Current Developments in Arctic Law

Volume 1, 2013

Edited By

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UArctic

Thematic Networks

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Opening Words

Dear Reader,

This is the first electronic book produced by the University of the Arctic's thematic network on Arctic Law. The contributions to this work are brief, a choice of format that enabled us to tap a range of the network's busy scholars for insights into their fields and show the breadth of legal scholarship dealing with matters Arctic.

Legal scholarship on and in the Arctic is booming. Climate change and economic globalization are opening up the region to an increasing range of human activities, ones which will require legal and other regulation if they are to be safe and sustainable. Given that research in the Arctic has long been multidisciplinary in orientation, legal research has benefitted from the research in other fields of Arctic studies. Yet, as law differs clearly from other scientific disciplines and typically has a strong influence on how society functions, we legal scholars are often called upon to explain to others the workings of the law. It is in this vein and with this book that we have tried to provide insights for colleagues in our own and other disciplines into how the law works in the Arctic. Many of the contributions identify the legal issues that will shape the future of the Arctic, offering perspectives that we hope will also interest the legal community at large.

Sincerely,

Timo Koivurova

Research professor, director
The Northern Institute for Environmental and Minority Law
Arctic Centre
University of Lapland

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International Law Status of Greenland

Gudmundur Alfredsson

After WWII, Denmark listed Greenland as a non-self-governing territory with the United Nations in accordance with Chapter XI of the Charter and submitted annual reports on the situation in the colony until 1954 when the General Assembly, in resolution 849 (IX) of 22 November 1954, took note of the integration.[1] The integration process, however, was entirely one-sided. From the lack of options offered to the Greenlanders to the absence of a referendum to the consultation of a municipal body that did not represent the whole country and had no mandate or authority to take constitutional decisions on behalf of the Greenlanders, the integration cannot withstand human rights scrutiny.[2]

In 2008, after some four years of negotiations, a joint Danish-Greenlandic Self-Governance Commission with a mandate to make proposals concerning the legal status of Greenland under both international law and constitutional law submitted a legislative bill and a detailed commentary thereto.[3] In a referendum on the self-governance package later that same year, with about 72% of the electorate participating, 75.5% of the Greenlanders voted yes and 23.5% said no. The new legislation entered into force in June 2009 after adoption by the Danish Parliament, foreseeing the granting of additional powers to Greenland's Government, including the judiciary, the police, the prison administration and enhanced capacity in the handling of foreign affairs. The Greenlandic language is now the only official language of Greenland, instead of Danish and Greenlandic as it was before. And the Greenlanders are the owners of all natural resources on their land and at sea; income from the exploitation of natural resources, after offsetting Danish Government subsidies, will now go to the Greenlandic Government.

Perhaps the most important provision of the new legislation recognizes the Greenlanders as a people. It is spelled out that as a people they have the right of external self-determination, that a

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[1] For the text of resolution 849 (IX), go to "www.un.org/documents/ga/res/9/ares9.htm".
[2] Gudmundur Alfredsson, Greenland and the Right to External Self-Determination, S.J.D.-dissertation at Harvard Law School, 1982; "Greenland and the Law of Political Decolonisation," German Yearbook of International Law, vol. 25 (1982), pp. 290–308; and "The Rights of Indigenous Peoples with a Focus on the National Performance and Foreign Policies of the Nordic Countries" in Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV), vol. 59 (1999), no. 2, pp. 529–542.
[3] The text and other information about the Government of Greenland, in Greenlandic, Danish and English, see "www.nanoq.gl".

decision on independence will be taken by a referendum in Greenland only, that independence for Greenland would not require a change in the Danish Constitution, and that an agreement on succession matters should be concluded with Denmark. This independence option played a significant role in the Greenlandic debate leading to the afore-mentioned referendum. This new approach constitutes a major departure from the previous official policy of the Danish Government of looking at and classifying the Greenlanders as an indigenous people within Denmark.

The decolonization arguments helped in shaping the Greenlandic arguments for the bilateral Self-Governance Commission and played a significant role in the Commission's deliberations and conclusions. Indeed, the people of Greenland continues to meet all the criteria which have been laid down, then and later, in the course of the decolonization process as conditions for the exercise of the right of external self-determination. These include:

a. The Greenlanders live in a distinct overseas territory far away from Denmark, meaning the so-called salt-water theory of decolonization is applicable. The Greenlandic situation is thus fundamentally different from that of groups who live within the metropolitan boundaries of States.

b. The Greenlanders possess subjective and objective identity and culture, with distinct history, language and other national characteristics that differ majorly from those of the administering power. These have often resulted in separate status or different treatment (like non-membership in the European Union, exclusion in some Danish treaty ratifications, a flag and postage stamps of their own, etc.).

c. The Greenlanders came under long-standing colonial control, as confirmed by Denmark with the inclusion of Greenland on the UN list of non-self-governing territories from 1946 to 1954. The termination of this colonial listing in 1954 was seriously flawed under international law standards of that time; no self-government had evolved as spelled out in article 73 of the Charter; the consultation was minimal and did not extend to the population of northern and eastern Greenland, the Greenlanders were not given the required options like independence or free association and, unlike the population of Denmark, they were not able to vote in the referendum on the amendment to the Danish Constitution which brought about their supposed integration.

d. In Danish reports to the United Nations about the colonial situation in Greenland during the period 1946–54, the information submitted was seriously misleading if not outright false, including statements to the effect that there were no Eskimos left in Greenland because of the mixing with Danish blood and that the Greenlanders had accepted integration through a municipal council without highlighting that it was less than representative, did not have a mandate for deciding on

constitutional issues, did not receive information about the full implications of the process, and was not given any other choices than integration.

In other words, a new State may be created in the Arctic in the years ahead. Listening to the current debate in Greenland, that decision would seem for the time being to depend on the local economy growing to the extent that it could substitute for the Danish State's annual budget contribution to Greenland's Government. A sound basis exists in international law for this eventual step and it rests on the right of self-determination, i.e. external self-determination, that the bilateral Self-Governance Commission has consented to and Danish legislation has confirmed. It will certainly be interesting in the years ahead to follow this debate and to see what decision the Greenlandic people eventually will take.

Indigenous Peoples Rights

Gudmundur Alfredsson

The rights of indigenous peoples are clearly part and parcel of human rights. They are based on rules in international instruments, beginning with the UN Charter and the Universal Declaration of Human Rights, concerning the equal enjoyment of all human rights and the prohibition of discrimination in that enjoyment. If and when these are not sufficient, special rights and special measures are called for to facilitate and speed up the achievement of equal rights and non-discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination contains strong language on the obligations of States to take special and concrete measures to combat racial discrimination.

Human rights instruments drawn up specifically to the benefit of indigenous peoples are the 1989 ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) and the 2007 UN Declaration on the Rights of Indigenous Peoples. These foresee a range of special rights and special measures concerning identities, cultures and traditions and the rights to self-management or self-rule and consent, as well as rights to land and natural resources as tools for maintaining and developing indigenous ways of life.

For debating and monitoring human rights situations facing indigenous peoples, the United Nations maintains mechanisms like the Permanent Forum on Indigenous Issues (PFII, subsidiary body of the Economic and Social Council), the Expert Mechanism on the Rights of Indigenous Peoples (under the Human Rights Council), the UN Voluntary Fund for Indigenous Populations, the Special Rapporteur on the Rights of Indigenous Peoples (submits monitoring reports to the Human Rights Council), and the Indigenous Fellowship Program.[4] In one respect these mechanisms are quite advanced; half the membership of the PFII, all the Trustees of the Voluntary Fund and the Special Rapporteur are indigenous persons.

In addition to the specialized instruments, indigenous peoples can draw on general human rights instruments, like the International Covenant on Civil and Political Rights. The UN Convention on the Rights of the Child makes three specific references to indigenous children, and the above-mentioned Convention on the Elimination of Racial Discrimination is also highly

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[4] Information on these activities and the corresponding instruments is available on the website of the UN High Commissioner for Human Rights at “www,ohchr.org”.

relevant to indigenous rights because of its strong language on special measures. International organizations actively monitor the compliance of States with human rights standards, and many of them allow individuals, and sometimes groups, to file complaints against States. Increasingly, the human rights performance of all States is being monitored, even when treaty obligations are not in place.

The most significant case law on indigenous rights is based on article 27 of the Covenant on Civil and Political Rights which is addressed to minorities but has been applied to indigenous peoples by the Human Rights Committee which is the monitoring body for the Covenant. In General Comment No. 23 from 1994, the Committee is explicit about this linking:

"7. With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them."

In this Comment, the Committee refers to two of its several cases dealing with indigenous rights, that is Communication No. 167/1984 (Bernard Ominayak, Chief of the Lubicon Lake Band v. Canada), views adopted on 26 March 1990, and Communication No. 197/1985 (Kitok v. Sweden), views adopted on 27 July 1988.

It is important to keep in mind that the international human rights standards are also applicable to indigenous peoples when they exercise power through self-government and/or cultural institutions and when they make use of their own customary laws. In other words, if or when a clash occurs between human rights and indigenous governance or culture, like may happen with regard to the rights of women and traditional justice, the expectation is that human rights should prevail.

When it comes to implementation at the national level, the international human rights standards should be incorporated into or inserted in constitutional law and/or legislative acts. Obviously indigenous rights should be part thereof. States carry the primary responsibility for the implementation of human rights in law and in fact. Independent and impartial courts and national human rights institutions must be available for addressing grievances and providing relief. When these fail, recourse should be available to international monitoring.

The Polar Law Program at the University of Akureyri

Gudmundur Alfredsson

The University of Akureyri in northern Iceland is since 2008 offering master degrees in polar law (both LLM for candidates with law degrees and MA for non-lawyers). It is the first degree program of its kind in the world with a focus on polar law. Doctoral studies in polar law are now on the drawing table. The University is working closely with the Stefansson Arctic Institute and the Northern Research Forum in Akureyri, the University of the Arctic and other academic institutions in several countries. Emphasis is placed on both international and domestic law concerning the polar regions, and the studies are interdisciplinary encompassing not only law but also political science, international relations, sociology and economics. The purpose of the program is to prepare graduates for further research and/or employment in both the public and private sectors, including national and local governments, international organizations, non-governmental organizations and corporations.

The master program addresses a wide range of global, regional, national and local legal issues that concern the Arctic and Antarctica. Courses in polar law offered at the University of Akureyri have included environmental law, climate change, biodiversity, sustainable development, human rights with an emphasis on the rights of indigenous peoples, peoples and cultures of the circumpolar north, customary laws of indigenous and other Arctic societies, land and natural resources rights, law of the sea, Arctic societies and cultures, comparative Arctic governance, self-government and good governance, economies and business in polar regions, Faroese law, sovereignty and boundary disputes on land and sea and methods of dispute settlement, international cooperation, geopolitics and security, and the roles of global, regional and sub-regional organizations in the polar regions.[5]

Natalia Loukacheva was in 2012 appointed the first Nansen Visiting Professor in Arctic Studies at the University of Akureyri, and under her supervision Polar Law Textbooks have been published in two volumes by the Nordic Council of Ministers.[6] Some of the other regular teachers in the master program have been Gudmundur Alfredsson, Agust Thor Arnason, Alyson Bailes, Nigel

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[5] More information about the master program, including admission procedures, are available at the website of the University of Akureyri at "www.unak.is".
[6] See “www.norden.org/en/publications/publikationer/2013-535”.

Bankes, Kees Bastmeijer, Niels Einarsson, Malgosia Fitzmaurice, Lauri Hannikainen, Lassi Heininen, Jón Haukur Ingimundarson, Rachael Lorna Johnston, Mike Karlsson, Timo Koivurova, Joan Nymand Larsen, Tavis Potts, Peter Ørebech, Kari a Rogvi and David VanderZwaag. The master program has attracted students from all of the Arctic countries and beyond.

The Polar Law Institute is a non-profit research and education institution based at the University of Akureyri and registered as a foundation under Icelandic law. It was established in June 2009, following the graduation of the first polar law students. The Institute organizes the annual Symposia on Polar Law that have so far been convened in Akureyri, Nuuk (Greenland) and Rovaniemi (Finland). Part of the 6th Symposium in 2013 was held in Reykjavik in cooperation with the Arctic Circle.[7] Other aims and purposes of the Institute are to carry out research projects in cooperation with other parties, enhance cooperation of academics, the public sector and the private sector in the field of polar law, and publish books and articles on polar law. Primary among the publications is the Yearbook of Polar Law, published since 2009 by Brill Academic Publishers in the Netherlands,[8] that carries presentations made at the above-mentioned Symposia. Gudmundur Alfredsson and Timo Koivurova are the Editors-in-Chief; Waliul Hasanat, Kamrul Hossain, David Leary, Natalia Loukacheva and Adam Stepien have served as Special Editors for one volume each

[7] See “www.arcticcircle.org”.
[8] See “ www.brill.com/publications/yearbook-polar-law”.

Arctic Energy and Climate Coordination

Elizabeth Burleson

A third of remaining global hydrocarbon reserves appear to be north of the Arctic Circle under less than 500 meters of water and within clear national jurisdictions.[9] Additional resources appear to lie in disputed territorial areas, where delineation of continental shelves is underway. Eight states have territorial claims,-- the five Arctic coastal states (Canada, Denmark, Norway, Russia, and the United States) and three others (Iceland, Finland, and Sweden). While many conflicting claims have been resolved, melting ice due to climate change is opening up areas where states seek to extend continental shelf activity.[10]

With millions of Russians within the Arctic Circle and a substantial Arctic military, Russia is currently the largest stakeholder in the region.[11] Traditional subsistence foods and the public health of Arctic communities are adversely impacted by the negative externalities of energy extraction and global persistent organic pollutants. Building on the numerous calls for scientific cooperation the United Nations Convention on the Law of the Sea (UNCLOS),[12] countries are beginning to work together to expand relevant baseline data – a foundation upon which ecosystem-based, integrated management can occur. Mapping, combining information into a shared database, and deciding upon a single method of analysis can facilitate coordinated interpretations and even a boundary agreement prior to submitting information.[13] Entering into multilateral agreements and increasing polar inclusive governance and funding can address environment and development challenges going foreword.

While Article 193 of UNCLOS recognizes states' rights to mineral resources, Article 192 sets forth states' duties to protect marine ecosystems. Article 234 authorizes Arctic coastal states to enforce shipping environmental protection provisions for such ice-covered waters as the Northwest

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[9] Betsy Baker, Law, Science, And The Continental Shelf: The Russian Federation And The Promise Of Arctic Cooperation, 25 Am. U. Int'l L. Rev. 251, 257 (2010).

[10] R.M. Bratspies, 'Human Rights and Arctic Resources', *Sw. J. Int'l L.* 15, 2009, p. 265.

[11] Baker, supra note 1 p. 251.

[12] *United Nations Convention on the Law of the Sea* (UNCLOS), opened for signature 10 December 1982, 21 ILM 1261 (entered into force 16 November 1994) Arts. 194, 197, 200, 204, 206 and 234; P. Allott, 'Power Sharing in the Law of the Sea', *Am. J. Int'l L.* 77, 1983, pp. 18-20.

[13] Monique Andree Allain, Canada's Claim to the Arctic: a Study in Overlapping Claims to the Outer Continental Shelf, 42 J. MAR. L. & COM. 1, 37 (2011).

Passage.[14] Nonetheless, there are substantial gaps in this loose Arctic legal framework including disagreement as to the status of the Northwest Passage as an international strait or historic internal waters of Canada; the absence of the United States in the UNCLOS dispute resolution procedures regarding the Northwest Passage due to its failure to ratify the Convention; and general uncertainty as to the extent to which given states can extend into newly accessible regions of the Arctic.

Climate risks to tribes are both physical and cultural as traditional livelihoods retreat with the ice. Even urban indigenous individuals face a disproportionate risk to the general population of most states given their relative lack of financial resources.[15] The international community has looked to indigenous communities for traditional knowledge.[16] Prior informed consent, acknowledging native research contributions, active participation in research as well as sharing research outcomes with indigenous communities all can go a long way to enhance understanding of the Arctic.[17]

The Convention for the Protection of the Marine Environment in the North-East Atlantic (OSPAR)[18] exemplifies ecosystem regional marine protection and can play a direct as well as indirect role in Arctic governance. It directly obligates member Arctic states to implement protection measures and indirectly provides a model with which Arctic good governance may be expanded. One option would be for OSPAR to become the umbrella framework to protect the Arctic marine environment. OSPAR states can unanimously invite new members to join the convention.[19] If it is politically infeasible for OSPAR membership to expand to all Arctic stakeholders, best practices can be borrowed from OSPAR and applied to the Arctic. While the Arctic Council has conducted crucial scientific studies, effectively responding to emerging environmental and natural resource use challenges can best be facilitated through a commission/council with a secretariat that can enact binding decisions in light of the polluter pays principle, precautionary principle, and best environmental practices principle.[20] OSPAR Annex III addresses offshore pollution and the OSPAR Commission has already adopted mandatory provisions to reduce offshore pollution.[21] OSPAR Annex V addresses the establishment of marine

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[14] *UNCLOS*, Art. 234.

[15] G. Alfredsson, 'Human Rights and Indigenous Rights', in Loukacheva (ed.) op. cit., p. 10333: ("the relocation of the village of Newtok is expected to cost as much as $130 million.")

[16] Ibid.

[17] Ibid.

[18] *OSPAR*, pmbl.

[19] Ibid, Art 27(2).

[20] Ibid, Art 2(2).

[21] *OSPAR Decision 9/3 on the Disposal of Disused Offshore Installations*. Online. Available HTTP: <http://www.ospar.org/documents/DBASE/DECRECS/Decisions/od98-03e.doc>; K.N. Casper, 'Oil and Gas

protected areas.[22] The OSPAR Commission has integrated climate change and offshore oil and gas analysis into its overall work. The Arctic marine environment constitutes a substantial part of OSPAR jurisdiction and its expansion to the Arctic at large may provide the most effective protection of the fragile Arctic region.

All of the Arctic states have ratified the International Convention on Oil Pollution Preparedness, Response, and Co-operation (OPRC) calling for oil pollution emergency plans,[23] pollution event reporting to coastal authorities,[24] and assistance in the event of an oil pollution incident.[25] Taking precautionary and polluter pays principles[26] into account OPRC, parties[27] and the International Maritime Organization facilitate compliance[28] through adoption of regulations,[29] reporting,[30] cooperation and collaboration.[31]

OPRC addresses the narrow field of oil pollution, not attempting to cover fisheries, navigation, or other areas in need of Arctic coordination. While it addresses the Arctic in scope it may not be sufficiently focused upon unique polar vulnerabilities. Given the relative success of layering the 1995 United Nations Agreement on Straddling and Highly Migratory Fish Stocks[32] on UNCLOS, Arctic stakeholders should try to negotiate an offshore energy instrument with which the US can participate despite US non-party status with UNCLOS. This could be an UNCLOS protocol-like agreement, a free standing multilateral agreement on Arctic energy, or some hybrid. Whether to center consensus building upon a theme such as energy or a region such as the Arctic is not as important as beginning the process of trying to strengthen protection before economic activity advances beyond the ecosystem's capacity to cope.

While the nature and scope of the instrument may depend upon geopolitical constraints, there appears to be widespread recognition on the following. (1) Arctic governance strengthening constitutes a global public good. (2) Arctic stakeholders can build upon cooperation to date. (3)

Development in the Arctic: Softening of Ice Demands Hardening if International Law', *Nat. Resources J.* 49, 2009, p. 848.

[22] *OSPAR*, Annex V, Art. 2.

[23] Ibid, Art. 3(2).

[24] Ibid, Art. 4(1)(a).

[25] Ibid, Art. 7.

[26] Ibid, pmbl.

[27] Ibid, Art. 2(6).

[28] Ibid, Art. 12(2).

[29] Ibid, Art. 3(1)(a).

[30] Ibid, Art. 4(2).

[31] Ibid, Art. 8(1).

[32] Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (1995), Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, 6th Sess, UN Doc A/ CONF 164/37, 34 ILM 1542.

Human rights, energy, natural resources and other sensitive topics can be broached through inclusive ecosystem decision-making forums.

The International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) currently applies to oil and gas exploration and exploitation in the Arctic.[33] All five Arctic coastal states have ratified MARPOL 73/78, which addresses energy in that fixed or floating platforms are included in the definition of ships.[34] Nevertheless, the shallow Arctic Ocean floor is not sufficiently mapped and single hulled container ships pose a serious risk of spilling oil/hazardous chemicals. Global cooperation is needed to prevent such events given the impracticability of remediation. States lack the capacity to mitigate and respond to temperate oil and gas disasters areas, let alone chronic and catastrophic Arctic contamination. Furthermore, the Arctic Council's Arctic Offshore Oil and Gas Guidelines remain voluntary[35] and do not address the reality that technologies do not exist to clean up polar oil spills.

Drilling should not get out in front of fiscal and technological capacity to respond to disasters.[36] The design, execution, and outcome of monitoring programs should be transparent and involve active civil society participation. Legally required environmental and safety reviews should occur at the planning stage of energy development.[37] Existing provisions can be amended to facilitate multi-scale governmental cooperative regulation. Permitting should involve adequate timeframes within which to review proposed operations as well as adequate funding with which to carry out such reviews.[38]

Conclusion

Can supplementing the existing polycentric Arctic loose framework with a new multilateral regime enhance Arctic governance? If so does it make sense to agree upon a sectoral or comprehensive approach? Given the contemporary geopolitical pulse, a starting point might be to build consensus regarding the central Arctic Ocean that is emerging as the ice cap melts. Irrespective of Arctic state efforts to expand continental claims, the centre of the Arctic still represents high seas and seabeds that are global commons.

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[33] Marpol 73/78, pmbl.

[34] Ibid, Art. 2(4).

[35] Arctic Council, Protection of the Arctic Marine Environment (PAME), Arctic Offshore Oil and Gas Guidelines § 1.5 (Oct. 10, 2002).

[36] Ibid, 11071; R.O. Brooks, 'The Gulf Oil Spill: The Road Not Taken', *Alb. L. Rev.* 74, 2010-2011, p. 489.

[37] S. Kalen, R.M. Seidemann, J.G. Wilkins and M.K. Terrell, 'Lingering Relevance of the Coastal Zone Management Act to Energy Development in our Nation's Coastal Waters?', *Tul. Envtl. L.J.* 24, 2010, p. 106.

[38] E.A. Norse and J. Amos, Ilulissat Declaration, and Policy Implications of the Deepwater Horizon Oil and Gas Disaster, *ELR News and Analysis* 40, 2010, p. 11072 (including monitoring active and abandoned infrastructure).

Regarding substantive good governance, the first question should be whether to drill for oil and gas, given the substantial carbon dioxide, methane, and other GHG emissions that result from such industrial operations.[39] Answering this question requires robust life cycle analyses of the spectrum of energy sources. A broad array of assessments that include wind, wave, solar, and geothermal options both on and off shore should be part of an informed, transparent, examination of the risks and advantages of polar energy generation.

[39] Norse and Amos, p. 11064.

Marine Mammal Regulation in the Arctic: Report for 2013

Richard Caddell

The regulation of marine mammals in the High North remains a controversial and delicate issue for contemporary international law. In few other regions does the debate over the conservation of charismatic species with a high anthropomorphic appeal clash with as markedly with questions over sustainable use, self-determination and the promotion and protection of the values and traditions of indigenous communities. In recent years, problems have largely centred on the complicated relationship experienced between the Arctic States and the International Whaling Commission (IWC) over the purported commercial and indigenous hunting of particular species of great whales. Issues have also arisen over the management of marine mammals by the North Atlantic Marine Mammal Commission (NAMMCO) and the inter-relationship between this body and the IWC. Moreover, the exploitation of seal resources and attempts to market seal products have encountered stern resistance within the institutions of the European Union (EU), which has adopted a strong conservationist line towards marine mammals and, conversely, is seeking to expand its influence within the Arctic region. Marine mammal regulation within the Arctic is therefore an emotive and politically-charged question involving the uneasy coexistence of a series of conflicting interests.

Arctic whaling and the IWC

At the 2012 Meeting of the IWC, the working practices of the Commission were reformed so that this body will meet on a two-yearly basis from 2013 onwards. Accordingly, there was no meeting of the IWC in 2013 and limited managerial consideration of Arctic whale resources. Nevertheless, this position exposed a flaw in the current issue of quotas to Greenland for the purposes of Aboriginal Subsistence Whaling. Greenland participates in NAMMCO as a formal party (see below) as well as the Canada/Greenland Joint Commission on Conservation and Management of Narwhal and Beluga, but is represented at the IWC by Denmark. In July 2013, Demark informed the IWC that, due to a failure to agree catch quotas for Greenlandic stocks in 2012, Greenland was left with no catch quotas for 2013 and beyond. The absence of an IWC meeting in 2013 meant that there was no formal opportunity to address this situation, hence Denmark would unilaterally implement a proposal tabled at the 2012 meeting in respect of

Greenland, so as to ensure that there was an uninterrupted supply of meat for subsistence purposes and to prevent the prospect of unregulated whaling. Denmark further warned that, while it remained committed to multilateral dialogue on whale management through the IWC, it would nonetheless withdraw from the Commission in 2014 if an acceptable solution to the Greenlandic quota issue could not be brokered through this forum.

In the absence of a formal management meeting, the IWC's focus on Arctic whaling has been essentially confined to scientific considerations. In June 2013 the Scientific Committee of the IWC received a long-awaited report on conversion factors in Greenland to assess the precise subsistence need of the local population to better inform future catch quotas, although this was stymied by lower than expected levels of data. Discussions were held concerning the taking of bowhead whales in the Arctic, as well as minke and fin whales for subsistence purposes in Greenland.

NAMMCO

In September 2012, NAMMCO celebrated its Twentieth anniversary and convened its 21st Council Meeting to reflect on progress made in the previous two decades and to address issues of pressing managerial and scientific concern. Consideration was given to the legal status of NAMMCO which, at the time of its establishment, raised controversial questions in respect of the UN Convention on the Law of the Sea 1982. The present author presented a legal opinion considering that NAMMCO could be viewed as an "appropriate organisation" through which the various parties could work through for the purposes of Article 65 of the 1982 Convention. The parties further discussed work on hunting methods, scientific research projects and cooperation with other bodies.

With 2012 being a busy and highly symbolic year for NAMMCO, 2013 has been somewhat quieter with the primary events scheduled for later in the year. At the time of writing, NAMMCO was poised to convene a series of meetings in November 2013, including the twentieth meeting of its Scientific Committee and meetings of its Working Groups on Harbour Porpoises and Walrus.

EC-Seal Products Dispute

The present – and on-going – dispute stems from legislation adopted by the EU in 2009 to regulate the trade in seal products. Regulation 1007/2009 was introduced due to concerns within the EU institutions over animal welfare issues associated with seal hunting, whereby several Member States had been considering national legislation to prohibit national markets in seal products. Regulation 1007/2009, which entered into effect in August 2010, prohibits the trade in seals and

seal-derived products, from both within and beyond the EU. The ban is subject to narrow exceptions for hunts conducted by the Inuit and other indigenous communities for subsistence purposes. It allows for non-commercial trade for personal use and only in circumstances in which such hunting is undertaken pursuant to national law and for the sole purpose of sustainable management, and provided that transactions occur on a non-profit basis. The legislation has been strongly condemned by indigenous groups fearful of a loss of vital revenue and a dilution of cultural traditions. It has also generated considerable political and legal discord between the EU and non-party Arctic states, especially Canada.

On 25 April 2013, the Court of Justice of the European Union (CJEU) delivered its verdict in response to a challenge to the legislation by a series of applicants, drawn from indigenous communities within the EU and Canada and various other groups connected with the facilitation of the seal trade. In September 2011, a group representing the interests of the sealing industry unsuccessfully challenged Regulation 1007/2009, in which the CJEU ruled that they lacked the requisite legal standing to bring such an action. The latest judgment was preceded by an Opinion issued in January 2013 by Advocate-General Kokott, which had advised that the decision to dismiss the applicants' initial case in September 2011 as inadmissible had been correct. In the present action, Case T-526/10 *Inuit Tapariit Kanatami* v. *European Commission* saw the legality of Regulation 1007/2009 and its implementing measures challenged on three main grounds:

- The legislation had been adopted on an erroneous legal basis.
- The restrictions on trade offended against the core principles of subsidiarity and proportionality.
- The legislation represented a breach of fundamental rights.

In respect of the first ground for appeal, the applicants contended that the legislation had been incorrectly founded upon Article 95 of the EC Treaty, which permits law-making for the purpose of ensuring the integrity of the EU common market. The applicants argued that the primary objective of Regulation 1007/2009 was clearly the promotion of animal welfare considerations and not the effective functioning of the common market, for which there is long-established case-law that a provision may not be introduced ostensibly under Article 95 where in fact the harmonisation of market conditions is merely an incidental effect of the legislation. The CJEU rejected this line of argument on the basis that a number of Member States, independently of the EU institutions, had sought to restrict or prohibit the importation and transit of seal products within their territories. These developments had therefore threatened to distort market conditions across the Union.

Notwithstanding copious references to animal welfare concerns, the Regulation was therefore fundamentally designed to promote uniform trade conditions and was therefore appropriately founded upon the legal bedrock of Article 95.

Concerning the second basis, the CJEU swiftly rejected the applicants' argument concerning subsidiarity due to a failure to adduce any meaningful evidence to this effect. The applicants further contended that Regulation 1007/2009 was manifestly inappropriate, went beyond what was necessary to achieve its objectives and that a labelling measure would have been less restrictive and more effective. This line of argumentation was also rejected due to a lack of evidence and a failure to establish that alternative legislation would have been more appropriate. Finally, the CJEU rejected the contention that the legislation breached fundamental human rights. Indeed, the Court noted that the affected groups had been consulted during the legislative process and that the Regulation itself maintained a legal right to sustainable hunting and the trade in seal products, while no meaningful evidence had been presented as to a serious impact upon the living conditions of the affected constituencies. The action in its entirety was accordingly dismissed forthwith.

Despite the strong judgment of the CJEU, the dispute remains live. At the time of writing (September 2013), the case remained before the dispute resolution organs of the World Trade Organisation, having been initiated by Canada in 2009. Shortly before the CJEU verdict was delivered, the WTO Panel indicated that it expected to deliver its final report to the parties in October 2013; further commentary on these outcomes will be forthcoming in the next edition of this Report.

Invoking the Human Rights of Indigenous Peoples to Combat Climate Change in the Circumpolar Arctic

Terry Fenge and Elanor Fenge

It has long been known that the scope and speed of environmental change in the Arctic as a result of climate warming is approximately twice the global norm. The implications of this for Arctic residents, particularly the region's Indigenous peoples, was canvassed in detail in the Arctic Climate Impact Assessment (ACIA) approved by Ministers to the eight-nation Arctic Council in 2004 and published in 2005. Pulling no punches, the ACIA projected extensive ablation of sea ice in the Arctic Ocean with cascading environmental impacts including significant reduction and even possible extinction of certain ice-dependent marine species, including polar bears and walrus. As a result, the hunting and food sharing culture of Inuit was projected to decline, perhaps disappear.

In response to these almost apocalyptic projections, Inuit of the Arctic and Athabaskan peoples of the sub-Arctic have petitioned the Inter-American Commission on Human Rights for relief. The Inuit petition submitted in 2005 targeted the United States of America for alleged unregulated emissions of greenhouse gases (GHGs)—up to 25 percent of global emissions—which, it was alleged, were contributing significantly to environmental change in the Arctic. The petition asked the commission to declare the USA in contravention of the collective human rights of Inuit pursuant to the 1948 American Declaration on the Human Rights of Man, and to work with Inuit to develop and implement a plan to respond to the unavoidable impacts of climate change. Spurred by the petition, the commission held a hearing on the connection between climate change and human rights, but did not pursue the matter further.

The Athabaskan petition, submitted in 2013, targeted Canada for its poor regulation of emissions of Black Carbon, a Short-Lived Climate Pollutant that is thought to cause up to 50 percent of observed environmental change in the Arctic and sub-Arctic. The commission has yet to announce whether it will consider the petition and whether, as requested by the petitioner, it will hold public hearings in the region.

The Inuit and Athabaskan petitions deal with global warming in the circumpolar world and invoke human rights as a political and legal lever to require national governments to take a far stronger position on mitigating climate change. While highly innovative, the Inuit petition was unable to satisfy the basic rule of causation linking specific emissions of GHGs from within the

United States of America to specific environmental changes with resulting human rights violations of Inuit. GHGs remain in the atmosphere for years and are transported across international borders making it impossible to pinpoint the location where specific GHGs originate. The transboundary nature of the problem makes it hugely difficult to substantiate legal claims in regard to widely emitted GHGs.

The Athabaskan petition, however, may satisfy the causation rule. Black Carbon resides in the atmosphere for days, not years, meaning that environmental change is primarily the result of emissions in or close to the circumpolar world. The short lived nature of Black Carbon enables a more substantial link between the cause of environmental change—Black Carbon—and the consequences—the human rights violations of Athabaskan peoples. This means that measures to reduce emissions in or near the Arctic would likely slow warming and mitigate the impacts of climate change.

Indigenous peoples and perhaps other sectors of civil society in various portions of the globe may follow the example set by Inuit and Athabaskan peoples, and invoke human rights to persuade national governments to mitigate climate change. Both legal scholars and practitioners should examine regional human rights regimes with this prospect in mind.

Integration of Arctic Sub-national Governments within the Arctic Council

Waliul Hasanat

The Arctic Council is the only international cooperative forum whew all Arctic states have membership established in 1996 aiming to environmental protection and sustainable development in the Arctic. In fact, the Arctic Council replaced Arctic Environment Protection Strategy that the Arctic states created in 1991. The Council functions as soft-law form of cooperation that may create political commitments rather than legally binding obligation. However, the Council has not seen entirely successful achieving its goals or meeting the needs of Arctic residents.

There are plentiful number of reformation proposal for the Council prepared by interested scholars and organisations which include:

1. Transforming the Council to formal international organisation by concluding an international treaty.
2. Concluding a framework treaty considering to acting faster against the rapid changes occurring in the region due to climate change.
3. Limiting the number of the working groups, setting up permanent secretariat and stronger coordination mechanism along with granting formal access to Arctic regional government, retaining its soft-law character unchanged.

In fact, the Council considered mostly none of those proposals although made significant reformations during the course of time. It has introduced regular budgetary system and yearly deputy ministers' meeting, has set up permanent secretariat in Tromsø, determined the role of observers, as well as updated its rules of procedure. The Council has formed a Task Force for Institutional Issues in order to implement the Council's decision to strengthen the Council. The Council has demonstrated its competence in negotiating international treaties which create legally binding obligations to its member states under public international law. Thus, it seems that the Council is moving towards right direction.

Yet, the local inhabitants in the region do not find the Council as reactive as they desire to many local issues mainly caused from climate change and development activities – mainly they expect that their national governments would pay deeper attention to regional issues and bring to the Council for wider cooperation. A regional council, say the Arctic Regional Council (ARC), including Arctic sub-national governments (e.g., county and provincial governments) may function better to put forward regional issues within the Council. The proposed ARC could play effective

advocacy role to develop closer contacts of national governments with residents of the Arctic, as well as send reports to the Arctic Council on on-going challenges, needs and expectations of Arctic residents.

Global Conference about Indigenous Sacred Sites in the Arctic held in Rovaniemi Produced the First International Declaration on the Protection of Sacred Sites in the Arctic

Leena Heinämäki and Thora Herrmann

For the first time, nearly 80 sacred sites guardians of indigenous communities, indigenous people's organizations, scientists, policy makers and members of civil society gathered in Finland to sign a joint declaration that states recommendations and guidelines for policy-making related to sacred sites in the Arctic and that calls for better recognize, legally protect and manage the sacred sites and sanctuaries of indigenous peoples in the Arctic region!

This worldwide first Arctic sacred sites declaration is the outcome of the international, multidisciplinary conference "Protecting the sacred: Recognition of Sacred Sites of Indigenous Peoples for Sustaining Nature and Culture in Northern and Arctic Regions" that brought together around 80 participants from six Arctic countries in Rovaniemi and Pyhätunturi, Finland, on September 11–13, 2013. Participants came from as far away as Yakutia, Eastern Siberia, Canada and Alaska to attend the event. For many indigenous delegations it was the very first time ever in Finland.

The conference was co-organized by the Northern Institute for Environmental and Minority Law (NIEM) at the Arctic Centre of the University of Lapland together with the Université de Montreal (Canada), and the University of the Arctic /Thematic Network on Arctic Law.

Among the key speakers were Birgitta Fossum from South Sami Museum and Cultural Centre Snåsa, Norway; Piers Vitebsky from the Scott Polar Research Institute at the University of Cambridge; Alexandra Xanthaki from Brunel Law School; René Kuppe from the University of Vienna; Pekka Kauppala from Saami Parliament; Eija Ojanlatva from the SIIDA Museum; Liisa Holmberg from the Sámi Educational Institute; the Nenets Indigenous Association 'Narian Mar'; the Nenets Indigenous Association, Yamal; the Innu and Naskapi First Nations from Canada.

Over three days, participants came and speak related to the entire circumpolar area. Many speakers underlined that the safeguarding of sacred sites requires universal involvement. Sacred sites are areas of special spiritual significance to peoples and communities. A large number of sacred sites in the Arctic are areas of great importance for the conservation of fragile and unique biodiversity. In fact, they are the world's oldest conservation areas. Sacred sites play also a key role in traditional cultures and lifestyles across the Arctic. They thus contribute to universal values that

maintain mankind's relationships with the earth. They can be in the mountains or springs, rocks or places where reindeers have been slaughtered. But today these sites are not sufficiently understood or recognized. Legal protection of these ancient sites and related policies are still often insufficient or absent. Many but not necessary all indigenous communities have expressed a strong interest to protect these sacred sites as an important component of their traditional culture. It becomes, however, increasingly difficult for indigenous communities to protect these ancient sites from outside interference, due for example to economic developments (tourism, mining, forestry) or infrastructural development (roads, dams, etc.). At the same time the need for protection may be challenged by some protection measures (identifying of location, mapping) and may raise the question of keeping intimacy and sensitivity of these places. Many of these sites are only known by the community members and it is very important to respect this privacy. Many of these sites are, however, publicly known. Some of them are legally recognized as a world heritage. At international level, sacred sites have been receiving increasing legal attention; they are now mentioned in several international legal instruments (e.g., CBD, UNDRIP). Yet, effective and culturally appropriate implementation is often still lacking. In all cases, it is crucial that all discussion and planning concerning these sites involve local indigenous peoples. Recognition of these sacred sites can be also used as a cultural revitalization and educational process. This conference has put a lot of emphasis to invite representatives of many Arctic indigenous communities to have a fruitful and open dialogue.

Due to lack of legal and political recognition of these places, a concerted action is needed!

The event succeeded in fulfilling four ambitious aims: first, to develop strategies towards more effective protection and management of sacred sites in Arctic regions, taking into account indigenous peoples' own practices and customary laws; second to critically analyze current legal / political standards relevant to sacred sites, highlight best practices and identify gaps; and third, to network and contribute to efforts of oral historical and practical intangible cultural heritage preservation together with indigenous communities in ways that they themselves find appropriate and case-sensitive; and fourth to increase the voice of sacred sites guardians of indigenous communities in Arctic regions.

Besides academic and practitioner discussions, the conference also produced recommendations for policy-making related to Sacred Sites and Sanctuaries in the Arctic as well as started a participatory, interdisciplinary, circumpolar research project to advance the transmission of spiritually relevant culturally embedded knowledge and practices related to sacred sites to younger generations.

The joint declaration signed at the conference represents an important move that demonstrate the need for action and highlights how important the safeguarding of sacred sites is for the conservation of fragile biological and cultural diversity in the Arctic regions, the transmission of culture and identity across the Arctic, and upholding the sustainable development in the North.

Another major outcome of the conference was also to start the process of editing the first comprehensive book on the protection of the sacred sites in Arctic regions.

This conference was unquestionably a memorable, highly educational and “not-to-be-missed” event: it advanced learning and legal / policy advocacy in support of sacred sites in the North, and it succeeded to create the first Arctic platform to develop innovative political ideas and sent a very clear signal to establish a holistic, multidisciplinary approach to effectively tackle the multiple issues of sacred sites in the North!

More information can be found on the conference website:
www.arcticcentre.org/sacredsites2013

A project on Sustainable Mining, Local Communities and Environmental Regulation in the Kolarctic Area (SUMILCERE)

Kamrul Hossain and Anna Gremsperger

The growing importance of mining within the Euro-Arctic Barents Region is now well-recognized. The increasing number of new mines is being constantly opened and the old ones are being re-launched. This development suggests that such a flow will continue during the next decades. As a result, mining industries, as they are growingly becoming one of the major driving forces for regional economic progress, will become an important factor in the region. However, prevailing regional characteristics, such as the unique and sensitive natural environment, which play an important role as a source of living for the population inhabiting the region, will interact with the industrial development processes. An apparent, and usual, conflict pertaining to environmental sustainability is therefore expected be the most robust deterrence in the mining activities.

Bearing in mind of this tension, in the beginning of 2013 a project entitled "Sustainable Mining, Local Communities and Environmental Regulation in the Kolarctic Area" in short "SUMILCERE" has been commenced. This is a two-year long project funded within the Kolarctic ENPI CBC initiative of the European Union (EU). Four countries of the Euro-Arctic region – Finland, Norway, Russia and Sweden – are involved in the project; participants respectively included are the University of Lapland, the Northern Research Institute, the Institute of the Northern Industrial Ecology Problems and Luleå University of Technology, the University of Lapland (its Faculty of Law and the Northern Institute for Environmental and Minority Law) being the lead partner.

While it is rational to have a coherent environmental regulation for identical environmental circumstances in the regional perspectives, it seems that the national regulations available in the region are very often different from each other. Taking into consideration of this difference the study thus will focus common concerns by way of having two important assessment procedures – the environmental impact assessment (EIA) and the social impact assessment (SIA). The former aims at predicting risks and impacts on the nature and physical environment while the latter is an assessment based on effects on health, living condition and general wellbeing of the local inhabitants. While EIA can be exercised based on national and international (in a trans-boundary context) regulations and standard available, the SIA is however a complex as it at the ends up producing social licensing – an approval from societal perspective granting legitimacy, credibility

and trust in the operation of industrial activities. This project, for the sustainable exercise of mining, argues that obtaining a social license is a must – the mining companies must know and understand the norms of the community, and be able to work with them as they represent to local 'rules of the game'. Obtaining social license nevertheless is not always an easy task though. It is maintained thus that the outcomes of research concerning SIA will be of great practical significance for obtaining social license.

Therefore the main goal of the project is to offer social and legal scientific set of tools and recommendations for sustainable mining projects, which are expected to be used by the industries and decision making authorities in the different level. With a view to obtaining this goal this project establishes a transnational and multidisciplinary research networks in order to develop best practices, and to come up with recommendations for sustainable mining, within the program area, albeit with a focus on mining industries. The project thus aims at supporting public-private collaboration; enhancing the use of already developed practices; and contributing to diminish risks in the mining sector.

At a practical level SUMILCERE involves several sub-projects. Researchers work in different working groups in order to comply with the expectations of each of the working groups. Separate sub-projects focus on current practices on the participation at a local level, and the relationships between mining projects and local mining communities. The sub-groups analyze the relevant legal structure in order to improve policy instruments and environmental regulations, which will also take into account of Sámi people and their special rights under international law. The possible outcome of the project leads to produce a common report with recommendations for mining industry to implement social issues in a better way in order for them to earn social licensing. In addition, a number of scientific articles are expected to be published with a view to promoting the idea of socio-economic development of the region, and of the communities, in the exercise of mining industry activities.

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Protection of the Arctic Ocean: Who Can Invoke Responsibility?

Rachael Lorna Johnstone

'States have the obligation to protect and preserve the marine environment'[40] within and beyond their own national jurisdictions but what rights do other States have if this obligation is not upheld?

International law has historically rested on bilateral relationships (or at least 'bilateralisable' primary rules[41]) but many norms of marine environmental protection do not have a State beneficiary; they may not even have an identifiable human beneficiary. Obligations for which violation does not necessarily create a victim State, such as the duty to prevent pollution in the Arctic Ocean,[42] are sometimes called 'absolute' obligations.

In the final year of the ILC's State Responsibility project, the proposition that all States have an interest in the observance by other States of shared legal obligations (the legal interest) was ultimately rejected from the second reading of the Articles[43] and instead, the ILC concluded that '[c]entral to the invocation of responsibility is the concept of the injured State.' [44] Article 42 describes three classes of 'injured States': those to whom the duty is owed directly (i.e. a bilateral or bilateralisable duty); those 'specially affected' by a duty owed to a group of States; and all States with a shared obligation in circumstances where its breach 'radically changes the position' of the other States (an 'interdependent' obligation).[45] Yet, in the event of gross pollution of the Arctic Ocean, extensive damage to the seabed, or elimination of a vulnerable species, it is quite possible that none of these would apply. Article 48 of the ILC Articles permits 'a State other than an injured State' to invoke responsibility (only) for breaches of *erga omnes* obligations[46] or *erga omnes partes*

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[40] United Nations Convention on the Law of the Sea 1982, 1833 UNTS 397 [UNCLOS] article 192.

[41] A bilateral relationship exists between two States; a multilateral relationship exists between more than two States but in many cases, creates a collection of bilateral relationships. An example of the latter is a multilateral free trade agreement.

[42] UNCLOS article 194.

[43] The International Law Commission [ILC] Articles on Responsibility of States for Internationally Wrongful Acts 2001 in Report of the International Law Commission on the Work of its Fifty-third Session, UN GAOR, UN Doc. A/56/10 (2001). See Bruno Simma, 'I diritti umani nel Progetto della Commissione del diritto internazionale sulla responsabilitá internazionale' in Marina Spinedi, Alessandra Gianelli and Maria Luisa Alaimo (eds), *La Codificazione della Responsibilitá Internazionale degli Stati alla Prova dei Fatti* (Giuffré 2006) 407, 410-411 (on significant support for the rights of non-injured States to invoke responsibility, including resort to countermeasures and the change in 2000).

[44] ILC Articles on State Responsibility (n 43) commentary to Part Three, Chapter 1, Introduction, para 2.

[45] For example, the anti-nuclear dumping provisions in the Antarctic Treaty 1959, 402 UNTS 71, article 5, extensive breach of which by one party renders the compliance of the others redundant.

[46] Duties owed under customary law to all other States.

obligations.[47] We will now examine whether the duty to preserve and protect the marine environment has either character.

UNCLOS Part XV provides a compulsory but residual option for judicial settlement of any dispute regarding interpretation or application of the convention with only limited exceptions.[48] Therefore, should negotiation and other efforts fail to conclude the matter, disputes pertaining to Part XII of UNCLOS (on protection of the marine environment) can be brought by and against all UNCLOS parties by any other State party (i.e. Part XII contains obligations erga omnes partes).[49] This is a matter of treaty interpretation and this reading is heartily supported by the Court's recent jurisprudence.[50]

Aside from litigation, the right to invoke responsibility includes the right to take countermeasures. Countermeasures are acts that would be unlawful but for continuing wrongful conduct of the responsible State at whom they are directed. Part XV of UNCLOS expressly encourages non-judicial methods of dispute settlement, these being: 'negotiation, enquiry, mediation, conciliation, arbitration,… resort to regional agencies or arrangements, or other peaceful means of their own choice'[51] which indicates that countermeasures are not precluded.[52] However, while the right of injured States to take them is widely accepted,[53] their availability to other States remains contested. UNCLOS does not refer to countermeasures therefore we must look beyond it, to customary law, to determine whether they are available for breaches of absolute obligations for protection of the marine environment: it would have to be shown that such obligations are erga omnes (not just erga omnes partes). While there is considerable State practice on unilateral countermeasures by non-injured States from different regions of the World – indeed, a 'settled practice'[54] – all of it to date has been in response to gross human rights abuses or humanitarian crises.

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[47] Duties owed under conventional law to other States parties to the treaty in question or under customary law to a select group of States, e.g. regional customary law.

[48] UNCLOS Part XV, Section 2; none of the limitations included in Section 3 pertain to Part XII.

[49] See also International Tribunal for the Law of the Sea: Seabed Disputes Chamber Case No. 17: Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area (Advisory Opinion) 1 February 2011, para 180.

[50] Questions Relating to the Obligation to Prosecute or Extradite (Belgium v Senegal) [2012] ICJ, paras 68-69.

[51] UNCLOS article 379, cross-referring to the UN Charter 1945, article 33(1) (emphasis added).

[52] Countermeasures are by definition peaceful means, see ILC Artciles on State Responsibility (n 43), article 50(1)(a).

[53] ibid article 49; see also Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v Slovakia) (Merits) [1997] ICJ 7) para 83.

[54] ibid chapter 6.2.1.d at note 162.

In Barcelona Traction, the Court indicated that recognition of norms as erga omnes pivoted on perceptions of the norms' importance.[55] The examples it has proffered in dicta include acts of aggression, genocide, 'basic rights of the human person, including protection from slavery and racial discrimination,' some obligations of humanitarian law, and the right of self-determination of Peoples[56] but have not so far extended to environmental protection. However, in a 2012 judgment, the Court implied that all absolute obligations are obligations erga omnes, arguing, a contrario, that:

If a special interest were required [to invoke responsibility], in many cases no State would be in the position to make such a claim. It follows that any State party to the Convention [Against Torture] may invoke the responsibility of another State party with a view to ascertaining the alleged failure to comply with its obligations.[57]

The potential repercussions of this for environmental law are vast but have yet to be tested. The Court may yet find there to be a distinction between the right to invoke responsibility for the purposes of litigation (i.e. standing), especially litigation under a treaty, and for the purposes of countermeasures.

In conclusion, there is now little doubt that all States parties to UNCLOS can bring judicial proceedings against one another for damage to the Arctic Ocean beyond national jurisdiction and a strong case to be made that countermeasures are similarly available. Watch this space!

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[55] *Barcelona Traction, Light and Power Company Limited (Belgium v Spain)* [1970] ICJ Rep 3: para 33, stating that: 'In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes.*' See also, Christian Tams, *Enforcing Obligations Erga Omnes in International Law* (Kindle edn, Cambridge University Press 2010) Chapter 4.2.1.

[56] Barcelona Traction para 33; East Timor (Portugal v Australia) [1995] ICJ Rep 90, para 29; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia) (Preliminary Objections) [1996] ICJ 595, para 31; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) [2004] ICJ 136, paras 155-157; and Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda) (Jurisdiction and Admissibility) [2006] ICJ 6, para 64.

[57] *Questions Relating to the Obligation to Prosecute or Extradite*, para 69; see also Giorgio Gaja (now on the Court and writing with the majority in this case), 'States having an Interest in Compliance with the Obligation Breached' in James Crawford, Alain Pellet and Simon Olleson (eds); Kate Parlett (asst ed), *The Law of International Responsibility* (Oxford University Press 2010), 961; see also *Nuclear Tests (Australia v France)* (Separate Opinion of Judge Petrén) [1974] ICJ Rep 298, 303 (noting the 'self-contradiction' of unenforceable norms).

Legal Responses to the Impact of Climate Change on Indigenous Peoples in the Arctic: Why Arctic Shipping Is a Human Rights Concern

Stefan Kirchner

Few regions of the world are as affected by climate change as the Arctic. The massive increase in temperature already has an impact on life in the north and will change the living conditions of the indigenous peoples of the Arctic even more in the coming decades.

In recent years there has been significant research on the impact of climate change on indigenous peoples, for the time being, though, international law is only sparingly used as a tool to fight climate change for the express purpose of protecting the indigenous peoples of the Arctic. One reason may be that climate change is a problem of global proportions and thus requires a global solution. A number of efforts are directed against climate change, including the use of international legal tools. The question then is how to deal with the effects of climate change.

Indigenous communities will often face local problems which might have non-local origins. Climate change is such an issue. The next step in protecting the rights of indigenous communities is then not only to act against climate change as such but how to protect local communities against the effects of climate change. These effects will look different in different locations. Coastal communities may be threatened by rising sea levels, communities which depend on hunting or other uses of natural resources may be threatened by the strain put on such natural resources by climate change.

The use of land and other natural resources has long been in the focus of those who are interested in the rights of indigenous peoples. This has contributed to the emergence of a perception that rights of indigenous peoples are apart from human rights in general. This is not the case. As an academic discipline, the rights of indigenous peoples are part and parcel of human rights law. If indigenous peoples' rights are to be defended effectively, they have to be treated as regular human rights. Like the rights of other groups which find themselves in vulnerable situations, such as children or the handicapped, indigenous peoples rights are human rights which are at risk of being overlooked and will often be difficult to enforce. While the latter issue can be dealt with through the creation of effective legal systems, it will remain important to adequately identify indigenous rights issues in the first place.

Climate change makes the Arctic more accessible. This provides a challenge to indigenous communities in the Arctic beyond the use of natural resources. Two noteworthy issues in this context are a possible increase in Arctic tourism as well as the effects of increased shipping in the Arctic. In particular the latter will have implications which remain difficult to address at this time. The International Maritime Organization is currently in the process of drafting a Polar Code on Navigation in Arctic and Antarctic Waters. From the perspective of human rights it is important to deal with the impact increased Arctic shipping will have on the local communities. Both issues, tourism and Arctic Shipping, will be dealt with in the context of research projects at the University of Lapland in the academic year 2013-2014.

As an academic discipline indigenous peoples' rights has to transcend (albeit not abandon) the focus on natural resources and to widen the scope of the discipline. This requires a better understanding of the challenges faced by indigenous communities. At the same time can such an approach help to close existing gaps between indigenous and non-indigenous local communities. Climate change is a global problem and has to be dealt with globally. Its effects may not distributed evenly, the local effects of climate change, though, affect both indigenous and non-indigenous groups. The protection of indigenous groups against the effects of climate change therefore highlights the need to understand indigenous peoples' rights as an integral part of human rights law.

The Scope for Indigenous Language Rights in Russia

Elena Knyazeva

The Russian Federation is one of the most multinational countries in the world with more than 160 different nationalities. There are 46 officially recognized small numbered indigenous peoples, each possessing its own language.[58] The National Census 2010 demonstrated that there are 316,011 small numbered indigenous persons in Russia.[59] The languages spoken by indigenous peoples belong to several language families that have no known genetic relations, and none of them is related to Russian in any way. Almost all indigenous languages of the Russian Federation are listed as endangered by UNESCO.[60] This statistics shows that there is an urgent need to develop and revitalise indigenous languages in Russia in general and education in indigenous mother tongue in particular.

The current body of law on language rights in Russia is partly adopted from the Gorbachev period; therefore, the legislation on indigenous language rights is fragmented and not systematized. The Constitution and federal laws contain provision of the Article 69 which does not establish an official definition of indigenous peoples: "[t]he Russian Federation shall guarantee the rights of the indigenous small numbered peoples according to the universally recognized principles and norms of international law and international treaties and agreements of the Russian Federation." According to the Constitution and the federal legislation, special status is given not to indigenous peoples in general, but to "small numbered indigenous peoples". By establishing underconstitutional definition, Russian domestic law does not recognize certain indigenous peoples as subjects of international law. According to the 1999 Federal Law on Guaranteeing the Rights of Numerically Small Indigenous Peoples, only those groups that are smaller than 50,000 persons can enjoy the status of numerically small indigenous peoples. That leads to the situations when certain indigenous groups that number slightly above this threshold are arbitrarily excluded from the scope of the law and related positive measures regarding linguistic protection.

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[58] Indigenous people Alyutors has disappeared during last several years and they were not registered in the current national census.

[59] Federal State Statistics Service. Official Results of the National Census 2010, http://www.perepis-2010.ru/ (accessed March 14, 2013).

[60] Moseley, Christopher, editor. *Atlas of the World's Languages in Danger.* Paris: UNESCO Publishing, 2010. http://www.unesco.org/culture/en/endangeredlanguages/atlas (accessed March 12, 2013).

As special language rights guarantees are not regulated by constitutional provision of the Article 69, the constitutional status of indigenous languages is based upon the general language rights provisions of the Articles 68(3), 19(2), 26(2) of the Russian Constitution. The legislation regulating indigenous peoples' language rights is more than ten years old and requires revision and consolidation. The only norm connecting the concept of indigenousness and language rights is to be found in the Article 10(1) of the 1999 Law on Guarantees: "[p]ersons belonging to indigenous small numbered peoples, associations of indigenous small numbered peoples in order to maintain and develop their cultural identity, and in accordance with the laws of the Russian Federation have the right: 1) to maintain and develop their mother tongue languages." The government does not have clear mechanisms responsible for realization of language rights of indigenous peoples established at the domestic level. Two recent documents represent positive attempts to create mechanism for the protection of indigenous rights: 2009 Concept Paper on the Sustainable Development of Indigenous Peoples of the North, Siberia and the Far East and 2012 Concept Paper on the State National Policy till 2025. However, neither of them deals with the problem of indigenous language rights substantively. There is an urgent need for the development of a clearly defined indigenous language policy and its' accurate implementation.

Arctic EIA Systems in Research and Practice First in - Finland and Russia Arctic Environmental Impact Assessment

Pamela Lesser and Sonja Bickford

Background

As the economic interest in and the pursuit of resources in the Arctic region intensify, so do the concerns as to how business development can occur without detriment to the natural and human environment. Given the synergistic effects of climate change, population increase and globalization, the demand for the North's natural resources will only increase.

Most of the development in these northern regions centers on natural resources, and more specifically, on the extraction or harnessing of natural resources. Given the large scale of these projects, the requirement to conduct an Environmental Impact Assessment (EIA) is usually triggered. However, with more and more new projects coming on-line as well as in the pipeline, the question arises whether the extant EIA systems adequately address the unique conditions in the arctic and, in terms of business opportunities, whether there are similarities across the systems or not.

Timo Koivurova, a research professor at the University of Lapland's Arctic Centre, with a grant from Tekes, has undertaken a project specifically focused on the nexus between the private sector and environmental impact assessment in arctic regions. This article is written by the project's researcher, Pamela Lesser and by the program manager, Sonja Bickford.

The aim of the project is to identify how the system actually works in practice from the viewpoint of the private sector, where there is room for improvement, how northern regions are unique, and to clarify what constitutes EIA best practices in the arctic.

Focus

Finnish EIA System

In order to answer these larger questions, the project will initially focus on how the Finnish EIA system operates in practice. Different companies operating in the Lapland region are in the process of being interviewed to better understand how the system can be improved through the integration of best practices voluntarily employed by the companies. As there is no existing list of EIA best

practices the Finnish companies currently follow, compiling this list and developing a methodology for compiling these best practices for EIA will be the first task of the project.

In addition to Finland, six other Arctic countries will be visited during the project in order to collect benchmarking information of not only the EIA systems, but also how private industries perceive and operate within those systems. This information will then be presented to the Finnish companies for informational and comparative purposes of how similar industries are complying, operating, and perceive their own EIA regulations and what environmental assessment practices work best.

Arctic EIA Best Practices

Ultimately a larger goal of the project will be to compile EIA best practices for all of the arctic countries. Again, this list will be derived from the private sector for use by the private sector and creating a so called roadmap of the process itself.

Russian EIA System and Information Service

With Russia as a neighbor coupled with new infrastructure development and trade opportunities emerging, Finnish companies have expressed a desire to explore business opportunities in northwest Russia. Better understanding Russian environmental legislation and their EIA system goes hand-in-hand with both producing responsible EIAs and furthering potential business opportunities by providing information to help Finnish companies better navigate the Russian environmental process.

Russia thus acts as a bridge between research, i.e. developing new best practices with the help of the private sector resulting in more responsible EIAs, and business practice, i.e. assisting Finnish companies with the Russian EIA process via a database (Information Service) containing relevant environmental legislation and personal contacts.

Companies and authorities in northwest Russia will be interviewed using the same template of questions used for the companies in the other arctic countries with the hope of ultimately ascertaining how integrating best practices can result in more responsible EIAs. With this information being accessible to companies interested in moving into northwestern Russia their market entry barriers to the region will be lowered.

The Information Service will be a year-long process involving the compilation of information from government officials, research organizations and the private sector on the legislative requirements of the Russian EIA system and also how it functions in practice. Both of these components are essential in order to ensure that Finnish companies can successfully navigate the system.

Expected Outcomes

Given the multi-faceted nature of the project, there are a number of expected outcomes. These include:

- A better understanding of the private sector's experience with the Finnish EIA system and where and how they would like to see it improved.
- A better understanding of the private sector's experience with the Russian EIA system and the information needed in order to help Finnish companies with emerging business opportunities.
- Identifying what makes northern regions unique in terms of EIA and identifying best practices to address those unique characteristics.
- Tailoring best practices for the private sector to the national EIA systems of arctic countries.

The European Union and the Governance of Arctic Shipping

Nengye Liu

The European Union (EU) is inextricably linked to the Arctic region by a unique combination of history, geography, economics and scientific achievements.[61] In the wake of the "Erika (1999)" and "Prestige (2002)" oil tanker spill disasters, the EU has been successful in playing a lead role in the development of European and international law for preventing vessel-source pollution in the past decade.[62] It is therefore hoped that the EU can make substantial contribution to the changing governance of Arctic shipping as well.

The EU has concrete competences to make substantial contributions to the governance of Arctic shipping. As a non-member of the International Maritime Organization (IMO), the EU has flexibility to take initiatives at European level to remedy gaps of current international law applicable to Arctic shipping. Internally, the EU could impose its legislation to any ships flying a flag of an EU Member States in the Arctic. It is suggested that the EU could implement the BWM Convention before its entry into force for EU flagged vessels in the Arctic. This will not only set a model in the international community, but also create incentives for the development of regional and international law. As an economic power and potential destination for trans-Arctic shipping, the EU could strengthen its port state control on the carriage and/or use of heavy grade fuels by trans-Arctic shipping. This may have a strong external influence for adoption of a mandatory Polar Shipping Code. Externally, the EU should reinforce its non-legally binding IMO coordination process and better engage/incorporate with Norway and Iceland. With an enhanced coordination process, the EU could pursue its policy objectives within the IMO more effectively. For example, the EU might consider proposing the establishment of a PSSA around Svalbard. Finally, if the EU could learn from its successful practice within the IMO to set up a coordination process within the Arctic Council, it is foreseeable that the EU will play a much more important role in the Arctic governance, including shipping issues.

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[61] COM (2008) 763 final, 20 November 2008, 2.

[62] *Nengye Liu / Frank Maes*, The European Union's Role in the Prevention of Vessel-Source Pollution and its Internal Influence, Journal of International Maritime Law 15 (5) (2009), 411-422.

Arctic Governance Developments

Natalia Loukacheva

Although the term "Arctic governance" has been used in international relations and political discourse for some time, no precise legal definition of this term presently exists. Thus, "as such, "Arctic governance" is per se not a legal term or concept. Broadly speaking, "governance" can be understood as a process in which political power is exercised by different players with due consideration to the principles of legitimacy, accountability and transparency."[63] This evolving concept has been given various interpretations by the many stakeholders interested in the topic. For example, the legal scholarship often links the concept of "governance" to the right to autonomy (self-government) that is housed in the concept of self-determination. Furthermore, within existing legal frameworks, it is possible to identify several areas that are relevant to particular issues of governance in the Arctic. Thus, one can explore: "Arctic marine governance which may include the legal regime for Arctic shipping, Arctic fisheries or Arctic living marine resources governance; Arctic resource governance embracing Arctic energy governance or Arctic wildlife governance; governance of the High Seas; Arctic environmental governance; climate governance in the Arctic; sustainable development governance in the Arctic; and indigenous governance in the Arctic, etc." [64] De facto, a number of elements pre-defined by the existing legal and political settings, socio-economic and environmental preconditions and the activities of the numerous actors involved in Circumpolar agenda, shape Arctic governance.

The growing global importance of the Arctic especially with regards to environmental change and its geo-political significance; the growing number of stakeholders wishing for a say in decision-making processes affecting the region, including questions of resources, have prompted a further inquiry in the scope of Arctic governance. In an attempt to define the framework for governance in the Arctic, research can be focused on various approaches and evaluate: the status and future of Arctic cooperation; the role of existing and potential institutions in addressing pan-Arctic and global issues; the scope, interests and capacities of the stakeholders engaged in the development of the Arctic agendas and their capacity to deal with the present and forthcoming challenges of

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[63] N. Loukacheva, "Arctic Governance" in N. Loukacheva ed., Polar Law Textbook, (Copenhagen: Nordic Council of Ministers, TemaNord 538:2010):125, www.norden.org

[64] *Ibid*., at 129.

governance in the region; the adequacy of legal and political (both formal and informal) arrangements relevant to questions of governance in the Arctic, etc.

The current Arctic governance framework is evolving, it is marked by complexity and its development often requires innovative responses and approaches that can be elaborated by researchers. The Arctic governance institutional complex is shaped by increasing cooperation and interests of a number of actors trying to bring their voices on how Arctic issues should unfold; it is also influenced by innovation in governance arrangements, and the growing strength of regional networks in the Arctic and multilateral regimes. However, the growing number of initiatives undertaken by those actors, pose a challenge to the efficacy of this institutional complex, so as competing individual or ambitious political groups' agendas, challenge the functionality of Arctic governance. Tasks and solutions relating to questions of Arctic governance will vary depending on the actors involved, their agendas and their jurisdictional capacity to deal with different levels of governance in the region. The number of actors engaged in Arctic governance questions ranges from the eight Arctic states, sub-national Arctic entities and their governments and many institutions of Arctic and global ordering to Indigenous peoples and their organizations, environmental and other NGOs, private and public business entities, as well as interested in the Arctic region members of the civil society (e.g., Northerners, academics, scientists, etc.).

Furthermore, the EU and a number of non-Arctic states such as China, India, Singapore, Japan, (etc.), have recently also expressed clear interests in becoming more fully involved in how Arctic issues should develop. The tasks, structures and needs of Arctic governance are changing so as the form and scope of the regional and trans-national cooperation. One important recent development that enhances the Arctic governance framework has to do with the reform of one of its key institutions – the Arctic Council which since the 2009 Tromsø Declaration has introduced several reforms that have changed its architecture and jurisdiction. The Arctic Council, undoubtedly now has a greater prominence in the regional and global discourse on the Arctic.[65]

Current developments in the area of Arctic governance suggest that its structure will continue to be shaped by agendas of many multi-level governance actors operating within the context of numerous areas of cooperation within and beyond the Arctic rim. Thus, the ongoing re-evaluation of the existing arrangements that determine the Arctic governance framework and the search for innovative approaches and forms of governance is a work in progress that poses further questions to

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[65] About those reforms see: N.Loukacheva, "Polar Law and Major Developments," in N. Loukacheva ed., Polar Law Textbook II (Copenhagen: Nordic Council of Ministers, TemaNord 535:2013):28-30, www.norden.org

the research agenda. For example, what are the emerging issues in Arctic governance? Are existing institutional structures sufficient to deal with the many issues relevant to Arctic governance? How Arctic governance will/should evolve in its nexus with legal developments and other transformations in the region?

Topics in Arctic governance form an important part of Polar law developments. For further information pls. see specialized publications on Polar law (e.g., The Yearbook of Polar Law, the Arctic Review on Law and Politics, and the Polar law textbooks 2010 and 2013).

Actual Topics of Research in Indigenous Law

Øyvind Ravna

Most of the circumpolar areas are homelands for Indigenous people. Step by step Indigenous Issues have got a significant place when political questions related to the Arctic and sub-Arctic areas are put on the agenda. This is for instance shown by the indigenous Permanent Participants in Arctic Council, where important issues for the future Arctic development not are to be discussed without consulting and considering the interests of the indigenous peoples.

However, questions remain as to what extend the commitments to indigenous people are upheld among the Arctic states, while there is a need for an in-depth, empirical and scientifically based information among politicians and other decision makers. This calls for future research. Here are some topics we will like to emphasize:

- Indigenous people's participation in the decision making processes is a part of the rights to self-determination. Both in relation to legislation processes, but particularly in relation to land planning and industrial intervention in traditional indigenous lands, there is a need for research on how this is implemented in national legislation.
- Benefit sharing and participation in outcome of extractive industries is a hot topic many places where the indigenous societies is confronted by the industrial intervention on their traditional lands. To what extent is this commitment upheld according to international norms and obligations, and how does the national legislation comply with those standards?
- The concept "indigenous" / "indigenous people" is interpreted in several ways, and is to some extent disputed. The concept may have great significance for the possibilities for indigenous people to enjoy their culture, livelihood and access to traditional lands and is thus an important object for research.
- The rights to free speech and organizing are basic human rights that are challenged, particularly in some indigenous societies. To what extent indigenous peoples and indigenous organizations are free to express their voices and organize politically, is thus a topic for research, including elaboration on what to do to improve the situation.
- The recognition of the indigenous property rights in relation to extraction of oil, gas, and mineral resources on indigenous people traditional lands, arise many question, including interpretation of the concept of property in the ECHR protocol 1 article 1.
- The recognition of coastal fishing rights has been researched, identified and debated in many indigenous societies, among them Norway. These questions have not come to an end, which requires more research.

- The Nordic Sami Convention is not completed nearly 10 years after the expert group filed their draft. The Convention was supposed to be a best practice example on protection of the cultural, social and livelihood rights of the indigenous people. The process itself is thus object for research, including what to be done to complete the process.
- Recognition of indigenous lands has for centuries been a hot topic, where the ILO Convention no. 169 to day sets up a standard and an international norm for that recognition. In Norway, the 2005 Finnmark Act and the Finnmark Commission is internal legal instruments aimed to complete the commitments of recognizing indigenous lands. Since the Finnmark Act internationally is upheld as kind of best practice, it is a need to inquire how that commitment is maintained.
- The ILO Convention no. 169 puts up particular requirements for assessing areas claimed to be indigenous lands. Based on the ILO bodies interpreting, particular emphasis is to be put on thoroughly processing and availability for indigenous peoples. To what extent this is the case in countries that have, or plan to ratify the Convention, should be analyzed.

Regulation of Fisheries in the Arctic High Seas – Going Forward with a Sidestep?

Arne Riedel

Arctic fisheries can contribute a relevant part to Northern economies, but do not make up a large part on a global scale yet.[66] The continuing recession of Arctic sea ice extent and volume opens up previously ice covered areas longer (some for the first time) for economic activities. The question is not anymore if but when the high seas of the Arctic Ocean will become even more readily available. Straddling and highly migratory fish stocks require bilateral and multilateral agreements to promote a more sustainable management.[67] Albeit it is not sufficiently clear yet to which extent fisheries in the Arctic Ocean will be affected by ocean warming, the influence of fresh water from glacier melts and ocean acidification through the increased intake of CO_2, precautionary regulation should be in place to prevent illegal, unreported and unregulated (IUU) fisheries.

The United Nations' Law of the Sea Convention (UNCLOS) provides the overarching framework and sets the differentiated rules for distinct zones of usage.[68] Regarding the water column (the convention takes a different approach for the seabed), states are allowed to regulate and control the use of living resources to up to 200 nautical miles (nm) from their coastal baselines (Art. 56f. and 61ff. of UNCLOS). As long as there is no legal opportunity to expand that reach, the area in the central Arctic Ocean will remain „high seas".

For fisheries in the high seas, UNCLOS has only limited rules in place for the management of such resources (Art. 63 (2), 64 and 66 (3) of UNCLOS), assigning regional cooperation outside of national waters and for migratory and straddling stocks to Regional Fisheries Management Organizations (RFMOs). An additional, more specific piece in the international framework is provided by the UN Fish Stocks Agreement (UNFSA, in force since 2001), to which all Arctic states are parties to, particularly in Articles 7 and 8 UNFSA. While some organizations with large geographical coverage focus on single species (tuna, for instance), others take a more regional approach. As of now, only a very small part of the Arctic Ocean is governed by RFMOs' area of

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[66] Rudloff (2010), The EU as fishing actor in the Arctic – Stocktaking of institutional involvement and existing conflicts, SWP Working Paper 2010/02, p. 12, http://www.swp-berlin.org/en/publications/swp-research-paper-detail/article/the_eu_as_a_shipping_actor_in_the_arctic.html.

[67] See for example the Norwegian-Russian Fisheries Commission, a bilateral cooperation taking place between since 1976, http://www.jointfish.com/eng.

[68] Although the USA have not ratified UNCLOS (yet), the treaty's rules on zones of influence – having the status of customary international law – are valid for all Arctic states.

competence: the North East Atlantic Fisheries Commission (NEAFC) area covers about 8% of the Arctic Ocean's high seas.

The existing situation leaves a window of opportunity for international cooperation:[69] Following an US-led initiative, the five Arctic states bordering the Arctic Central Ocean's high seas found together in April/May 2013 to discuss issues concerning possible future fisheries in the area. An excerpt from the chairman's statement, however, stated there would be no need for an additional RFMO, and it would be recommended to take interim measures while further improving the scientific understanding of the changes in Arctic habitats. The participation of other international players with potential interests in Arctic fisheries only appears in a single line of the statement.[70]

As clear as the interests of Arctic states in the use of resources in the whole of the Arctic Ocean might be, this mandate does not extend to the regulation of the Arctic high seas without the other interested parties. Recognized principles of international environmental law, such as the precautionary principle and the principle of international cooperation – enshrined in the provisions of UNCLOS (Art. 197) and the UNFSA (Art. 5 (1), 7 (3), 8 and 21) – require the involvement of all interested parties by addressing "States fishing on the high seas" in general.

This does not imply, however, when the involvement will take place and in which form. Possibilities reach from an inclusive approach for the development of cooperative measures to the establishment of an RFMO with the option of a later accession by interested states.

From a governance perspective, the actions of the five Arctic states as of now (such as the proposed interim measures) suggest that the high seas' fisheries management could become a sector of regional cooperation outside the Arctic Council. It is striking that this development comes at a time that the previously fairly exclusive Arctic Council is in the process of opening up to more observer states (including inter alia Japan and China with large fishing fleets) and also recently provided the floor for negotiations of agreements among all eight Arctic states.[71]

Thus, it will be interesting to see if the seeming attempt of a re-regionalization of interests by the five states adjacent to the Arctic Ocean will be upheld for long. The way towards further extensive

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[69] See already the postulation of principles for Arctic marine ecosystems by Chapin et al. (2008), Policy Options for Arctic Environmental Governance, Arctic Transform Paper, 2008, S. 5, http://arctic-transform.org/download/EnvEX.pdf.

[70] Chairman's Statement at Meeting on Future Arctic Fisheries, 1 May 2013, http://www.state.gov/e/oes/rls/pr/2013/209176.htm: States whose EEZs border the Arctic Central Ocean's High Seas area "acknowledge that other States may have an interest in this topic and that they should be included in talks at some point in the future as appropriate."

[71] Agreements negotiated under the auspices of the Arctic Council include – as of now – the Agreement on Cooperation on Aeronautical and Maritime Search and Rescue in the Arctic (2011) as well as the Agreement on Cooperation on Marine Oil Spill Pollution, Preparedness and Response in the Arctic (2013).

research in fisheries as well as discussions on a possible moratorium or the establishment of new RFMOs in the Arctic high seas should include all relevant players on the international level. Taking „sidesteps“ for the regulation of this Arctic and international issue is counteracting these developments.

Mapping Human Rights Challenges of Immigrants in Finland

Nafisa Yeasmin

One of the most eye-catching signs of the process of globalization is the increase in flows of immigrants among countries, regions and continents.[72] Immigration is deeply involved in the globalization process and no analysis of immigration in Europe today can avoid consideration of European integration dynamics.[73] Migration policy does not always focussed to the right direction and the domestic actors come to international negotiating tables for representing their own national interests. Rather, domestic actors avoid the main issues and try to keep the control in their own hand. Most of the national ministries concerned with migration do not participate in international negotiations.[74]

The European states argued against ratifying the International Convention on the Protection of the Rights of All Migrant Workers 2010 and member states struggle to keep migration policies in their own control to the extent possible. Like other EU countries, Finland has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. A number of social indicators show that immigrants (especially from non-EU countries) have considerably higher rates of unemployment than the natives.[75] Immigrants should not be treated as a separate group, as their rights are guaranteed in such documents as the European Convention on Human Rights and other international human rights instruments that Finland has pledged to observe. The society needs more immigrants in this area for economic development which is related to human development. Finnish immigration policy does not follow the human rights standards to some extent.

The human rights debate of immigrants in the United Kingdom and the United States is readily visible in the work of immigration scholars and in their academic debates. However, the rights of immigrants in Finland are an equally urgent issue. This research field still to be explored and still represents a poorly investigated research object. It is to explore the concrete benefits for immigrant communities as well as Finnish society for future development by establishing civic rights of immigrants and on the other hand by eliminating discrimination.

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[72] J A Alonso, 'International Migration and Development: A review in light of the crisis' *Economic and Social Affairs* (2011).

[73] G Lahav, *Immigration and Politics in the New Europe* (Cambridge University Press, 2004).

[74] V Guiraudon, 'European Integration and Migration Policy: Vertical Policy-making as Venue Shopping' 38: 2 *Journal of Common Market Studies* (2002) 251–271.

[75] http://www.migrationinformation.org/USfocus/print.cfm?ID=406 (accessed March 2013).