of indigenous resources or lands.

Aside from the intrusions of migrants, UNDRIP prohibits military exercises in the areas occupied by IPs, unless public interest requires otherwise or as requested or agreed to by the IPs themselves.

Lands rights

All two instruments recognize that traditional occupation of indigenous and tribal lands is sufficient basis for state recognition of title over these lands. They all recognize the right of ownership of the tribal and indigenous peoples over the lands either traditionally occupied or used by the community or by its individual members. UNDRIP treats in greater detail the aspect of land rights, including the concept of restitution in cases of deprivation of indigenous territories without their consent.

Natural resources

Both instruments recognize the right of tribal and indigenous peoples to the natural resources of their lands, as well the use, management and conservation thereof. However, ILO Convention No. 169 is the only instrument that has a specific provision on how to guarantee IPs' rights when the State retains ownership of natural resources pertaining to their lands[157].

Conditions of employment

Both instruments (ILO Convention No.169, UNDRIP, and IPRA) provide for a wide range of special measures aiming at closing the socio economic gaps faced by IPs in the employment market.

Vocational training, handicrafts, and rural industries

Both instruments recognize and protect the right of indigenous peoples to vocational training, handicrafts, and rural industries. ILO Convention No.169 provides that any special training programmes shall be based on the economic environment, social and cultural conditions and practical needs of the peoples concerned. The UN Declaration is more explicit with respect to indigenous peoples' right to basic services. It provides that indigenous peoples have the right to special measures for immediate effective and continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health, and social security.

International supervision

Unlike ILO's Conventions (CEACR), the Declaration has no special supervisory system attached to it. However, the UN's human rights bodies and mechanisms can rely on the Declaration and address implementation issues within their respective mandates:

- The Permanent Forum on Indigenous Issues;
- The Human Rights Council, including its Special Rapporteur on the situation of the human rights and fundamental freedoms of indigenous people and the expert mechanism set up in December 2007 to advise the Council on questions relating to the promotion and protection of human rights of indigenous peoples;
- UN human rights treaty bodies, particularly the Committee on the Elimination of Racial Discrimination (CERD).

In turn, a number of the Declaration's provisions, are particularly relevant to the ILO's mandate, and are relevant to ILO instruments beyond Convention No. 169. The ILO promotes joint dissemination of UNDRIP and Convention No.169 and includes the Declaration in its training packages and methodologies.

Implications for the ILO and the UN system
Article 41 of the Declaration states that the "organs and specialized agencies of the United Nations system shall contribute to the full realization of the provisions of the Declaration…". Article 42 provides that "the United Nations and its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies….shall promote respect and full application of the provisions of this Declaration and follow-up on the effectiveness of this Declaration".

UN Bodies devoted to IP's rights

Threre are three UN bodies that are mandated to deal specifically with indigenous peoples' issues: the Permanent Forum on Indigenous Issues (UNPFII), the Expert Mechanism on the Rights of IPs and the Special Rapporteur Rights of IPs.

The Expert Mechanism on the Rights of Indigenous Peoples

The Expert Mechanism on the Rights of Indigenous Peoples is a new United Nations mechanism on the rights of indigenous peoples created by the Human Rights Council following an informal meeting on the most appropriate mechanisms to continue the work of the Working Group on Indigenous Populations (WGIP). The Expert Mechanism is a subsidiary expert mechanism of the Human Rights Council with a specific mandate. Composed of five experts, the Expert Mechanism will provide thematic expertise on the rights of indigenous peoples to the Human Rights Council, the main human rights body of the United Nations. This expertise will be provided in the manner and form requested by the Council: the thematic expertise will focus mainly on studies and research-based advice and the mechanism may suggest proposals to the Council for its considerations and approval, within the scope of its work as set out by the Council. Finally, the Office of the United Nations High Commissioner for Human Rights provides human, technical and financial assistance to the Expert Mechanism for the fulfilment of its mandate.

The Special Rapporteur on the Rights of Indigenous Peoples

In 2001, the Commission on Human Rights decided to appoint a Special Rapporteur on the rights of indigenous peoples, as part of the system of thematic Special Procedures. The Special Rapporteur's mandate was renewed by the Commission on Human Rights in 2004, and by the Human Rights Council in 2007. In the fulfillment of her mandate, the Special Rapporteur:

- Promotes good practices, including new laws, government programs, and constructive agreements between indigenous peoples and states, to implement international standards concerning the rights of indigenous peoples;

- Reports on the overall human rights situations of indigenous peoples in selected countries;
- Addresses specific cases of alleged violations of the rights of indigenous peoples through communications with Governments and others;
- Conducts or contributes to thematic studies on topics of special importance regarding the promotion and protection of the rights of indigenous peoples.

Additionally, the Special Rapporteur she reports annually on her activities to the Human Rights Council.

The UN Permanent Forum on Indigenous Issues

The United Nations Permanent Forum on Indigenous Issues (UNPFII) was established by the UN in response to demands from IPs for a high level permanent body at the United Nations. The Permanent Forum is the result of an alliance or coalition effort among various "Ethnic Groups" spread across the world. The first meeting of the Permanent Forum was held in May 2002, and yearly two-week sessions take place in New York.

The Permanent Forum is an advisory body to the Economic and Social Council[158] (ECOSOC) with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. It is noteworthy that unlike the tow others UN bodies mentioned above (Expert Mechanism and Special Rapporteur), UNPFII is not a Human Rights body and that is actually why WGIP was not simply disbanded but replaced by the Expert Mechanism, in orde to maintain the link with the Human Rights Council. According to its mandate, 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 UNPFII is comprised of 16 independent experts, functioning in their personal capacity, who serve for a term of three years as Members and may be re-elected or re-appointed for one additional term. Eight members are nominated by governments and 8 members are directly nominated by indigenous organizations in their regions.

The Members nominated by governments are elected by ECOSOC based on the five regional groupings of States normally used at the United Nations: Africa; Asia; Eastern Europe; Latin America and the Caribbean; and Western Europe and Other States.

The Members nominated by indigenous organizations are appointed by the President of ECOSOC and represent the seven socio-cultural regions determined to give broad representation to the world's indigenous peoples: Africa; Asia; Central and South America and the Caribbean; **the Arctic**; Central and Eastern Europe, Russian Federation, Central Asia

and Transcaucasia; North America; and the Pacific - with one additional rotating seat among the three first listed above. The rotating seat is taken by Asia during the term 2014-2016.

It is of interest to note that the Arctic "as a whole" is treated as a socio-cultural region but separated from two other socio-cultural regions, namely North America (according to the UN definition of North America: United States of America, Greenland and Canada) and the Russian Federation.

As far as the present term is concerned, term 2014-2016, we note that no member of the UNPFII represents the Arctic socio-cultural region as a whole and actually none of the 7 socio-cultural regions are represented as such, Asia Pacific Region being the only one mentioned but as "Vacant". Four members among the sixteen (actually fifteen, Asia Pacific Region being not represented) represent IPs from the "Eight-state Arctic"[159] area, more specifically: two members, one government nominated and one indigenous nominated, represent the Russian Federation; one member indigenous nominated represents the United States and one member indigenous nominated represents Canada.

We have brought together in a table a history of members of the permanent Forum for the five terms originating from the "Arctic countries", by indicating those who are government-nominated members ("GN") and those who are indigenous-nominated members ("IN") with the exception of the first term 2002-2004 where this distinction was not yet considered relevant by the newly-created UNPFII Secretariat:

	Finland	Canada	Greenland/ Denmark	Norway	Russian Federation	Sweden	USA
2014-2016		IN			IN+GN		IN
2011-2013	GN	IN			IN+GN		IN
2008-2010					IN+GN	IN	IN
2005-2007		IN	IN+GN		IN+GN		
2002-2004		2		1	2		1

Figure 24: UNPFII Members from Arctic countries since 2002

This table gives rise to a number of interesting comments, one of which is related to the balance between State and non-State official members of UNPFII from "Arctic countries". Indeed, this balance is of more or less importance, depending on the level of political participation of IPs in their country. Furthermore, distinguishing Arctic "IN" member by country might be relevant for example in the case of Mr. Pavel Sulyandziga (Russian Federation) who represented the "Russian Association of Indigenous Peoples of the North" (RAIPON) at the Permanent Forum from 2005 to 2010 but is not much relevant in the case of Mr. Aqqaluk Lynge (Greenland), president of the "Inuit Circumpolar Council" - an international NGO representing the Inuit of Alaska, Canada, Greenland, and Chukotka (Russia) - from 1995 to 2002, who serve as a "IN" member of the UNPFII for the term 2005-2007.

This brief analysis shows that the political conception of the "Eight-State Arctic" which to a certain extent, determines the political representation of IPs concerned, developed by the Arctic Council, is not recognized by the UNPFII which as a subsidiary body of ECOSOC, is dominated by the United Nations regional groups of members states model. The Sweden Strategy for the Arctic region claimed that the political definition of the Arctic Council is "further strengthened by the fact that international bodies refer to the Arctic and the Arctic States as the area north of the Arctic Circle and the eight Arctic states"[160]. Apparently, this political and regional definition has not been endorsed by the United-Nations Permanent Forum on Indigenous Issues.

As a matter of fact, there is no available U.-N. nor ECOSOC official definition of the socio-cultural region "Arctic" and if the "Arctic" were to be recognized as a socio-cultural region by the Permanent Forum, the question arises as to how to articulate and/or complement political representation of IPs from one "Arctic country" (for example, RAIPON) and political representation from multinational IPs organizations (for example, the Saami Council or the Inuit Circumpolar Council**)**, bearing in mind that would it be in the Russian Federation, in Canada or in the United States, Arctic IPs are only a part of IP's national population. What is of interest for our subject, the Arctic, applies indeed for all socio-cultural regions recognized by the world indigenous Permanent Forum.

NGO's consultative status

Regarding the ECOSOC status of "member" appointed by indigenous organizations, it has to be recalled that since 1946, non-governmental organizations can take a role in formal UN deliberations through ECOSOC. Article 71 of the UN Charter opened the door for suitable arrangements for consultation with NGOs. This relationship with ECOSOC is governed today by ECOSOC resolution 1996/31[161]. International, regional and national NGOs, non-profit public or voluntary organizations are eligible to obtain consultative status. There are three categories of status: general, special and roster consultative status. Resolution 1996/31 grants different rights for participation in ECOSOC and its subsidiary bodies - principally ECOSOC's Functional Commissions - including rights to United Nations passes, to speak at designated meetings, and to have documents translated and circulated as official UN documents.

The United Nations Voluntary Fund for Indigenous Peoples

Finally, it is worth noting that among the six Arctic indigenous peoples' organizations with "Permanent Participant" status to the Arctic Council, presented further in this study, only two of them, namely the ICC and the Aleut International Association, have consultative status to ECOSOC and more specifically, "special" consultative status. Given the low financial capacity of indigenous peoples organizations, it is of crucial importance that the United Nations Voluntary Fund for Indigenous Peoples established in 1985 by GA resolution 40/131 gives IPs the opportunity to participate in the sessions of the Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples, the Human Rights Council, including its Universal Periodic Review mechanism, and the treaty bodies. Without the support of the Fund, Indigenous Peoples would face severe challenges in their ability to participate in these important international human rights processes.

4.3 ARCTIC STATE'S RELATIONSHIP WITH INDIGENOUS PEOPLES

This subsection examines the degree of legal recognition and protection afforded to the indigenous peoples in the various states concerned. On the basis of a brief historical overview of the relationship between each state concerned and the indigenous communities, we provide an evaluation of the level of recognition of indigenous peoples' rights in each country concerned, based on the Multiculturalist Policy (MCP) index for Indigenous Peoples developed by the Queen's University including nine forms of public policy intended to recognize or accommodate the distinctive status of IPs.

4.3.1 Relationship between Canadian authority and the Inuit

We focus our brief historical overview on the Inuit, the single "Aboriginal people" of Arctic Canada.

Historical background

Time immemorial

Inuit and their ancestors have inhabited the Canadian Arctic since time immemorial. Archaeological evidence indicates human habitation of the Arctic dating to approximately 12,000 years ago in the Bering Strait region. Modern Inuit (meaning "people") migrated east to populate the western and eastern Arctic, northern Quebec, and Labrador about 1,000 years ago.

Inuit first encountered European peoples through Erik the Red's tenth century Icelandic voyages to Newfoundland and Labrador. In the late fifteenth century, European explorers began to arrive on the northeast coast of North America, searching for gold and a Northwest Passage to Asia. Moravian missionaries established the first permanent settlements among Labrador Inuit in 1765, ministering to health and welfare needs, and encouraging commercial fishing operations. Despite interaction with European peoples, Inuit maintained patterns of regional, seasonal migration that were based on the availability of natural resources and supported their traditional subsistence practices well into the twentieth century.

Late 18th century: Inuit Contact with Whalers and Fur Traders

Commercial whaling began in the eastern and western Arctic during the late eighteenth century and by 1840, the Americans, English and Scottish had established their whaling operations west into Pond Inlet and Cumberland Sound. The whaling industry peaked in the 1860s. Afterwards, whaling crews supplemented their incomes with caribou, seal and walrus hunting, as well as fishing and fox trapping, which over-exploited many traditional Inuit subsistence resources. In time, populations of bowhead whale, musk ox and caribou became severely depleted, leading to increased exploitation of the more profitable fox fur. By the late nineteenth century, fur traders had begun to move further north into former whaling territory.

The entrance of whalers and Hudson's Bay Company (HBC) traders in each region of the Arctic was followed closely by the Northwest Mounted Police (NWMP) and missionaries,

who established churches, and limited school and hospital facilities. Inuit subsistence, however, became increasingly and irrevocably tied to European economic forces and foreign consumer goods, contributing to widespread starvation after the collapse of fur prices in the 1930s. Throughout the 1930s and 1940s, the Canadian Government initiated relief programs for Inuit, yet until 1950, official federal policy advocated a traditional, selfsufficient way of life for Inuit, insofar as that was possible

1924: Indian Act amended to include the Inuit people

By the early twentieth century, many within the Canadian Government were questioning Inuit status—unsure if they should be considered Canadian citizens or wards of the state, like First Nations. In 1924, a bill was passed to amend the *Indian Act*, assigning responsibility for Inuit to the Department of Indian Affairs, but ensuring that Inuit would remain Canadian citizens

In 1930, this bill was repealed making the Northwest Territories (NWT) Council in Ottawa responsible for Inuit. The Royal Canadian Mounted Police (RCMP), by default of their presence, was delegated to administer relief (food and ammunition) in the North.

1939: the Re-Eskimo case

In 1939, the Supreme Court pronounced their judgement in the *Re Eskimo* case, stating that, constitutionally, Inuit were classified as Indians in Canada. This distinction made Inuit the legal responsibility of the Canadian Government. The government, however, sought to ensure that Inuit remained distinct from First Nations in legislation and governance, and the *Indian Act* was specifically amended to exclude Inuit in 1951. The amendment stated that, "a reference in this Act to an Indian does not include any person of the race of aborigines commonly referred to as *Eskimos"*.

Although, historically, there has been no legislation or policy corresponding to the *Indian Act* for Inuit, Inuit affairs continued to be administered federally.

During the Second World War, and then the Cold War, American military personnel stationed in the North were critical of the Canadian Government's perceived neglect of Inuit, including their inadequate living conditions, health care and education

According to Hugh Keenleyside, former Deputy Minister of the Department of Mines and Resources and Commissioner of the NWT Council, "The awakening of general interest in the Arctic was in part the result of political and defence considerations that marked the period of the Cold War. But additional recognition of its importance came also from a new appreciation of the economic possibilities of that region."

Post World War II Acculturation and Assimilation of Inuit

Beginning in the 1950s, the Government of Canada encouraged Inuit to settle permanently in communities and established social welfare programs for housing, education, healthcare and economic development to improve the Inuit standard of living.

In 1955, Jean Lesage, the Minister of the Department of Northern Affairs and National Resources, announced a new policy for Inuit administration, to remedy the "almost continuing state of absence of mind" in which Inuit had previously been administered and to ensure that Inuit had the same rights, privileges, opportunities and responsibilities enjoyed by other Canadians.

Federal government programs for Inuit hoped to improve living standards in several ways. Housing developments and diversification of the northern economy created some long-term employment in sedentary communities.

Finding employment in communities, particularly stable, year-round jobs was difficult for many adult Inuit who spoke little English and lacked formal education and skills training. In 1967, the Government of the Northwest Territories (GNWT) moved from Ottawa to Yellowknife, the new capital of the Northwest Territories. Moving the GNWT to the North meant an expansion of the territorial civil service, and the creation of many jobs. The increased presence of government administrators in the Arctic—who were sometimes Inuit—enlarged the territorial and federal governments' awareness of social concerns and the need to improve welfare programming, particularly in the areas of education and health.

With the creation of permanent communities throughout the North during the 1960s, the federal and territorial governments sought to establish structures of community governance similar to those in southern Canada. Inuit were encouraged to participate in local government and administrative organizations.

Inuit became eligible to vote in the 1950 federal election, and the first Inuk was elected to the NWT Council in 1966. Inuit political involvement during the 1960s and 1970s was often motivated by concerns about federal government-sponsored development of northern oil, gas and mineral resources. Inuit had viewed themselves as stewards of the North since time immemorial, and sought to preserve the sustainability of their natural environment and access to the resources that had long supported their livelihood.

Federal reports and policies, such as the 1967 Hawthorn Report and the 1969 *White Paper*; drew attention to the social, economic and legal concerns of Aboriginal people in the Canadian North. A 1972 edition of *Inutitut* magazine, which was published by Indian and Northern Affairs Canada, outlined the federal government's seven objectives for resource development programs until 1980. The objectives are stated in the Government of Canada's 2004 "Framework for a Northern Strategy." This chart demonstrates some continuity in the government's policy objectives for the North from 1972 to 2004.

Aboriginal response to the *White Paper*, which was withdrawn the same year that it was released, encouraged the federal government to fund organizations representing the interests of Aboriginal peoples, and to create policies for negotiating comprehensive and specific land claims.

1970s: the Creation of Inuit Organizations

In 1971, Inuit formed the national organization "Inuit Tapirisat" of Canada (now "Inuit Tapiriit Kanatami", "ITK") to lobby the Government of Canada for mechanisms to increase their autonomy, including self-government and a land claim covering parts of the Northwest Territories and northern Quebec.

Following the creation of ITK, regional associations were established to provide local representation for Inuit. These organizations included the Northern Quebec Inuit Association (NQIA) which was founded in 1971; the Labrador Inuit Association (LIA) founded in 1973; and three organizations in the eastern Arctic, which were established in the mid-1970s: the Kitikmeot Inuit Association, the Keewatin (now Kivalliq) Inuit Association, and the Baffin Regional (now Qikiqtani) Inuit Association.

Members of the Kitikmeot, Kivalliq, and Qikiqtani Inuit Associations established the Tungavik Federation of Nunavut (TFN) in 1982 to negotiate the Nunavut Land Claims Agreement. General objectives shared by Inuit political organizations across the North included respect for the natural environment and maintenance of its sustainability; ensuring that Inuit received infrastructural benefits from economic development in their communities, such as roads and improvements to housing; and local control over resource development projects, including local job creation. The comprehensive claims negotiated by each of the four Inuit organizations, however, demonstrate some regional priorities.

Land Claims Agreements

Since 1970, Inuit have negotiated four comprehensive land claim agreements with the federal government. These agreements are[162]:

- the James Bay and Northern Quebec Agreement and Complementary Agreements (JBNQA), which were reached in 1975 in northern Quebec;
- the Inuvialuit Final Agreement, which was reached in 1984 in the western Arctic;
- the Nunavut Land Claims Agreement, which was settled in 1993 in the eastern Arctic;
- the Labrador Inuit Land Claims Agreement, which was settled in 2003 in northern Labrador.

	Inuvialuit Settlement Region	**Nunavut**	**Nunavik**	**Nunatsiavut**
Political Organization	Committee for Original Peoples' Entitlement (1970-1984)	Tungavik Federation of Nunavut (1982-1993)	Northern Quebec Inuit Association (1971-1978)	Labrador Inuit Association (1973-?)
Land Claim Agreement and Year Claim was Submitted	Inuvialuit Final Agreement (1974) also called the COPE agreement	Nunavut Land Claims Agreement (1977)	James Bay and Northern Quebec Agreement (1973)	Labrador Inuit Land Claims Agreement (1977)
Agreement-in-Principle Settled	October 1978	April 1990	November 1974	June 2001
Beneficiary Corporation	Inuvialuit Regional Corporation (IRC) (1984)	Nunavut Tunngavik Incorporated (NTI) (1993)	Makivik Corporation (1978)	Labrador Inuit Development Corporation (LIDC) (1982)

Final Agreement Settled	June 1984	April 1993	November 1975	January 2005
Regional Government	Beaufort/Delta Government (TBA)	Government of Nunavut (1999)	Kativik Regional Government (1976); Nunavik Government (TBA)	Nunatsiavut Government (Fall 2006)

Figure 25: Inuit Political Organizations and their comprehensive Land Claims.
Source: www.aadnc-aandc.gc.ca

With the settlement of these land claims, the Inuit organizations are now responsible for administering the terms of the comprehensive claim agreements on behalf of Inuit beneficiaries. They are also fora for Inuit to raise awareness of issues like healthcare, housing, education, the environment and economic development. Ensuring the implementation of land claim settlement terms, devolving governing authority to Inuit and regional governments, and maintaining stewardship of their lands and resources are issues of continuing regional significance for Inuit.

Section 35 of the *Constitution Act*, 1982 recognizes Aboriginal peoples' inherent right to self-government, which was reaffirmed in the federal government's 1995 Inherent Right Policy.
The structures of self-government created in each of the four Inuit land claim regions are different, and include both Inuit (ethnically-based) and public governments.

The increased involvement of Inuit in political organizations since the 1970s has led to significant levels of Inuit participation in public structures of governance, such as the Government of Nunavut.

The governments created through the JBNQA and the Inuvialuit Final Agreement are regional Inuit governments and are limited in scope and authority. Inuit in Nunavik and the Inuvialuit Settlement Region have initiated processes for negotiating more comprehensive, public government structures with the Government of Canada, since their claims were negotiated before 1995 and the federal government will not re-negotiate existing claim agreements to address the inherent right to self-government. In Labrador, the Nunatsiavut Government will be comprised of elected Inuit representatives and the municipal governments within the settlement region will be public governments. In each of the four predominantly Inuit regions of Canada, Inuit have sought to establish institutes of government that reflect their status as taxpayers within the federal system, and facilitate the representation of non-Inuit within their structure of governance.

The 2004-2005 Aboriginal Roundtable sectoral policy sessions convened by the Privy Council Office that dealt with Aboriginal housing, health, land claim negotiations, accountability, economic development and life-long learning provided Inuit with an opportunity to raise their concerns with the federal government. Still, Inuit are concerned that environmental issues, particularly climate change, which is an issue of global concern, were not included in these sessions.

2004: The Northern Strategy Framework

The Prime Minister's Northern Strategy Framework[163] announcement in December 2004 provides funding to address some areas of Inuit concern. ITK expressed satisfaction that the Northern Strategy Framework recognizes Inuit and the North for their vital role in creating Canadian identity, and for its promise to help northerners deal with environmental issues, including climate change, environmental contaminants and sustainable development. The Northern Strategy also includes initiatives for economic development, devolution of governance and northern sovereignty. Inuit organizations are concerned, however, that Nunatsiavut and Nunavik, and consequently one-third of Canada's Inuit population, are excluded from the Northern Strategy.

2009: Canada's Northern Strategy

In the "Canada's Northern Strategy: Our North, Our Heritage, Our Future" published in 2009, four priority areas are presented including "promoting social and economic development" and "improving and devolving northern governance":

> The North is central to the Canadian national identity. The longstanding presence of Inuit and other Aboriginal peoples and the legacy of generations of explorers and researchers are fundamental to our history [...]
>
> Canada's North is first and foremost about people – the Inuit, other Aboriginal peoples and Northerners who have made the North their home, and the Canadians in other parts of the country who recognize how central it is to our shared heritage and our destiny as a nation.
>
> Inuit – which means "people" in Inuktitut – have occupied Canada's Arctic lands and waterways for millennia. Long before the arrival of Europeans, Inuit hunters, fishers and their families moved with the seasons and developed a unique culture and way of life deeply rooted in the vast land. Our nation's strong presence in the Arctic today is due in large part to the contributions of Inuit, who continue to inhabit the North.
>
> The lands just south of the Arctic Circle have been occupied for thousands of years by the ancestors of today's Aboriginal peoples including the Dene, Gwich'in, Cree and Métis. Today, these Aboriginal peoples live in communities across the Yukon, southern Northwest Territories and northern border regions of mainland provinces. Over the past two hundred years, non-Aboriginal residents from southern Canada and other parts of the world have also chosen to make the North their home.

Summary of the findings

Several index or track indicators have been developed by scientific institutions or NGOs to provide objective evaluations of the level of recognition of minorities, ethnic groups and indigenous peoples rights in every concerned country in the world. The "Ethnic Power Relations" (EPR) Dataset identifies all politically relevant ethnic groups and their access to state power in every country of the world; the "State of the World's Minorities and Indigenous Peoples" provides an annual assessment of the situations of ethnic, cultural and linguistic minorities in countries around the world; or the State of the World's Human Rights

addressing pluralism drivers in contexts where they relate to human rights concerns, especially with respect to political and legal rights, to mention some of the most important ones. Regarding the nature of our work-programme, the Multiculturalist Policy (MCP) index project[164] developed by the Queen's University, and more specifically, the MCP Index for Indigenous Peoples including nine forms of public policy intended to recognize or accommodate the distinctive status of indigenous peoples, appears to be the most appropriate index for evaluating the level of recognition of IP's rights in each concerned countries. The MCP index for Indigenous Peoples is based on the adoption of the following nine policies:

1. recognition of land rights/title**,**
2. recognition of self-government rights**,**
3. upholding historic treaties and/or signing new treaties**,**
4. recognition of cultural rights (language; hunting/fishing)
5. recognition of customary law
6. guarantees of representation/consultation in the central government
7. constitutional or legislative affirmation of the distinct status of indigenous peoples
8. support/ratification for international instruments on indigenous rights,
9. affirmative action

1. Recognition of land rights/title

In the north, the Inuit are beneficiaries of modern-day treaties and land claims through the James Bay and Northern Quebec Agreement, the Inuvialiut Final Agreement (The Western Arctic Claim Settlement), the Labrador Inuit Land Claims Agreement-In-Principle, and the Nunavut Land Claims Agreement Act.

2. Recognition of self-government rights

The Government of Canada recognizes the inherent right of self-government as an existing Aboriginal right under section 35 of the Constitution Act, 1982. The inherent right to self-government is a matter of policy and has not been codified in law, nor has it been recognized by the Supreme Court of Canada. Several bands and Aboriginal communities and regions have negotiated self-government agreements with the federal government (Sechelt Indian Band Self-Government Act; Westbank First Nation Self-Government Agreement; James Bay and Northern Quebec Agreement).

In 1993 the Nunavut Land Claims Agreement (NLCA) was signed by the Government of Canada, the Government of Nunavut, and Tungavik Federation of Nunavut (TFN), the legal Inuit representative. Nunavut is a public territorial government, but because 85% of its population is Inuit, Nunavut can be considered an example of Aboriginal self-government in Canada

3. Upholding historic treaties and/or signing new treaties

The first of the modern-day treaties was the James Bay and Northern Quebec Agreement, signed in 1975. To date, the federal government has settled 24 self-government and comprehensive land claim areas (two are stand-alone self-government) with Aboriginal people in Canada (INAC 2010b).

4. Recognition of cultural rights (language, hunting/fishing, religion)

The Supreme Court of Canada ruled in R. v. Sparrow (1990) that Aboriginal rights recognized and affirmed by section 35 (1) of the Constitution Act, 1982 include those practices that form an "integral part" of an Aboriginal community's "distinctive culture."

5. Recognition of customary laws

Canadian courts have recognized the existence of Aboriginal customary law in a number of circumstances (customary mariage, customary adoption…)

6. Guarantees of representation/consultation in the central government

Section 35.1 of Canada's Constitution Act, 1982 obliges the government of Canada to invite representatives of the aboriginal peoples to participate in discussions relating to proposed amendments to Aboriginal rights and freedom, as well as amendments to section 91.24 of the Constitution Act, 1867 that confers legislative responsibility for "Indians, and Lands reserved for Indians."

All federal departments and agencies are required to comply with the legal duty to consult and possibly accommodate Aboriginal interests. Currently, the Government of Canada has developed an interim guideline entitled Aboriginal Consultation and Accommodation: Interim Guidelines for Federal Officials to Fulfill the Legal Duty to Consult. Neither the federal government nor any of the provincial governments ensures that Aboriginal peoples are represented in Parliament or in the legislatures. However, government studies and commissions have addressed the issue of guaranteed representation in Parliament or provincial/territorial legislatures.

7. Constitutional or legislative affirmation of the distinct status of indigenous peoples

Section 35 of the Constitution Act, 1982, recognizes Aboriginal people and their rights. Aboriginal people are described as including "Indians, Inuit and Metis." Moreover, section 35 "recognized and affirmed" that the rights of Aboriginal people pre-exist the constitution and are not created by the constitution.

8. Support/ratification for international instruments on indigenous rights

Canada has ratified or acceded to many of the major international human rights treaties. These treaties importantly include the ICCPR and its first optional protocol, the ICESCD and the ICERD. Although none of these treaties include a textual expression regarding the right of indigenous peoples, the interpretations of the supervisory bodies of these treaties create a minimum obligation to consult with Aboriginal peoples in good faith.

Within Canadian domestic legal jurisprudence, the participation rights of Aboriginal Canadians do not appear to flow from international human rights obligations. Canada has not ratified ILO Convention 169. Canada was among the four countries that voted against the UNDRIP. In November 2010, Canada reversed its position and endorsed the UNDRIP. This declaration is non-binding and does not impose duties or obligations on the Canadian government or Crown.

9. Affirmative action

Aboriginal people were identified as one of four groups designated as beneficiaries for employment equity as a result of the 1984 Abella Commission on Equality in Employment. Through the federal Department of Human Resources and Skills Development Canada, the Government of Canada has developed the Aboriginal Skills and Employment Partnership as well as the Aboriginal Skills and Employment Training Strategy. These initiatives are designed to provide funding for employment programs and services that help Aboriginal people and private sector employers prepare for, obtain and maintain employment for Aboriginal people.

As a general conclusion of his report on the situation of indigenous peoples of Canada[165] (2014), the Special Rapporteur James Anaya stated that:

> Canada was one of the first countries in the modern era to extend constitutional protection to indigenous peoples' rights. This constitutional protection has provided a strong foundation for advancing indigenous peoples' rights over the last 30 years, especially through the courts.
>
> Federal and provincial governments have made notable efforts to address treaty and aboriginal claims, and to improve the social and economic well-being of indigenous peoples. Canada has also addressed some of the concerns that were raised by the Special Rapporteur's predecessor following his visit in 2003. Moreover, Canada has adopted the goal of reconciliation to repair the legacy of past injustices and has taken steps towards that goal.
>
> But despite positive steps, daunting challenges remain. Canada faces a continuing crisis when it comes to the situation of indigenous peoples of the country. The well-being gap between aboriginal and non-aboriginal people in Canada has not narrowed over the last several years, treaty and aboriginal claims remain persistently unresolved, indigenous women and girls remain vulnerable to abuse, and overall there appear to be high levels of distrust among indigenous peoples towards government at both the federal and provincial levels.

4.3.2 Relationship between Danish authority and the Indigenous Peoples

Historical bakground

Time immemorial

More than 4,000 years ago – the first peoples arrive. Some of these peoples were the ancestors of the Inuit. Through history Greenland has been inhabited by different Inuit peoples and cultures. Greenland's Inuit people are descended from the people who came to Greenland at the beginning of the first millennium AD.

The Norse first came to Greenland just before the dawn of the first millennium AD, and promptly disappeared again after approximately 500 years. The Norse could thus be said to be the first European colonizers.

Modern colonization

1721 – Modern colonization begins with the Norwegian-Danish missionary Hans Egede, who

went to re-Christianize the Norse in Greenland, but found only the Inuit whom he Christianized. Hans Egede travelled on behalf of the Danish Crown. Greenland thus effectively becomes a Danish colony.

Until the middle of the 19th century Greenland is administered by the Danish Government without the inclusion of local Greenlandic councils.

Mid-19th century: establishement of local councils

By the middle of the 19th century the first local councils are being established in various districts across the country. These councils consisted of Danish civil servants (colonial managers, priests, doctors, etc) and some of the debt-free skilled hunters. These councils had very limited competences and dealt mostly with social assistance and the maintenance of law and order.

In 1911 these councils were replaced by municipal councils (focussing on social assistance, basic education help for the sick, and law and order) and two provincial councils. The members of the municipal councils were elected by the population – including Danish civil servants who had served in Greenland for at least two years. The provincial council debated common matters and questions. The members of the provincial council were chosen from among the members of the municipal councils.

From 1945 to 1954 Greenland was on the UN-list of non-self-governing territories in accordance with the stipulation of UN-Charter chapter XI.

By 1953–54, Greenland is no longer officially a colony becoming instead an integral part of Denmark through the new Danish Constitution of 1953. Greenland also gets representation in the Danish Parliament – the *Folketing* – with two seats.

In 1972–73 Greenland becomes a member of the EEC together with the rest of Denmark, even though the vast majority of people in Greenland vote against this in the 1972 referendum. By the beginning of the 1980s a new referendum is arranged in Greenland and a "no" vote is returned. In 1985 Greenland finally leaves the EEC and attains the status of an Overseas Countries and Territories (OCT) to the EEC, now EU.

The beginning of the 1970s saw the creation, in Greenland, of an internal Greenlandic Home Rule (HR) committee that both the Danish and Greenlandic side agreed upon. Greenland had to clearly formulate its wishes before starting work in a joint Greenlandic-Danish Home Rule Commission. In 1975 the Committee makes its recommendations on what Home Rule should contain and these subsequently serve as the basis for further negotiations between Greenland and Denmark.

1979: the Home Rule Act

In 1975, the joint Danish-Greenlandic HR Commission is established. It completes its work in 1978. The result is the Home Rule Act and system, which the *Folketing* accepted and the Greenlandic people subsequently endorsed through a referendum, in 1979.

Home Rule was based on the Home Rule Act and with this Act the first Greenlandic Parliament and the first Greenlandic Government were established. These bodies assumed legislative and the executive power in the fields of responsibility/areas of competence which they gradually took over. In the beginning these areas were few in number, but by the late 1990s almost all 17 major areas listed in the appendix to the HRA had been taken over. Among others these included: education, the health system, social affairs, housing, infrastructure, the economy, taxation, fisheries, hunting and agriculture, the labour market, commerce and industry, the environment, the municipalities, culture, the church, etc.

The authorities in Greenland did not initially attain competence in respect of the exploitation of potential mineral resources through the recommendations of the HR Commission of 1975–78 though they did subsequently gain an increasing role in this area also. The Home Rule system was essentially a process where Greenland, initially at least, attained limited competences and authority over its own affairs. Over time, up to 2009, this system was however to evolve into a much more comprehensive package of responsibilities and competences.

From 1999 to 2002 Greenland had its own internal Greenland Self-Government (GSG) Commission established by the Home Rule Government. The Commission members were Greenlandic parliamentarians, civil servants, academic scholars, etc. The GSG Commission issued its report in 2003 containing recommendations for the path of Greenland's future societal development. Since Greenland was, and still is, part of the Kingdom of Denmark these changes needed to be negotiated with Denmark with both Danish constitutional law and also international law in mind.

The GSG Commission was of the opinion that the Greenlandic people are "a people" according to international law with a right to self-determination. The GSG Commission further recommended that the relationship between Greenland and Denmark should evolve into something more like a partnership, and that the Home Rule Act of 1978 should be replaced with a more modern piece of legislation.

On June 21, 2004 Greenland's Premier Hans Enoksen and the Danish Prime Minister Anders Fogh Rasmussen signed the mandate and framework of the Greenland-Danish Self-Government Commission. It was also stated here that the members of the GDSG Commission would be parliamentarians from both Denmark and Greenland (8 members from each country) representing all the parties in the two parliaments.

The mandate specified the scope of the GDSG Commission's mandate and outlined the framework of the Commisson's work – focusing in particular on highlighting the areas in which recommendations were required. The Greenland-Danish Self-Government Commission began its work in September 2004.

On April 17th, 2008 The Greenland-Danish Self-Government Commission held its final meeting and in May 2008, in Nuuk, the chairmanship of the GDSG Commission officially

handed over the Report on Greenland Self-Government to the Greenland Premier and the Danish Prime Minister. In June, also in Nuuk, the members of the GDSG Commission publicly presented the Report

After the summer 2008 a period of open and public debate began where further presentations on the possible Self-Government system were made. On the 25th of November 2008 a popular referendum took place on whether or not the Draft Act on Greenland Self-Government should replace the Home Rule Act. The result was 75.54% in favour of the introduction of Self-Government, and 23.57% against.

As a consequence of the referendum result on the 28th of November 2008 the Greenland Parliament asked the Greenland Government to contact the Danish Government and ask them to present the Bill on Greenland Self-Government for the Danish Parliament – the *Folketing*. The Bill on Greenland Self-Government is now an act of the Danish *Folketing* – the Act on Greenland Self-Government of 2009.

The Act on Greenland Self-Government of 2009

The Act contains 29 sections, excluding the Preamble. The Act has two lists including in total 33 fields of responsibility (jurisdiction/competences) that can be taken over by Greenland from the Danish state one by one. When taken over, the legislative and executive power, the financing and the administration over the field in question will become Greenland's responsibility. In comparison to this under the Home Rule system, the taking over of new fields of responsibility normally meant an increase in the Danish block grant in order for Greenland to be able to finance the new areas of competence.

The preamble is an integral part of the Act. It states that:

> Recognising that the people of Greenland is a people pursuant to international law with the right of self-determination, the Act is based on a wish to foster equality and mutual respect in the partnership between Denmark and Greenland. Accordingly, the Act is based on an agreement between Naalakkersuisut Greenland Government and the Danish Government as equal partners.

The preamble serves as the fundamental guiding principles for the interpretation of this document. There are two main elements in the preamble:

1. Recognition of Greenlanders as a people according to international law with the right of self-determination

2. The Act is based on a wish to foster equality in an agreement based on mutual respect between the Greenland Government and the Danish Government as equal partners.

As underlined by Mininnguaq Kleist, answering the question "Who constitutes the people of Greenland?" on cultural and ethnic basis is not easy but one can ever address the question in a legal sense: who has the right to vote and to run for public office? Those rights can be used in

order to indicate who is part of the Greenlandic people, because "rights can be used as an indicative factor in telling who is de facto part of this group of people"[166]. For example, it is stated in the Act that it is for the Greenlandic people to decide whether or not Greenland becomes independent. This will happen among other things through a referendum. And the individuals who are allowed to vote are legally part of the "people of Greenland".

From this legal perspective, the individuals who constitue the Greenlandic people are for example, the residents of Greenland who are 18 years of age and above, they have the right to partake in elections, to vote or run for office in Greenland. To be able to vote, one has to be a Danish citizen and to have lived in Greenland for at least 6 months prior to the democratic election or referendum. Greenlanders are thus Danish citizens and have Danish passports even after Self-Government has been introduced. It is of importance to note that the right to vote in Greenland is not attached to ethnicity. Thus, ethnic Danes and Faroese who have lived, and still live, in Greenland for more than 6 months will also be part of "the Greenlandic people", in a legal sense. A French person, or a person of any other nationality, will not be part of the Greenlandic people, even though he or she might have lived in Greenland for years, until she/he opts for Danish citizenship first and obtains it. So Danish citizenship is also for the time being at least a prerequisite for being part of the Greenlandic people in a legal sense.

The rights to vote and run for public office in Greenland may change if the *Inatsisartut,* the Parliament of Greenland, should so decide. And if this happens, who constitutes the people of Greenland will also change in a legal sense. The *Inatsisartut* can change the legislation on who has the right to vote in Greenland, because that piece of legislation is an internal Greenlandic matter and not part of the Self-Government Act. If a change in the right to vote should occur it would probably not be based on ethnicity, but rather on how long you have had your permanent residence in Greenland, before you obtain the right to vote in Greenland.

The recognition of the Greenlandic people does not only extend to the indigenous people of Greenland, but also to people of other ethnic origin, primarily Danes living in Greenland. This is very much in line with the Government of Greenland being a public government, and not a purely indigenous government. But as the vast majority of the population of Greenland is part of the indigenous group (approximately 88%) this is reflected in the makeup of the governing cabinet.

Under the HRA the Greenlanders were, in the Danish wording, called "*et særligt folkesamfund*" which roughly translates as "a unique people's society". This Danish predicate has no clear definition and is not used under international law and thus has no direct rights attached to it according to international law. The term "people" is linked to the right to self-determination. Greenland's right to internal self-determination is limited by the fields of responsibilities which Greenlanders have not yet assumed. Denmark retains formal powers over those fields. But Denmark will not rule or change anything major within those areas without reference to the Greenlandic authorities first. Greenland will gradually strengthen its own right to internal self-determination. Greenland will also strengthen its external self-determination when it takes over a field of jurisdiction.

The equality-aspect of the relationship between the Greenland Government and the Danish Government is explicitly mentioned in the preamble to the Act. It is further underlined with reference to the specific use of the constructs "mutual respect" and "partnership" in the document. One of the main reasons to underline this was the desire to show that both the Self-Government system and The Act on Greenland Self-Government are products of the cooperation between the two countries agreed upon after fruitful and constructive negotiation. Fundamentally it means, that even though Denmark is the stronger of the two partners, it is not allowed to unilaterally repeal the Act on Greenland Self-Government without Greenland's acquiescence.

Summary of the findings

We summarize the findings by following again the Multiculturalist Policy Index (MPI)[167] relating to IPs:

1. Recognition of land rights/title

Prior to the 2009 self-government legislation, the Greenland Home Rule Act (1978) stated that, "The resident population of Greenland has fundamental rights to the natural resources of Greenland" (section 8.1). Despite the ambiguity of this provision, many legal opinions generally recognized that Greenland could claim full ownership of all surface and subsurface resources. Under the Act on Mineral Resources in Greenland, the exploitation of subsurface resources is administered jointly between Danish and Greenland authorities. The act affords Greenland a veto on all matters relating to prospecting and exploitation of subsurface resources, including hydro-electricity. Since 1998, the administration of all mineral resource activities has been in the hands of Home Rule authorities.

2. Recognition of self-government rights

In 2009, the Danish Parliament passed, assented and ratified the Act on Greenland Self-Government. Chapter 1, section 1 of the act reads: "The Greenland Self-Government authorities shall exercise legislative and executive power in the fields of responsibility taken over. Courts of law that are established by the Self-Government authorities shall exercise judicial powers in Greenland in all fields of responsibility. Accordingly, the legislative power shall lie with the Greenland Parliament, the executive power with the Greenland Government, and the judicial power with the courts of law."

Under the authority of the Greenland Home Rule Act (1978), Greenland has assumed powers of self-government over several areas of domestic affairs, such as education, the economy (including fishing and trade), taxation, health, and infrastructure. However, the Home Rule authorities rely on the Danish government (in the form of block grants and other transfers) for about 50 percent of public expenditures. Through the Act on Greenland Self-Government (2009), the Self-Government authorities of Greenland may take over all fields of responsibility that have not already been assumed by the Home Rule Government, with the exemption of the following: the constitution, foreign affairs, defence and security policy, the Supreme Court, nationality, and exchange rates and monetary policy.

3. Upholding historic treaties and/or signing new treaties

None

4. Recognition of cultural rights (language; hunting/fishing)

Under Home Rule, Greenland has assumed authority over cultural affairs. Under the Ministry of Culture, Education, Research and the Church, the Government of Greenland has responsibility for these broad matters, but also language policy, media, leisure activities, and cultural matters. Section 9 of the Home Rule Act stipulated that Greenlandic is the principal language in Greenland, that Danish must be thoroughly taught, and that either language may be used for official purposes. In schools, the primary language of instruction is Greenlandic. However a great deal of public administration is conducted predominantly in Danish.

With the passage of the Act on Greenland Self-Government (2009), Greenlandic has been declared the official language in Greenland. In accord with the Home Rule Act, the Self-Government Commission has noted that the existing legislation on public administration, which established that both Greenlandic and Danish languages can be used with respect to public matters, should continue as a matter of principle.

Fishing and hunting is an area of jurisdiction conferred to the Greenland government. A separate government department, the Ministry of Fisheries, Hunting and Agriculture is responsible for legislation on national and international fisheries and hunting. Administration of legislation relating to fishing, hunting and agriculture is the responsibility of the Fisheries, Hunting and Agriculture Agency.

5. Recognition of customary law

Greenlandic customary law forms part of a "hybrid" system of law unified in Danish statutes. The justice and law reforms of the 1950s did away with the distinction between Greenlandic and Danish law. However features of Greenlandic customary law are enshrined in legislation and legal practices. The Greenland Administration of Justice Act (1951) and the Greenland Criminal Code (1954) still form the basis for the modern justice system in Greenland today. These acts allow for the more traditional and customary practices to enter Greenland's legal environment by preserving the lay judge institution.

6. Guarantees of representation/consultation in the central government

Greenland's public administration bodies are represented in the Danish central state by the Rigsombudsmand (the High Commissioner) in Greenland. The High Commissioner is the chief of the Danish administration in Greenland. The position's functions include control over legislation and matters concerning family law, reporting to the Danish Prime Minister's Office, and planning and organizing meetings between home rule and Danish authorities, amongst others.

The Danish state is obliged under section 13 of the Home Rule Act to consult with the Greenland home rule government before concluding international treaties that specifically affect Greenland's interests. Under section 16 of the Home Rule Act, Greenlandic authorities may request representation on Danish diplomatic missions to attend to subject matters where

legislative and administrative powers have been entirely transferred to the authorities of Greenland.

7. Constitutional or legislative affirmation of the distinct status of indigenous peoples

The Greenland Home Rule Act of 1978 proclaims that "Greenland is a distinct community within the Kingdom of Denmark" (see Chapter 1, section 1 (1) of the act).

The preamble of the 2009 Act on Greenland Self-Government reads: "Recognizing that the people of Greenland is a people pursuant to international law with the right of self-determination, the Act is based on a wish to foster equality and mutual respect in the partnership between Denmark and Greenland."

Danish representatives to the United Nations have remarked in the past that "there was only one indigenous people in the Kingdom of Denmark: the Inuit of Greenland." (UN 2002).

8. Support/ratification for international instruments on indigenous rights

Denmark ratified ILO Convention 169 Indigenous and Tribal Peoples Convention, 1989, in February 1996. Denmark voted in favour of adopting the United Nations Declaration on the Rights of Indigenous Peoples.

9. Affirmative action

Affirmative action has not been introduced as a legal measure in Greenland.

4.3.3 Relationship between US federal government and Alaska Natives

Historical bakground

When the Europeans arrived in the 18th century to colonize Alaska, they considered Alaska Natives to be uncivilized savages who should either be civilized or conquered. The Russians, and later the Americans, often tried to relegate Alaska Natives to an inferior status with inferior roles. As an occupying power, the Americans imposed a legal system that dispossessed Native peoples of their traditional lands.

1874: the Mining Act

Economic development in Alaska was partially shaped by the Mining Act of 1874 which allowed only two groups of people to stake mining claims: citizens or immigrants of good standing which typically meant "white" immigrants. Alaska Natives were excluded. Some Alaska Natives, in trying to balance the power of the white miners and the U.S. military, allied with the missionaries. The Presbyterian missionaries in Southeast Alaska formed the Alaska Native Brotherhood (ANB) and Sisterhood (ANS) organizations to promote white American culture among the Natives. The by-laws of these organizations prohibited participation in potlatches, the speaking of Native languages or the practicing of Native religions. However, once these organizations were in place, the Native took advantage of this Western tool and shifted the agenda to promote their interests in ways not anticipated by the

missionary groups. The ANB and ANS, for example, were important organizations for Natives as they pursued the right to become citizens of the United States.

Alaska Natives, including Indians, Eskimos, and Aleuts, occupied Alaska for centuries before the Treaty of Cession from Russia of 1867 when the United States purchased Alaska. However, neither the Treaty of Cession (Treaty of March 30, 1867, 15 Stat. 539) nor any subsequent act (including the First Organic Act of 1884, in which the United States made Alaska a "district" and allowed for the creation of a local government and the enforcement of local laws, and the Alaska Statehood Act of 1958, in which the U.S. made Alaska the forty-ninth state) clarified the nature or extent of Alaska Native land rights. These rights were based on the Natives' historic or aboriginal use and occupancy of Alaska lands, not on treaties between Alaska Natives and the United States.

The Organic Act acknowledged the land rights of Alaska Natives in a provision that was to have long-lasting consequences. It said Natives: "*shall not be disturbed in the possession of any lands actually in their use or occupation or now claimed by them*" and that the terms under which they would get title to their lands would be decided in the future by Congress.

The Organic Act of 1884, passed by Congress, brought the first civil government to Alaska. The Organic Act "*provided specific protection to claims of miners and lands used by missionaries, but gave only promise of continued use and occupancy of lands to holders of aboriginal rights*"[168]

By the time the United States made Alaska a state in 1958, it had formally recognized the land rights of only a handful of the state's Native villages. For example, in 1891 Congress established the Annette Island Reserve for the Metlakalta Indian Community and after 1891 a number of presidential orders created other reservations. But many Native inhabitants continued to make claims for land that government officials did not formally recognize.

The Alaska Native Allotment Act of 1906

Following this development, the Dawes Act was effectively applied to Alaska through the 1906 adoption of the Alaska Native Allotment Act of 1906 (34 United States Statutes 197), which provided for individual allotment of land as privately held parcels, creating the possibility of loss of lands due to fractionalisation and sale similar to the devastating results of the Dawes Act for Indian peoples throughout the United States.

In addition, the 1926 Alaska Native Townsite Act (Public Law No. 69–280) was adopted, with a similar intent to provide lands on the basis of individual use. In response to a range of conditions, including the massive loss of Indian territory, the 1934 Indian Reorganization Act (IRA) was adopted and later amended (in 1936) to apply to Alaska Natives, providing recognition of the important collective nature of their land rights as well as traditional councils and tribal governments (Public Law No. 74–538).

Under the IRA, a number of Alaska Native communities organised themselves for the purposes of self-government, with many still in existence today. The vast majority of Alaska

Native traditional councils were maintained, however. Though a couple of Indigenous collectives were organised under "reservation" land systems this approach was not put in place for Inuit in Alaska. The subsequent 1946 Indian Claims Commission was hailed as a new policy to ensure redress of Indigenous rights and the Commission did in fact address issues brought by the Tlingit and Haida in Southeast Alaska. Section 4 of the Statehood Act of 1959 (Public Law 85–508) acknowledged outstanding rights and title of Alaska Native people to lands by stating:

> the right or title to which is held by the United States or is subject to disposition by the United States, and to any lands or other property, (including fishing rights), the right or title to which may be held by any Indians, Eskimos, or Aleuts (hereinafter called natives) or is held by the United States in trust for said natives; that all such lands or other property, belonging to the United States or which may belong to said natives, shall be and remain under the absolute jurisdiction and control of the United States until disposed of under its authority […].

Alaska Statehood Act of 1959

With the Statehood Act of 1959, the United States chose to disclaim all rights to any lands belonging to Alaska Natives and to ignore the fundamental rights and status of Alaska Native peoples. However, the Act also authorized Alaska to select more than 102.5 million acres from so-called "vacant, unappropriated, and unreserved" public lands within the state for its own use. Because Alaska Natives had asserted claims to most of the state's public lands, the State was unable, without protest and controversy, to select such lands under the Statehood Act. In 1969 the U.S. secretary of the interior imposed a moratorium on approval of the State's applications for public lands, pending settlement of Native land claims. Meanwhile, the discovery of vast oil reserves on the North Slope of Alaska, and the desire among non-Native commercial enterprises to make use of those reserves created additional pressures for settlement of the Native claims.

The Alaska Native Claims Settlement Act of 1971

The Alaska Native Claims Settlement Act of 1971 is the key piece of United States legislation impacting Alaska's Indigenous peoples. Congress designed the Alaska Native Claims Settlement Act (ANCSA) of 1971 (P.L. 92-203, 85 Stat. 688) to resolve the land claims of Alaska's Native inhabitants. The ANCSA gave Alaska Natives legal title to approximately 44 million acres of Alaskan land. The Act also established an Alaska Native Fund of $962.5 million to compensate the Natives for the lands and rights taken from them. The Act extinguished "*all aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy*." The Act revoked all reservations in the state, except the Annette Island Reserve.

In the Act, Congress stated its desire to settle the Native land claims "without creating a reservation system" like that found in the continental United States. The Act established a landholding system different in two fundamental respects from that in the lower forty-eight states. First, Alaska Native lands were owned not by tribes or by the United States as trustee for the tribes, but rather by newly established regional and village corporations. The Settlement Act authorized the creation of 12 regional corporations and over 200 smaller

village corporations to own and manage the forty-four million acres selected by the Natives and paid them the $962.5 million settlement. All Natives were eligible to be shareholders in one or more of these corporations, which were chartered under Alaska state law. Second, Native lands were owned by the regional and village corporations as "fee simple", which meant there were no restrictions on the ability of the corporations to use or sell the lands as they saw fit. In contrast, nearly all Native lands in the continental United States are owned by the federal government, held in trust for the tribes, and cannot be used or sold without the consent of the United States.

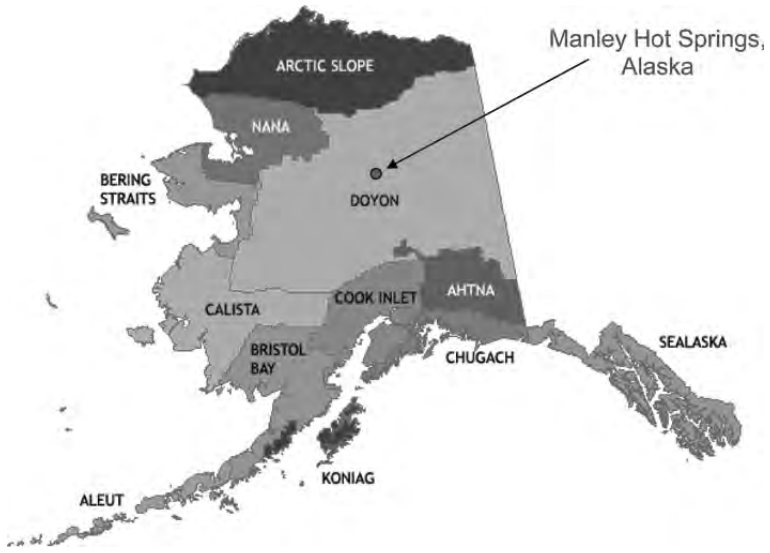

Figure 26: The Twelve ANCSA Regional Corporation boundaries, Alaska.

The corporate ownership of Native lands and the ability of Native corporations to freely sell their lands distinguish Alaska Native landholdings from most Indian landholdings in the continental United States. In view of these distinctions, the U.S. Supreme Court ruled in the case of *Alaska v. Native Village of Venetie* (1998) that Alaska Native lands (other than the Annette Island Reserve) do not qualify as "Indian country", a category of lands under United States law that includes Indian reservations, allotments made under the General Allotment Act, and other lands set apart and administered by the United States for Indians. Because Native lands are not Indian country, Alaska Natives cannot exercise full governmental powers over them. For example, Natives cannot regulate or tax the activities of nonmembers who live, work, travel, or conduct business on Native lands. These activities are governed instead by state and federal law. Native tribes, however, do have the power to regulate many activities occurring inside Native country.

As defined in section 3(b) of ANCSA, an Alaska Native is: 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 Metlakatla Indian Community), Eskimo, or Aleut blood, or combination thereof. The term includes any Native as so defined either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or

Native group of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any village or group, Any decision of the Secretary regarding eligibility for enrollment shall be final[169].

The ANCSA extinguished the aboriginal hunting and fishing rights of Alaska Natives. After the Act, Natives were required to comply with state laws when hunting and fishing anywhere in the state. Many of these state laws prevented Natives from engaging in their traditional subsistence ways of life. In 1980 Congress remedied this problem by enacting the Alaska National Interest Lands Conservation Act. This act allowed Alaska Natives and other rural residents to engage in subsistence hunting and fishing on public lands.

In a short period of time it became clear that ANCSA did not reflect and would never reflect the true aspirations of the Alaska Native peoples nor was the corporate structure an institutional structure freely chosen by them. Many of the village corporations are without resources to gen-erate profits. And, even if they do have such resources, to exploit them for profit is inconsistent with their values, customs, practices, and land and resource use.

The real problems of ANCSA lie in the fact that lands, territories and resources, self-determination, and subsistence were not initially made secure by the Act. The very instrument that was to secure the land and a future for Alaska Native peoples may be the one by which they lose the distinct characteristics and status as indigenous peoples.

The Report of the Alaska Native Review Commission of 1985

In response to this situation and the threats facing Alaska Native communities, the Inuit Circumpolar Conference (ICC) – which since 2006 has been called Council – established the Alaska Native Review Commission to gain an understanding of the impact of the Act on the lives of Alaska Native peoples. To conduct the review of the Act, the ICC appointed former British Columbia provincial court Justice Thomas R. Berger of Canada as Commissioner, a well-known advocate of Native rights. Berger's mandate was to conduct a comprehensive review of the social, economic, political and environ-mental impact of the ANCSA. Sixty-two village hearings were complimented by eight formal roundtable discussions where both indigenous and non-indigenous repre-sentatives from throughout the world participated. The findings of Commissioner Berger re-affirmed what Native people had been saying since the enactment of ANCSA. Berger's report[170], *Village Journey: The Report of the Alaska Native Review Commission* amplified the desires of Alaska Natives for continued ownership of their ancestral lands, self-government, and recognition of hunting and fishing rights. Following the release of *Village Journey*, from 1985 to 1988, village and tribal leaders from across the state lobbied Congress to amend ANCSA in a fashion consistent with Berger's recommendation and the views of the tribal leadership:

- to ensure that village lands held by corporations could be transferred to traditional governments;
- to ensure that nothing in the legislation would undermine the inherent rights of self-government and self-determination;
- to entrench traditional hunting and fishing rights in both state and federal law.

The tribal campaign to amend ANCSA was spearheaded by the Alaska Native Coalition (ANC), a state-wide organisation representing traditional indigenous governments and village corporations. The corporate-led effort to amend ANCSA solely within the framework of the corporate structure was spearheaded by the Alaska Federation of Natives (AFN). The lobbying effort was a fierce battle between the ANC and AFN, which divided the Alaska Native community along tribal/corporate lines.

Unfortunately, the ANC was not successful in gaining the amendments desired. The resulting law (Public Law 100–241) does not curb the major threats posed by ANCSA. The land can still be lost or sold and there are no provisions to ensure continued Native ownership and control of the corporations. The amendments actually allow corporations to sell new stock to non-Natives. More importantly, however, is the fact that the amendments did not provide for returning land to the traditional and tribal governments.

Furthermore, from 1971 until 1993 Alaska Native traditional and tribal governments enjoyed, at best, a rather vague political and legal status due to the fact that neither the United States' Congress nor the State of Alaska were willing to acknowledge the existence of tribal governments in Alaska or their inherent powers.

In 1993, Ada Deer, a Me-nominee Indian woman and former Assistant Secretary for Indian Affairs, published the list of federally-recognised tribes, including 226 Alaska Native tribes[171] and further drafted preambular language clarifying the powers, status, authority and the sovereign immunity of Alaska Native governments. This action caused a flurry of political activity prompted by the undercurrents in the stream of non-Native opponents to tribal sovereignty. For example, in the *Alaska v. Native Village of Venetie* case, the tribe was sued by the State of Alaska for imposing a tax on a contractor intend-ing to build a structure within the tribal community. The State asserted that the ANCSA purportedly "extinguished" any status of Alaska Native lands as "Indian Country".

Tribal leaders managed to infuse a government-to-government dialogue with the language of the then draft United Nations Declaration, which resulted in the adoption of Administrative Order No. 186 by former State of Alaska Governor Tony Knowles. This order acknowledged the existence of Tribes in Alaska and their distinct legal and political authority. The order was followed by the adoption of the *Millennium Agreement* in April 2001 by both Tribal governments and the State Executive branch. The final *Millennium Agreement* echoes some of the language of the original draft United Nations Declaration, albeit adapted for this specific context. Specifically, Part III entitled "Guiding Principles" states:

> The following guiding principles shall facilitate the development of government-to-government relationships between the Tribes and the State of Alaska:
>
> - The Tribes have the right to self-governance and self-determination. The Tribes have the right to determine their own political structures and to select their Tribal representatives in accordance with their respective Tribal constitutions, customs, traditions, and laws.
>
> - The government-to-government relationships between the State of Alaska and the Tribes shall be predicated on equal dignity, mutual respect, and free and informed consent.

- As a matter of courtesy between governments, the State of Alaska and the Tribes agree to inform one another, at the earliest opportunity, of matters or proposed actions that may significantly affect the other.

- The parties have the right to determine their own relationships in a spirit of peaceful co-existence, mutual respect, and understanding.

- In the exercise of their respective political authority, the parties will respect fundamental human rights and freedoms.

In 2013, The Bureau of Indian Affairs from the Department of Interior published the current list of 566 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes[172]. The list is updated from the notice published on October 1, 2010. "Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs". We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names: "Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs".

An analysis of ANCSA in the context of international human rights standards would immediately bring out the inconsistencies between domestic United States' policy and international norms. A significant omission in the Act was the fact that there was no single provision addressing the right of Alaska Native peoples to self-determination. A primary example is the purported "extinguishment" of the hunting and fishing rights of Alaska Native peoples. The fundamental rights of participation in decision-making, consent, inter-generational rights, development, and a wide range of other rights have been violated by the terms of ANCSA. The denial of the paramount right to self-determination and self-government has been the most problematic for the indigenous communities of Alaska. Therefore, the United Nations Declaration stands as an important document to Alaska Native peoples, including the Inuit. Through the Declaration, Alaskan Inuit can begin to right the wrongs of ANCSA and other destructive and unhelpful laws, regulations and policies.

Summary of the findings

1. Recognition of land rights/title

Until 1871, when the United States ceased entering into treaties with Indian tribes, almost 400 treaties had been signed. Most treaties concerned land title and usufructuary rights to land. Treaties were designed to exchange, ceding territory to the United States in return for a set of guarantees, which largely entailed rights to specific territories for the tribe. These reserves were to be protected from non-Indian encroachment.

However, under federal US law, not all Indian land rights are afforded "property rights" status. Property rights status is considered as recognized title and cannot be unilaterally

confiscated by Congress. Lands without this protection (i.e., unrecognized lands held by aboriginal title, by virtue of historical possession and use) can be taken without compensation. The Bureau of Indian Affairs is responsible for the administration and management of 55 million surface acres and 57 million acres of subsurface minerals estates held in trust by the United States for American Indians, Indian tribes, and Alaska Natives.

2. Recognition of self-government rights

The United States has recognized that its relationship with Indian tribes constitutes a government-to-government relationship. In 1975, the Indian Self-Determination and Education Assistance Act was passed to encourage tribal participation in, and management of, programs that had been administered on their behalf by various federal departments. Under the Tribal Self-Governance program, signed into law in 1994, greater responsibility for policy and program administration was transferred from the federal Bureau of Indian Affairs to tribal governments.

3. Upholding historic treaties and/or signing new treaties

There are nearly 400 treaties signed between the United States and Indian tribes: the first treaty dates back to 1778 between the United States and the Delawares. In 1871, the United States ceased entering into treaties with Indian tribes. In most cases, treaties were designed to take land away from a tribe. In exchange for land, the United States promised to respect a tribe's sovereignty, and to provide for the well being of tribal members. The United States Supreme Court ruled in 1903 in Lone Wolf v. Hitchcock that Congress maintains unrestricted power to unilaterally abrogate treaties. However, in United States v. Dion (1986), the court recognized that "Indian treaties are too fundamental to be easily cast aside.".

4. Recognition of cultural rights (language; hunting/fishing)

American Indians may hunt, fish and trap on forest lands in the public domain. In some instances, specific treaties, statutes or other federal laws and regulations, as well as intergovernmental agreements, provide Indians with hunting and fishing rights. The Native American Language Act of 1990 was passed by Congress in order to promote and protect traditional Native American languages. Section 102 (1) reads: "The Congress finds that the status of the cultures and languages of Native Americans is unique and the United States has the responsibility to act together with Native Americans to ensure the survival of these unique cultures and languages."

In a joint resolution by the Senate and House of Representatives in 1978, the US Congress expressed the general policy of the US government toward traditional Native American religions. The resolution reads: "henceforth it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites".

5. Recognition of customary law

In 1993, the US government passed the Indian Tribal Justice Act 1993. Section 2 (7) of the Indian Tribal Justice Act of 1993 reads: "traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this Act." This legislation affirms the principle that tribal courts are the appropriate venue for specific forms of justice unique to particular Indian tribes. In Williams v. Lee (1959), the court maintained that the States do not have jurisdiction over civil matters that occur on Indian reservations and brought by a non-Indian against an Indian. The matter would be dealt with through tribal courts and this authority could only be limited by Congress.

6. Guarantees of representation/consultation in the central government

The federal obligation to consult Indian tribes was enshrined by President Clinton under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments on 6 November 2000. The Tribal Law and Order Act, which was signed in July 2010, requires the Bureau of Indian Affairs and the Office of Justice Services to establish certain policies, procedures and guidelines for consultation with tribes.

7. Constitutional or legislative affirmation of the distinct status of indigenous peoples

Section 2 and section 8 of Article I of the Constitution of the United States explicitly mentions "Indians," and "Indian Tribes." Moreover, section 2 of the fourteenth amendment also refers to "Indians."

8. Support/ratification for international instruments on indigenous rights

The United States has not ratified ILO Convention C 169. The United States was one of four countries that voted against the UNDRIP. In April of 2010, the United States announced at the UNPFII that it has decided to review the US position on the Declaration.

9. Affirmative action

Affirmative action has been American policy since an executive order by President Kennedy in 1961. This executive order mandated that federally financed projects take affirmative action to ensure that human resources practices are free from racial discrimination. As per the operation of the Executive Order Program, "Each contracting agency in the Executive Branch of government must include the equal opportunity clause in each of its non-exempt government contracts. The equal opportunity clause requires that the contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. American Indian or Alaskan Native, Asian or Pacific Islander, Black, and Hispanic are considered minorities for purposes of the Executive Order. This clause makes equal employment opportunity and affirmative action integral elements of a contractor's agreement with the government".

As a general conclusion of his report on the the situation of indigenous peoples in the United States of America, the Special Rapporteur James Anaya stated that:

> Indigenous peoples in the United States – including American Indian, Alaska Native and Native Hawaiian peoples – constitute vibrant communities that have contributed greatly to the

> life of the country. Yet they face significant challenges that are related to widespread historical wrongs and misguided government policies that today manifest themselves in various indicators of disadvantage and impediments to the exercise of their individual and collective rights[173].

However, "the situations in Alaska and Hawaii are each unique and merit particular attention and action on the part of the United States to secure the rights of indigenous peoples there. The Special Rapporteur intends to address these situations further in future communications with the United States"[174].

4.3.4 Relationships between Fennoscandia States and the Sami

Historical background

The Sami are the indigenous people of northern Fennoscandia and the Kola Peninsula. The Sami are a pastoral nomadic people. Although their origin is uncertain, there is little dispute that the Sami were the occupants, since time immemorial, of the northernmost region of Fennoscandia when "neighbouring" countries colonized the area[175]. The practice of reindeer herding is central to the Sami way of life, often regarded as the defining feature of Sami culture. As "Western" views of territory have long been characterized by fixed, exclusive, geographically bounded space, these notions of territory were not suitable for a lifestyle based on reindeer husbandry, which requires collective herding, seasonal migration, and flexible and adaptive land uses. Contradictions between these two conceptions of territoriality have been a fundamental feature of state-Sami relations, notably with regard to the practice of reindeer herding. An analysis of the national policies towards the Sami shows that the inability of governments to conceive of broader notions of territory has had detrimental effects on herding and Sami culture as a whole[176]. These conceptual differences of territoriality had several consequences:

> 1- The Nordic states viewed the Sami as nomadic, and thus having no ownership of their land. This rationale was used to justify the extension of state sovereignty over the Sami and their homeland, irrespective of the notions of territory and nationhood held by the Sami themselves.
> 2- Reindeer herding was viewed as an illegitimate or backwards form of economic activity.
> 3- Where states did feel an impulse to "protect" the Sami way of life, they viewed nomadic pastoralism as economically unviable. This prompted systems of administration which increased state regulation of herding.

Three different periods of history can basically be distinguished: the processes by which medieval kingdom of Sweden, Russia and Norway-Denmark expanded their sovereignty over Sami territory and became modern territorial states. The next period is characterized by increasing state administration of the Sami, based on policies assimilation and paternalism which lasted from the mid-19th century until the 1960s. And lastly, as the states have become

more sensitive to Sami rights issues since the 1970s policies were undertaken to make herding a "modern industry".

Even before the Sami were brought under the full sovereignty of the nascent states of Denmark-Norway, Sweden, and Russia, they were victims of competition between the kingdoms, each trying to exert control over them. During this period of time, the primary mechanism of state control was taxation. One of the earliest examples of Sami taxation was a decree by the King of Sweden in 1277 granting traders to tax the Sami with whom they traded[177]. The long-standing denial of Sami rights to land has been based on the notion that Sweden and Denmark-Norway established sovereignty over "ownerless lands"[178]. The delineation of territory for specific groups of Sami served the interests of the nation-states by "nationalizing" the Sami and their land. This development of nationalization occurred simultaneously with the settlement of fixed national borders. The Treaty of Teusina in 1595 established the border between Russia and Sweden-Finland and with the Stromstad Treaty of 1751 the Norwegian-Swedish border was defined. An addendum to the Stromstad Treaty, the Lapp Codicil, happened to be one of the most significant document concerning Sami territorial rights. The Lapp Codicil's importance lies in the fact that it recognized, in a legal international treaty, the right of the Sami to freely cross the border as part of their seasonal migration of reindeer herding:

> The Sami need the land of both states. Therefore, they shall, in accordance with tradition, be permitted both in autumn and spring to move their reindeer herds across the border into the other state. And hereafter, as before, they shall, like the state's own subject's, be allowed to use land and share for themselves and their animals, except in the places stated below, and they shall be met with friendliness, protected and aided…[179]

The Lapp Codicil is remarkably respectful of Sami interests and is often referred to as the Sami Magna Carta[180].

During the nineteenth century, nomadic reindeer herding was viewed as an inferior level of economic development to agriculture and industry and as not viable economically[181]. Two administrative policy types were pursued by the three Scandinavian countries examined in this study. One of them was "assimilation" and the other was "paternalism". The former policy type seeks to encourage the transition of the Sami from pastoral nomadism to modern economic activities when the latter seeks to preserve Sami culture by bringing them under the protection of state administration. Broadly speaking, the Norwegian government followed the first policy type and Sweden the second, when Finland is a special case.

Norway is considered to have exercised the most assimilationist policy towards its Sami population. Whereas Sweden-Finland made a legal distinction between land uses based on herding and those of agriculture, Norway acknowledged no such difference.[29] Norway's attitude toward the Sami is evidenced in a 1902 law which granted land ownership only to Norwegian speakers.[30] The effects of Norwegian legislators' negative attitudes towards the Sami way of life are seen in the various statutes designed to regulate the practice. The Reindeer Herding Acts (RHA) of 1854 and 1933 were not designed to protect reindeer

herding and the Sami way of life, but to ensure that herding did not interfere in the development of other "culturally and economically superior" land uses such as farming and forestry[182].

Sweden adopted a narrow interpretation of Sami ethnicity mainly based on economic activity. Those who participated in a "traditional Sami" livelihood (primarily reindeer herding) were classified as Sami. Likewise, Sami that pursued agriculture were considered Swedes or Finns. Paternalism thus only applied to reindeer herders, while Sami who chose other activities were legally and culturally assimilated. The Reindeer Herding Act of 1886 embodied this philosophy as it granted hunting and fishing rights on designated lands only to herding Sami. These activities were considered as supplemental to the primary Sami activity of reindeer herding. Non-herders who previously had once enjoyed land use for subsistence purposes were now prevented from doing so. The 1886 and 1898 RHAs also specified that the Sami's right to the land was usufruct (right of use), not ownership. Worse was to come in the 1928 RHA which created a Lapp sheriff administration to regulate Sami reindeer herding.[35] This marked a new era in state-Sami relations in Sweden. The motivation for herding legislation in this period was not the protection of herding, but of the new agricultural settlements that were developing in the north. A policy of segregation was thought to be the best approach to minimize herder-settler conflicts.[36] Government defined herding districts known as "Lappbys", later "Samebys". The new organizations' purpose was to provide a legally responsible entity for paying compensation to farmers whose property was damaged by reindeer herds.[37]

Unlike Norway and Sweden, reindeer herding is not legally reserved as a Sami right in Finland. One of the first significant changes to reindeer herding in Finland was the introduction of government defined reindeer districts. This occurred under Russian rule in 1898.[38] To have grazing rights herders were required to be registered in one of these districts. This arrangement also gave the state the right to limit the number of reindeer in each district.[39] This system encouraged many non-Sami farmers to adopt reindeer herding either as a secondary or primary economic activity. With the 1948 Reindeer Husbandry Act every Finnish citizen was granted the right to breed reindeer in a reindeer district.[40] While reindeer herding in Finland is a healthy industry thanks to government support, the Sami are now a minority among herders, and must seek legal means to exercise their claim to their land.

Summary of the findings

1. Recognition of land rights/title

Finland

Finland has regularly denied that they have ever acknowledged that the Sami people had ownership rights to their traditional territories. The Nordic countries, including Finland, maintain to this day that it is beyond doubt that the Saami people's nomadic land use has not given rise to legal rights to land and that the Saami traditional lands, water, and natural resources belong to the Finnish state.

Section 4 of the Constitution of Finland states that "The territory of Finland is indivisible. The national borders can not be altered without the consent of the Parliament." According to the Finnish government, "Finland has, for a long time, tried to settle the rights of the Sami people to the lands traditionally used by them in a manner acceptable to all parties, but without success".

Sweden

The Swedish Reindeer Grazing Act of 1886 abolished any previously recognized Sami land rights and declared the Sami people's traditional land the property of the Swedish Crown. To this day, the Swedish government maintains that it alone owns all the lands of Sweden.

In the Taxed Mountains case, the court ruled that the Sami could conceivably acquire title to land by using it for traditional Sami economic activities. However, in this case, the Sami party did not have a proper evidential basis for their claim to ownership (UN 1997).

Despite the Skattefjall ruling, no substantive or formal rights to land have been afforded to the Sami by the Swedish government. The United Nations Association of Sweden reports that the Sami right to land is ignored and systematically violated in Sweden

In 1998, the Government of Sweden issued a formal apology to the Sami for the discrimination and injustice that they were met with by the Swedish state, including forced dislocation from their traditional lands.

Norway

The Finnmark Act of 2005 provides that the Sami people, through prolonged use of land and water, have acquired rights to land in Finnmark (sec. 5). However, the Finnmark Act is ethnically neutral in the sense that individual legal status is not dependent on whether one is a Sami, Norwegian or Kven or belongs to another population group.

There is no clearly defined Sami homeland, as in Finland, but the Finnmark Act transferred approximately 95 percent of the land in Finnmark county under state ownership to the Finnmark Estate. The act does not involve changes in the rights of use and ownership to the land in Finnmark county. The act established the Finnmark Commission that will study the right of ownership and right to land in Finnmark county.

2. Recognition of self-government rights

Finland

The Sami of Finland have an elected representative body, the Sami Parliament, which elects 20 representatives every four years. The substantive power of the Sami Parliament is to look after the Sami language and culture, as well as to take care of matters relating to their status as an indigenous people. The Parliament represents the Sami in national and international contexts and attends to matters related to the language and culture of the Sami and their position as an indigenous people. The Parliament may submit initiatives and proposals and prepare statements for authorities. The legislation does not afford the Sami Parliament a

power of veto over the national Finnish Parliament. Given the inadequate authority for executive governance, the Sami Parliament is more an advisory body to the Finnish government than a body for the administration of Sami affairs.

Sweden

The Sami Parliament of Sweden was established in 1993 under the Sami Parliament Act of 1992. The act states that the Sami Parliament's primary purpose is "to monitor issues that relate to Sami culture in Sweden." Although the Sami Parliament is an elected body, by the Sami, it is regarded under Swedish law as a government agency to the central government. As a state agency, the Sami Parliament must carry out the policies and decisions made by the Swedish Parliament. The Government of Sweden maintains the right to stipulate directives for the operations of Sami governance. As a state authority, the Sami Parliament must follow the guidelines in the official appropriations documents that the Government of Sweden adopts each year. Since 2007, the Sami Parliament has assumed responsibility for the reindeer industry from the Government of Sweden.

Norway

The Sami Parliament, established in 1987, is an indigenous electoral body elected among and for the Sami people in Norway. The Sami Parliament represents the Sami people in all matters concerning the Sami. The Sami Parliament has its separate electoral system with elections every fourth year. The Sami Parliament is only an advisory body to the Norwegian legislature and does not constitute an order of government with jurisdiction over Sami traditional territories. The Norwegian government has the overall responsibility for Sami policy.

3. Upholding historic treaties and/or signing new treaties

Finland

There is no evidence that Finland has ever signed a treaty with the Sami people. The Lapp Kodicill, an annex to a 1751 border agreement between Norway and Sweden, details rights and duties of the Sami people. The Sami have maintained that the Lapp Kodicill has status as a binding treaty under international law, and as such confirms the signatories' duty to respect the Sami nation.

Sweden

There is no evidence that Sweden has ever signed a treaty with the Sami people.

Norway

There is no evidence that Norway has ever signed a treaty with the Sami people.

In 2001, the governments of Norway, Finland and Sweden, and the Sami Parliament in the three countries, appointed an Expert Group to draft a Nordic Sami Convention. In November 2005, the Expert Group presented the draft text to the three governments and the three Sami Parliaments. Negotiations have since stalled the process. If ever signed, the Sami Convention

would be a legally binding treaty between Finland, Norway and Sweden on the rights of the Sami people, and could thus be viewed as a renewal of the Lapp Kodicill.

4. Recognition of cultural rights (language; hunting/fishing)

Finland

The Sami have a constitutionally protected right "to maintain and develop their own language and culture" as per section 17 of the Constitution Act of Finland. Despite the lack of formal rights to land, in 1995 the Finnish Parliament granted the Sami the right to cultural autonomy within the demarcated areas of the Sami Homeland. This right to cultural autonomy was afforded constitutional protection by an amendment in 1995.

As stated by the Finnish constitution, provisions on the right of the Sami to use the Sami language before the authorities are laid down by an act. Indeed, the Sami Language Act (2003) contains provisions on the right of the Sami to use their own language before the courts and other public authorities, as well as on the duty of the authorities to enforce and promote the linguistic rights of the Sami.

The Sami in Finland have no special rights to land or water use in the pursuit of traditional hunting and fishing activities. Under the 1990 Finnish Reindeer Herding Act, the right to reindeer husbandry in Finland requires mere residence in the Sami Homeland area, and thus non-Sami can pursue reindeer herding in this area as well. Reindeer-herding, fishing and hunting constitute the right of any citizen of not only Finland, but any member state of the European Union, having his or her permanent residence in the reindeer-herding area of northern Finland.

The Fishing Act of 1982 excludes mention of the northern region of Finland, the Sami Homeland area. The law regulating fishing in Sami Homeland is the 1902 legislation that denies Sami rights to land and water use.

Sweden

The Sami Parliament Act of 1992 invests the responsibility in the Sami Parliament over the direction of Sami linguistic work and preservation efforts. The Sami language received formal status as an official minority language in Sweden with the enactment of the 1999 legislation, Act Concerning the Right to Use the Sami Language in Dealings with Public Authorities and Courts. This law stipulated the right to use Sami, both spoken and written, in proceedings with administrative authorities and courts. This law limited Sami language rights to the northernmost municipalities in Sweden. The 1999 language legislation was replaced in 2009 with the Act on National Minorities and National Minority Languages. This new law protects the Sami language and expands the geographical areas where the right to use Sami in proceedings with authorities is accommodated.

In the same year, however, Swedish was proclaimed in a separate statute, the Language Act of 2009, to be the main language in Sweden, putting an emphasis on the minority status of Sami.

The Reindeer Husbandry Law, enacted in 1971 and last revised in 1993, regulates the rights of Sami in reindeer breeding. Only those Sami who are permitted to carry out reindeer herding enjoy special land and water rights. The land and water rights of Sami fishermen or other Sami have never been covered by the present legislation.

In 1992 the Swedish Parliament adopted legislative measures affecting traditional Sami hunting and fishing rights. The Swedish Parliament decided that all traditional Sami hunting grounds shall be accessible and open for all Swedish citizens.

Norway

In 1992, Norway passed the Sami Language Act, making Sami and Norwegian both official languages in certain parts of Norway that have large Sami populations. Under this legislation, the Sami people have the right to use their mother tongue in communication with local and regional authorities.

The Sami Act of 1987, most recently amended in 2003, states in section 1.5 that "Sami and Norwegian are languages of equal worth." Pursuant to section 3.12 of the same act, a Sami Language Council has been established.
According to the 1999 Education Act, all students in primary and lower secondary schools in areas defined in the act as Sami districts are entitled to study and be taught in the Sami language. Outside Sami districts, any group of ten or more students who so demand, have the right to study and be taught in the Sami language.

The purpose of the 2005 Finnmark Act is to facilitate the management of land and natural resources in the country of Finnmark for the benefit of the residents of the county and particularly as a basis for Sami culture, reindeer husbandry and social life (section 1).

The act confers the rights to all residents, including the Sami, of Finnmark county to fish, fell certain trees, remove timber for home crafts, hunt and trap big and small game, pick cloudberries, and to reindeer husbandry. The act, however, does not contain provisions on sea fishing.

As already noted, the act is ethnically neutral and the rights are not special to the Sami. As well, all individuals must be issued a permit for such activities.

5. Recognition of customary law

Finland

Finland revoked the recognition of Sami customary law in the 19th century. While there has been some minor acknowledgement of customary law by the courts, customary law is not widely recognized.

Sweden

With the abolition of the Taxed Lapp Land system in the late 19th century through the enactment of the 1886 Reindeer Grazing Act, the Swedish government revoked Sami legal traditions and customary law.

Norway
Under the assimilation policies of the 19th century, Norway revoked the recognition of Sami customary law. During the debate over Sami rights, the government of Norway largely ignored Sami customary conceptions of land and water rights.

6. Guarantees of representation/consultation in the central government

Finland
There are no specific provisions for the representation of Sami, or other persons belonging to ethnic, national or linguistic minorities, in the Finnish Parliament or the Municipal Councils, which are bodies nominated by general elections and regulated by the Elections Act.

The Finnish Rules of Procedure of the Parliament (article 37) stipulate that the Sami can be heard in Parliament in the context of the preparation of a matter by a committee to influence the subject matter of a proposal.

In accordance with the Sami Parliament Act, the Finnish Department of Culture, Sports and Youth Policy within the Ministry of Education aims to negotiate with the Sami Parliament in the preparation of strategies, policy programs, and legislation that may affect the Sami people as an indigenous people.

Sweden
The Sami Parliament is a consultative mechanism, and serves largely an advisory function. Unlike Finland and Norway, there is no legislated obligation on the part of the Swedish state to consult with the Sami Parliament. No mandatory action follows the hearing of the Sami Parliament in Sweden. According to Sapmi, the Sami Parliament website, “the Sami have no representation in the Swedish Parliament”. No Sami has ever been elected to the Swedish Parliament.

Norway
The Norwegian Government and the Sami Parliament have signed an agreement specifying how consultations are to take place. Consultation procedures apply to all types of issues, such as legislative or administrative measures that may directly affect Sami interests. Consultations are not to be concluded until the Sami Parliament and the Norwegian State agree that it will be possible to reach agreement.

The Finnmark Act of 2005 requires the consultation of the Sami in the management of land and natural resources in the area of the Finnmark Estate.

7. Constitutional or legislative affirmation of the distinct status of indigenous peoples

Finland
Section 17 of the Constitution Act of Finland (2000) explicitly states that the Sami are an indigenous people as does numerous sections of the Sami Parliament Act.

Sweden
The Government of Sweden states that the Sami are recognized as an indigenous people and constitute a recognized minority in Sweden. Currently, the Sami are recognized as one of five national minorities under the National Minorities in Sweden Government Act of 1998. A new Swedish Constitution was drafted in 2010. The draft recognizes the Sami as a full-fledged people and not a minority. In a previous draft of the new constitution, the Sami were called an "ethnic minority." This description drew strong reaction from the Sami community, prompting the change by a parliamentary committee in favour of the term "people". The draft Nordic Sami Convention will recognize the status of the Sami people as the only indigenous people of Sweden, as well as Norway and Finland.

Norway
The Sami received constitutional recognition on 21 April 1988 when the National Parliament of Norway amended the Norwegian Constitution through the adoption of Article 110 (a). Article 110 (a) of the Constitution of the Kingdom of Norway recognizes the Sami, stating that: "It is the responsibility of the authorities of the State to create conditions enabling the Sami to preserve and develop its language, culture and way of life." Speaking after the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UN DRIP), Johan L. Lovald, the Norwegian representative stated that "Norway would work with the Sami people, recognized as indigenous by the Government [of Norway]".

8. Support/ratification for international instruments on indigenous rights

Finland
Finland voted in favour of adopting the United Nations Declaration on the Rights of Indigenous Peoples. This declaration is non-binding and does not impose duties or obligations on the Finnish state. Finland has not ratified ILO Convention 169.

Sweden
Sweden voted in favour of adopting the United Nations Declaration on the Rights of Indigenous Peoples. Sweden has not ratified ILO Convention C169. Although the Swedish government has made attempts to ratify this convention, progress has slowed in recent years. It is the view of the Government of Sweden that indigenous peoples have the right to self-determination insofar as they constitute peoples within the meaning of common Article 1 of the 1966 ICCPR and 1966 ICESCR. Sweden has clarified for the UN that the right to self-determination shall not be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of Sweden.

Norway
On 19 June 1990, Norway was the first country to ratify ILO Convention 169 Indigenous and Tribal Peoples Convention, 1989. Norway voted in favour of adopting the UNDRIP.

9. Affirmative action

Finland
There is no evidence that affirmative action for the Sami people exists in either law or policy.

Sweden
There is no evidence that affirmative action for the Sami people exists in either law or policy. In 2009, the new Discrimination Act was enacted, replacing several previous statutes, combining features of each into one comprehensive anti-discrimination law. The legislation entails provisions on "active measures" in working life in the areas of equal pay.

Norway
There are no affirmative action programmes to overcome discrimination in employment against Samis. Employment equity falls under several statutes. Most pertinent for the Sami people is The Anti-Discrimination Act (2006). The purpose of the act is to promote equality, ensure equal opportunities and rights and prevent discrimination based on ethnicity, national origin, descent, skin colour, language, religion or belief.

In his report on the situation of Sami peoples in the Sapmi region of Norway, Finland and Sweden (2011), the Special Rapporteur on the rights of indigenous peoples, James Anaya, "commends the Sami people and the Governments of Norway, Sweden and Finland for the significant work achieved to date to develop this important instrument", the draft text for the "Nordic Sami convention"[183].

As a general conclusion of his report, the Special Rapporteur James Anaya stated that:

> Overall, Norway, Sweden and Finland each pay a relatively high level of attention to indigenous issues, in comparison to other countries. In many respects, the plans and programmes related to the Sami people in the Nordic countries set important examples for securing the rights of indigenous peoples. However, more remains to be done to ensure that the Sami people can pursue their self-determination and develop their common goals as a people living across more than one State, as well as enjoy within each of the States in which they live the full range of rights that are guaranteed for indigenous peoples in contemporary international instruments[184].

4.3.4 Relationship between Russian authorities and the indigenous peoples

Historical background

From a historical perspective, the relationship between the Russian authorities and the "indigenous peoples" can be schematically divided into three different periods: the "non-intervention" politics of the Russian Empire, the paternalistic policy of the Soviet Union and the implementation of indigenous rights in contemporary Russia[185].

As pointed out by Anna Varfolomeeva, in Russia, the concept of « indigenous people » is closely connected with the process of expansion and land claim. At the early stages of Siberian expansion, the term "*tuzemtsy*" (aborigines, literally "those lands' people") was widely used[186]. This concept implies that although the lands where natives reside are different, they belong to the State.

In 1822, the Statute of the Russian Empire "*On the Governing of Outlanders*" was published. It was the first legal act to define the status of indigenous people[187]. The statute divided all the Siberian indigenous peoples into three categories: settled, nomadic (changing places of living in accordance with seasons) and vagrant (changing places of living depending on hunting or fishing possibilities). Each of these categories received special rights[188].

On the whole and up to the beginning of the Soviet period, the authorities of the Russian Empire were motivated by non-intervention principle. Although they tried to organize the indigenous communities, native populations were never forced to change their traditional lifestyle, to move to another territory or to learn Russian. It is clear from the 1822 statute that Russian authorities tried to take into account the peculiarities of indigenous lifestyle[189] and made the attempt to accommodate administrative bodies to the needs of native population instead of accommodating indigenous peoples to the majority.

During the first years of Soviet period, the term "*korennoy narod*" ("indigenous people", literally "rooted people") which emphasizes the deep connection of the people with its territory, and recognizes them as distinct ethnic community ("narod" means "people"), appeared in legal documents.

From 1924 to 1932 more than fifty normative acts on the issues concerning indigenous peoples were published[190]. In 1924, the Committee on Assistance to the Peoples of Remote Northern Peripheries was created. This Committee aimed at dealing specifically with the problems of indigenous communities[191].

In 1926 a large-scale polar census was conducted among the indigenous peoples of the North. The census was at the same time an expedition aimed at recording the peculiarities of indigenous lifestyle, the places and periods of nomadism, traditional occupations, healthcare and religious practices[192].

In the special decree on October 25th 1926 "*On establishment of the temporary provisions on the management of native peoples and tribes of the northern outskirts of the Russian Soviet Federative Socialist Republic*", several important aspects of the "korennoy narod" concept were outlined: small number, unique traditional lifestyle, low level of socio-economic development[193]. The decree of 1926 contained the list of twenty six indigenous peoples of Russian Soviet Federative Socialistic Republic (RSFSR): Sami, Nenets, Khanty, Mansi, Enets, Dolgan, Nganasans, Selkup, Ket, Evenki, Yukagirs, Evens, Chukchi, Koryak, Eskimo, Aleut, Itelmen Tofalars, Ulchi, Nanai, Nivkhs, Udege, Negidals, Orok, Orochi, Chuvans.

Some peoples which possessed similar characteristics were for some reasons excluded from the decree and thus were not named "native". Regarding Vepses, Karelians and Komi people, although they resided in northern territories, were small-numbered and led traditional lifestyle, their exclusion from the decree of 1926 was motivated by the reason expressed in the opening paragraph of the decree itself: « *The aboriginal administrative bodies are organized for the peoples residing at the northern territories of RSFSR... given that these peoples are not separated into special republics and regions*»[194].

The attitude of Soviet authorities towards indigenous peoples fits into the general framework of the country's national politics. During the first years after the 1917 Revolution, the Soviet policies towards many ethnic groups of the country were directed by the views of Lenin according to whom all the nations were equal. In 1914 Lenin published the essay "Nations' Right to Self-Determination" where he outlined that Russian proletariat should recognize the equality of all the nations and their right to self-determination (up to secession)[195]. This equal development of nationalities was seen by Lenin as a necessary prerequisite for his main goal: the unification of peoples under the Communist state[196].

The idea of all the Soviet nations' equality resulted in granting territorial autonomy to many national subjects of the Soviet Union in 1920-1921 and later in 1924. The course of 1920s was entitled "*Nativisation Campaign*" (korenizatsija) which implied encouragement of territorial identity, recruitment of ethnic minorities to administrative posts, and promotion of primary and secondary education in minority languages.

The Republic of Karelia was granted autonomy in 1920 and the reason for gaining territorial autonomy was that it was home to several Finno-Ugrian peoples: Karelians, Vepses and Finns[197]. In 1925, Komi-Permyak autonomous Region was created, also with the goal to encourage the development of Komi people[198]. Among other autonomous republics created in the 1920s, there are Yakut Soviet Socialist Republic (1922) and Mari Autonomous Region (1920)[199]. None of these northern peoples were therefore included in the list of aboriginal northern populations of 1926.

According to the constitution of RSFSR adopted in 1918, « *The soviets of those regions which differentiate themselves by a special form of existence and national character may unite in autonomous regional unions, ruled by the local congress of the soviets and their executive organs* »[200]. In Article 22 of the Constitution it is stated that "*The Russian Socialist Federated Soviet Republic, recognizing the equal rights of all citizens, irrespective of their racial or national connections, proclaims all privileges on this ground, as well as oppression of national minorities, to be contrary to the fundamental laws of the Republic*"[201].

Although the principle of territorial autonomies is still outlined later in the USSR Constitution of 1936[202]and RSFSR Constitution of 1937[203], the notion on non-discrimination of national minorities disappears. Such a change goes alongside with Stalin's conception of strengthening the nation through territorial autonomy, so in the USSR Constitution of 1936 most of the rights (excluding the right for education in native language) are guaranteed to national minorities through their autonomy.

During the 1930s, the national politics of the Soviet Union changed radically. In 1934 Stalin officially declared the end of "nativisation campaign"[204]. The idea of "world revolution" became no longer valid, and Stalin was developing the project of "building socialism in a single country"[205]. The primary goal of the USSR was rapid industrialization involving exploitation of natural resources, building of plants and factories, development of science and education. Indigenous communities which in many cases resided at territories rich with natural resources were viewed in the context of industrialization as the object of economic changes.

Between 1937 and 1957 no legislative acts aimed at the small- numbered peoples of the North were published. Indigenous peoples were probably viewed by Soviet authorities in the similar way as the one reflected in ILO Convention 107, meaning as temporarily backward communities which will and should inevitably assimilate to the majority.

For indigenous peoples of the North the beginning of the 1930s was marked with the creation of several national Regions in Siberia and Far East. This process can be seen as the last attempt of Soviet authorities to balance the preservation of small-numbered peoples and the increasing commercial exploitation of the North. Preservation of indigenous peoples was hard to full fill, as many Russian peoples following the natural resources exploitation at the North, resettled to the territories which were traditionally inhabited by indigenous communities.

The 1930s were marked with the beginning of forced collectivization which began in 1929. The aim of the process was the creation of co-operative farming (kolkhoz) through abolition of individual peasantry. As other Soviet peasants, northern populations were forced to join the collective farming enterprises; during this process the traditional lifestyle of indigenous peoples was not taken into account.

After the war, starting from late 1940s, state interventions to the life of indigenous communities were strengthened. The process called politika poselkovanija (the politics of settlement) aimed at the change for small-numbered peoples from nomadic to settled lifestyle started. The process included building of larger housing complexes designed for indigenous communities and then ensuring their resettlement from smaller villages.

By 1950s more than 50% of the northern residents consisted of recent migrants; by that time most of the population could speak Russian well. Russian inevitably influenced the smaller languages of the North; in many cases it was the language of education (at least secondary one) and the lingua franca for communication with migrants from other regions.[122] The new course was based on the idea of the Soviet patriotism through all the small peoples merging with the Russian people and forming "a single brotherly family"[206]

In 1957, the state again turned attention to its northern communities with the decree on the economic and cultural development of indigenous peoples. It opened a whole epoch of similar decrees devoted to different aspects of indigenous life which were adopted in 1960, 1967, 1973, 1980, 1987, 1989 and 1991. Up to mid-eighties the term "small peoples of the North"

remained being used in documents and legal acts. In the period of late 1980s and early 1990s it becomes slightly modified: "small-numbered peoples".

In late 1980s, the general politics of glasnost led to several national uprisings in different parts of the country. Many national groups felt that they got the chance to influence the authorities. The wave started with the December 1986 actions of protest in Kazakhstan: protesters demanded the Soviet authorities to change the national politics in the republic, to ensure more rights to its Kazakh population and to assist in the development of Kazakh language. The revolt became the precedent which soon motivated the elites of other Soviet nations to stand up defending their rights. In the end of 1987, mass protests of Armenians in Nagorno-Karabakh started. In 1988 and 1989 the so-called "Singing revolution" took place in the Baltic countries.

Following the Kazakh protest, in January 1987 the General Secretary of the Communist Party Mikhail Gorbachev delivered a program speech where he declared that authorities should pay more attention to all the nations which are represented in the USSR and make sure that the interests of every nation are taken into account[207]. The speech had a large influence on local authorities in autonomous Regions: in many regions, including the Republic of Karelia, the programs of revitalization of minority languages and cultures were initiated.

After the break-up of the USSR, the Russian Federation declared itself the main successor of the Soviet Union. The new state, as the Soviet Union, was highly ethnically diverse. The 2002 census recognized 198 ethnic groups in the Russian Federation[208].

In the first Constitution of the Russian Federation adopted in 1993 the term « korennoy narod » (indigenous people) appeared again. Article 69 of the Constitution states: "*The Russian Federation guarantees the rights of small indigenous peoples in accordance with the generally accepted principles and standards of international law and international treaties of the Russian Federation*"[209].

In the beginning of 1990s the representatives of Russian minorities not included in the list of indigenous peoples adopted in 1926 started lobbying in order to be added to the list. In 1991, four peoples were added to the list: Teleuts, Kumandins, Shorians and Todzhins. In 2000, the list of indigenous peoples was enlarged almost twice consisting now of 45 peoples[210]. A special list defining the indigenous peoples of North, Siberia and Far East was adopted in 2006 including 40 peoples[211].

In the Federal law "On the Guarantees of the Rights of Small-Numbered Indigenous Peoples of the Russian Federation" adopted in 1999, the numerical ceiling in 50 thousand people is set up for indigenous peoples. The official definition which is outlined in every legislative act related to indigenous communities is: "*indigenous peoples are peoples residing at the territories of traditional settlement of their ancestors, preserving traditional lifestyle and occupations, consisting of less than 50 thousand people in the Russian Federation and perceiving themselves as self-sustaining ethnic communities*"[212].

The numerical requirement is quite unique: the international documents dealing with indigenous people mostly concentrate on their self- perception as well as the existence at a certain territory prior to the invasion. As an example, in the legislative system of Canada the ties to a certain territory and the existence of special practices are considered important when defining indigenous peoples. Australian legislation to a large extent focuses on self-identification of Aboriginal communities. It is not hard to draw the line between the native American's existence at the territory and its later colonization, as well as the indigenous population of Latin America and Spanish conquistadors, but it is impossible to create a common model for Russia taking into account that indigenous peoples take more than a half of the country's territory which was acquired at different stages of history.

The obvious consequence of the numerical requirement is that it inevitably excludes the peoples who possess similar characteristics as the ones included into the "indigenous" list but their number exceeds 50,000. In the case of the Republic of Karelia where Vepses and Karelians traditionally reside, both of them existed at the territory long before Russians acquired it, both have traditional lifestyle and similar occupations. Nevertheless, the number of Karelians according to the 2010 census is 65,000 people; the number, thus, is the only reason for them to be denied indigenous peoples status.

Although the list is presented as "The unified list of small-numbered indigenous peoples of the Russian Federation", it mostly includes the peoples residing in the North, Siberia and Far East of the country. As a matter of fact, the current Russian legislation on Indigenous Peoples mostly concentrates on the northern territories. The various ethnic minorities of Dagestan, the number of which does not exceed the threshold of 50,000 representatives, are not included to the list. The problem is that the thirteen peoples recognized as small-numbered by the Republic of Dagestan are not accepted as separate ethnic groups at the federal level. In the census of 2010 they are listed as sub-groups of the Avar people[213]. In the long term, if the Caucasian nationalities were added to the list, it will be quite extensive, because along with the titular nations, there are over 100 ethnic groups and nationalities living in the territory of the Russian Federation.

Over the years since the break-up of the Soviet Union the Russian state has developed several legal provisions aimed specifically at indigenous peoples. The article 69 of the Constitution marks the return to the concept of "indigenous people" and states the obligation of Russia to ensure indigenous rights in accordance with international documents. The Russian Federation has not yet ratified the two international instruments specifically devoted to the protection of indigenous peoples, the ILO Convention 169 and the UN Declaration on the Rights of Indigenous Peoples. Apart from the article 69 of the Constitution, three major legal documents are of particular importance:

- In 1999, the Federal law "On Guarantees of Rights of Small-numbered Indigenous peoples of the Russian Federation" was adopted.
- In 2001, Russian Duma adopted the law on the legal base of « traditional natural resource use », aimed specifically at the indigenous small-numbered peoples of the North, Siberia and Far East.

- In 2009 the Concept of Sustainable Development of Indigenous Small-Numbered Peoples of North, Siberia and Far East for 2009-2025 was adopted.

According to the Federal law "On Guarantees of Rights of Small-numbered Indigenous peoples of the Russian Federation", small-numbered people have the right to use the land necessary for their traditional occupations freely, to control these lands' use, and to get reparations in case their habitat was damaged. They also got the right to protect and develop their national cultures, languages and religions[214]. Regarding the Law dealing with « traditionnal natural resource use », the term was added to the Russian legal system in order to protect the lands of indigenous peoples in 1992, but only in 2001 the Federal law was finally formed. According to this law, specific areas where indigenous people reside could be recognized as traditional natural resource use lands of local, regional and federal level.

The Concept of Sustainable Development of Indigenous Small-Numbered Peoples of North, Siberia and Far East for 2009-2025 (in three stages: 2009-2011, 2012-2015, 2016- 2025) is a set of principles and priorities for the ensured sustainable development of Russian small-numbered peoples[215]. The aim of the Concept is to raise economic and social potential of indigenous peoples while preserving their traditional habitat, lifestyle and cultural values. The Concept mostly concentrates on land rights of indigenous peoples. It is stated that the importance of land and natural resources for indigenous communities' sustainability should be recognized. Indigenous peoples should receive priority right to have access to fishery and hunting places. The first stage of the Concept ended in 2011 and the results turned out to be far behind the expected one.

Summary of the findings

As emphasized by expert Indra Øverland: "On paper, the Russian Federation provides relatively good protection for its small northern indigenous peoples[…]. As in many fields of governance in Russia, the problem is not theory or principles but practice and implementation"[216]. In order to evaluate the degree of recognition and protection afforded to the indigenous peoples of the Russian Arctic, it is not enough to analyze the existing legal acts guaranteeing indigenous peoples' rights; it is also necessary to track how these legal provisions were implemented in practice.

1. Recognition of land rights/title

Land rights are a key element in the Russian legal documents dealing with indigenous peoples and a key element which distinguishes indigenous peoples from ethnic minorities in general. Indigenous communities have the right to use their traditional territories which should be protected by the state; at the same time, they cannot own this land. The issue of land and natural resources ownership is one the key reasons for the non-ratification of Convention 169 by the Russian Federation. Most probably such a position of Russian state is caused by the fact that the majority of indigenous peoples reside in the territories rich with oil and gas, and the authorities of many Russian regions, as well as the State, do not want to lose the control over natural resources.

The drawback of the Federal law on traditional territories is that it is not specified in the law which areas in the state can be recognized as traditional natural resource use lands. This problem is left to regional and local governments to decide on. The similar territories may be in one case recognized as traditional lands, in other case not, depending on the regional authorities. Today most of Russian indigenous peoples still cannot enjoy the right to control their traditional territories, as no lands were assigned to them by regional governments.

On the whole, the current land legislation for indigenous peoples has three considerable disadvantages. First, in many cases its vague formulations (such as the non-defined traditional natural resource use territory) do not facilitate the implementation of the law. Second, the peculiarities of indigenous lifestyle are not fully reflected in federal legal documents: for example, there are no federal laws "On reindeer breeding in the North"; whereas many indigenous communities directly depend on this occupation, its provisions vary from region to region. The nomadic lifestyle of some indigenous peoples is also not taken into account in land legislation.

Moreover, there is no coherence between law implementation in different subjects of the Russian Federation. According to the current Federal laws, each subject defines concrete provisions on indigenous land use. However, such a situation leads to unequal treatment of indigenous communities residing in the same state. Besides, as Russian regions can adopt their own legislation and taking into account the vagueness of definitions in federal legislation, there is a high risk that regional legal acts on indigenous peoples' rights may contradict federal ones.

Indigenous peoples live on lands rich in natural resources, such as oil and gas, water resources, minerals and coal. Instead of providing development for the indigenous population, the increased interest in natural resources on the part of the Russian state, as well as both Russian and foreign companies, puts increasing pressure on the indigenous peoples and their traditional livelihoods.

2. Recognition of self-government rights

Article 11 of the Federal Law "On guarantees of the rights of indigenous peoples of the Russian Federation" entitles indigenous peoples to establish territorial public self-government, while the annulled Article 13 of this Law prescribed for representation of indigenous peoples in legislative bodies of the subjects of the Russian Federation and local self-government institutions. In addition, the federal law "On general principles of organization of the communities of the indigenous peoples of the North, Siberia and Far East of the Russian Federation" provides a possibility for awarding the communities, unions (associations) of indigenous peoples with special powers of local self-government. But the Russia-wide process of reforming the administrative system and division of powers going on since 2004 has revoked many articles and changes and amendments, in particular, those concerned with the rights of indigenous peoples and setting up their communities.

Since the adoption of the Federal Law "On Territories of Traditional Nature Use of indigenous peoples of the North, Siberia and the Far East of the Russian Federation" in 2001,

which is the only federal act establishing a mechanism to demarcate territories customarily inhabited and/or used by indigenous peoples, the Federal Government has not established a single Territory of Traditional Nature Use (TTNU) of federal status. In most cases, TTNUs would need to be established with federal status rather than regional or local because much, if not most, of the land used by indigenous peoples is vested in the Federal Administration, including all land assigned to the "forest fund".

About 600 TTNU have been established by regional administrations and local bodies of self-government in the Northern regions, most of them in Khanty-Mansi Autonomous Okrug. They are, however, considered illegitimate by the Federal Government because, in accordance with the Land Code, the boundaries and management plans of said territories must be approved by the Federal Government, which it has not done.

On 18 June 2014, the State Duma adopted the final version of draft Federal law "On amendments to the Land Codex of the Russian Federation and various legislative acts of the Russian Federation". This draft bill voids Article 31 of the Land Code, which sets out the right of indigenous peoples to participate in decision-making on the allocation of land plots for construction in places of their traditional residence and economic activity. This right is partially reinstated in a newly-introduced Article 39.14 but, here, it applies only in cases where land is allocated for construction without a tender. In other words, indigenous peoples' right to participate in decisionmaking regarding their ancestral land and their traditional way of life is significantly restricted without any compelling reason.

The revision of the federal act "On Non-Profit Organisations" requires NGOs engaged in political activities and accepting foreign fundings to register as organisations acting as foreign agents. Indigenous peoples' organisations are vulnerable to being denounced and stigmatized as foreign agents[217].

3. Upholding historic treaties and/or signing new treaties

There is no evidence that Russian authorities have ever signed a treaty with the Indigenous peoples.

4. Recognition of cultural rights (language; hunting/fishing)

In comparison to land rights, cultural rights legislation of Russia in many cases reflects the provisions of ILO Convention 169. Article 68 of the Constitution guarantees all peoples of Russia the right for preservation of their languages and creation of the conditions favorable for their study and development[218]. The Concept of State National Policy adopted in 1996 sets the development of languages and cultures of the Russian Federation's peoples as one if state's main goals[219]. The Federal Law on Education (1992) guarantees the right of every citizen to have secondary education (up to high school) in native language[220]. Cultural rights are also in focus of the Concept of Sustainable Development of indigenous peoples 2009-2025.

In 1996 the Federal Law on National-Cultural Autonomy, was adopted. The law defines national-cultural autonomy as a public association of the citizens of the Russian Federation

belonging to certain ethnic groups based on their voluntary self-organization with the purpose of independent dealing with the questions of saving national distinctiveness, development of language, education, and national culture[221]. In 2003 the law was implemented with several amendments: according to them, national-cultural autonomy is a non-governmental organization. According to the law, national-cultural autonomies can receive necessary support for saving national distinctiveness, create mass-media on national language, follow national traditions, revive national crafts, create educational and cultural institutions, and participate in the activities of international NGOs.

Cultural rights of indigenous peoples are outlined in many legal documents of the Russian Federation. Still, in many cases the problem of vague formulations (such as "national-cultural autonomy") remains in this field as well as in the area of land rights. Perhaps there is a need in a Federal law devoted specifically to linguistic and educational rights of indigenous peoples in order to create a unified base of indigenous cultural rights protection which does not depend on the will of regional administration.

According to Article 30 of the Constitution adopted in December, 12th, 1993, everyone shall have the right to association, including the right to create trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed. The right to promote one's culture and language is also a constitutional right; in this case, the real use of the Federal law seems unclear. Nevertheless, its positive consequence is that the law motivated ethnic groups of the Russian Federation to unite into associations and NGOs promoting the rights of national minorities

Federal laws concerning cultural rights are prepared and implemented without consultation with indigenous communities. The enforcement of indigenous cultural rights is negatively influenced with the lack of funding from federal and regional budgets.

5. Recognition of customary law

In imperial Russia, customary law aws an integral part of the administration of Siberia. Moscow imposed a system of indirect rule whereby internal affairs would be administered by the indigenous communities themselves, with minimal interference from the authorities. The Soviet Union retained some aspects of consideration for customary law in judicial norms. The three framework laws on IPs (The federal law "On guarantees of the rights of indigenous small-numbered peoples" adopted on 30 April 1999; the federal law "On territories of traditional Nature Use of Indigenous small-numbered peoples of the North, Siberia and the Far East" adopted on 7 May 2001; and the law "On the general principles of the organisation of obshchinas of the North passed on 20 June 2000) allow for the possibility of considering elements of indigenous peoples' customary law before the courts. However, since obshchinas rarely function as bodies of local self-governement, the latter provision is largely theoretical[222].

6. Guarantees of representation/consultation in the central government

RAIPON participates in discussing federal draft laws relating to the indigenous peoples of the North. The quotas for representatives are established for indigenous peoples to take part in

regional politics in Russian: in election committees (Yamalo-Nenetskiy Autonomous Okrug), in legislative institutions (Republic of Buryatia , Nenetskiy, Khanty-Mansiyskiy and Yamalo-Nenetskiy autonomous okrugs). There are special bodies at the regional parliaments (*Duma*): Assembly of representatives of northern indigenous peoples (Khanty-Mansiyskiy Autonomous Okrug), Standing Commission on affairs of Nenets and other northern indigenous peoples (Nenetskiy Autonomous Okrug), Representative of the indigenous peoples of the North (Sakhalinskaya Oblast). Indigenous peoples' organisations of Sakhalinskaya and Kemerovskaya oblasts, as well as Chukotskiy, Koryakskiy, Nenetskiy and Evenkiyskiy autonomous okrugs, have the right to forward legislative initiatives. In the Chukotskiy Autonomous Okrug, councils of indigenous peoples' representatives were established at the okrug government, regional and municipal executive bodies to consolidate cooperation between the indigenous peoples and the government.

Despite RAIPON's participation in the political sphere both in Russia and abroad, the indigenous peoples' contribution to solving many vitally important questions is still very small both at the regional and local levels. This results from the lack of mechanisms to involve indigenous peoples in controlling of the observance of laws relating to themselves, as well as the lack of juridical knowledge among the indigenous peoples. The latter was proven by several research works, for example, those conducted in the Chukotskiy Autonomous Okrug in 2002. Therefore it is necessary to hold various seminars and workshops devoted to enable indigenous peoples to solve their problems together with the authorities[223].

In 2012, the UNPFII raised serious concerns about the lack of political participation in Russia[224]. The Special Rapporteur has criticized the lack of meaningful participation in decision making and the absence of free prior and informed consent in respect of large scale infrastructure and mining projects[225].

7. Constitutional or legislative affirmation of the distinct status of indigenous peoples

The Russian Federation has adopted the internationally recognized concept of « Indigenous » while still adhering to the soviet term « Small-numbered Peoples ». The small-numbered indigenous peoples are protected by Article 69 of the Russian Constitution and three federal framework laws: 1) On the guarantees of the rights of the indigenous small-numbered peoples of the Russian Federation (1999); 2) On general principles of the organization of communities [obshinas] of the indigenous small-numbered peoples of the North, Siberia and the Far East of Russian Federation; and 3) On Territories of Traditional Nature Use of the indigenous small-numbered peoples of the North, Siberia and the Far East of the Russian Federation (2001). These three framework laws establish the cultural, territorial and political rights of indigenous peoples and their communities. Implementation of the aims and regulations contained in these laws has, however, been complicated by growing political pressure and several subsequent changes to natural resource legislation and government decisions on natural resource use in the North.

8. support/ratification for international instruments on indigenous rights

The Russian federation has abstained from adopting the UNDRIP along with ten other countries. The Russian Federation has not ratified ILO Convention No 169.

9. affirmative action

The Concept Paper on the Sustainable Development of Indigenous Peoples of the North, Siberia and the Far East of the Russian Federation, which the Federal Government provides an important impetus for advancing the rights of indigenous peoples and for overcoming their disadvantage in social and economic spheres.

As a general comment of his report on the situation of indigenous peoples in the Russian Federation (2010), the Special rapporteur James Anaya noted that:

> The Russian Federation has taken important steps towards ensuring the realization of the human rights of the country's "small-numbered indigenous peoples". However, continuous and focused attention is necessary in order to accelerate positive developments, to ensure better implementation of existing legal guarantees, and to ensure that the Russian Federation's commitment to human rights principles and to specific policy benchmarks are realized for all indigenous peoples throughout Russia.
>
> Moreover, the federal and regional Governments should work together to establish optimal and harmonious legislation and policy on indigenous issues, allowing sufficient flexibility for regional authority without compromising federal priorities and guidance. Special attention should be paid to ensuring the successful implementation of legal guarantees at the local level for all indigenous communities, such as by establishing reliable ways to monitor implementation and to remedy breaches of the guarantees.
>
> The rights of ethnically distinct indigenous groups that do not meet the legislative criteria for designation as "small-numbered indigenous peoples", but that nonetheless have characteristics similar to those within this category, should be protected. Consideration should be given to adapting this category, or to otherwise extending special protections for the benefit of such groups, in accordance with relevant international standards.

4.4 ARCTIC INDIGENOUS PEOPLES' ORGANIZATIONS

Six Indigenous Peoples' organizations currently represent the rights and interests of Arctic Indigenous Peoples:

Arctic Athabaskan Council (ATC).

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.

Aleut International Association (AIA)

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. Accredition Special 2005[226] consultative status with ECOSOC

Gwich'in Council International (GCI)
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'in and currently addresses priorities that relate to the environment, youth, culture and tradition, social and economic development and education.

Figure 27: Arctic Indigenous peoples' communities represented by PPs at the Arctic Council
Source: UNEP

Inuit Circumpolar Council (ICC)
ICC 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 internationally. 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: 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.
Since 1983 Special 2005 consultative status with ECOSOC

Russian Association of Indigenous Peoples of the North, Siberia and Far East (RAIPON)
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, organized in 35 regional and ethnic organizations. Their home represents around 60% of total Russian territory, from the Murmansk region to Kamchatka.

Saami Council

The 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).

4.4 COOPERATION WITH INDIGENOUS PEOPLES IN REGIONAL ORGANIZATIONS

4.4.1 The Arctic Council

The Arctic Council (AC) has evolved in 1996 from the Arctic Environmental Protection Strategy (AEPS), which emerged as a follow-up to the initiatives proposed by Michael Gorbachev in Murmansk in late 1987 and was one of the first cooperative programs of the post-Cold War period in the circumpolar area. In the international arena, the AC has recently been recognized as a unique forum of partnership between governments, indigenous peoples' organizations and international non-governmental organizations (NGOs) for promoting environmental cooperation and sustainable development.

As mentioned earlier, AC has designated the States which shall be referred to as "Arctic States" by virtue of their status of members of the Arctic Council: Canada, Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the United States of America. AC has therefore representatives from Canada, Denmark, Iceland, Finland, Norway, Russia, Sweden and the USA.

A number of regional bodies, e.g. the Nordic Council of Ministers, the Barents Euro-Arctic Council and the Council of the Baltic Sea States, and influential international organizations, e.g., the Conference of the Parliamentarians of the Arctic Region and United Nations Economic Commission for Europe (UN-ECE), have acquired the status of Observer in the AC. Seven member states of the European Union are connected to the work of the AC as either members or observers. This confirms the Council's image as an able and consistent political actor in the international arena.

The structure of the Arctic Council is also distinctive as compared to that of other intergovernmental organizations: instead of being made up of committees or commissions, it

comprises thematic working groups and projects. Six working groups have permanent though very small secretariats, resources of their own and manage on-going projects that are submitted for approval at the Senior Arctic Officials meetings by AC participants. Member states allocate resources for these projects on a voluntary basis.

The AEPS included the first organizations of indigenous peoples –the Saami Council and Inuit Circumpolar Conference as full participants. Under the AC, the status of indigenous peoples'organizations (IPOs) has been defined: in addition to its eight member states, the Council has seven seats for Permanent Participants (PPs), which have been set aside for Arctic IPOs. The AC adopts consensus-based decisions, which gives IPOs the opportunity to participate on an consultative basis in the decision-making process.

An analysis of the AC model involves two interrelated tasks: introspection on the internal structure of the body and an interpretation of its external framework. Internally, the following are identified as the stakeholders of the AC: the Council's member states, Permanent Participants, working groups, secretariats and observers.

Member-States	**Permanent Participants**	**Observers**		
		States	**International Organisations**	**Non-governmental Organisations**
Canada	Aleut International Association	France (2000)	Conference of Parliamentarians of the Arctic Region (SCPAR)	Advisory Committee on Protection of the Seas (ACOPS)
Denmark (Greenland/ Faroe Islands)	Arctic Athabaskan Council	Germany	International Federation of Red Cross and Red Crescent Societies (IFRC)	Association of World Reindeer Herders
Finland	Gwich'in Council International	Netherlands	International Union for the Conservation of Nature (IUCN)	Circumpolar Conservation Union (CCU)
Iceland	Inuit Circumpolar Conference	Poland	Nordic Council of Ministers (NCM)	International Arctic Science Committee (IASC)
Norway	RAIPON	United Kingdom	Northern Forum	International Arctic Social Sciences Association (IASSA)
Russian Federation	Saami Council	Spain	North Atlantic Marine Mammal Commission (NAMMCO)	International Union for Circumpolar Health (IUCH)
Sweden	Only one PP's seat	China (2013)	UN Economic Commission for Europe (UN-ECE)	International Work Group for Indigenous Affairs (IWGIA)
USA		Italy (2013)	UN Environment Programme	University of the Arctic

	is available according to Ottawa Declaration (1996).		(UNEP)	
		India (2013)	UN Development Programme (UNDP)	Worldwide Fund for Nature Arctic Programme (WWFAP)
		Japan (2013)		
		Korea (2013)		
		Singapore (2013)		

Figure 28: Arctic Council Participants.
Source: www.arcticcouncil.org

IPOs and the Arctic Council

Indigenous peoples' organizations have worked in a number of global processes, among these the negotiations on the Stockholm Convention on Persistent Organic Pollutants, the first international environmental treaty to specifically mention the Arctic and northern indigenous peoples. Indigenous perspectives have been crucial in the work on the extensive « Arctic Climate Impact Assessment » (2000 -2004, ACIA), an AC project. The voices of the Arctic indigenous peoples were also heard at the WSSD meeting, held in Johannesburg in August 2002. A special brochure produced for the WSSD illustrated the cooperation between Permanent Participants and Arctic Council states on climate change assessment. The Council was presented as a model for arrangements that could be developed following the Summit to give indigenous peoples around the world a voice in determining policies that affect their lands, resources, and cultures. Another large AC project published in 2004, the Arctic Human Development Report, that was structured from the outset to include the participation of the indigenous peoples.

Initially, only two indigenous peoples' organizations, namely the Saami Council and the Inuit Circumpolar Conference, were observers in the AEPS but were joined by the RAIPON and the Aleut International Association as Permanent Participants in the Arctic Council. Out of the six indigenous organizations represented as PPs in the Arctic Council, only RAIPON is a national-level one. Having in mind the Ottawa Declaration mentioned above, we see that RAIPON is the only PP fullfilling the requisit (b) (« Arctic organizations of indigenous peoples representing more than one Arctic indigenous people resident in a single country ») where the others PPs are international, drawing their membership from two or more countries (« Arctic organizations of indigenous peoples representing a single indigenous people resident in more than one Arctic State »). Membership in these IPOs extends to all people of indigenous descent of the respective nationalities or ethnic groups. RAIPON represents 40 indigenous nations of the North, Siberia and the Far East, i.e., all the Arctic nations that have been given legal status by the Russian state as indigenous peoples. The other Permanent Participants represent only single nations.

At present, IPOs occupy six of the seven available Permanent Participant seats in the Council. The status of Permanent Participant is granted after an application for that status has been reviewed and discussed, and a decision made by the Council by consensus. Informally, however, the decision on the acceptance of a new Permanent Participant very much depends on the opinion of the IPOs. However, it would take a rather long time - almost 10 years - to

select the IPOs for the next seat that could represent other indigenous nations of the Arctic region politically. This issue of representation has been a de facto political norm of the Arctic Council.

There are other indigenous organizations among the observers in the Arctic Council (e.g., the Association of World Reindeer Herders), but they are not expected to receive the status of Permanent Participant at present. This internal setting can be seen as political in nature: it is mutually agreed and understood (we could assume it to be another existing norm of the Arctic Council) that the Arctic indigenous peoples settle the issue of representation among themselves. Accordingly, the quite complicated overlapping pattern of indigenous representation (national, international and dual representation via IPOs) has never been questioned and is unlikely to be discussed in the AC. The norms mentioned have not originated in the Council's internal setting; they have been formed and established in other international organizations, such as the Working Group on the Draft UN Declaration on the Rights of Indigenous Peoples and the Permanent Forum on Indigenous Issues under the UN ECOSOC. Where the Arctic Council is concerned, they are to be understood as de facto norms. What may be recognized as a new, original norm is the will that sovereign states have shown to extend their decision-making power to the public organizations representing Arctic communities and to share resources and information that ensure the communities'input in the decision-making process. IPOs were well placed to accept this right and responsibility due to their internal structures. All the PPs have vertical and horizontal functional power structures: they elect their presidents, chiefs or leaders either by a direct vote or by delegating voting powers to representatives. At the local level, indigenous communities enjoy the same independent election system extended to the regional or provincial level. Usually there are also advisory bodies, e.g., councils of elders that may issue decisions when requested or necessary. Supreme indigenous organs often rotate according to territorial disposition, and this flexibility makes dual representation both possible and feasible. It is even more impressive that the level of indigenous representation is not low: the Aleut International Association represents over 5,000 members in the USA and Russia; the Arctic Athabaskan Council 32,000 indigenous persons in Canada and the USA; the Gwich'in Council International 9,000 members in the USA and Canada; the Inuit Circumpolar Conference 150,000 persons in Canada, Denmark(Greenland), the USA and Russia; the Saami Council 30,000 members in Finland, Norway, Sweden and Russia; and RAIPON 250,000 members from 40 nations in Russia.

4.4.2 The Barents Euro-Arctic Council

Background

A conference on cooperation in Kirkenes, Norway, took place on 11 January 1993 with the participation of the Ministers of Foreign Affairs or representatives of Denmark, Finland, Iceland, Norway, the Russian Federation, Sweden and the European Commission. The conference was also attended by observers from the United States of America, Canada, France, Germany, Japan, Poland, and the United Kingdom.

According to the declaration "Cooperation in the Barents Euroarctic Region"[227] (herein after referred to as "Kirkenes Declaration"), the participants expressed their conviction that expanded cooperation in the Barents EuroArctic Region will contribute to stability and progress in the area and in Europe as a whole, where partnership is now replacing the confrontation and division of the past. Such cooperation might contribute to international peace and security.

The Kirkenes declaration recognizes the features characteristic of this Arctic Region, especially its harsh climate, sparse population and vast territory and call for the improvement of the conditions for local cooperation between local authorities, institutions, industry and commerce across the borders of the Region.

Participants agreed to establish a Council of the Barents EuroArctic Region to provide impetus to existing cooperation and consider new initiatives and proposals. The objective of the work of the Council is to promote sustainable development in the Region, bearing in mind the principles and recommendations set out in the Rio Declaration and Agenda 21 of the United Nations Conference on Environment and Development (UNCED) which was held in June 1992.

The Council is aimed at serving as a forum for considering bilateral and multilateral cooperation in the fields of economy, trade, science and technology, tourism, the environment, infrastructure, educational and cultural exchange, as well as projects particularly aimed at improving the situation of indigenous peoples in the North.

As far as indigenous peoples' participation is concerned**,** the Kirkenes Declaration states that "the Participants concerned reaffirmed their commitment to the rights of their indigenous peoples in the North in line with the objectives set out in Chapter 26 on Indigenous People of Agenda 21. They state their commitment to: "recognize and to strengthen the role of indigenous peoples and their communities"[228] in the region, and to ensure that the cooperation will take the interests of indigenous peoples into consideration. Interestingly, "the Participants agreed to exchange information regarding existing or proposed legislation with a bearing on the position of indigenous peoples in their respective countries".

Cooperation in the Barents Euro-Arctic Region was launched in 1993 on two levels: intergovernmental (Barents Euro-Arctic Council, "BEAC"), and interregional (Barents Regional Council, "BRC"), with sustainable development as the overall objective.

Intergovernmental cooperation

The BEAC meets at Foreign Ministers level in the chairmanship country at the end of term of office. The chairmanship rotates every second year, between Norway, Finland, Russia and Sweden. Finland holds the chairmanship of BEAC for the period 2013-2015.

The members of the Barents Euro-Arctic Council are: Denmark, Finland, Iceland, Norway, Russia, Sweden and the European Commission. The Observer states of the Barents Euro-

Arctic are: Canada, France, Germany, Italy, Japan, Netherlands, Poland, United Kingdom and the United States of America.

Interregional cooperation

At the same time, as the BEAC was established in 1993 by the signing of the Kirkenes Declaration, the regional representatives, together with indigenous peoples signed a cooperation protocol that established the Regional Council for the Barents Euro-Arctic Region with the same objectives as the BEAC: to support and to promote cooperation and development in the Barents Region.

The Barents Regional Council unites 13 member counties (or equivalent local administrative bodies) and a representative of the indigenous peoples in the northernmost parts of Finland, Norway and Sweden and north-west Russia. The Barents Region includes the following counties (or their equivalents):

- in Finland: Kainuu, Lapland and Oulu Region (North Karelia was granted an observer status in 2008)
- in Norway: Finnmark, Nordland and Troms
- in Russia: Arkhangelsk, Karelia, Komi, Murmansk and Nenets.
- in Sweden: Norrbotten and Västerbotten

Figure 29: Geographical coverage of the BEAC/BRC.
Source: BEAC website

Indigenous Peoples in the Barents Region are:

- Sami (in Norway, Sweden, Finland and Russia)
- Nenets (in Russia)
- Veps (in Russia)

The Chairmanship of the BRC rotates biennially between its 13 member counties. The Regional Council convenes twice a year. The Regional Council's meetings are prepared by the Regional Committee which consists of civil servants from the member county

administrations. Arkhangelsk Oblast, Russia, took over the Chairmanship from Norrbotten, Sweden, in October 2013 and will hold it until the end of 2015.

Geographical coverage

Regarding its geographical coverage in terms of longitude, it is tempting to say that the Barents Regional Council, as compared to the Arctic Council which covers the Arctic as a whole, plays the role of the Eastern Arctic cooperation body.

In saying so, we must specify that the BEAC differs from a classic intergovernmental forum, involving neighbouring States, in that it has granted full member status to the European Commission. The European Union is then considered as a political actor in the Arctic region[229], actually the Eastern Arctic. "The EU is intextricably linked to the Arctic region"[230] at least because of three BEAC State members being EU State members (Denmark, Finland, Sweden) and two BEAC State members being members of the European Economic Area (Iceland, Norway). There is another strong argument. The concept of a "Euro-Arctic Region" is also grounded on a joint policy between EU, Russia, Norway and Iceland, known as the "Northern Dimension" initiated in 1999 that will be presented below.

Working Groups

In order to concretise the cooperation the Regional Council has established Working Groups in priority areas of work as defined in the Kirkenes declaration. There are at present three regional thematic working groups on environment, investment and economic co-operation as well as transport and logistics. Together with the Working Group on Indigenous Peoples which has an advisory role to both the Regional Council and to the BEAC, and six joint BEAC/BRC working groups (culture; health and related social issues; education and research; energy: tourism; youth) there are 13 WGs reporting to the BRC.

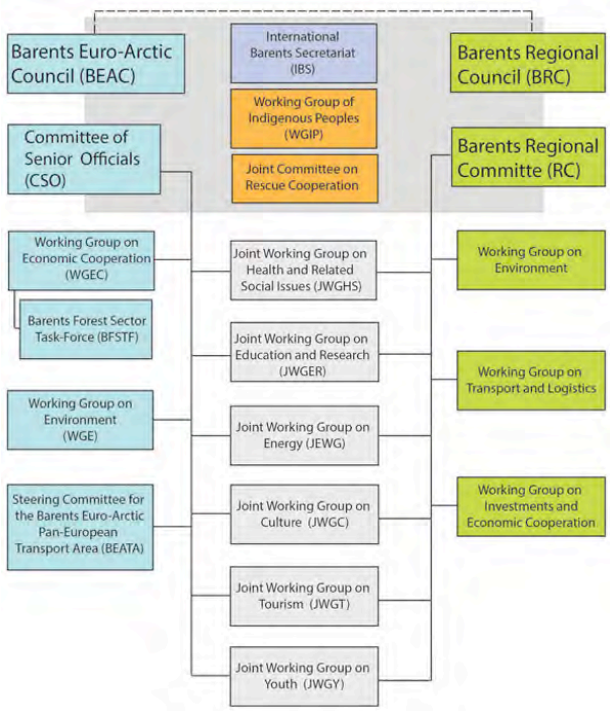

Figure 30: Organisation chart of the Barents Cooperation.

Source: BEAC website.

Indigenous Peoples' participation

According to the official BEAC website, out of a total population in the Barents Region of approximately 5.3 million people, there are around 85 000 Sami inhabitants in Sápmi. 50-60 000 of those are living in Norway, some 20 000 in Sweden, some 7 000 in Finland and around 2 000 in Murmansk Oblast in Russia.

In the Russian Nenets Autonomous Okrug there are 7 000 Nenets people. Approximately 6 000 Vepsians are living in the Republic of Karelia. These peoples are represented in the WGIP. The Komi people are represented by the representative of the Russian Republic of Komi, a member of the Barents Regional Council since 1 January 2002.

Let us note in passing that, in the Russian Government approved large-scale program of social and economic development of the "Russian Arctic Zone" mentioned above, the Komi Republic and the Republic of Karelia are no more part of the northern territories of the Russian federation. This adds further confusion, if needed, to the question of the delineation of the Arctic, as the Barents Euro-Arctic Council plays the role of the Eastern Arctic regional cooperation body.

The Working Group of Indigenous Peoples (WGIP) was established on a permanent basis by the Regional Council in 1995. The WGIP consists of representatives of: the Sami, the Nenets and the Vepsian peoples.

The WGIP is distinguished from other regional working groups by the fact that, in addition to its operational role as a WG, it also has an advisory role to both the Barents Council (foreign ministers) and the Regional Council (county governors). The Chair of the WGIP represents the indigenous peoples of the Region at the ministerial meetings of the BEAC. The WGIP has a representative in the Regional Council and the Regional Committee.

A Barents Indigenous Peoples Office was established in Murmansk in October 2003. The aim of the BIPO is to maintain contacts, develop relations and stimulate participation of the Murmansk region, Karelian and Nenets indigenous institutions and peoples in the Barents cooperation. The BIPO is run by Tatiana Jerogova.

The WGIP have participation in the Barents Regional Council, the BEAC Working Group on Environment, the Joint Working Group on Youth, Steering Committee on Children and Youth at Risk (CYAR), the Joint Working Group on Culture, the Joint Working Group on Health and Social Related Issues.

On the 4th of February, 2010, the WGIP arranged the 1st Barents Indigenous Peoples' Congress. Approximately 60 representatives of the IPs of the Barents Euro-Arctic Cooperation were gathered to discuss the role and influence of indigenous peoples in the Barents Euro-Arctic Council. As expressed in the Resolution[231] from the 1st Barents IP's

Congress, the congress called for a new mandate for the IP' representation in the Barents cooperation:

> 1. As indigenous peoples, the Nenets, Saami and Vepsian peoples are entitled to the right to self-determination.
> 2. By virtue of the right to self-determination, the Nenets, Saami and Vepsian peoples have the right to represent themselves in international affairs, which includes participatory rights in international bodies that address issues of relevance to them.
> 3. At the very least, this participatory right amounts to the level of participation indigenous peoples enjoy as Permanent Participants to the Arctic Council.
> 4. The Nenets, Saami and Vepsian peoples' participation in the BEAC and the BRC must first and foremost be achieved by them each being granted status as Permanent Participants to the BEAC and the BRC.

According to the resolution, the PP' status would give the IPs full and active participation within the BEAC and the BRC. This principle would apply to all meetings and activities of the BEAC and the BRC, from ministerial meetings to regional meetings. IPs "shall be represented by Heads of Delegations from their peoples appointed by them, and be provided with ample time for right to speak at each meeting". Each of these peoples must be allowed to represent itself directly in these bodies, and not only through the WGIP.

After receiving feedback from the indigenous organizations, the final declaration of the Barents Indigenous Peoples' Congress was to be presented to the higher levels of the Barents Euro-Arctic Cooperation.

According to the Action Plan for Indigenous Peoples in the Barents Euro-Arctic Region for the period 2013-2016 issued by the WGIP in February 2012: "WGIP and the indigenous peoples of the region still claims for a strengthened representation of indigenous peoples within the formal structures of the Barents cooperation" and "the Congress' mandate will be to adapt the Action Plan of Indigenous Peoples in the BEAR and to promote the issue of direct representation of the indigenous peoples in the Barents regional Council and the Barents Euro-Arctic Council".

In summary, the establishment of the BEAC was "part of the process of evolving European cooperation and integration" between the Northern parts of Europe and the rest of the European continent, which includes the creation of the Council of the Baltic Sea States in 1992. The founding declaration of BEAC also refers explicitly to the Strategy for Protection of the Arctic Environment, adopted at the Ministerial Meeting in Rovaniemi in 1991, which lead to the establishement of the Arctic Council in 1996, mentioned as such on the BEAC website, as an official "partner and organizations" of the BEAC regarding international cooperation in the Arctic and the Barents region.

States	Arctic Council (before may 2013)	Barents Euro-Arctic Council 2014
Canada	member	observer
Denmark/Greenland	member	member
EU	Ad hoc observer	member
Finland	member	member

France	observer	observer
Germany	observer	observer
Iceland	member	member
Italy	Ad hoc observer	observer
Japan	Ad hoc observer	observer
Netherlands	Observer	observer
Norway	member	member
Poland	observer	observer
Russia	member	member
Spain	observer	none
Sweden	member	member
United Kingdom	observer	observer
United States of America	member	observer

Figure 31: A comparison between the AC Panel and the BEAC Panel.
Source: AC and BEAC websites.

As mentioned earlier, the Barents Regional Council can be seen as the Eastern Arctic cooperation body. However, when comparing the Panel members and the Panel observers of the two organizations, the least we can say is that there are strong similarities between the regional and the international cooperation bodies. With the single exception of Spain, any State member or State observer of the BEAC has a status of state member or state observer at the Arctic Council. The present community of States directly and indirectly concerned by new challenges and opportunities in the Arctic is then framed by the regional and the international Arctic cooperation bodies Panels. As mentioned earlier, the next phase of the cooperation regime in the Arctic Council came in May 2013 with the inclusion of 5 Asian state actors (plus Italy) as state observers.

Similarities, partnership and cooperation between the two bodies are not restricted to states actors but expand also to IP's organizations and to NGOs. It is then not surprising if the innovation of the Arctic Council, regarding a special status for IP's organizations - under certain conditions - is claimed by the WGIP, especially for the Sami and the Nenets represented respectively by the Sami council and the Russian Association of Indigenous Peoples of the North (RAIPON) which both enjoy a PP legal status at the Arctic Council. Finally, it shall be noted that the Sami peoples are often mentioned as "the EU's only indigenous people living in the Arctic regions of Finland and Sweden, as well as Norway and Russia"[232].

4.4.3 The EU Northern Dimension

As briefly mentioned above, the Northern Dimension (herein after "ND") is a joint policy between EU, Russia, Norway and Iceland. The ND Policy was initiated in 1999 and renewed in 2006. The policy aims at providing a framework to:

- promote dialogue and concrete cooperation;
- strengthen stability, well-being and intensified economic cooperation;
- promote economic integration, competitiveness and sustainable development in Northern Europe.

The "broad geographical definition"[233] of the ND is:

> Area from the European Arctic and Sub-Arctic, areas to the southern shores of the Baltic Sea, including the countries in its vicinity and from North-West Russia in the east to Iceland and Greenland in the west"[234].

The main objectives of the policy are to provide a common framework for the promotion of dialogue and concrete cooperation, strengthen stability and well-being, intensify economic cooperation, promote economic integration, competitiveness and sustainable development in Northern Europe.

Four ND partnerships in Public Health and Social well-being, Culture, Environment and Transport and Logistics - corresponding to four BEAC priorities stated in the founding declaration of the Council - are presented by BEAC as major partnerships in the official intergovernmental cooperation in the Barents region.

In 2010, the ND Ministerial meeting instructed the ND Steering Group "to consider ways to develop the ND Arctic Window without duplicating work within the mandates of the Arctic Council or the Barents Euro-Arctic Council". The ministers noted that consideration would be needed to be given to how indigenous peoples could be included in deliberations. The Steering Group has invited indigenous peoples' representatives to participate in meetings and requested that ND partnerships and initiatives consider further actions regarding the Arctic.

In addition to the four ND Partners, other participants are: EU Members States in their national capacity; Regional Councils, the Arctic Council (AC), the Barents Euro-arctic Council (BEAC), the Council of the Baltic Sea States (CBSS) and the Nordic Council of Ministers (NCM); International Financial Institutions (IFIs), e.g. European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), the Nordic Investment Bank (NIB) and the Nordic Environment Finance Corporation (NEFCO) as well as other financial institutions; universities, research centres and the business community; Canada and the United States as observers; Belarus participates in practical cooperation.

EU has also used other financial instruments and programmes to support project cooperation in the region, contributing to the aims of ND Policy, notably the Baltic Sea Region Programme and ENPI Cross-border cooperation programmes.

In 2014-20, the EU will support the Northern Dimension through the European Neighbourhood Instrument (ENI) Regional East Programme.

5. THE EU AND THE INDIGENOUS PEOPLES

5.1 THE EU AND HUMAN RIGHTS

The European Union sees human rights as universal and indivisible. It actively promotes and defends them both within its borders and when engaging in relations with non-EU countries. Human rights, democracy and the rule of law are core values of the European Union. Countries seeking to join the EU must respect human rights. All trade and cooperation

agreements with third countries contain a clause stipulating that human rights are an essential element in relations between the parties.

The Union's human rights policy encompasses civil, political, economic, social and cultural rights. It also seeks to promote the rights of women, of children, of those persons belonging to minorities, and of displaced persons. As we will see below, since indigenous issues first made it onto the EU agenda in 2007, significant steps have been made. At the same time, the EU has been showing a growing interest in the Arctic region and has been developing an EU Arctic Policy where regular dialogue with Arctic indigenous peoples is seen as a main policy objective. As we write these lines, the Council has requested[235] the Commission and the High Representative to present proposals for the further development of an integrated and coherent Arctic Policy by December 2015.

5.1.1 EU Founding treaties and Human Rights

In 1950, predating the establishment of the EU, the Council of Europe adopted the European Convention for the protection of Human Rights and Fundamental Freedoms (usually referred to as the European Convention on Human Rights, "ECHR") which establishes the European Court of Human Rights. The ECHR includes a number of rights relevant to the fields of employment and industrial relations. In 1961, the Council adopted the European Social Charter (ESC) which originally contained 19 economic and social rights. All EU member States being members of the Council of Europe and have ratified the Convention and the Charter, the two latter served in many ways as a model for the EU Charter of Fundamental Rights.

EU's primary law[236] which covers the set of founding treaties of the EU set out the distribution of competences between the Union and the Member States and establishes the powers of the European institutions. Therefore, primary law, namely the Treaty on the EU (TEU) and the Treaty on the Functioning of the EU (TFEU), determine the legal framework within which the EU institutions implement European policies. It of great significance for this study to note that EU's primary law is actually the primary source of human rights development in the Union. EU's primary law makes explicit references to both the European Convention of Human Rights (Article 6(2) TEU) and the Social Charter (Article 151(1) TFEU). The TEU explicitly mentions values of respect for human dignity and respect for human rights, including the rights of persons belonging to minorities. These values are set out in Article I-2:

> 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, nondiscrimination, tolerance, justice, solidarity and equality between women and men prevail.

The societies of the Member States are characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. These values play an important role, in two specific cases. Firstly, under the procedure for accession to the EU:

> 1. The Union shall be open to all European States which respect the values referred to in Article I-2, and are committed to promoting them together[237].

Any European State wishing to become a member of the Union must respect these values in order to be considered eligible for admission. Secondly, failure by a Member State to respect these values may lead to the suspension of that Member State's rights deriving from membership of the Union:

> 1. On the reasoned initiative of one third of the Member States or the reasoned initiative of the European Parliament or on a proposal from the Commission, the Council may adopt a European decision determining that there is a clear risk of a serious breach by a Member State of the values referred to in Article I-2. The Council shall act by a majority of four fifths of its members after obtaining the consent of the European Parliament[238].

The rights of every individual within the EU were established at different times, in different way and in different forms. For this reason, the EU decided to include them all in a single document which had been updated in light of changes in society and social progress: the Charter of Fundamental Rights of the European Union (herein after referred to as "Charter of Rights"). The Charter of Rights was adopted at the Nice European Council on 7 December 2000 but at that time it did not have any binding legal effects. It became legally binding on the EU institutions and on nationals government, just like the EU Treaties, with the entry into force of the Treaty of Lisbon, on 1 December 2009. The EU fundamental rights are 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*"*

5.1.2 EU Human Rights Policy

EU Strategic Framework and Action Plan on Human Rights and Democracy (2012-2014)

In June 2012 the EU Strategic Framework and Action Plan on Human Rights and Democracy[239] was adopted. The Framework sets out principles, objectives and priorities designed to improve the effectiveness and consistency of EU Policy as a whole. Together with the Action Plan, it provides an agreed basis for a truly collective effort, involving EU Member States as well as the EU Institutions. We mention below the main principles and priorities of the Strategic Framework:

- Promoting the universality of human rights: The EU calls on all States to implement the provisions of the Universal Declaration of Human Rights and to ratify and implement the key international human rights treaties, including core labour rights conventions, as well as regional human rights instruments

- Human rights in all EU external policies: The EU will promote human rights in all areas of its external action without exception. In particular, it will integrate the promotion of human rights into trade, investment, technology and

telecommunications, Internet, energy, environmental, corporate social responsibility and development policy as well as into Common Security and Defence Policy and the external dimensions of employment and social policy and the area of freedom, security and justice, including counter-terrorism policy.

- Implementing EU priorities on human rights: The EU will continue to promote freedom of expression, opinion, assembly and association, both on-line and offline; democracy cannot exist without these rights. It will promote freedom of religion or belief and to fight discrimination in all its forms through combating discrimination on grounds of race, ethnicity, age, gender or sexual orientation and advocating for the rights of children, persons belonging to minorities, indigenous peoples, refugees, migrants and persons with disabilities.

- The EU will intensify its efforts to promote economic, social and cultural rights; the EU will strengthen its efforts to ensure universal and non-discriminatory access to basic services, with a particular focus on poor and vulnerable groups. The EU will encourage and contribute to implementation of the UN Guiding Principles on Business and Human Rights.

- Working with bilateral partners: The EU will place human rights at the centre of its relations with all third countries, including its strategic partners.

- Working through multilateral institutions: The EU will resist strenuously any attempts to call into question the universal application of human rights and will continue to speak out in the United Nations General Assembly, the UN Human Rights Council and the International Labour Organisation against human rights violations. The independence and effectiveness of the UN Office of the High Commissioner for Human Rights, as well as of the treaty monitoring bodies and UN Special Procedures, is essential.

As being focused on Human Rights and Democracy, this framework does not deal specifically with IP's Rights (collective right, land right…) or national ethnic, religious or linguistic minorities' rights but with the application of EU Fundamental Right standards to minorities and indigenous peoples.

The EU Action Plan on Human Rights and Democracy expiring at the end of 2014 is a made up of a list of 36 targeted and concrete actions: incorporating HR in Impact Assesment; Regular assessment of implementation of the EU HR strategy; Intensify the promotion of ratification and effective implementation of key international human rights treaties, including regional human rights instruments; Organise periodic exchanges of views among Member States on best practice in implementing human rights treaties; Conduct a targeted campaign on the rights of the child with a specific focus on violence against children; Support initiatives, including of civil society, against gender based violence and feminicide, to name only a few of them, indicating again that the EU Action Plan intend to deal with general

application of Fundamental Rights and not with specific rights of minority or of Indigenous Peoples. As an example, the Action Plan mentions the "promotion of universal ratification and implementation of four ILO core labour standards" with no reference to ILO Convention No. 169. It has to be noted that, as an exception, the Action Plan includes two actions supporting the recognition of minority right and indigenous peoples' right:

> 28. Promote the respect of the rights of persons belonging to Minorities: Review best practice and ensure the use of existing EU instruments to support efforts to protect and promote the rights of persons belonging to minorities, in particular in dialogues with third countries (EU entities concerned: EEAS, Commission, Member States).
> 29. A strengthened policy on indigenous issues: Review and further develop EU policy relative to the UN Declaration on the Rights of Indigenous Peoples, with a view to the 2014 World Conference on Indigenous Peoples.
> (EU entities concerned: EEAS, Commission, Member States).

Every year the Council adopts its Annual Report on Human Rights and Democracy. This report encompasses two parts: the first one is thematic, reflects the structure of the Action Plan and provides an assessment of the actions taken to address the Action Plan's priorities. The second part is geographical and covers EU actions in third countries, thus mapping in detail human rights situation across the globe.

European Instrument for Democracy and Human Rights (2014-2020)

With a financial support of €1.3 billion between 2014 and 2020, the European Instrument for Democracy and Human Rights (EIDHR) supports, inter alia, non-governmental organizations promoting human rights, democracy and the rule of law; abolishing the death penalty; combating torture; and fighting racism and other forms of discrimination in the European Union and worlwide.

EU Special Representative to HR

In 2012, the EEAS has appointed an EU Special Representative for Human Rights, Stavros Lambrinidis. With an initial mandate running until 30 June, 2014, now extended until 2015, the role of this EUSR His role is to enhance the effectiveness and visibility of EU human rights policy.

The Human Rights Day

On the 10 of December 2014, the EU celebrated the UN's Human Rights Day to commemorate the adoption of the Universal Declaration of Human Rights 66 years ago. The EU High Representative Federica Mogherini recalled that EEAS had made human rights a core objective, and is currently advocating human rights in over 40 dialogues with countries around the globe and with the UN.

5.2 EU POLICY ON INDIGENOUS PEOPLES

The EU and the international instruments on IP's Rights

The European Union has been active on indigenous peoples' issues since the late 1990s. Its representatives have participated in international meetings on indigenous peoples for more

than a decade and the EU took a positive position during negotiations on the draft declaration on the rights of indigenous peoples, supporting its adoption by the Human Rights Council in 2006 and at the General Assembly in 2007. The EU also participates in the UN Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the Human Rights Council as well as other international fora where its representatives contribute on indigenous peoples' issues. As we will see below, the EU seeks to integrate indigenous issues into all aspects of its external policies (political dialogues, multilateral fora, financial support).

The European Instrument for Democracy and Human Rights and the IPs

Through the European Instrument for Democracy and Human Rights (EIDHR) launched in 2006, the EU has supported projects designed to increase indigenous peoples' capacity and rights as part of its larger objective to strengthen the role of civil society. As an example, the EIDHR supported organizations working to promote the ILO Convention No. 169 and indigenous representatives seeking to participate in relevant UN bodies.

The EU Regulation on the Development and Cooperation Instrument and the IPs

The EU Regulation on the Development and Cooperation Instrument (DCI) for the period 2007 to 2013 identified thematic areas for funding support that are inclusive of indigenous peoples' concerns including through emphasis on the preservation of cultural diversity, biodiversity and enhancement of the sustainable use of natural resources. The new Regulation on the DCI for the period 2014 to 2020 has two new programmes entitled "Global public goods and challenges" and "Support for civil society organizations and local authorities" prioritizing the fight against poverty – an objective that ought to maintain indigenous peoples as a focus of attention given their disadvantage in all societies.

The EU Strategic Framework and Action for Human Rights and Democracy and the IPs

As mentioned earlier, the EU Strategic Framework and Action Plan for Human Rights and Democracy adopted in June 2012 include commitments that potentially may benefit indigenous peoples such as the agreement to have corporate social responsibility provisions in free trade agreements negotiated by the EU and committing to advocate for the rights of indigenous peoples.

The European Consensus on Development and IPs

Indigenous peoples are also an issue in development cooperation under the 2005 European Consensus on Development supported by the Council, Member States, the European Parliament and the European Commission. The Consensus commits the EU "to apply a strengthened approach to mainstreaming' specific cross-cutting issues, including indigenous peoples, to integrate their concerns at all levels of cooperation, ensuring their full participation and free, prior and informed consent".

EU and the International Day of the World's IP

EU Delegations around the world also organize events around 9 August –The International Day of the World's Indigenous People – to raise awareness their rights.

EU and the UN World Conference on IPs

A UN World Conference on Indigenous Peoples, the first one ever organized by the United Nations, was held on September 22-23, 2014 in New York. The Conference had the objective of sharing perspectives on the promotion of the rights of indigenous peoples as proclaimed in the UN Declaration on the Rights of Indigenous Peoples. The EU contributed actively to the preparations of the Conference and to its outcome. The outcome document aims at transforming international commitments into concrete actions. The EU also delivered a statement at the World Conference where it underscored that protection of indigenous peoples' rights is a clear priority for the EU and that the EU will do its share to make sure that the decisions and recommendations of the outcome document will be implemented: "Indigenous peoples´ rights, as defined in the UNDRIP, form an integral part of the EU´s human rights policy"[240] (8 août 2014).

European Parlimanent Resolutions on the Human Rights on IP

In addition, the European Parliament has adopted a number of resolutions on the human rights of indigenous peoples in specific countries for example, Colombia, Guatemala, Peru and West Papua or on thematic issues such as the impacts of climate change in the Arctic or timber export partnerships in Cameroon and the Republic of Congo

EU corporate social responsability policy and IPs

In October 2011 the European Commission published a new policy on corporate social responsibility[241]. The policy is focused on integrating the UN Guiding Principles on Business and Human Rights[242] into the national programmes of member states. As part of the policy, companies are also invited to include the Guiding Principles into their activities and respect human rights. In 2013, an oil and gas sector guide on implementing the UN Guiding Principles on Business and Human Rights[243] was published by the European Commission. The sector guide includes reference to the principle of free, prior and informed consent and its relevance in particular to indigenous peoples noting that the right "applies to indigenous peoples with regard to activities involving land, territory or other resources that they traditionally own, use or occupy. This includes cultural heritage sites which are essential to their survival as distinct peoples"(Oil and gas sector guide, p.38).

Further guidance to companies, including oil and gas companies is expected to come. In September 2014, the EU has published a new report by indigenous rights expert Julian Burger, entitled "Indigenous Peoples, Extractive Industries and Human Right"[244]. This report calls for a specific recognition of free, prior and informed consent as an obligation for extractive industries engaging in activities that may impact indigenous peoples. It notes that serious and unacceptable human rights violations continue to be associated with the extractive industries in their dealings with indigenous peoples and considers that such abuses are likely to continue given the more invasive methods of extraction required to respond to global demand for commodities.

5.3 EU POLICY ON THE ARCTIC REGION

Background

Greenland has historically been the most important Arctic territory to play any sort of significant role for the European Community. However, after Denmark became a member of the EC in 1973, conflicts concerning fishing and hunting sea mammals lead Greenland to leave the EC. When Greenland formally left the EC in 1985, the Community was left without any territories above the Arctic Circle, and as a result Arctic issues disappeared from its political agenda.

In 1995, when Finland and Sweden joined the EU, the Union was again represented with territories to the north of the Arctic Circle.

In 1997, under the Finnish presidency, the initiative to create the "Northern Dimension" was launched. However, while the scope of the ND stretched from Iceland to the Kola Peninsula and later also came to include "an Arctic Window," its main focus became the Baltic states and Sweden and Finland's relationship with Russia.

In 2006, with the second Finnish presidency, Finland sought to revive the entire ND, opening up the possibility of a strengthened EU focus in the Arctic. Yet while the ND was re-launched and amended to become a "partnership model," where Norway, Russia, and Iceland, along with the EU, were given status as equal members, there were still no significant attempts to develop the "Arctic Window."[245]The ND has then played an important role with respect to developing regional cooperation between the EU and Russia in the Arctic area of Murmansk and Lapland.

According to expert N. Wegge (2011), the "ND cooperation is more accurately characterized as regional cooperation rather than as an initiative of a genuine Arctic nature".Therefore, while the ND dealt with Arctic issues, "this was not the source of the EU's wholehearted Arctic policy initiative".

The starting point for the Union's Arctic policy directly followed in the wake of the EU's Integrated Maritime Policy development. The Integrated Maritime Policy process was a major undertaking in the first Barroso Commission, developed through the production of a "Green Book," and later a "Blue Book."[246] While the Arctic was hardly mentioned in the "Green Book" presented in 2006, this had changed by the presentation of the "Blue Book" a year later. The attached Action Plan states:

> In 2008, the European Commission will produce a report on strategic issues for the EU relating to the Arctic Ocean [...] The aim of this action is to lay the foundation for a more detailed reflection on the European interests in the Arctic Ocean and the EU's role in this respect[247].

The plan to produce a report on strategic issues for the EU in the Arctic was soon to become a reality, and on the eve of 2008 an EU inter-service working group was created to take on the task. All but one of the members came from the Commission, primarily from Directorate-General for the External Relations, and the sole external person was an Arctic expert from the

European Environmental Agency. The group was chaired by the Hungarian national János Herman, who was to become the key actor in Arctic policy development. As noted by expert N. Wegge (2011), "while concerns relating to the Arctic were new to most of the members in the inter-service group, this was also true for other EU institutions", including the European Parliament.

The evolution of EU Arctic policy

Over the last few years the EU has become more aware of its interests in the Arctic and begun developing an Arctic policy. According to the EEAS, "the EU has an important role to play in supporting successful Arctic cooperation and helping to meet the challenges now facing the region. The EU is the world's strongest proponent of greater international efforts to fight climate change". The EU has 3 Arctic Council states amongst its members. The EU is also a major destination of resources and goods from the Arctic region. Many of its policies and regulations therefore have implications for Arctic stakeholders. The EU wants to engage more with Arctic partners to increase its awareness of their concerns and to address shared challenges in a collaborative manner.

EU Arctic policy has presently 3 main policy objectives:

- protecting and preserving the Arctic in cooperation with the people who live there
- promoting sustainable use of resources
- international cooperation.

In the following section, we review in chronological order the various official EU documents aimed at drawing up the EU Arctic policy with particular focus to indigenous peoples' issues and the way they are addressed in each document succeeding to previous documents.

European Parliament Resolution on Arctic governance (9 october 2008)[248]

In its preamble, the European Parliament resolution of 9 October 2009 makes no reference to any other EU official document for the reason that it is the first to be dealing specifically with the Arctic. Anyhow, this Resolution was adopted in the perspective of the "fourthcoming Commission communication on Arctic policy" which was supposed to "lay the foundations of a meaning ful EU Arctic policy" and the European Parliament was hoping that the fourthcoming Communication would draw its inspiration from the Resolution:

> 7. […] calls on the Commission to address, at least, the following issues in its communication:
>
> 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 neighbours 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;

We note that in the very first EU official document on the Arctic, the respect for indigenous populations as such is identified as one of the four major Arctic issues. In this respect, it is also of interest to mention two preambulatory clauses devoted to IPs:

> K. whereas the above-mentioned conference on the Arctic also focused on climate change in the region, its effects on the indigenous populations and possible adaptations to these effects,
>
> M. whereas 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, as the ice is too thin to hold their sleds, while wildlife such as polar bears, walruses and foxes are in danger of seeing much of their habitats disappear,

Apart from these two occurences on IPs, the Resolution is focusing on the impact of climate change and its geopolitical and geoeconomical consequences in a "region currently not governed by any specifically formulated multilateral norms and regulations, as it was never expected to become a navigable waterway or an area of commercial exploitation".

The heart of the message in the Resolution on Arctic governance is presented in point 15:

> Suggests 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;

From our perspective, an interesting aspect of this suggestion is the participation of "peoples and nations" in international negotiations on the protection of the Arctic. As a matter of fact, the NGO le Cercle Polaire[249] has been deeply involved in the preparation of the 2008 Resolution, which was based on a treaty draft developed by le Cercle Polaire Working Group on Arctic Governance and presented to the European Parliament by MEP Michel Rocard, former Prime minister of France and political advisor of NGO le Cercle Polaire. As can be seen on le Cercle Polaire website, the treaty draft had been conceived to ensure a political participation of IPs in multilateral interstate negotiations.

As explained by expert N. Wegge (2011)[250], "when the highly controversial resolution passed in the Parliament, alarm bells went off in Oslo and Copenhagen again, with both countries mobilizing to prevent the EU Commission from endorsing the Parliament's position", regarding an international treaty for the protection of the Arctic. As a matter of fact, the resolution created quite a racket and resulted in considerable problems for the Commission in relation to the other Arctic states while it prepared its presentation of the Communication of EU interests in the Arctic. After a joint meeting in Brussels on November 12, 2008 between the Norwegian Prime minister Jens Stoltenberg and Commission President Jose Manuel Barroso, the latter declared that "as a matter of principle, we can say that the Arctic is a sea, and a sea is a sea. This is our starting point". By so stating he implied that the United Nations

Convention of the Law of the Sea (UNCLOS) should be recognized as a legal framework. While Barroso would not go into detail about the forthcoming release of the Commission's Communication on the Arctic, the EU Observer reported the next day: "Commission backs Norway's Arctic vision: no new treaty."[251]

Communication on the European Union and the Arctic Region (20 November 2008) [252]

Due to the controversial aspect of EP Resolution of 9 October 2008 and the decision of the Commission President not to endorse the EP suggestion regarding a new legal framework for the Arctic, the Commission's Communication of 20 November 2008 is currently presented[253] as the first official contribution of EU institutions on the "Arctic Region"[254]. This Communication is centered on three sub-themes reflecting the main EU policy objectives:

– Protecting and preserving the Arctic in unison with its population
– Promoting sustainable use of resources
– Contributing to enhanced Arctic multilateral governance

It is interesting to note that as a cross-cuting issue, Indigenous peoples' participation, partnership or rights is addressed in a separate sub-section (2.2) of the Communication and is not mentioned in any other section dealing with "natural resources" or "Arctic governance", not even in the general introduction nor in the conclusion. Among the three sections covering the three sub-themes mentioned below, IP's issues are dealt in the first section "Protecting and preserving the Arctic in unison with its population" whose title does not make a distinction between the Arctic residents and the IP. The term "IP" comes out in sub-section 2.2 devoted to "indigenous Peoples and local population". Let us also note that Arctic environment and climate issues are grouped together with IPs issues in a single section.

We print below the explicit references to IP's issues in the 2008 Communication:

> 2.2. Support to indigenous peoples and local population
> *Policy objectives*
> Arctic indigenous peoples in the EU are protected by special provisions under European Community Law. A key principle of the Joint Statement on EU development policy is the full participation and free, informed consent of indigenous peoples. EU regional policy and cross-border programmes also benefit indigenous peoples, whose organisations participate in the Northern Dimension. Rights of indigenous peoples are a thematic priority under the European Initiative for Democracy and Human Rights.
>
> Hunting marine mammals has been crucial for the subsistence of Arctic populations since prehistoric times and the right to maintain their traditional livelihood is clearly recognised. However, modern human activities have put certain of these species in danger and there is growing concern in the EU about animal welfare. EU policies should continue to take all factors into account, seeking an open dialogue with the communities concerned.
>
> *Proposals for action*:
> – Engage Arctic indigenous peoples in a regular dialogue.
>
> – Provide opportunities for self-driven development and the protection of their lifestyle.

> – Support in particular the organisations and activities of the Saami and of other peoples of the European Arctic, *inter alia* under regional and cross-border programmes. Promote Northern European know-how in reindeer husbandry.
>
> – Continue efforts ensuring effective protection of whales especially within the framework of the International Whaling Commission (IWC), including in the Arctic context. Support proposals for the management of indigenous subsistence whaling, provided that conservation is not compromised, whaling operations are properly regulated and catches remain within the scope of documented and recognised subsistence needs.
>
> – Conduct dialogues with indigenous and other local communities traditionally engaged in the hunting of seals.
>
> – The Community is currently considering banning the placing on the market, import, transit and export of seal products. However, this should not adversely affect the fundamental economic and social interests of indigenous communities traditionally engaged in the hunting of seals. Under the terms of the Proposal for a Regulation of the European Parliament and of the Council concerning trade in seal products, seal products resulting from hunts traditionally conducted by Inuit communities which contribute to their subsistence are exempted. The proposal also foresees that trade is allowed in other cases where certain requirements are met regarding the manner and method whereby seals are killed and skinned. The Commission's dialogue with the indigenous communities concerned will aim to facilitate the practical implementation of these provisions.

It is of interest to bear in mind the first statement of section 2.2: "Arctic indigenous peoples in the EU are protected by special provisions under European Community Law" which covers by itself a significant part of the present study. As a general comment on the 2008 Communication, one can say that in 2008, the two main IP's issues identified by the EU werea human rights and traditional whale and seal hunting, along with reindeer herding, as far as European Arctic IPs are concerned. The former has a general character reflecting the core values of the EU, and the latter is motivated by particular circumstances, the Community being at that time, "considering banning the placing on the market, import, transit and export of seal products". In conclusion, from the narrow perspective of our study, the 2008 Communication is distinguished by the fact that it deals with natural resources and Arctic governance issues (as two main sections) without any reference to IP's participation, partnership or rights.

Finally, as a last word about the controversial suggestion of the European Parliament resolution of 9 October 2008, the Commission's communication specifies that "the European Parliament has recently highlighted the importance of Arctic governance and called for a standalone EU Arctic policy" making itself clear that "an extensive international legal framework (UNCLOS) is already in place that also applies to the Arctic". It is to be noted that this last statement echoes the core message of the Illulissat declaration[255] in May 2008: "we recall that an extensive international legal framework applies to the Arctic Ocean. (…) This framework provides a solid foundation for responsible management by the five coastal States

and other users of this Ocean [...]. We therefore see no need to develop a new comprehensive international legal regime to govern the Arctic Ocean".

Council conclusions on Arctic issues (8 December 2009)[256]

The Council recalls its conclusions of 8 December, 2008, that welcomed the Commission Communication of 20 November 2008. The Council welcomes the gradual formulation of a policy on Arctic issues to address EU interests and responsibilities and approves the three main policy objectives proposed by the Commission. When presenting 7 key principles on which the EU policy should be based on (effective implementation by the international community of adequate measures to mitigate climate change; reinforced multilateral governance through strengthening and consistent implementation of relevant agreements; maintaining the Arctic as an area of peace and stability…), the Council makes specific reference to the needs and the rights of "Arctic residents, including Indigenous peoples" again grouped together with Arctic natural environment issues:

> The Council considers that an EU policy on Arctic issues 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;

The Council presents its conclusions in the form of 23 numbered points whose four of them explicitly refer to local communities or/and indigenous peoples:

> 2. The Council recognises that EU policies on natural resource management that impact on the Arctic should be formulated in close dialogue with Arctic states and local communities and take into account the importance of sustainable management of all natural resources in that region.
>
> 3. The Council underlines the importance of supporting sustainable development for indigenous peoples, including on the basis of their traditional means of livelihood, 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.
>
> 6. 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 [...] A systemic approach to Arctic research should cover aspects ranging from protecting the environment, including the role of the Arctic region as an important part of the Earth ecosystem, to the effects of climate change and natural resource exploitation on biodiversity, long range transport of hazardous chemicals, local communities and the sustained livelihood of indigenous peoples.
>
> 20. The Council notes that the Arctic is also one of the priority areas of the revised Northern Dimension policy, a common policy between the EU, Iceland, Norway and the Russian Federation. It encourages development of the ND Arctic Window without duplicating work within the mandates of the Arctic Council or the Barents Euro-Arctic Council. In particular, the Council notes that further consideration would be needed on how indigenous peoples could be included in the deliberations on the ND Arctic Window.

In conclusion no. 2, the issue is not about promoting human rights or IP's rights on a general basis, but to recognize the right of "local communities" to participate in the development and the natural resource management of the lands they occupy which without any explicit references to them, echoes several major provisions of the ILO Convention No. 169 and the UNDRIP. As a matter of fact, conclusion no. 3 explicitly mentions the "respect for the rights of the indigenous peoples". Another significant aspect of the Council conclusions is the express concern of the Council for the political participation of IPs in the development of the Northern Dimension Arctic Window.

From our specific perspective, the 2009 Council conclusions reflects a better informed and less schematic - not to say, less bureaucratic - approach of Arctic IP's issues than the former EU official documents on Arctic issues and showes an unequivocal commitment of the EU towards the recognition of indigenous peoples rights, not only in advocating those rights but in implementing them into its Arctic policy project. The "respect for [...] the needs and rights of Arctic residents, including the indigenous peoples" being presented not only as a point among others, but as a key principle of the EU policy on the Arctic is of great significance for our study. In conclusion no. 23, the Council requests the Commission to present a report on progress made in these areas by the end of June 2011.

European Parliament resolution on a sustainable EU policy for the High North (20 January 2011)[257].

The European Parliament resolution of 20 January 2011 takes into account the Commission communication as a "first step towards responding to the European Parliament's call for the formulation of an EU Arctic policy" whereas the Council Conclusions on Arctic Issues is recognised as "a further step in the definition of an EU policy on the Arctic".

The European Parliament resolution's preamble contains three preambulatory clauses related to human rights, indigenous peoples' rights and Nordic Sami's Rights:

> – having regard to the United Nations Declaration on the Rights of Indigenous Peoples of 13 September 2007,
> – having regard to the Nordic Sami Convention of November 2005,
> – having regard to 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,

The EP Resolution contains 67 points grouped into six sections: The EU and the Arctic (1-14); natural resources (15-23); climate change and pollution effects on the Arctic (24-30); sustainable socio-economic development (31-41); governance (42-55); conclusions and requests (56-67). We print below the various points related to indigenous and local communities concerns:

> *The EU and the Arctic*

5. Conscious of the need to protect the fragile environment of the Arctic, underlines the importance of overall stability and peace in the region; 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; stresses the similarity in approach, analysis and priorities between the Commission Communication and policy documents in the Arctic States; stresses the need to engage in policies that respect the interest in sustainable management and use of the land-based and marine, non-renewable and renewable natural resources of the Arctic region, which in turn provide important resources for Europe and are a major source of income to the inhabitants of the region;

7. Emphasises the importance of interacting with Arctic communities and supporting capacity-building programmes in order to improve the quality of life of indigenous and local communities in the region and gain more understanding of the living conditions and cultures of these communities; calls on the EU to promote a stronger dialogue with the indigenous peoples and the Arctic local inhabitants;

Sustainable socioeconomic development

31. Recognises that the effects of the melting ice and milder temperatures are not only displacing indigenous populations and thereby threatening the indigenous way of life but also creating opportunities for economic development in the Arctic region; acknowledges the wish of the inhabitants and governments of the Arctic region with sovereign rights and responsibilities to continue to pursue sustainable economic development while at the same time protecting traditional sources of the indigenous peoples' livelihood and the very sensitive nature of the Arctic ecosystems, taking into account their experience in using and developing the various resources of the region in a sustainable way; [...]

34. 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; stresses the need to adopt special measures to safeguard the culture, language and land rights of indigenous peoples in the way defined in ILO Convention 169; calls for a regular dialogue between the indigenous peoples' representatives and the EU institutions and further calls on the EU to take into account the special needs of sparsely populated peripheral areas in terms of regional development, livelihoods and education; underlines the importance of supporting activities promoting the culture, language and customs of indigenous peoples;

35. Notes that the economies of the indigenous peoples rely to a high extent on sustainable use of natural resources and therefore that the reduction of climate change and its effects and the right of the indigenous peoples to an unpolluted natural environment are also questions of human rights;

36. Welcomes the work of the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and that of the UN Expert Mechanism on the Rights of Indigenous Peoples;

37. Welcomes the successful completion by the Expert Mechanism of its progress report on the study on indigenous peoples and the right to participate in decision-making;

38. Encourages the Arctic Member States to engage in negotiations leading to a new ratified Nordic Sami Convention;

39. Urges the EU to promote actively the culture and language rights of Finno-Ugric people living in Northern Russia;

Governance

43. Emphasises that, although States play a key role in governance in the Arctic, other players – such as international organisations, indigenous and local people and sub-state authorities – also have important roles; points out that it is important to increase trust among those with legitimate interests in the region by taking a participative approach and using dialogue as a way of developing a shared vision for the Arctic;

48. Welcomes the degree of political organisation of indigenous interests in the Sami Parliaments and then Sami Council in Northern Europe and the cooperation among several indigenous organisations on a circumpolar basis and acknowledges the unique role of the AC with regard to the involvement of indigenous people; recognises the rights of the indigenous peoples of the Arctic as set out in the UN Declaration on the Rights of Indigenous Peoples and encourages the Commission to make use of the EIDHR for the benefit of Arctic indigenous people empowerment;

Conclusions and requests

57. Calls on the Commission, in negotiating bilateral agreements, to take account of the fact that the sensitive Arctic ecosystem must be protected, the interests of the Arctic population, including its indigenous population groups, must be safeguarded and the natural resources of the Arctic must be used sustainably, and calls on the Commission to be guided by these principles in relation to all activities;

65. Calls for all governments in the Arctic region, especially that of Russia, to adopt and endorse the United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly on 13 September 2007;

66. Urges Member States to ratify all the key agreements regarding the rights of indigenous peoples, such as ILO Convention 169;

As an overall comment, it is to be noted that in the 2011 EP Resolution, indigenous peoples' issues are not contained in one specific section. Indeed, they are primarily specified in the section "Sustainable socioeconomic development" but they are also addressed in others sections, namely "The EU and the Arctic", "Governance" and "Conclusions and requests" which is an indicator of a "cross-cutting approach" and of a consensus among MEPs regarding the centrality of the issue of "respect for (…) the needs and rights of Arctic residents, including the indigenous peoples", presented as a key principle in the 2009 Council conclusions on Arctic issues.

By analyzing the 2011 EP Resolution, one cannot fail to be surprised by the numerous references to human and indigenous peoples rights and by the level of accuracy of these references to international instruments devoted to IP's rights, to UN treaty-based monitoring bodies, not to forget a special focus on "the EU's only indigenous people, the Sami people",

regarding negotiations on a new ratified Nordic Sami convention. The 2011 EP Resolution marks a turning point in the EU approach of IP's issues developed in the EU Arctic policy project. While the 2008 Communication was advocating indigenous rights on a general basis and while the 2009 Council conclusions was promoting the fundamental principle of consultation and participation without any reference to ILO's C169, the 2011 EP Resolution throws diplomatic caution to the wind, urging Russia and the EU member States concerned to to ratify all the key agreements regarding the rights of IPs and present a well-informed set of arguments based on international standards on IP's rights (cultural right, langage right, land rights…). And beyond the international standards, the Resolution (point 35) makes reference to the ongoing discussion conducted by the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights[258].

It is of interest to note that the title of the 2011 EP Resolution makes use of the expression "High North" rather than "Arctic region". As far as EU official documents on the Arctic are concerned, this is an isolated case. As mentioned earlier, the "expression" "High North", as referring to the North circumpolar region, is mainly to be found in the English wording of the official and public documents on the Arctic region issued by the Norwegian Government. This all the more surprising that the term "High North" has no immediate corresponding counterpart in academic or political discourse outside Norway. We therefore suspect some Norway influence on the wording of the Resolution. As explained by N. Wegge[259], Norway and Canada have been "the most influential external actors" in the development of an Arctic policy for the European Union since 2008 "when the highly controversial 2008 Resolution passed in the Parliament, alarm bells went off in Oslo". On the suggestion of the Norwegian foreign minsitry, "multiple bilateral talks between the EU leaders and some of the most senior Norwegian Foreign Affairs officials were arranged. "The intense Norwegian effort during this period to follow up on the Commission's work caused the chair of the inter-service group, János Herman, to exclaim that he felt "surrounded by Norwegians"[260]. Regarding the 2011 EP Resolution, one cannot fail to notice the occurency of unsual warm words, in this case on Norway, in the preambulatory clause "E": "whereas Norway, a reliable partner, is associated with the EU through the EEA Agreement".

Joint Communication: Developing an EU Policy towards the Arctic Region (26 June 2012)[261]

The 2012 joint Communication of the Commission and the High Representative sets out the case for increased EU engagement in Arctic issues.

The first part of this Joint Communication presents a set of building blocks for the EU's constructive engagement in the Arctic to tackle the challenge of sustainable development and the second part responds to the Council's request for follow-up to its Conclusions on Arctic issues and the European Parliament's Resolution on a sustainable EU policy for the High North. It summarizes the EU's contribution to the Arctic since 2008 including "climate change and environment", "research, monitoring and assessments" and notably, "support to indigenous peoples and local populations".

The Joint Communication recalls a number of EU initiatives reflecting the objective of the Commission to have regular dialogue with the indigenous communities of the Arctic:

- 9 March 2010, the Commission hosted an "Arctic Dialogue" workshop.
- January 2011: The Commission met again with representatives of Arctic indigenous peoples in Tromsø, Norway.
- June 2011: The EEA invited Arctic indigenous peoples' groups to a workshop to discuss use of lay, local and traditional knowledge in monitoring the Arctic environment and assessing trends and changes affecting the Arctic population.

The EU provides substantial financial support to civil society organisations working on indigenous issues, in particular through the European Instrument for Democracy and Human Rights (EIDHR). The EU provides a significant amount of funding through various initiatives to indigenous groups and local populations.

We print below the list of the EU funding programmes during the 2007-2013 co-financing period amount to €1.14 billion, or €1.98 billion including EU Member States co-financing:

- The 2007-2013 European Regional Development Fund[262] (ERDF) set aside €4.3 million in the cross-border Sápmi sub-programme to support the Sami population in developing its cultural life and industry in a sustainable manner. Additionally, Interreg IVA North, the programme of which Sápmi is a part, with EU funding of €34 million (total €57 million) has the objective of strengthening the attractiveness and competitiveness of the northernmost regions of Finland, Sweden and Norway.
- Similar objectives govern the Botnia-Atlantica programme[263] in covering northern regions of Finland, Sweden and Norway (EU funding of €34.4 million out of a total of €60.9 million) and the Sweden-Norway Interreg IVA programme (EU funding of €37 million out of a total of €68 million).
- The Northern Periphery Programme[264] involving Ireland, Finland, Sweden and the United Kingdom as well as the Faroe Islands, Greenland, Iceland and Norway (with possible participation of the Russian Federation and Canada), has a budget of €59 million, of which EU funding amounts to €35 million. The Programme aims to help remote communities in northern Europe develop their economic, social and environmental potential;
- The transnational Baltic Sea Region Programme[265] (of which EU funding amounts to €217 million out of €278 million), finances the Bothnian 'Green Logistic Corridor' to connect northern Scandinavia and the Barents with end markets in the Baltic Sea region and central Europe;
- In the 2007-2013 period ERDF invests € 243 million in the North Sweden programme and € 177 million in the Mid-North Sweden programme to increase the competitiveness of the regions. Sami issues are integrated into the different priority areas;
- The Northern Finland ERDF Programme[266] is operating with an overall budget of €1.1 billion, of which €311.3 million comes from the EU budget. The programme's priorities include measures specifically designed for the Sami, supporting entrepreneurship and business based on the Sami culture;
- The Kolarctic programme[267] is one of 13 cross-border cooperation programmes currently co-funded under the European Neighbourhood and Partnership Instrument (ENPI) and ERDF. The 2007-2013 budget of the programme amounts to €70.48 million, of which

€28.24 million is EU funding. Northern regions of Finland, Sweden, Norway and the Russian Federation participate in the programme.

- In the sub-Arctic part of the Barents region, another cross-border cooperation programme – the Karelia programme[268] - is operating with an overall budget of €46.5 million, of which €23.2 comes from the EU budget and the remaining part consists of contributions from Member States and the Russian Federation.

The Northern Dimension Partnership in Public Health and Social Well-being (NDPHS) has developed a work plan to improve mental health, prevent addiction and promote child development and community health among indigenous peoples. The work plan is to be implemented by 2013.

By comparison with the financial support to IP and local communities' issues over the period 2007-2013, around €200 million of EU funds has been allocated to Arctic research over the period 2002-2012.

European Parliament resolution on the EU strategy for the Arctic (12 March 2014)[269]

Having regard to its previous resolution of January 2011 and to the joint communication of June 2012 and to the Commission communication of November 2008, the European Parliament Resoplution on the EU strategy for the Arctic of March 2014 "reiterates its call for a united EU policy on the Arctic, as well as a coherent strategy and a concretised action plan on the EU's engagement on the Arctic".

By comparison with the EP resolution of January 2011, neither in the preamble nor in the 57 points of the Resolution, the issue of respect for IP's rights is raised with the notable exception of point 44: "Confirms its formulations on the rights of indigenous people"; which indeed, makes the 2011 Resolution an appendix to the new resolution, as far as IP rights standards are concerned. This choice allowes the new resolution to consider the references to IP rights standards rights contained in the 2011 EP resolution as valid, and as as consequence, to focus on other specific IP's issues. With point 53, the 2014 Resolution becomes more concrete by asking the Commission to report on which EU programmes could be used to support a long-term balanced sustainable development involving the people of the Arctic, thus "recognizing their wish for sustainable development of the region". Let us also mention Resolution point 45:

> 45. Supports the meetings held by the Commission with the six associations of circumpolar indigenous peoples that are recognised as permanent participants in the Arctic Council; asks the Commission to explore the possibility of ensuring that their voices are taken into account in EU debates, providing funds for these associations;

Another notable aspect of the 2014 EP Resolution is the relative emphasis that is placed on the "European Arctic" and the EU's only indigenous people specifically. The first occurences appear already in the preamble:

> E. whereas Denmark, Finland and Sweden are Arctic countries; whereas the EU's only indigenous people, the Sami people, live in the Arctic regions of Finland and Sweden, as well as Norway and Russia;
>
> H. whereas the Arctic is an inhabited region with sovereign states; whereas the European Arctic region encompasses industrialised modern societies, rural areas and indigenous communities; whereas the active involvement of these regions in the development of the EU-Arctic policy is essential for ensuring legitimacy, mutual understanding and local support for the EU's Arctic engagement;
>
> I. whereas there has been a longstanding engagement of the EU in the Arctic through its involvement in the Northern Dimension Policy with Russia, Norway and Iceland, in the Barents cooperation and particularly in the Barents Euro-Arctic Council and the Barents Regional Council, in the strategic partnerships with Canada, the US and Russia, and in its participation as an active ad hoc observer in the Arctic Council in recent years;

Several points of the Resolution mention explicitly the "European Arctic", the indigenous peoples from the Barents Euro-Arctic Council or "indigenous stakeholders of the European Arctic":

> 7. Regards the Barents Euro-Arctic Council (BEAC) as an important hub for cooperation between Denmark, Finland, Norway, Russia, Sweden and the Commission; notes the work of the BEAC in the fields of health and social issues, education and research, energy, culture and tourism; notes the advisory role of the Working Group of Indigenous Peoples (WGIP) within the BEAC;
>
> 34. Recommends strengthening regular exchange and consultations on Arctic-related topics with regional, local and indigenous stakeholders of the European Arctic in order to facilitate mutual understanding, in particular during the EU-Arctic policymaking process; stresses the need for such consultations to draw on the experience and expertise of the region and its inhabitants and to guarantee the essential legitimacy of the EU's further engagement as an Arctic actor;
>
> 44. Confirms its formulations on the rights of indigenous people in general and the Sami in particular, as the EU's only indigenous people;

Indeed, the objective of an EU strategy on the Arctic is still prevailing in the 2014 EP resolution and many points of the Resolution deal with Arctic issues, apart from the single exception of point 43 making use accidentally of the expression "High North". Nonetheless, the set of arguments and references to the European Arctic contained in the Resolution showes that the EU seeks to increase its legitimacy in Arctic Affairs by valuing its implication in the so-called European Arctic area, notably through the BEAC regional cooperation body and the ND. In the field of Indigenous Peoples Rights, the EU didn't hesitate to make strong statements of universal value where in the field of "Arctic multilateral governance", presented earlier as one of the three main EU policy objectives, the EU feels the need to increase its legitimacy in the eyes of States directly concerned. Undoubtedly, the list of EU's financial contribution to the Arctic since 2008 contained in the 2012 Joint Communication served the same goal of enhancing EU's legitimacy in Arctic Affairs.

Last but not least, Resolution point 5 expresses regrets (or repentance) regarding the EU regulation on seals products and its consequences on indigenous peoples and livelihood. As the EU ban on seals products is known to be Canada's official argument against granting the EU an Arctic Council observer status at the ministerial meetings in April 2009 and May 2013, we understand that this point is another argument in support of the recognition of the EU as a political actor in the Arctic region, and incidentally, at the Arctic Council intergovernmental forum.

Council conclusions on developing a European Union Policy towards the Arctic Region (12 May 2014)[270].

The Council takes note of the Joint Communication of the Commission and the High Representative of June 2012 which "sets out the path for the EU's increased engagement in the Arctic" and of the important considerations of the European Parliament in its resolution of 12 March 2014 on the EU strategy for the Arctic.

As stated in conclusion 1, the Arctic is a region of "growing strategic importance" and the "EU should now further enhance its contribution to Arctic cooperation" by, notably "intensifying the EU's constructive engagement with Arctic States, indigenous peoples and other partners to find common solutions to challenges that require an international response" (conclusion 2). In conclusion 4, "the Council supports the intention of the Commission and the High Representative to intensify dialogue on Arctic matters with all the EU's Arctic partners". We note that regarding the general objective of Arctic cooperation, the Council has incorporated the principle of "indigenous peoples" as "partners".

In the same way as noticed earlier with the 2014 European Parliament resolution, the only two Council conclusions devoted to indigenous peoples or local communities are not dealing with IPs rights but more practically with appropriate ways (programmes, regular dialogue, annual meeting, subsidies…) of ensuring IP's participation and consultation on the EU policies that may affect them, and are given appropriate platforms to present their particular concerns to EU institutions and audiences:

> 7. The Council supports EU's efforts for increased dialogue with indigenous peoples of the Arctic region, and welcomes the annual EU Arctic Indigenous Peoples' Dialogue meetings. The EU should also explore appropriate ways of ensuring that the representatives of Arctic indigenous peoples are informed and consulted on EU policies that may affect them.
>
> 14. The Council invites the Commission to ensure that Arctic-relevant programmes financed by the EU under the 2014-2020 multi-annual financial framework, meet the development needs of local populations [...].

In the end, the Council requested the Commission and the High Representative to present proposals for the further development of an integrated and coherent Arctic Policy by December 2015.

6. PROPOSAL FOR AN EU ACTION PLAN ON IP'S RIGHTS

In the light of the present study and its various findings, in consideration of the fundamental importance of Human Rights in EU treaties and EU policies and indeed, in the context of the EU-Arctic policymaking process, which is announced to be completed for December 2015, we have designed a list of 43 possible actions aimed at fostering the political participation of IPs in the "Arctic governance" which could be implemented, carried out or promoted by EU institutions, bodies or Members States, within their respective field of competence, at various level (international organizations, UN bodies, EU state members, regional cooperation bodies, third countries, NGOs..).

Promoting the universality of IP' rights

1. **Intensify the promotion of ratification, adoption and effective implementation of all the key agreements regarding the rights of indigenous peoples, such as ILO Convention 169, reminding States that indigenous peoples' right of participation and consultation must be respected and put into practice in the very implementation process of these agreements.**

2. **Encourage third countries to fully cooperate with the UNPFII, the Expert Mechanism on the Rights of IPs and the Human Council.**

3. **Call for all governments in the Arctic region to adopt and endorse the UNDRIP.**

4. **Recommend EU member states to ratify ILO Convention No. 169.**

Human rights for IP/Indigenous peoples' rights throughout EU policy

5. **Include references to IP's rights to any EU policy documents on Human Rights**

6. **Promoting human rights including IP's rights in all EU external action without exception. In particular, it will integrate the promotion of human rights/IP's rights into trade, investment, technology and telecommunications, Internet, energy, environmental, corporate social responsibility and development policy as well as into Common Security and Defence Policy and the external dimensions of employment and social policy and the area of freedom, security and justice.**

7. **Develop EU policy relative to the UN Declaration on the Rights of Indigenous Peoples.**

8. **Ensure that EU development policies comply with human rights, including those set out in the UNDRIP.**

EU Policy on the Arctic

9. **Continue to place a high priority on strengthening Arctic IP's participation and consultation in the Arctic governance system**.

10. **Adress the IP's issue as a cross-cutting issue involving various sectors.**

Business and Human Rights

11. **Recommend that EU member states include reference to IP's rights set out in the UNDRIP in their Business and Human Rights National Action Plans.**

12. **Recommend that a European Regional Action Plan on Business and Human Rights be developed on indigenous peoples and extractive industries.**

13. **Ensure that all investment and trade agreements both by the EU and by member states comply with international human rights standards, including those addressing the rights of IPs.**

14. **Establish a regulatory framework to ensure that future investment and trade include mandatory human rights impact assessment and due diligence requirements.**

15. **Explore ways in which EU bodies and personnel concerned with trade and their respective policies, procedures and practices, can be better trained and coordinated so as to ensure that all trade-related activities are fully compliant with the human rights obligations of the EU and its Member States, and the EU's international development agenda.**

16. **Propose the establishment of an effective, affordable, and accessible grievance mechanism where indigenous peoples can address allegations of European corporate violations of their rights, including their decision-making rights over developmental activities in their territories or impacting on their rights.**

<u>Working through multilateral institutions</u>

17. **Maintain active participation of the EU in the UNPFII, the Expert Mechanism on the Rights of Indigenous Peoples and the Human Rights Council as well as other international fora where its representatives contribute on indigenous peoples' issues.**

18. **Develop and agree an annual approach to the identification of priorities at the UN – and where relevant the ILO – across all indigenous peoples rights related meetings in Geneva and New York, in consistency with the priorities defined for its action at the UN.**

19. **Give support to the eventual elaboration of a UN convention on the rights of indigenous peoples.**

20. **Support proposals for the management of indigenous subsistence whaling at the International Whaling Commission (IWC), provided that conservation is not compromised, whaling operations are properly regulated and catches remain within the scope of documented and recognised subsistence needs.**

Business and Human Rights/IP' Rights

21. **Support further discussion under the auspices of the UN Forum on Business and Human Rights of ways and means of strengthening protection of indigenous peoples' rights, including further elaboration of how the Guiding Principles on Business and Human Rights can be implemented in practice.**

22. **Engage in the discussions of the UN Forum regarding a proposed treaty on business and human rights as a means of preventing the most flagrant violations of human rights of indigenous peoples arising from certain practices by governments and extractive industries.**

Working with bilateral partners

23. **Continue to develop local human rights, including IP's rights, country strategies in third countries.**

24. **Ensure that the human rights including IP's rights country strategies are taken into account in human rights and political dialogues at all levels, in policymaking and when programming and implementing financial assistance with third countries, including in Country Strategy Papers.**

25. **Call for government of Russia to adopt and endorse the UN Declaration on the rights of IP.**

Strenghtening EU priorities on IP's rights

26. **Give high priority to the recognition of IP's rights, first and foremost the principle of "Free, Prior, Informed and Consent", in the finalisation of the EU Arctic policy on the basis of extensive consultations with IP.**

27. **Foster the development of the ND Arctic Window and ensure that indigenous peoples are included in the deliberations on the ND Arctic Window**

28. **Include a panel on indigenous peoples in the EU Human Rights Forum that will provide opportunities to draw on a wide range of civil society organizations, academic institutions and others working on indigenous issues.**

29. **Maintain the thematic priority given to the rights of indigenous peoples under the European Initiative for Democracy and Human Rights**.

30. **Supports the request made by WGIP to be be granted Permanent Participant status as at the BEAC and the BRC.**

31. **Encourage the EU Special Representative to Human Rights to enhance the effectiveness and visibility of EU indigenous peoples' Rights policy**.

32. **Ensure that Arctic-relevant programmes financed by the EU under the 2014-2020 multi-annual financial framework, meet the development needs of local populations.**

33. **Heads of EU Delegations, Heads of Mission of EU Member States, heads of civilian missions and operation commanders shall work closely with IP's rights NGOs active in the countries of their posting.**

34. **Maintain regular dialogue with the six associations of circumpolar indigenous peoples that are recognised as permanent participants in the Arctic Council and explore the possibility of ensuring that their voices are taken into account in EU debates, providing funds for these associations;**

35. **Urge the Arctic Member States to engage in negotiations leading to a new ratified Nordic Sami Convention.**

Business and Human Rights/IP's Rights

36. **Establish a forum for dialogue with indigenous peoples' representatives to consider measures that might be proposed improve relations between their communities and extractive industries that are within EU jurisdiction.**

37. **Propose an EU-initiated multi-stakeholder dialogue on indigenous peoples, extractive industries and human rights focused on regulation of extractive industry in accordance with the Declaration on the Rights of Indigenous Peoples and as a means of ensuring a level playing field for all companies operating on indigenous peoples' lands.**

38. **Invite and support civil society organizations and academic institutions, in cooperation with indigenous peoples, to continue research on the impacts of extractive industries on indigenous communities.**

39. **Conduct a targeted campaign on the rights of indigenous peoples.**

<u>Support for Indigenous Peoples, academic and civil society organizations</u>

Supporting current works of identification of Arctic indigenous peoples in Statistics

40. **Supporting programmes from social sciences researchers or local initiatives, involving indigenous peoples themselves, aimed at improving knowledge of specific Arctic indigenous communities regarding their demography, geography and culture.**

Supporting capacitiy-building of indigenous communities

41. **Continue to support capacity-building of indigenous communities in particular in relation to business and human rights including in human rights strategies drafted by EU delegations in relevant countries.**

42. **Support the organisations and activities of the Saami and of other peoples of the European Arctic, *inter alia* under regional and cross-border programmes. Promote Northern European know-how in reindeer husbandry.**

43. **Promote actively the culture and language rights of Finno-Ugric people living in Northern Russia.**

Appendix 1: Unified List of Small-Numbered Indigenous Peoples of the Russian Federation (March, 24, 2000).

The peoples marked in bold are in the List of Small-Numbered Indigenous Peoples of the North, Siberia and the Far East (2006).

	Name	Places of residence
1	Abazins	Karachevo-Cherkes Republic
2	Aleuts	Kamchatka Territory
3	Alyutors	Kamchatka Territory
4	Besermyans	Udmurt Republic
5	Vepses	Republic of Karelia, Leningrad Region
6	Dolgans	Krasnoyarsk Territory, Yakutia
7	Izhors	Leningrad Region
8	Itelmens	Koryak Autonomous Region
9	Kamchadals	Kamchatka Territory
10	Kereks	Chukotka Autonomous Region
11	Kets	Krasnoyarsk Territory
12	Koryaks	Koryak Autonomous Region, Kamchatka Territory, Chukotka autonomous Region, Magadan Region
13	Kumandins	Altai territory, Altai Republic, Kemerovo Region
14	Mansi	Khanty-Mansy Autonomous Region, Tyumen Region, Sverdlovsk Region, Komi Republic
15	Nagaibaks	Chelyabinsk Region
16	Nanais	Khabarovsk Territory, Primorsk Territory, Sakhalin Region
17	Nganasans	Dolgano-Nenets Autonomous Region, Krasnoyarsk Territory
18	Negidals	Khabarovsk Region
19	Nenets	Yamalo-Nenets Autonomous Region, Nenets Autonomous Region, Arkhangelsk Region, Khanty-Mansy Autonomous Region, Komi Republic
20	Nivkhs	Khabarovsk Territory, Sakhalin Region
21	Oroks	Sakhalin Region
22	Orochs	Khabarovsk Territory

23	Sami	Murmansk Region
24	Selkups	Yamalo-Nenets Autonomous Region, Tyumen Region, Tomsk Region, Krasnoyarsk Territory
25	Soyots	Buryatia Republic
26	Tazs	Primorsk Territory
27	Telengits	Altai Republic
28	Teleuts	Kemerovo Region
29	Tofalars	Irkutsk Region
30	Tubalars	Altai Republic
31	Tuvans - Todzhins	Tyva Republic
32	Udege	Primorsk Territory, Khabarovsk Territory
33	Ulchs	Khabarovsk Territory
34	Khanty	Khanty-Mansy Autonomous Region , Yamalo-Nenets Autonomous Region, Tyumen Region, Tomsk Region, Komi Republic
35	Chelkans	Altai Republic
36	Chuvans	Chukotka Autonomous Region, Magadan Region
37	Chukchi	Chukotka Autonomous Region, Koryak Autonomous Region
38	Chulyms	Tomsk Region, Krasnoyarsk Territory
39	Shapsugs	Krasnodar Territory
40	Shorians	Kemerovo Region, Khakassia Republic, Altai Republic
41	Evenks	Yakutia, Evenk Autonomous Region, Krasnoyarsk Territory, Khabarovsk Territory, Amur Region, Sakhalin Region, Buryatia Republic, Irkutsk Region, Chita Region, Tomsk Region, Tyumen Region
42	Evens	Yakutia, Khabarovsk Territory, Magadan Region, Chukotka Autonomous Region, Koryak Autonomous Region, Kamchatka Region
43	Enets	Dolgano-Nenets Autonomous Region
44	Eskimo	Chukotka Autonomous Region, Koryak Autonomous Region
45	Yukagirs	Yakutia, Magadan Region

[1] by virtue of a small island Grimsey located at 66° 32' 30'' North
[2] Editor's note
[3] AHDR, 2004, p. 17
[4] Northwest Territories, Yukon and Nunavut.
[5] AHDR, 2004, p.16
[6] The Department of Defence Arctic Strategy uses a broad definition of the Arctic, codified in 15 U.S.C. 4111, that includes all U.S. and foreign territory north of the Arctic Circle and all U.S. territory north and west of the boundary formed by the Porcupine, Yukon, and Kuskokwim Rivers; all contiguous seas, including the Arctic Ocean and the Beaufort, Bering, and Chukchi Seas, and the Aleutian islands chain.
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[8] New building Blocks in the North - The next step in the Government's High North Strategy, Norwegian Ministry of Foreign Affairs, 2009, p.7
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[10] "The High North is a broad concept both geographically and politically. In geographical terms, it covers the sea and land, including islands and archipelagos, stretching northwards from the southern boundary of Nordland county in Norway and eastwards from the Greenland Sea to the Barents Sea and the Pechora Sea. In political terms, it includes the administrative entities in Norway, Sweden, Finland and Russia that are part of the Barents Cooperation. Furthermore, Norway's High North policy overlaps with the Nordic cooperation, our relations with the US and Canada through the Arctic Council, and our relations with the EU through the Northern Dimension", O. Gunnar Skagestad, 2014.
[11] O. Gunnar Skagestad, 2014.
[12] Finland's Strategy for the Arctic Region, 2013 - Government resolution on 23 August 2013, Prime Minister's Office Publications, 16/2013
[13] "Iceland is geographically located by the Arctic Circle and is therefore within the Arctic", Parliamentary resolution on Iceland's Arctic Policy, March 28, 2011.
[14] ASI, 2009, p.32
[15] Inter-American Commission on Human Rights, Indigenous and Tribal Peoples' Rights Over Their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System (OEA/Ser.L/V/II. Doc. 56/09, 2009), para. 56
[16] E/2007/43 and E/C.19/2007/12, paras. 5-6.
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[21] AMAP Assessment 2009: Human Health in the Arctic, chap.1, p.2
[22] ASI, 2009, p. 32
[23] See for example: C. Keskitalo, Negotiating the Arctic: the Construction of an International Region, Routledge, London, 2004.
[24] Keskitalo, 2004
[25] Ottawa Declaration, 1.(a), 1996. Available at: www.arctic-council.org
[26] "Only seven countries stretch their territories beyond the Arctic Circle (Canada, Denmark, Finland, Norway, Sweden, The United States and the USSR)". Factors to be considered in delineating « Arctic » and « Antarctic » in terms of Health problems and services, Journal of Public Health, Karl Evang, Oct. 1963, p.1565, available on: http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1254377/?page=1
[27] E.C.H. Keskitalo, Negotiating the Arctic: The construction of an international Region, Routledge, 2004, p.4
[28] Ibid, 2.
[29] Ibid, 2.
[30] AHDR, 2004, Introduction, p. 20
[31] Personal witness
[32] The AEPS is the first multilateral (non-binding) agreement among the Arctic States.
[33] Arctic Monitoring and Assessment Program (AMAP); Conservation of Arctic Flora and Fauna (CAFF); Protection of the Arctic Marine Environment (PAME); Emergency, Prevention, Preparedness and Response (EPPR); Sustainable Development and Utilization (SDU).
[34] AMAP, 2009. AMAP Assessment 2009: Human Health in the Arctic. Arctic Monitoring and Assessment Programme (AMAP), Oslo, Norway, chap.1, p.2
[35] The 2009 AMAP assessment of Human Health in the Arctic was built upon the previous AMAP human health assesments that were presented in 1998 (AMAP Assessment Report: Arctic Pollution Issues. Arctic Monitoring

and Assessment Programme (AMAP), Oslo, Norway) and 2002 (AMAP Assessment 2002: Human Health in the Arctic. Arctic Monitoring and Assessment Programme (AMAP), Oslo, Norway).
[36] Apart from the AHDR, other working groups such as CAFF and EPPR developed their own boundaries or adapted the AMAP boundary. As a matter of fact, the different scopes of each working group makes it difficult to have a "one-size-fits-all" solution.
[37] Similarly, the CAFF boundary follows the tree line in order to include the ecosystems that are the focus of its activities.
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[40] http://www.un.org/esa/socdev/unpfii/documents/5session_factsheet1.pdf (Page visited on 12 May 2014)
[41] Ibid
[42] Ibid
[43] Ibid
[44] UN DESA, 2004:1.
[45] Original quote in "The Study of the Problem of Discrimination against Indigenous Populations", 1986, UN Doc. E/CN.4/Sub.2/1986/7 and Add. 1-4.
[46] ILO, C169, Indigenous and Tribal Peoples Convention (No. 169); Convention concerning Indigenous and Tribal Peoples in Independent Countries (Entry into force: 05 sept. 1991). See: www.ilo.org
[47] Ibid p.10
[48] Government of Canada, Aboriginal Affairs and Northern Development Canada, www.aadnc-aandc.gc.ca
[49] Government of Canada, Aboriginal Affairs and Northern Development Canada, www.aadnc-aandc.gc.ca/reference/licence-eng.html
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[61] Lehtola 2002: 86-87 (2).
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